



## Toward the Specific Criminal Procedures for Disabled Persons in Indonesia

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### Abstract

*This paper aims to analyze the need for the specific criminal procedure for disabled persons in Indonesian criminal justice system. This study employed doctrinal legal research using statute and conceptual approaches. The findings of this research reveal that the criminal justice system is based on the normalcy concept, which holds that everyone is physically and cognitively normal. As a result, the investigation, prosecution, and examination processes in court proceedings are exclusively aimed at and created for regular people. Persons with disabilities have been pushed to the margins and perhaps ignored. Persons with disabilities' rights are frequently infringed, both as perpetrators and as witnesses/victims of criminal activities. The medical method should be abandoned in favor of a social approach for the criminal justice system to be pro-people. What's needed is for law enforcement to do their jobs at each stage of the criminal justice system so that people with disabilities can have a fair trial. In the early phases of the criminal justice process, a profile assessment is required to determine the character, challenges, and requirements of people with disabilities.*

**Keywords** Criminal procedure; disabled person; social approach

### INTRODUCTION

The criminal justice system was not created with people with disabilities in mind from the start. People with disabilities who witness or are victims of a crime are treated the same as other witnesses or victims.<sup>1</sup> They must give testimony based on what they have seen, heard, or experienced. In fact, because they are deaf or blind, or because they have intellectual and psychological barriers, such as those experienced by slow learners or mentally retarded, not all of them will be able to hear or see a crime, causing difficulties in giving testimony during the investigation and examination stages of court proceedings.<sup>2</sup>

When looked at closely, the Criminal Procedure Code is mostly affected by a point of view or a common ideology. Legal regulations (statutory norms) are created and meant for normal people solely, ignoring the reality of disabled individuals. This idea of normalcy is reflected in how law enforcement authorities approach perpetrators, witnesses, and victims of people with disabilities. Indeed, this worldview is not only incorrect from the start, but also discriminatory, given the character, challenges, and requirements of persons with disabilities whom some people classify as aberrant. The police, prosecutors, and judges, under the guise of equality before the law, require witnesses to be people who have seen, heard, or experienced a criminal act without exception. Furthermore, law enforcement officers questioned whether the mentality of retardation's testimony was offered solely because the answers to a question were ambiguous.<sup>3</sup>

People with disabilities are more likely to be victims of criminal actions such as rape, assault, or sexual abuse, hence they should be given legal protection, one of which is the creation of a pro-disability criminal justice system.<sup>4</sup> The goal is to ensure that they receive a



fair trial.<sup>5</sup> If the primary goal of establishing the criminal justice system is to seek material truth, this goal will be thwarted if the criminal justice system's design is still founded on the normalcy ideology.<sup>6</sup>

This study proposes the criminal justice system for disabled people, a vulnerable minority whose existence in Indonesia is increasingly neglected and disregarded. The first section of this paper explains why understanding impairments requires a shift in theoretical approach. Until now, the medical approach/model has dominated the interpretation of disability as a concept or issue. The assumption is that people with disabilities are treated as sick people who require treatment. Of course, this strategy is ineffective and biased. As a result, discussing impairments must be approached from the perspective of removing barriers and educating against prejudice, with the ultimate objective of inclusion in mind.

The second section of this dissertation examines the Indonesian Criminal Code's intellectual foundation, which is based on the ideology of normalcy. The Criminal Procedure Code was not created with people with disabilities in mind. As a result, they frequently become secondary victims. The final section of the paper emphasizes the necessity for a pro-disabled criminal justice system. It is not the rights of persons with disabilities who are suspects, defendants, witnesses, or victims of criminal acts that investigators, public prosecutors, and judges must pay attention to and fulfill, but rather the barriers to interaction that prevent persons with disabilities from enjoying their right to a fair trial that must be addressed.

## **METHOD**

This study employed doctrinal legal research that mainly focused on the legal norms promulgated in the Criminal Procedure Code of Indonesia regulating the specific procedure for disabled persons. In addition, the research used conceptual approach. The basic understanding of medical theory of disability and social disability theory has important role in explaining the comprehensive regulatory framework toward the specific criminal procedure for disabled person in the criminal justice system. This study used literature as a tool to obtain the data. This study then was analyzed qualitatively.

