



A Juridical Examination of the Criminal Liability of Persons with Physical Disabilities in Sexual Violence Cases in Indonesia

I Gede K Ananta Yoga*¹, I Made Wirya Darma²

^{1,2}Universitas Pendidikan Nasional, Indonesia

Email: anantayoga0809@gmail.com

*Corresponding Author

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Abstract

Sexual violence is a serious crime that produces multidimensional impacts, including physical, psychological, and social harm. The complexity increases when offenders are persons with physical disabilities. This article aims to analyze the criminal liability of such offenders through a normative review of court decisions and to propose normative solutions for achieving substantive justice. The research employs a normative legal method using statutory, conceptual, and case approaches, specifically examining Indonesian criminal law, applying the theories of John Rawls, Philipus M. Hadjon, and Roscoe Pound, and analyzing the Ambon District Court Decision No. 236/Pid.Sus/2024 and the Mataram District Court Decision No. 23/Pid.Sus/2025. The findings confirm that physical disability does not negate criminal liability since actus reus and mens rea remain fulfilled. However, disability has not been proportionally considered in sentencing, resulting in merely formal justice. The study recommends normative reform, technical guidelines for law enforcement, and disability-friendly correctional facilities to ensure proportionality, prevent discrimination, and uphold human rights. The research implications suggest that these recommendations can serve as a foundation for policymakers to strengthen legal frameworks, provide practical guidance for law enforcement officers in handling cases involving persons with disabilities, and encourage the development of more inclusive correctional institutions. Moreover, the findings highlight the importance of aligning national practices with international human rights standards, which may inspire further comparative studies and reforms in other jurisdictions.

Keywords: Criminal liability, Disability, Sexual Violence, Mens rea

Abstrak

Kekerasan seksual merupakan kejahatan serius yang menimbulkan dampak multidimensional, termasuk kerugian fisik, psikologis, dan sosial. Kompleksitas meningkat ketika pelakunya adalah penyandang disabilitas fisik. Artikel ini bertujuan untuk menganalisis pertanggungjawaban pidana pelaku tersebut melalui tinjauan normatif terhadap putusan pengadilan serta mengusulkan solusi normatif untuk mewujudkan keadilan substantif. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, khususnya menelaah hukum pidana Indonesia, menerapkan teori John Rawls, Philipus M. Hadjon, dan Roscoe Pound,



serta menganalisis Putusan Pengadilan Negeri Ambon No. 236/Pid.Sus/2024 dan Putusan Pengadilan Negeri Mataram No. 23/Pid.Sus/2025. Temuan penelitian menegaskan bahwa disabilitas fisik tidak menghapus pertanggungjawaban pidana karena unsur *actus reus* dan *mens rea* tetap terpenuhi. Namun, disabilitas belum dipertimbangkan secara proporsional dalam pemidanaan, sehingga hanya menghasilkan keadilan formal. Studi ini merekomendasikan reformasi normatif, pedoman teknis bagi aparat penegak hukum, serta fasilitas pemasyarakatan yang ramah disabilitas untuk menjamin proporsionalitas, mencegah diskriminasi, dan menegakkan hak asasi manusia. Implikasi penelitian menunjukkan bahwa rekomendasi ini dapat menjadi landasan bagi para pembuat kebijakan untuk memperkuat kerangka hukum, memberikan panduan praktis bagi aparat penegak hukum dalam menangani kasus yang melibatkan penyandang disabilitas, serta mendorong pengembangan lembaga pemasyarakatan yang lebih inklusif. Selain itu, temuan penelitian ini menekankan pentingnya menyelaraskan praktik nasional dengan standar hak asasi manusia internasional, yang dapat menginspirasi studi komparatif lebih lanjut dan reformasi di yurisdiksi lain.

