



## FAIR TRIAL FOR PERSONS WITH DISABILITIES: IDEALITY VS REALITY

Novie Amalia Nugraheni \*, Andri Kristanto

Doctor of law program Jendral Soedirman University, Purwokerto

[novie\\_amalia12@yahoo.com](mailto:novie_amalia12@yahoo.com)

### Abstract:

The purpose of this research is to analyze the barriers in fulfilling the rights of persons with disabilities in the fair trial process to provide legal protection to persons with disabilities. The type of research used in this study is juridical normative research using secondary data obtained from previous research. The data analysis method used is qualitative by collecting data in the form of applicable laws, books, journals related to persons with disabilities and law enforcement, and interviews with stakeholders involved. The research results show that fair trials for persons with disabilities are still an ideal that has not been fully achieved. Real commitment and action from the government, law enforcement, and society are needed to ensure the protection of the rights of persons with disabilities in the justice system. There is still a lack of understanding and awareness of their needs, but increased awareness and training can help address this issue. Fair trials must consider limited physical accessibility and alternative communication facilities, and ensure adequate training for court staff. Concrete actions are needed to improve awareness, training, and accessibility in the justice system.

**Keywords:** Disability; Legal protection; Fair Trial.

### Abstrak:

Tujuan dari penelitian ini adalah untuk menganalisis hambatan dalam memenuhi hak-hak penyandang disabilitas dalam proses persidangan yang adil guna memberikan perlindungan hukum kepada penyandang disabilitas. Jenis penelitian yang digunakan dalam penelitian ini, adalah jenis penelitian yuridis normative dengan menggunakan data sekunder yang diperoleh dari penelitian sebelumnya. Analisis data yang digunakan adalah dengan menggunakan metode kualitatif dengan mengumpulkan data dalam bentuk hukum yang berlaku, buku, jurnal yang terkait dengan penyandang disabilitas dan penegakan hukum, wawancara dari para pemangku kepentingan yang terlibat. Hasil penelitian menunjukkan bahwa, persidangan yang adil bagi penyandang disabilitas masih menjadi ideal yang belum sepenuhnya tercapai. Diperlukan komitmen dan tindakan nyata dari pemerintah, penegak hukum, dan masyarakat untuk memastikan perlindungan hak-hak penyandang disabilitas dalam sistem peradilan. Masih ada kekurangan pemahaman dan kesadaran tentang kebutuhan mereka, tetapi peningkatan kesadaran dan pelatihan dapat membantu mengatasi masalah ini. Persidangan yang adil harus memperhatikan aksesibilitas fisik dan fasilitas komunikasi alternatif, serta memastikan pelatihan yang memadai bagi staf pengadilan. Untuk meningkatkan situasi ini, diperlukan tindakan konkret untuk meningkatkan kesadaran, pelatihan, dan aksesibilitas dalam sistem peradilan.

**Kata Kunci:** Disabilitas; Perlindungan Hukum; Persidangan Adil.

## A. Introduction

Indonesia is a country that strongly upholds human rights, and is the mandate of reform. One of the targets of the reform process is the legal sector. The Indonesian people want to prove that the guarantee of human rights, especially in the field of law, is a form of respect and protection as a form of a democratic state of law. (Asshiddiqie, 2003) One of the concerns is legal protection for people with disabilities, based on Law Number 8 of 2016 concerning Persons with Disabilities, law enforcers are obliged to provide reasonable accommodation for persons with disabilities who are dealing with the legal process. According to Mansour Fakhri, the existence of difables cannot be separated from a very destructive social construction, namely Difabel is attached to disability, which is interpreted as disabilities. Persons with Disabilities in Law No. 8/2016 is a replacement for the term "Persons with Disabilities" as mentioned in Law No. 4/1997 which has been revoked. In international legal terms contained in the Convention on the Rights of Persons with Disabilities, which has been ratified through Law Number 9 of 2011, it is called "Person with Disabilities".