## **RESULTS AND DISCUSSION**

### **Medical and Social Model of Disability**

Examining the concept of individuals with disabilities from the perspective of constructing models will be more suitable. The medical paradigm was the first to arise when it came to the presence of people with impairments. A person with a disability is viewed as a sick person who requires care, rehabilitation, medication, and compassion, according to this approach. This approach views disability as a problem that affects people with impairments rather than society. He also holds people with disabilities responsible for changing them so that they can be rehabilitated or treated so that they can adapt to society. A person with a record or a handicap is the word used by medical model followers to describe someone who has a physical anomaly.<sup>7</sup>



The Minority Group Model of Disability evolved because of the arguments made by professionals and people with disabilities themselves against the medical model. Persons with disabilities are classified as a marginalized minority group in this approach. People with disabilities, as well as disadvantaged groups based on race, gender, or sexual orientation, are victims of humiliation, discrimination, and exclusion from the community, according to this paradigm, which was first developed by a British Disability Studies expert. Persons with disabilities will always be marginalized since they are deemed aberrant people with a smaller population than normal people.

Many groups, particularly those with impairments, find the disability paradigm of a minority group unsatisfactory. Physical deformities are a gift from God to them, and they do not need to be regarded a problem, so that whether a person is normal or not, they are more concerned with their job and function in society. This concept has resulted in the development of a social paradigm for addressing handicap challenges (social model of disability). Disability is viewed as a social construct and a component of the human experience in this model. Disability is a difficulty in the relationship between people with disabilities and society's still prejudiced ideas. As a result, the objective is to break down barriers and educate people to overcome prejudices, with the goal of insulation. Disability is defined as a condition that prevents a person from interacting with their surroundings. This impediment is caused by the surrounding environment, which makes it difficult for people with impairments to engage with others.<sup>8</sup>

The content of the social model, the barrier-based approach to understanding disability, is accommodated in Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities. "Disability is an evolving concept," the preamble letter e says, "and it is the outcome of the interaction between physically and intellectually defective people and environmental impediments that impede their full and effective involvement in society on an equal footing with other people." This prologue demonstrates that disability is a concept that relates to the issues that persons encounter because prolonged physical, mental, intellectual, or sensory discomfort inhibits interaction and prevents full and effective involvement in society.

A person's ability to interact with other people or their environment is determined by the hurdles that he or she faces. A deaf individual, for example, is not deemed disabled if he does not communicate with other people. When a person communicates with someone who does not understand sign language, they are referred to as a person with a handicap. However, if the other person utilizes sign language that the deaf person understands, the disability will be removed. A blind man is another example. If he does not interact with his environment, such as when reading non-braille types of writing, he is not considered a person with a handicap. If a blind person reads an article in a newspaper, book, or on the internet written for people who are not blind, he is referred to as a person with a disability. Disabilities would vanish if he had access to written information in braille.<sup>9</sup>



### **The Disabled Persons in the Criminal Procedure Code: Mapping out the Flaws**

The criminal justice system must be able to balance at least two types of interests: the public interest, the interests of citizens who are victims of crime, either directly or indirectly, and the interests of criminals. One of the primary philosophical foundations in the establishment of the criminal justice system must be the proportional consideration of these two interests. However, examining the formulations of legal norms in Law Number 8 of 1981 concerning the Criminal Procedure Code, it appears that the primary motivation for the creation of the Code was the need to protect criminals' human rights, which were frequently violated by criminal law enforcement officers.