Kata Kunci: Tanggung jawab pidana, Disabilitas, Kekerasan Seksual, Mens rea

Introduction

Sexual violence constitutes a serious crime that violates fundamental human rights and generates destructive consequences for both individuals and society.¹ Komnas Perempuan recorded 330,097 cases in 2024 (up 14.17% year-on-year), mostly in the personal sphere, indicating high vulnerability among women and children.² As a form of crime categorized as serious, the handling of sexual violence requires criminal law instruments capable of ensuring protection, legal certainty, and a deterrent effect for perpetrators.³ This paper situates sexual violence within Indonesia's criminal law framework that seeks protection, legal certainty, and deterrence.⁴

The complexity of legal issues arises when acts of sexual violence are committed by individuals with physical disabilities. Pursuant to Law No. 8 of 2016 on Persons with Disabilities, a person with disabilities is defined as any individual who has long-term physical, intellectual, mental, or sensory impairments which, in interaction with various barriers, may hinder their full and equal participation in society as other citizens. Under Law No. 8/2016, persons with disabilities are entitled to protection and non-discrimination.⁵

¹ Febra Anjar Kusuma et al., "Analisis Studi Kasus Dampak Sosiologis Terhadap Korban Pelecehan Seksual Di Indonesia," *Sosmaniora: Jurnal Ilmu Sosial Dan Humaniora* 4, no. 1 (2025): 77-88, <https://doi.org/10.55123/sosmaniora.v4i1.4927>.

² "Catahu 2024: Menata Data, Menajamkan Arah: Refleksi Pendokumentasian Dan Tren Kasus Kekerasan Terhadap Perempuan," accessed April 9, 2025, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2024-menata-data-menajamkan-arah-refleksi-pendokumentasian-dan-tren-kasus-kekerasan-terhadap-perempuan>.

³ Martitah Martitah et al., "Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia," *Heliyon* 10, no. 14 (2024): e33719, <https://doi.org/10.1016/j.heliyon.2024.e33719>.

⁴ Faisal Riza and Erwin Asmadi, *Hukum Pidana Indonesia*, ed. Muhammad Arifin, Pertama (Medan: Umsu Press, 2023).³

⁵ Ana Andayani et al., "Analisis Kesiapan Polisi Dan Hakim Dalam Memberikan Keadilan Bagi Penyandang Disabilitas Sebagai Pelaku Tindak Pidana Di Kota Samarinda," *Journal of Education Research* 6, no. 1 (2025): 23-33, <https://doi.org/10.37985/jer.v6i1.2182>.

Normatively, the Law on Persons with Disabilities affirms the right to protection, non-discrimination, and fair treatment for persons with disabilities. Human rights acknowledge various forms of protection, or what is commonly referred to as 'protection,' in the context of the protection of special groups, as is also necessary for all individuals.⁶ However, a critical question arises as to whether such protection applies exclusively when individuals with disabilities are victims, or whether it also extends to situations in which they are positioned as perpetrators of criminal acts.⁷ Indonesia's legislative policy in addressing sexual violence is articulated in Law No. 12 of 2022 on the Crime of Sexual Violence.⁸ In Ambon District Court No. 236/Pid.Sus/2024, a deaf-mute defendant was convicted of a child sexual offense and sentenced to eight years; disability did not preclude liability. In Mataram District Court No. 23/Pid.Sus/2025, a defendant born without both arms was convicted of sexual offenses against multiple victims and sentenced to ten years; the judgment did not discuss disability as a mitigating factor.⁹

Several previous studies have addressed similar themes, albeit with different emphases. Fachyuzar, Purba, and Susilawati (2024) focused primarily on the protection of victims in cases of sexual harassment involving persons with disabilities.¹⁰ Similarly, the study by Erna Listiawati et al. (2023) examined access to justice for individuals with intellectual disabilities in conflict with the law, emphasizing barriers related to facilities, institutional sensitivity, and technical regulations.¹¹ In contrast, the present article offers novelty by specifically highlighting cases in which individuals with physical disabilities are implicated as perpetrators of sexual violence. Furthermore, the work of Zainuddin and Rosidi (2025) concentrated on disparities in criminal sanctions between offenders with physical disabilities and underage perpetrators in sexual violence cases.¹²

This study provides a strong justification for the urgency of this research, as it demonstrates that many aspects regarding the relationship between disability and behavioral problems remain poorly understood, thereby necessitating a more comprehensive

⁶ Dedy Ardian Prasetyo, Fuad Shehab Shyyab, and Rahimah Embong, "The Impact of Human Rights Principles on the Criminal Act of Caning: Asymmetric Decentralization Insight," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 60–90, <https://doi.org/10.53955/jhcls.v5i1.528>.