Persons with disabilities who are dealing with the law either as perpetrators, victims or witnesses are often denied their rights in the form of less friendly and inadequate infrastructure and other social barriers. Based on Article 6 of Government Regulation Number 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in Criminal proceedings consists of: (Maulidina et al., 2022)

- a. Non-discriminatory treatment;
- b. Fulfillment of a sense of security and comfort;
- c. Effective communication
- d. Fulfillment of information related to the rights of Persons with Disabilities and the progress of the judicial process;
- e. Provision of long distance audio visual communication facilities;
- f. Provision of standards for the examination of Persons with Disabilities and standards for the provision of legal services; and Provision of Disability Assistants and/or Translators.

However, in fulfilling their rights in a fair judicial process for persons with disabilities, there are often obstacles so that the fulfillment of rights that are expected to be fulfilled cannot be carried out properly, this results in persons with disabilities becoming marginalized in society even though there are national and international regulations governing their rights.

A judicial process faced by persons with disabilities should not only focus on law enforcement, but also provide a fair judicial process in the form of infrastructure and easy access to services for persons with disabilities. The reason why people with disabilities need special attention is because they need support and assistance from others. If the fulfillment of access to a fair trial is violated by the State as a legal organizer, the State is considered to have failed in upholding human rights (HAM) so that violations of human rights will be obtained. (Nur Patria, 2022)

The lack of knowledge of law enforcers towards persons with disabilities, supported by the absence of a special mechanism for the justice system in Indonesia, and the infrastructure needed by persons with disabilities, indicates that there must be an optimal evaluation and improvement of the judicial institutions to realize a fair trial for persons with disabilities.

Research addressing issues of rights for people with disabilities has been conducted by several researchers previously, such as Frichy Ndaumanu, in his article

titled "Rights of Persons with Disabilities: Between Responsibility and Implementation by Local Governments," published in the *Journal of Human Rights*, Vol. 11, No. 1 (2020). Frichy Ndaumanu's research focuses on the responsibility of local governments in fulfilling the rights of people with disabilities in general, differing from the author's research, which emphasizes the fulfillment of the rights of people with disabilities in the judicial process in Indonesia. (Ndaumanu, 2020)

Another study was conducted by Alia Harumdani Widjaja et al., titled "Protection of Rights for Persons with Disabilities in Obtaining Decent Employment and Livelihoods for Humanity," published in the *Constitution Journal*, Vol. 17, No. 1 (2020). This research analyzes the rights of disabilities in obtaining equal rights to employment. The scope of this study is clearly different from the author's research, where once again the author focuses on the discussion of specialized judicial rights for people with disabilities. (Widjaja et al., 2020)

Based on the above, this study intends to understand and analyze the Legal Protection for Persons with Disabilities in the Current Judicial Environment as well as the Legal Protection for Persons with Disabilities in the Ideal Judicial Environment.

## **B. Research Method**

The writing of this article is a normative juridical research (legal research), which is conducted by examining various formal legal rules such as laws, regulations, and literature containing interconnected theoretical concepts. This research utilizes a problem-oriented approach in the form of a legislative approach, which involves examining laws and regulations governing legal protection for Persons with Disabilities in the Indonesian judicial system. The data sources used include both primary and secondary data. Primary data consists of information directly obtained from the field, while secondary data comprises information gathered from various literature sources. The collected data is analyzed using qualitative analysis techniques.

## **C. Discussion**

### **1. Legal Protection for Persons with Disabilities in the Current Justice Environment**

Every Indonesian citizen who is dealing with the law has equal status in the law. The principle of Equality Before the Law adopted by the State of Indonesia is a consequence of the protection that must be provided by the state to provide justice equally to the community. Equality in law is realized by the existence of justice for everyone regardless of background, so that everyone dealing with the law will get fair equality and protection from all forms of discrimination. (Hakim, 2020)

Law No. 8/2016 on Persons with Disabilities does regulate the rights of persons with disabilities and the obligations of the government in ensuring equal rights and participation of persons with disabilities in the life of society, nation and state. The Disability Law does regulate courts and prisons that must provide accessible facilities for persons with disabilities. Physical facilities such as elevators for wheelchair users and court files available in braille or audio format for the blind, as well as non-physical facilities such as sign language interpreters or languages understood by persons with intellectual disabilities and the hearing impaired, are examples of facilities that must be provided by courts and correctional institutions. In addition, in the trial process, the scope of witnesses and evidence must also be expanded to ensure justice for persons

with disabilities. This is important to ensure that people with disabilities have the same access to justice as everyone else.(Sodiqin, 2021)

People with disabilities are often discriminated against in the legal system. This can occur due to a lack of awareness of the rights of persons with disabilities, as well as a lack of appropriate access for persons with disabilities to obtain adequate legal assistance. The legal system must treat everyone fairly, including people with disabilities.(Wiraputra, 2021)

Pursuing fair justice for persons with disabilities involves striving to achieve an ideal where they have equal access to legal resources and are appropriately accommodated within the justice system. This ideal situation would ensure that their disability does not hinder their ability to receive or participate in fair trials and legal proceedings.