Because the emphasis in the Criminal Procedure Code is on the protection of criminals, it's not surprising that victims are overlooked and forgotten in the criminal justice system. The victim is reduced to a witness who is morally and legally obligated to recount what he witnessed and felt. If the information was presented both during the investigation and at the court hearing, its existence is forgotten. With this mentality, it's only natural that the topic of people with disabilities did not arise at the time. It seems unfathomable that, with the number of people with disabilities increasing year after year, combined with their fragility, this would happen.<sup>10</sup>

The Procedure Code was also created based on the normalcy concept, which is still in use today. The officer must not be deaf, and his physique must be complete and undamaged in any way. A public prosecutor cannot be a person with a lame, dwarf body, one eye, one hand, or one leg. To become a judge, you must be in good physical and mental health. With this disease, judging a person with one hand, one long leg, who only sees the right or left eye, or a midget for a lifetime is impossible. Because police officers, public prosecutors, and judges are descended from people who are physically flawless, even if their morals and integrity are tainted. People with disabilities who are victims of criminal crimes must be handled as normal people who are victims of criminal acts, not as people with impairments.<sup>11</sup>

A suspect or defendant is a person who appears to be physically normal. The Criminal Procedure Code's rights of suspects and defendants are likewise based on this concept of respect, and do not take sides with the legal interests of persons with disabilities, whether they are suspects, defendants, witnesses, or victims of a crime. First, a suspect's or defendant's right to be clearly informed in a language he knows about what he is suspected or accused of is limited to Indonesian and has nothing to do with sign language. Second, while a suspect or defendant has the right to seek interpretive aid at any time, this clause only applies to suspects, defendants, and witnesses. Third, the Criminal Procedure Code governs translators for deaf or mute defendants or witnesses, but it is unclear what criteria are utilized to ensure that the translation understands the language, character, and habits of people with impairments.<sup>12</sup>

The basic principle in relation to the investigation and prosecution processes is that, while there is a relationship between investigation and prosecution, their existence is still separate. Although the investigator has a moral obligation to notify the public prosecutor once an inquiry is launched, this does not imply that the two are inextricably linked. This is because the public prosecutor has the authority to declare that the investigator's Investigation





Report is incomplete, and that it must be completed. The report will most likely be passed back and forth between the investigator and the public prosecutor during this procedure. This condition is clearly harmful to those with impairments, particularly those with communicative and intellectual problems including autism, slow learners, and mental retardation. Furthermore, the procedure of processing the Crime Scene, which might occur multiple times, has a psychological impact on the active participation of witnesses or victims with disabilities.<sup>13</sup>

Judges selected to hear cases apply in general to persons with impairments during the examination process in court proceedings. In other words, there are no requirements for judges who deal with matters involving people with disabilities. Judges are also barred from adopting attitudes or making statements that cast doubt on witnesses or victims. However, it is generally known that the judge's questioning frequently converts the victim into a second victim in cases of rape, revocation, or sexual abuse. Due to the attitude of law enforcement personnel who are unsympathetic to their rights and interests, victims of criminal crimes become revictimization.<sup>14</sup>

Witnesses and victims who will testify in court must swear or agree to tell the truth. Typically, oaths or pledges are made with the assumption that the witness or victim is a physically and mentally normal person, and that they have not encounter people with impairments. Judges can also hear witness/victim testimony about specific topics without the defendant present, but this is not required. If the facts of the case reveal that the witness was traumatized or was not free while he testified in the presence of the defendant, the judge would normally order the defendant to leave the courtroom. This means that the order to charge the defendant when the witness/victim testifies will only be followed out if it is obvious that the witness/victim has been traumatized. Clearly, this arrangement does not protect the rights of people with disabilities, particularly those with intellectual disabilities who are frequently exposed to trauma over a lengthy period.<sup>15</sup>

The preceding explanation demonstrates that the criminal justice system as embodied in the Criminal Procedure Code is still biased against people with disabilities and founded on the idea of normalcy. In fact, the rights and needs of suspects, defendants, witnesses, and victims with disabilities who are involved in the criminal justice system differ from those of suspects, defendants, witnesses, and victims without disabilities. The criminal justice system, by equating the two, effectively fails to protect and support people with disabilities. As a result, it is vital to establish a criminal justice system for people with disabilities, so that their rights are respected on the one hand, and the material reality that is to be protected on the other.<sup>16</sup>