⁷ I Made Wirya Darma, I Gusti A A Mas Triwulandari, and Dewi Bunga, "Victim Blaming: Labeling for Women Victims of Sexual Violence in Human Rights Perspective," *International Journal of Law Reconstruction* 6, no. 2 (2022): 212, <https://doi.org/10.26532/ijlr.v6i2.23887>.

⁸ Zahra Alsabilah and Dr. Hery Firmansyah, S.H., M.Hum., MPA, "Legal Protection for Persons with Disabilities Who Become Victims of Sexual Violence," *Journal of Law, Politic and Humanities* 5, no. 2 (2024): 724–729, <https://doi.org/10.38035/jlph.v5i2.1019>.

⁹ Amylee Mailhot Amborski et al., "Sexual Violence Against Persons With Disabilities: A Meta-Analysis," *Trauma, Violence, and Abuse* 23, no. 4 (2022): 1330–1343, <https://doi.org/10.1177/1524838021995975>.

¹⁰ M. Zhuhri Fachyuzar, Indra Gunawan Purba, and Susilawati, "Analisis Yuridis Tindak Pidana Pelecehan Seksual Yang Dilakukan Terhadap Penyandang Disabilitas (Studi Putusan Nomor 11/Pid.Sus/2024/PN Dob)," *Hukum Dan Kemasyarakatan Al-Hikmah* 5, no. 4 (2024): 455–79.

¹¹ Erna Listiawati et al., "Acces to Justice Penyandang Disabilitas Intelektual: Peradilan Pidana Sebagai Implementasi Equality Before the Law," *Simbur Cahaya*, no. 1 (July 16, 2023): 173–90, <https://doi.org/10.28946/sc.v30i1.2796>.

¹² M. Zainuddin and Ahmad Rosidi, "Ketimpangan Hukum Antara Penyandang Disabilitas Fisik Dan Non Disabilitas Pelaku Kekerasan Seksual Dalam Sistem Hukum Di Indonesia," *Ganec Swara* 19, no. 2 (2025): 785–790, <https://doi.org/10.59896/gara.v19i2.297>.

and proportional legal treatment for offenders.¹³ This article, however, advances a distinctive contribution by focusing exclusively on offenders with physical disabilities, employing concrete case studies from the Ambon District Court Decision No. 236/Pid.Sus/2024 and the Mataram District Court Decision No. 23/Pid.Sus/2025. The discussion of criminal liability is centered on the fulfillment of the elements of *actus reus* and *mens rea*.¹⁴ Based on this analysis, the central research question posed in this study is: do offenders with physical disabilities receive special treatment in the course of legal proceedings, criminal sentencing, and the execution of judicial decisions, as compared to non-disabled offenders?

To address this research question, the study employs a normative legal method, given the legal vacuum concerning the regulation of offenders with disabilities, which ideally should be comprehensively and explicitly provided for within the criminal justice system.¹⁵ This gap presents challenges in practice, as existing rules primarily emphasize the protection of persons with disabilities in their capacity as victims, while their position as perpetrators of criminal acts remains insufficiently regulated.¹⁶ Accordingly, this study examines relevant legislation, scholarly doctrines, and judicial decisions in order to develop a legal framework that is more just, proportional, and non-discriminatory toward persons with disabilities.

This study employed a normative legal method, which is a research approach focused on analyzing legal texts, doctrines, and court rulings. The research used three distinct approaches: a statutory approach, a conceptual approach, and a case-based approach. The data was gathered from both primary and secondary legal sources. The primary sources included key legislation such as Law No. 12 of 2022 on Sexual Violence, Law No. 8 of 2016 on Persons with Disabilities, and the Criminal Code (KUHP). Crucially, the study also conducted a specific analysis of two landmark court decisions: Ambon District Court Decision No. 236/Pid.Sus/2024 and Mataram District Court Decision No. 23/Pid.Sus/2025. Secondary legal materials were drawn from various legal literature, academic journals, and relevant research related to criminal liability, the rights of persons with disabilities, and the concept of justice. All data was compiled through a comprehensive literature review and document analysis.

The data analysis was qualitative and normative, aimed at examining the coherence between legal theory, existing regulations, and real-world legal practice. To frame the findings, the study applied several legal theories, including John Rawls's theory of justice, Philipus M. Hadjon's theory of legal protection, and Roscoe Pound's responsive legal theory. This multi-faceted approach allowed the study to deeply investigate how the physical condition of an offender with a disability is considered within the criminal justice system, while also identifying the significant gap between formal and substantive justice.