Based on data from the National Statistics Agency (BPS), the number of people with disabilities in Indonesia in 2022 has increased from the previous year Where in 2021 there were 16.5 million people with disabilities in Indonesia but then increased in 2022 to 22.5 people. This is certainly a special concern from all parties.

Table 1

Data on the number of people with disabilities in Indonesia

<b>Year 2022</b>	22.5 million people
<b>Year 2021</b>	16, 5 million people

Source: BPS Report 2022

The Convention on the Rights of Persons with Disabilities (CRPD) has two main functions in human rights instruments, namely a tool of social control and a tool of social engineering, being a means of controlling the rule of law and its policies towards people with disabilities.(Martínez-Medina et al., 2022) In reality, the fulfillment of rights for Persons with Disabilities in a fair judicial environment at this time there are gaps in obtaining legal access, physical and mental disabilities become obstacles for Persons with Disabilities in communicating and interacting with the surrounding environment, especially Persons with Disabilities who are dealing with the law. Article 5 of Law Number 8/2016 explains that Persons with Disabilities have accessibility rights. The Accessibility Rights referred to are facilities provided for Persons with Disabilities in order to realize equal opportunities (Article 1 point 8 of Law Number 8 of 2016). The rights obtained in legal protection and justice for Persons with Disabilities are implemented through equal treatment in law and recognition as legal subjects to obtain accessibility rights.(Fauzi, 2022)

In legal theory, a fair trial is a fundamental right of every individual,(Basri, 2021) including persons with disabilities. However, in reality, fair trial for persons with disabilities often remains an unattainable ideal. A fair trial for persons with disabilities must ensure that they have equal access to the judicial process, namely the right to be represented by a competent lawyer, the right to understand and actively participate in the judicial process, and the right to obtain accommodations that suit their needs, but the reality on the ground shows that there are still many challenges and obstacles in realizing a fair trial for persons with disabilities. One of the main challenges is the lack of awareness and understanding on the part of law enforcement about the rights and special needs of persons with disabilities. In addition, the infrastructure and facilities in the courts are often inadequate to accommodate the needs of persons with disabilities,

such as limited physical accessibility, lack of alternative communication facilities, and lack of training for court staff regarding the handling of cases involving persons with disabilities. Despite the challenges, it is important for the justice system, especially in Indonesia, to continue to improve accessibility and inclusiveness for persons with disabilities in the judicial process. Concrete steps are needed to overcome these challenges, such as increasing awareness and understanding by law enforcement officials of the rights and needs of persons with disabilities, training court staff in handling cases involving persons with disabilities, improving physical accessibility and adequate facilities in courts, and ensuring policies and procedures are in place that regulate fair treatment of persons with disabilities in the justice system. In an ideal world, a fair trial for persons with disabilities should ensure equal access, use of support, and fairness of process for them.

The position of Persons with Disabilities as persons in conflict with the law, in the criminal context as defendants, victims and witnesses or in civil cases must receive full protection. Fair trial in Manfred Nowak's explanation of Article 14 of the International Covenant on Civil and Political Rights. (Lillich & Nowak, 1995) The judiciary is the highest institution in seeking justice so it must create a fair and accessible trial for persons with disabilities. However, the fact is that there are many cases involving people with disabilities as victims due to lack of evidence, where people with disabilities who are in the position of victims do not have the ability to defend themselves. In Article 1 point 26 of KUHAP, the definition of a witness is a person who can provide information for the purposes of the investigation that he/she sees, hears and experiences himself/herself. The Indonesian Criminal Procedure Code (KUHAP) only facilitates free legal aid in the form of translators/linguists for criminal offenders/perpetrators who are mute/deaf/blind, while Persons with Disabilities who are victims or witnesses have not received free assistance from the state. This is certainly a dilemma when in a process of proof in court, both prosecutors, judges and lawyers get witnesses and victims who are persons with disabilities.