### **Toward the Specific Criminal Procedure for Disabled Persons**

The barrier method is utilized in accordance with the substance of the social model for the criminal justice system to be pro-disability for people with disabilities. What's needed here aren't the rights of people with disabilities who are suspects, defendants, witnesses, or victims of criminal acts that investigators, public prosecutors, and judges must consider and fulfill, but rather what barriers to interaction people with disabilities face that prevent them



from enjoying the right to a fair trial. It will be known about the rights of persons with disabilities that law enforcement officers must fulfill by knowing and assessing these hurdles. The role of law enforcement officials is to detect these hurdles since the social model regards disability as a matter of interaction between persons with disabilities and the person or their surroundings. The rights and needs of people with disabilities can be identified once these impediments have been identified.<sup>17</sup>

Identification of the barriers and needs of persons with disabilities confronted with the criminal justice system must occur during the investigation stage, as the findings will be utilized as guidelines for addressing cases during the prosecution and examination stages of the court proceedings. As a result, investigators, public prosecutors, and judges who handle cases involving people with disabilities must be familiar with the topic of disability, which takes the form of competency certification and requires a lot of patience. 10,4. The implication is that if matters involving persons with disabilities are handled by investigators, public prosecutors, and judges who do not have competency certifications, investigations, prosecutions, and examinations in court procedures become null and void. Persons with impairments can also work as investigators, public prosecutors, and judges. What is the reason for this? They can recognize the barriers and needs of people with disabilities, which is the answer. In addition, while dealing with people with disabilities, it is vital to build a feeling of four in investigators, public prosecutors, and judges so that they can better accomplish their responsibilities.<sup>18</sup>

Conducting a profile assessment by presenting disability psychologists, psychiatrists, translators, and teachers, friends of deans of persons with disabilities, or their parents, as well as organizations of persons with disabilities, is an easy way to identify the barriers and needs of persons with disabilities. This assessment must be completed during the investigative stage, and the results will have an impact and be utilized to fulfill the rights of people with disabilities later. Following the profile assessment, it will be known what type of disability a person with a disability has, whether he or she requires a companion from the investigation stage to the examination stage at the court hearing, whether it is necessary to meet the defendant when giving information, how to communicate and ask law enforcement officials, psychological resilience of persons with disabilities during the examination process, and what kind of intelligence a person with a disability possesses.<sup>19</sup>

The victim of a crime who is mentally retarded and deaf and mute, a disability psychologist, psychiatrist, sign interpreter, teacher, playmate, or victim's family must be included in the profile assessment. Legal and communication difficulties are the most common challenges that people with impairments confront. Psychologists with disabilities are presented to learn how to communicate and ask questions with victims with law enforcement officials, as well as the length of time for examinations, examination methods, examination room design, and assistance from the investigation stage to the examination stage during court proceedings. The state is responsible for all costs. If the victim is traumatized during the examination in the police station, the examination is conducted in areas the victim enjoys, such as the park, the victim's home, or even the playground where the victim used to play with his friends. If the victim will be traumatized by seeing the judge's



enormous shirt, the judge must remove it during the courtroom examination. If the victim was traumatized when he saw the defendant, the defendant was promptly issued by the judge during the victim's examination. If the victim can only devote 30 minutes to answering questions from investigators and judges, the question-and-answer process must be broken up with pauses. If the victim requires the assistance of a psychologist, the psychologist must be present during the inquiry and the court hearing.<sup>20</sup>

Presenting psychiatrists must be psychologists who are familiar with handicap issues. Its existence is required both during the inquiry and examination in court, to avoid unfavorable outcomes, and to assess the victim's mental state to create medical records connected to his psychiatric condition. Certain drugs, such as anti-depressants, are required to calm the victim's mental condition. To break down communication difficulties, sign language interpreters are brought in. Deaf persons, those close to and trusted by the deaf, or others who are not deaf but understand and have long communicated and interacted with the deaf should be employed as translators. It is preferable if the translator that investigators, public prosecutors, and courts must give is not only one, but three. The first is a deaf interpreter who immediately translates the deaf perpetrator or victim's words. The non-deaf translator's function is to give the translation of the deaf translator to investigators, public prosecutors, and judges. A third person who understands deaf sign language is needed to confirm that the deaf translation is accurate.<sup>21</sup>