¹³ Jesper Dammeyer, Sofie Moen, and Louise Bøttcher, "Associations between Psychosocial Difficulties among Children with Cerebral Palsy and Parental and Family Factors," *Journal of Developmental and Physical Disabilities*, 2025, <https://doi.org/10.1007/s10882-025-10029-5>.

¹⁴ Mia Amalia et al., *Asas-Asas Hukum Pidana*, ed. Sepriano, Pertama (Jambi, 2024).3

¹⁵ Rio Christiawan and Tuti Widyaningrum, *Penelitian Hukum Normatif*, ed. Yayat Sri Hayati, I (Depok: Rajawali Pers, 2024).52

¹⁶ Michelle Wieberneit et al., "Silenced Survivors: A Systematic Review of the Barriers to Reporting, Investigating, Prosecuting, and Sentencing of Adult Female Rape and Sexual Assault," *Trauma, Violence, and Abuse* 25, no. 5 (2024): 3742–3757, <https://doi.org/10.1177/15248380241261404>.

Criminal Liability of Persons with Physical Disabilities

This study finds that disability status may influence judicial decisions when the individual with disabilities is the victim. As stipulated in Article 15 of Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS), an additional penalty of one-third may be imposed when the victim is a person with disabilities.¹⁷ By contrast, the statute contains no provision regarding offenders with disabilities. Consequently, persons with physical disabilities who perpetrate acts of sexual violence remain subject to criminal liability under Indonesia's positive law.

This is exemplified in the Decision of the Ambon District Court No. 236/Pid.Sus/2024/PN Amb, concerning a sexual offense against a child committed by the defendant Fredy Amunupunyo, also known as Opa Moumou (71), a resident of Passo Village, Ambon. Although deaf and mute, the defendant was nevertheless found guilty of sexually assaulting a 10-year-old child. He was sentenced to eight (8) years' imprisonment, reduced by the time already served, and fined IDR 1,000,000,000 (one billion rupiah)

Furthermore, the Decision of the Mataram District Court No. 23/Pid.Sus/2025/PN Mtr in the case of I Wayan Agus Suartama, also known as Agus Buntung, demonstrates that the defendant's physical limitation—being born without both arms—did not exempt him from criminal liability. In judicial practice, however, the treatment of offenders with disabilities remains largely confined to the fulfillment of formal rights, such as access to legal counsel and the right to a public trial, without extending to special considerations in the execution of sentences.¹⁸ In effect, offenders with physical disabilities are procedurally treated in the same manner as non-disabled offenders, notwithstanding the fact that their condition requires particular adjustments in the enforcement of penalties.

This finding aligns with the theory of criminal liability, which emphasizes that a person may be held responsible if both an unlawful act (*actus reus*) and fault (*mens rea*) are present.¹⁹ In cases involving offenders with physical disabilities, these two elements remain satisfied, as physical limitations do not negate the offender's awareness of their conduct. In the Mataram District Court Decision, I Wayan Agus Suartama, who was born without both arms, was sentenced to ten years of imprisonment and fined IDR 100,000,000. In this ruling, the panel of judges did not consider the defendant's physical disability as either a ground for exculpation or a mitigating factor. Instead, the judicial reasoning centered on the number of victims—fifteen in total, including minors—the psychological harm inflicted, and the necessity of imposing a deterrent effect to safeguard society.

From the perspective of Indonesian positive law, the judge's decision can be understood, as the Penal Code (KUHP) recognizes only mental disorders as grounds for exculpation. Article 44 of the KUHP stipulates that a person cannot be punished if, at the

¹⁷ Cyntia Merya Destha, Hafrida, and Herry Liyus, "Pertanggungjawaban Pidana Terhadap Pelaku Kekerasan Seksual Terhadap Penyandang Disabilitas Intelektual" 3, no. 1 (2024): 4–6.

¹⁸ Calum A.F. Henderson and Melissa Bull, "Sentencing and the Over-Representation of People with Cognitive Disability in the Australian Criminal Justice System," *Current Issues in Criminal Justice* 36, no. 1 (2024): 81–98, <https://doi.org/10.1080/10345329.2023.2245592>.