The current judicial practice, at the District Court level in regencies and cities, only has a Legal Aid Post (Posbakum) that provides legal assistance in the form of Lawyers / Legal Advisors who defend the defendant in the trial, but this does not provide access to free interpreters for perpetrators of criminal acts, victims of criminal acts and witnesses of a criminal event who have disabilities. Article 178 Paragraph (1) of KUHAP explains that interpreters are intended for speech impaired (mute) and hearing impaired (deaf) who cannot write so that those who can write are not provided access to interpreters, these qualifications certainly do not accommodate persons with disabilities who have other deficiencies or disabilities. When people with disabilities have the status of perpetrators, victims or witnesses, their rights are often deprived and support from the justice system is minimal. (Lillich & Nowak, 1995)

While the goal is to achieve a justice system that treats persons with disabilities fairly and equally, there are still many challenges in translating these ideals into practice, which may lead to a gap between what the law envisions and the lived experiences of persons with disabilities.

## **2. Legal Protection for Persons with Disabilities in an Ideal Judicial Environment**

The main barriers that limit or prevent access to justice for people with disabilities refer to the 2013 Australian Human Rights Commission report entitled Access To

Justice In The Criminal Justice System For People With Disability, namely the first environmental / community / community support is not available to some people with disabilities, second; People with disabling conditions do not receive support, adjustments or assistive devices in the criminal justice process, Third; negative assumptions about people with disabilities who are considered incapable of participating in the legal process, Fourth; Specific support, accommodations and programs are not provided to people with disabilities because they are considered unable to understand or respond to criminal charges brought against them so they are considered unfit to plead, Fifth; the lack of appropriate assistive device support for people with disabilities who are criminal offenders, in correctional institutions they often receive inhumane and degrading treatment and even torture because they are considered helpless.(Ainan Nirmaya Beki & Gede Artha, 2019)

Concrete efforts are needed to address these challenges to achieve fair trials for persons with disabilities. Steps that need to be taken include: increasing awareness and understanding of the rights and needs of persons with disabilities by law enforcement agencies, training court staff in handling cases involving persons with disabilities, improving physical accessibility and facilities in courts including updating infrastructure to accommodate the needs of persons with disabilities, such as accessibility stairs and elevators, disability-friendly parking facilities, and alternative communication facilities, and ensuring policies and procedures governing fair treatment of persons with disabilities in the justice system are in place in Indonesia, because the judicial service needs of persons with disabilities are different from those of the general public, with persons with disabilities requiring physical accessibility and procedural accessibility.(Mawaddah, 2022)

Government Regulation No. 39 of 2020 on Adequate Accommodation for Persons with Disabilities in the judicial process must be implemented to end discriminatory practices and run a legal system that upholds equal rights, starting from investigations, prosecutions and trials covering general courts, religious courts, state administrative courts, and military courts as well as in the Constitutional Court as a fulfilling judicial process for persons with disabilities.(Sahyana, 2020)

#### **D. Conclusion**

In reality, a fair trial for persons with disabilities is still an ideal that has not been fully achieved. There needs to be real commitment and action from all parties, including the government, law enforcers, and society as a whole to ensure that the rights of persons with disabilities are respected and protected in the justice system. In reality, there are still many law enforcers who do not have an adequate understanding of the rights and needs of persons with disabilities. However, awareness raising and proper training can help address this. The ideal of a fair trial for persons with disabilities includes limited physical accessibility, lack of alternative communication facilities, and inadequate training for court staff. In order to achieve fair trials for persons with disabilities, concrete actions are needed to increase awareness, training and accessibility in the justice system. Expanding awareness and appropriate training can help address this.

#### **E. Recommendations**

1. Existing regulations made for persons with disabilities who are in conflict with the law should be re-evaluated, so that there are no multiple interpretations between one regulation and another.

2. Regarding physical accessibility in the form of facilities and infrastructure to be immediately provided at every stage of the examination process, starting from the Police, Prosecutor's Office, Courts to Correctional Institutions.
3. The ability of law enforcement officials and court staff should be given special training in dealing with, understanding and serving persons with disabilities in their status as perpetrators, victims and witnesses.