Teachers, playmates, or parents of the victims are brought in to provide background information on the crime's timeline, the victim's daily activities, and items that the victim always carries, such as calendars or dolls. In some incidents of rape involving a victim with mental retardation, the teacher or playmate is frequently utilized as a place to confide in the victim. Victims, rather than their parents, find it easier to tell what occurred to them. In some cases, however, victims were more open to their parents than to their classmates or teachers. As a result, their presence is critical in learning about the barriers and requirements of victims.<sup>22</sup>

In addition to the requirement that investigators, public prosecutors, and judges have certification of competence in handling cases involving people with disabilities and conducting a profile assessment, case handlers for people with disabilities must work together in the same way that environmental protection and management cases and election criminal cases are handled. The goal is to ensure that not only the procedures and methods for dealing with issues involving people with disabilities are simple, but also that their right to a fair trial is respected. Persons with disabilities groups are required because, in some cases where persons with disabilities have been victims of criminal activities, the role of this organization is critical to the proper resolution of these cases. In addition, when investigators, public prosecutors, and judges meet challenges connected to the limitations and demands of people with disabilities, his presence is quite beneficial. In other words, organizations that work with people with disabilities provide valuable information that can help the investigation's profile assessment proceed smoothly, such as presenting a disability psychologist, the host, and even the victim himself.<sup>23</sup>



## CONCLUSION

The Criminal Procedure Code, which serves as a normative reference for the administration of the criminal justice system, is thought to have been based on the ideology of normality, which holds that everyone is physically and mentally normal. As a result, the investigation, prosecution, and examination processes in court proceedings are exclusively aimed at and created for regular people. Only a person who can witness a crime personally can be used as a witness; a blind person, even if he has the faculty of smell and "sees" the act, cannot be used as a witness. When dealing with criminals, this situation plainly negates the presence of people who are deaf, blind, or mentally impaired.

Persons with disabilities' rights are frequently abused, both as perpetrators and as witnesses/victims of criminal activities, because they are deemed abnormal people and the Criminal Procedure Code is exclusively intended at normal people. Criminal cases involving a disabled perpetrator or victim must be handled and examined by investigators, public prosecutors, and judges who are familiar with disability issues to fulfill the rights of persons with disabilities and to ensure that the criminal justice system is no longer based on normal ideologies, but rather applies proportionately to normal people and persons with disabilities in accordance with their respective characteristics and needs.

A profile assessment by a disability psychologist, psychiatrist, and special companion to determine the character, barriers, and needs of persons with disabilities is required at the investigation stage because the results will be used as guidelines for handling cases at the prosecution and examination stages of court proceedings. Only after a profile assessment can it be determined whether the perpetrator or witness/victim is deaf, mute, blind, mentally disabled, slow learner, autism, and others, how to communicate with them and what questions to ask them, the conditions of the investigation room, the examination room in the court, who must be in that room, and what facilities and infrastructure must be in place to fulfill their rights.

## REFERENCES

- Reksodiputro M. *Criminology and the Criminal Justice System* [Indonesian]. Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia. 1994. (1)
- Benedet J, Grant I. (2007), "Hearing the sexual assault complaints of women with mental disabilities: Evidentiary and procedural issues. *McGill Law Journal*. 52, p. 515. (2)
- Syafi'ie M. *Potret Aksesibilitas Penyandang Disabilitas di Yogyakarta*, Solider Jul. 28, 2013. Retrieved from <https://www.solider.id/2013/07/28/potret-aksesibilitas-penyandang-disabilitas-di-yogyakarta>. Accessed on March 24, 2022. (3)
- Ortoleva S. (2020), "Inaccessible justice: Human rights, persons with disabilities and the legal system. *ILSA Journal of International & Comparative Law*, 17, p. 281. (4)
- Nowak M, (2005), *U.N. Covenant on Civil and Political Rights – CCPR Commentary*, Erw. Aufl., Kehl/ Straßburg/Arlington. (5)
- Bakhri S. (2009), *The law of proof in criminal justice practice*. Pusat Pengkajian & Pengembangan Ilmu Hukum, Fakultas Hukum, Universitas Muhammadiyah Jakarta. (6)