¹⁹ Aris Munandar Ar et al., "Peran Niat (Mens Rea) Dalam Pertanggungjawaban Pidana Di Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 240–252, <https://doi.org/10.71153/jimmi.v1i3.140>.

time of the offense, they suffered from a mental defect due to developmental impairment or illness.²⁰ Physical disability alone does not nullify criminal liability. Nevertheless, both the KUHP and the Law on Judicial Power provide room for judges to take the defendant's circumstances into account as mitigating factors. Ultimately, the justice of a statute depends upon its application by judges.

Theoretically, once legislation is enacted, responsibility shifts to the judiciary as the executor of judicial power and enforcer of the law. Judicial independence in Indonesia rests on three fundamental principles: (a) judges are bound only by law and justice; (b) no external party, including the government, may interfere with or direct judicial decisions; and (c) judges cannot be held personally liable for rulings rendered in the exercise of their judicial functions.²¹ Under the Law on Judicial Power, judicial reasoning constitutes the foundation of thought or consideration in rendering decisions, which must account for both mitigating and aggravating circumstances. Every judge is required to set forth such considerations in writing as an inseparable part of the judgment.

As representatives of the judiciary, judges are required to possess not only intellectual capacity but also high moral integrity, so that their decisions reflect a sense of justice while ensuring legal certainty. In exercising adjudicative authority, judges are obliged to base their rulings on sound and accountable legal reasoning. Accordingly, the drafting of judicial considerations must be carried out carefully and systematically, employing precise legal language. Legal reasoning constitutes an intellectual endeavor (*ijtihad*) through which a judge formulates decisions in a given case. This process demands rigor and consistency in structuring judicial considerations, which must be articulated in proper and correct Indonesian, in accordance with linguistic norms applied in legal practice.²² Judicial reasoning encompasses the presentation of factual circumstances, legal facts, the formulation of legal issues, and the application of legal norms derived from legislation, custom, jurisprudence, and legal theory. Judges may also employ methods of legal interpretation or engage in legal discovery (*rechtsvinding*) to reinforce their arguments and ensure that decisions align with prevailing legal principles. The absence of any judicial consideration regarding the defendant's disability status in the Mataram District Court decision thus illustrates that Indonesia's criminal justice system remains inclined toward formalism and insufficiently attentive to the humanitarian dimensions of offenders with disabilities. This phenomenon suggests that justice is increasingly a social commodity, dependent on public visibility rather than on consistent legal principles.²³ Nevertheless, the findings of this study also underscore the importance of the principle of proportionality in sentencing.

²⁰ Orintina Vavinta Ida and Nany Suryawati, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Dengan Gangguan Kejiwaan Menurut Ketentuan Hukum Positif," *Binamulia Hukum* 12, no. 2 (2023): 263–275, <https://doi.org/10.37893/jbh.v12i2.620>.

²¹ Alva Dio Rayfindratama, "Kebebasan Hakim Dalam Menjatuhkan Putusan Di Pengadilan," *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA* 1, no. 2 (2023): 1–17, <https://doi.org/10.55606/birokrasi.v1i2.409>.

²² Ida and Suryawati, "Pertanggungjawaban Pidana Bagi Pelaku Tindak Pidana Dengan Gangguan Kejiwaan Menurut Ketentuan Hukum Positif."

²³ Rustamaji Muhammad et al., *The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality*, *Journal of Human Rights, Culture and Legal System*, vol. 5, 2025, <https://doi.org/10.53955/jhcls.v5i2.637>.

Nevertheless, the findings of this study also underscore the importance of the principle of proportionality in sentencing. The proportionality principle requires that courts impose punishments commensurate with the gravity of the offense committed. Accordingly, the severity of a sanction must be determined in line with the statutory penalties prescribed by law. Andrew von Hirsch emphasizes that such proportionality represents the fulfillment of justice.²⁴ Hence, a sentence must not be lighter or harsher than the punishment stipulated by statute. Any disproportionality between the sentence imposed and the statutory framework undermines the function of censure inherent in criminal punishment.