## REFERENCE

- Ainan Nirmaya Bekti, N., & Gede Artha, I. (2019). Perlindungan Hukum Terhadap Penyandang Disabilitas Sebagai Saksi Dan Korban Tindak Pidana Dalam Proses Peradilan \*. *E-Journal Ilmu Hukum Kertha Wicara*, 8.
- Asshiddiqie, J. (2003). Konsep Negara Hukum Indonesia. In *L'école de Palo Alto*.
- Basri, H. (2021). Perlindungan Hukum Terhadap Pelaku Tindak Pidana Berdasarkan Sistem Peradilan Pidana Indonesia. *SIGn Jurnal Hukum*, 2(2). <https://doi.org/10.37276/sjh.v2i2.90>
- Fauzi, M. N. K. (2022). KOMPLEKSITAS PEMENUHAN HAK PENYANDANG DISABILITAS YANG BERHADAPAN DENGAN HUKUM DI PENGADILAN TINGGI TANJUNG KARANG. *Inovasi Pembangunan : Jurnal Kelitbangan*, 10(03). <https://doi.org/10.35450/jip.v10i03.317>
- Hakim, D. L. (2020). Asas Asas Hukum Pidana. In *Cv Budi Utama* (Vol. 5, Issue 1).
- Lillich, R. B., & Nowak, M. (1995). U.N. Covenant on Civil and Political Rights. CCPR Commentary. *The American Journal of International Law*, 89(2).
- Martínez-Medina, A., Morales-Calvo, S., Rodríguez-Martín, V., Meseguer-Sánchez, V., & Molina-Moreno, V. (2022). Sixteen Years since the Convention on the Rights of Persons with Disabilities: What Have We Learned since Then? In *International Journal of Environmental Research and Public Health* (Vol. 19, Issue 18). <https://doi.org/10.3390/ijerph191811646>
- Maulidina, H. A., Gunadi, K. S., SAHARA, A. M., & ... (2022). Analisis Perspektif Jaksa Dalam Akses Keadilan Bagi Penyandang Disabilitas Pada Proses Peradilan Di Kabupaten Karanganyar. *Jurnal Ekonomi ...*, 4(4).
- Mawaddah, F. H. (2022). Implementasi Layanan Peradilan Bagi Penyandang Disabilitas Perspektif Teori Efektivitas Hukum Soerjono Soekanto (Studi di Pengadilan Agama Kabupaten Malang). *Etheses of Maulana Malik Ibrahim State Islamic University*, 6(8.5.2017).
- Ndaumanu, F. (2020). Hak Penyandang Disabilitas: Antara Tanggung Jawab dan Pelaksanaan oleh Pemerintah Daerah. *Jurnal HAM*, 11(1). <https://doi.org/10.30641/ham.2020.11.131-150>
- Nur Patria, E. P. (2022). MEWUJUDKAN SISTEM PERADILAN PIDANA YANG FAIR BAGI PENYANDANG DISABILITAS. *Mimbar Keadilan*, 15(1). <https://doi.org/10.30996/mk.v15i1.6068>
- Sahyana, Y. (2020). Implementasi Hak Asasi Manusia Dalam Sistem Peradilan Pidana Indonesia. *Jurnal Konstituen*, 2(2).
- Sodiqin, A. (2021). AMBIGUITAS PERLINDUNGAN HUKUM PENYANDANG DISABILITAS DALAM PERUNDANG-UNDANGAN DI INDONESIA. *Jurnal Legislasi Indonesia*, 18(1). <https://doi.org/10.54629/jli.v18i1.707>
- Widjaja, A. H., Wijayanti, W., & Yulistyaputri, R. (2020). Perlindungan Hak Penyandang Disabilitas dalam Memperoleh Pekerjaan dan Penghidupan yang

Layak bagi Kemanusiaan. *Jurnal Konstitusi*, 17(1).  
<https://doi.org/10.31078/jk1719>  
Wiraputra, A. D. (2021). Perlindungan Hukum Terhadap Pekerja Penyandang Disabilitas. *Dharmasisya*, 1(1).