- Kanter AS. (2010), "The law: What's disability studies got to do with it or an introduction to disability legal studies. *Columbia Human Rights Law Review*, 42, p.403. (7)
- Anastasious, D & Kauffman, J.M. (2013), "The Social Model of Disability: Dichotomy between Impairment and Disability. *Journal of Medicine and Philosophy*, 38, 4, pp. 441-459 (8)
- Hanafi, H., Hidayatullah, H., & Tamjidnor, T. (2022). Domestic Violence: Comparison between Islamic Law and Domestic Violence. *International Journal of Social Science, Education, Communication and Economics (Sinomics Journal)*, 1(1), 1–8. <https://doi.org/10.54443/sj.v1i1.1>
- Lawson, A and Beckett, A, E, (2020), "The Social and human rights models of disability: towards a complementary thesis, *The International Journal of Human Rights*, 25, 2, pp. 13 (9)
- Mudzakkir, (2001). *Posisi Hukum Korban Kejahatan Dalam Sistem Peradilan Pidana*, Dissertation, Postgraduate Program, Faculty of Law, University of Indonesia, Jakarta (10)
- Mudzakkir, (2001). *Posisi Hukum Korban Kejahatan Dalam Sistem Peradilan Pidana*, Dissertation, Postgraduate Program, Faculty of Law, University of Indonesia, Jakarta (11)
- Priamsari, Putri A, (2019), "Hukum yang berkeadilan bagi penyandang disabilitas", *Masalah-Masalah Hukum*, 48, 2, pp. 216-220 (12)
- Sholihah, I, (2016), "Kebijakan Baru: Jaminan Pemenuhan hak bagi penyandang disabilitas", *Sosio Informa*, 2, 02, pp. 167-169 (13)
- Ndaumanu, F, (2020), "Hak penyandang disabilitas: antara Tanggung Jawab dan Pelaksanaan oleh Pemerintah Daerah", *Jurnal HAM*, 11, 1, pp. 131-134 (14)
- Priamsari, Putri A, (2019), "Hukum yang berkeadilan bagi penyandang disabilitas", *Masalah-Masalah Hukum*, 48, 2, pp. 216-220 (15)
- Sholihah, I, (2016), "Kebijakan Baru: Jaminan Pemenuhan hak bagi penyandang disabilitas", *Sosio Informa*, 2, 02, pp. 167-169 (16)
- Syafi'ie M. Purwanti P, Ali M. (2014), *Potret Difabel berhadapan dengan Hukum Negara*, Yogyakarta: SIGAB. (17)
- Blume JH, Johnson SL, Millor SE. (2011), *Convicting Lennie: Mental Retardation, Wrongful Convictions, and the Right to a Fair Trial*. *NYL School Law Review*, 56, p.943. (18)
- Guo Z. (2010), *Approaching visible justice: procedural safeguards for mental examinations in China's capital cases*. *Hastings International & Comparative Law*, 33, p. 21 (19)
- Australian Human Rights Commission. (2013), *Access to Justice in the Criminal Justice System for People With Disability: Issues Paper*. Australian Human Rights Commission. (20)
- Brodoff L, McClellan S, Anderson E. (2003), "The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon. *Seattle Journal Social Justice*, 2, p.609. (21)
- Grant C. (2012), *The Texas Intellectual Disability Standard in Capital Murder Cases: A Proposed Statute for a Broken Method*. *S. Texas Law Review*, 54, p. 151. (22)



Lacovou, M, (2020), “A contribution towards a possible re-invigoration of our understanding of our social model of disability’s potential”, *Disability & Society*, 26, 7, pp.1169-1171 (23)