At the same time, according to John Rawls's theory of justice, fairness must prioritize the most disadvantaged groups. This is consistent with the difference principle in Rawls's concept of justice, which stresses that restorative justice should benefit those who occupy the weakest positions, whether victims or offenders. The offender's awareness of the social unacceptability of their conduct and its legal consequences, combined with their active participation in the process of restoration, constitutes a vital element in fostering reconciliation and rebuilding equitable social relations.²⁵

Thus, sentencing of offenders with disabilities must take into account their physical condition to ensure that punishment is neither discriminatory nor inhumane. Article 36 of Law No. 8 of 2016 on Persons with Disabilities stipulates that law enforcement officials are obliged to provide facilities and special treatment to accommodate persons with disabilities throughout the judicial process. This right, referred to as the right to accessibility, is intended to facilitate daily activities for persons with disabilities while also guaranteeing their access to public services. Accordingly, as a vulnerable group, persons with disabilities are entitled to protection and social services aimed at enhancing their independence. The provision of infrastructure, facilities, healthcare support, and accessibility measures constitutes an essential requirement to enable persons with disabilities to participate in legal proceedings on an equal basis, free from discriminatory treatment.²⁶

Persons with disabilities are inherently vulnerable to various forms of discrimination.²⁷ In this regard, law enforcement authorities play a crucial role in fostering a safe environment by preventing stigma, discrimination, and intimidation directed at offenders with disabilities. Hence, the responsibility of law enforcement includes minimizing potential discriminatory practices. From the perspective of Islamic law, the findings of this study are consistent with the doctrine of *fiqh jinayah*, which classifies sexual harassment as a *jarimah ta'zir*. Sexual violence is considered a *jarimah ta'zir* because it is not expressly

²⁴ Oheo Kaimuddin Haris and Sabrina Hidayat, "Asas Proporsionalitas Tindak Pidana Persetubuhan Terhadap Anak," *Halu Oleo Legal Research* | 5, no. 2 (2023): 576–591, <https://journal.uho.ac.id/index.php/holresch/>.

²⁵ Yolanda Felicia Arianto et al., "Konsep Keadilan Restoratif Dalam Perspektif Teori Keadilan John Rawls," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humanioral* 3, no. 1 (2025): 1–25, <https://doi.org/10.11111>.

²⁶ Muhammad Garda Romado and Mitro Subroto, "Upaya Pemenuhan Hak Bagi Narapidana Penyandang Disabilitas," *Jurnal Pendidikan Tambusai* 5 (2021): 6382–6386, <https://www.jptam.org/index.php/jptam/article/view/1954>.

²⁷ Ahmad, Zulkifli Ismail, and Malanie Pita Lestari, "Membangun Kesadaran: Kekerasan Terhadap Penyandang Disabilitas Dan Solusi Perlindungannya," *Jurnal Ilmiah Nursantara (JINU)* 2, no. 2 (2025): 131–142, <https://doi.org/https://doi.org/10.61722/jinu.v2i2.3593>.

regulated in the Qur'an or Hadith as part of *hudud* crimes. Instead, it is closely associated with violations of honor and is analogized to acts approaching *zina*. Accordingly, from the standpoint of Islamic criminal law, such conduct constitutes a *jarimah* subject to *ta'zir* sanctions, since neither *hudud* nor *qishash* punishments encompass it.

According to A. Djazuli, *ta'zir* punishments serve an educative purpose, namely to provide a lesson to the offender in order to prevent recidivism, or in other words, to instill a deterrent effect. Furthermore, *ta'zir* is defined as a sanction determined by *Ullil Amri* (legitimate authority) that carries both preventive and repressive functions (*al-radd wa al-jazm*). It is applied to *hudud*, *qishash*, and *diyat* offenses that do not meet the required conditions, as well as to acts mentioned in the Qur'an and Hadith for which no specific punishment is prescribed. Examples include offenses such as insult, breach of trust, and other crimes stipulated by *Ullil Amri* for the sake of public interest, such as traffic violations. Thus, *ta'zir* serves a dual function: as an instrument of education for offenders and as a means to safeguard social order and the welfare of society.²⁸

Judges are vested with discretion to determine sanctions proportionate to the degree of wrongdoing while taking into account the offender's condition. The concept of *al-'uqūbah bi qadri al-jurm* (punishment commensurate with the act) requires proportionality between the offense committed and the punishment imposed, while also considering humanitarian factors. Although Indonesia does not formally apply Islamic criminal law except in Aceh, *fiqh jinayah* remains significant as an academic study. It functions as a source of Islamic legal thought, a comparative framework for positive law, and a moral foundation for evaluating contemporary criminal acts.²⁹

In comparison with previous studies, the present research differs in its focus. For instance, Fachyuzar, Purba, and Susilawati (2024) emphasized the protection of victims with disabilities, whereas this study concentrates on the treatment of offenders with disabilities.³⁰ This distinction constitutes the novelty of the research, namely, demonstrating that the physical condition of disabled offenders does not extinguish criminal liability but should properly serve as a consideration in sentencing and the execution of punishment.

Accordingly, it can be concluded that persons with physical disabilities who commit sexual offenses remain subject to criminal liability. However, both the Indonesian legal system and Islamic law acknowledge the scope for humanitarian considerations in imposing and executing punishments, thereby allowing the realization of substantive justice

²⁸ A Djazuli, *Ilmu Fiqh Penggalian, Perkembangan, Dan Penerapan Hukum Islam*, 13th ed. (Jakarta: Kencana, 2021).52

²⁹ Syamsul Fatoni et al., "Asas Proporsionalitas: Perspektif Hukum Positif Dan Maqosid Syariah Dalam Sistem Peradilan Pidana," *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 1 (2025): 46-71, <https://doi.org/10.20885/iustum.vol32.iss1.art3>.

³⁰ Fachyuzar, Purba, and Susilawati, "Analisis Yuridis Tindak Pidana Pelecehan Seksual Yang Dilakukan Terhadap Penyandang Disabilitas (Studi Putusan Nomor 11/Pid.Sus/2024/PN Dob)."

Table 1. Legal Process of Non-Disabled Offenders and Offenders with Physical Disabilities

No	Legal Process Aspect	Non-Disabled Offenders	Offenders with Physical Disabilities
1	Investigation & Arrest	Standard procedures without impediments	Standard procedures, but occasionally hindered by accessibility barriers (transportation, facilities)
2	Court Proceedings	Able to follow the entire trial process without difficulties	Able to attend proceedings, though sometimes requiring special assistance
3	Criminal Liability	Full liability, without exception	Full liability, but physical condition may be considered in specific cases
4	Judicial Decision	Based on culpability and the gravity of the offense	Based on culpability and the gravity of the offense, with physical limitations as potential considerations
5	Execution of Sentence (Prison)	No special treatment, standard correctional facilities	Encounter difficulties in correctional facilities that are not disability-friendly
6	Right to Legal Protection	Equal rights as other citizens	Equal rights as other citizens, but requiring the application of non-discrimination and accessibility principles

Source: Author's Research Findings, 2025

The comparison between non-disabled offenders and offenders with physical disabilities shows that, while both groups are subject to the same legal framework and full criminal liability, differences arise in practice at several stages of the legal process. During investigation and trial, disabled offenders often face accessibility barriers and may require special assistance to participate effectively. In sentencing, physical limitations are rarely but potentially considered as mitigating factors, though not sufficient to alter liability. The greatest disparity is evident in the execution of sentences, as correctional facilities generally lack disability-friendly infrastructure, creating disproportionate hardship. Thus, although both groups possess equal legal rights, the realization of such rights for disabled offenders depends on the consistent application of non-discrimination and accessibility principles.

Policy and Judicial Practice Recommendations for Offenders with Disabilities

In the practice of criminal adjudication in Indonesia, several cases illustrate how persons with disabilities may also become perpetrators of sexual violence.³¹ Two landmark decisions that exemplify this phenomenon are the Ambon District Court Decision No.

³¹ Dani Krisnawati and Ria Restu Wikansari, "Addressing the Challenges in Protecting Child Victims of Sexual Violence within Non-Formal Education Institutions," *Sriwijaya Law Review* 8, no. 2 (2024): 249–68, <https://doi.org/10.28946/slrev.Vol8.Iss2.2987.pp249-268>.

236/Pid.Sus/2024/PN Amb and the Mataram District Court Decision No. 23/Pid.Sus/2025/PN Mtr. Both cases reveal a consistent pattern: the disability status of the defendants was acknowledged only administratively, without serving as a substantive factor in sentencing.³² In the Ambon case, the defendant, Fredy Amunupunyo, also known as Opa Momou, a 71-year-old man with hearing and speech impairments, was convicted of committing sexual violence against a minor. The panel of judges sentenced him to eight (8) years of imprisonment, reduced by time served, and imposed a fine of IDR 1,000,000,000 (one billion rupiah), with a subsidiary penalty of four (4) months' imprisonment in the event of non-payment. Although the defendant's disability was recorded in his personal identity, the court did not treat it as a ground for exculpation or a mitigating factor. Instead, judicial considerations were limited to general factors, such as the defendant's courteous demeanor and admission of guilt.

Meanwhile, in the Mataram District Court case, the defendant, I Wayan Agus Suartama, also known as Agus Buntung, a person with a physical disability born without both arms, was found guilty of committing sexual harassment against 15 victims, including minors. The court imposed a sentence of ten years' imprisonment and a fine of IDR 100,000,000. As in the Ambon case, the defendant's disability status was recorded in his identity but had no bearing on the severity of the punishment. Judicial considerations were instead focused on the number of victims, the psychological harm inflicted, and the need for deterrence. Taken together, these two decisions demonstrate a consistent pattern: although the defendants were persons with disabilities, their conditions were not regarded as relevant in determining the severity of punishment. The difference lay only in the length of the sentences, which was determined by the seriousness of the offenses and the number of victims, rather than by the defendants' disabilities. From the perspective of criminal liability theory, both judgments are consistent, as the elements of *actus reus* and *mens rea* were fulfilled. The defendants' congenital physical disabilities did not negate their legal awareness.

However, from the standpoint of John Rawls's theory of justice, both rulings primarily uphold formal justice equal treatment of all offenders, while falling short of substantive justice that favors vulnerable groups. Within the framework of Philipus M. Hadjon's theory of legal protection, the law is directed more toward safeguarding victims. According to Hadjon, legal protection for victims constitutes an effort to ensure justice and legal certainty by safeguarding the rights of individuals who have suffered harm.³³

This outcome may be understood given that sexual violence is categorized as an extraordinary crime; however, the rights of disabled defendants to receive proportional sentencing were not adequately accommodated. From the perspective of Roscoe Pound's responsive legal theory, law ought to function as an instrument of social engineering that balances the protection of victims with fair treatment of offenders—an equilibrium that has

³² Md Shodiq, *Hukum Pidana Perbandingan*, ed. Mas Putra Zenno, I (Padang: Takaza Innovatix Labs, 2025).101

³³ Octavia Rouli Megawaty, Tofik Yanuar Chandra, and Mohamad Ismed, "Perlindungan Hukum Terhadap Perempuan Korban Tindak Pidana Kekerasan Seksual Dalam Lingkup Rumah Tangga," *ARMADA: Jurnal Penelitian Multidisiplin* 2, no. 8 (2024): 668, <https://doi.org/10.55681/armada.v2i8.1466>.

yet to be reflected in these two decisions.³⁴ According to Pound, the law should be capable of adapting to the evolving dynamics of society and serve as a mechanism for reconciling diverse social interests. The role of law must not be confined to purely textual enforcement; rather, it should operate as a tool for restructuring social imbalances. In this sense, the ideal form of law is one that fosters social harmony through a process of deliberate and gradual transformation.³⁵

Furthermore, from the standpoint of penal theory, both decisions reflect the predominance of retributive (punishment as retribution) and utilitarian (deterrence and prevention) approaches. A restorative orientation is absent, as the humanitarian dimensions of offenders with disabilities were not taken into account. Accordingly, an analysis of the Ambon and Mataram District Court rulings demonstrates that Indonesian positive law affirms the criminal liability of persons with disabilities who commit sexual offenses, yet has not substantively accommodated their condition. Victim protection remains the principal priority, whereas the principles of substantive justice and proportionality in sentencing for disabled offenders continue to be overlooked.

Table 2. Analysis of Judicial Decisions through Legal Theories

No	Legal Theory	Analysis of Ambon & Mataram District Court Decisions
1	Theory of Criminal Liability	Consistent: <i>actus reus</i> and <i>mens rea</i> were present, thus offenders were held liable despite their disabilities.
2	John Rawls's Theory of Justice	Not realized: formal justice was applied, while substantive justice for vulnerable groups (persons with disabilities) was neglected.
3	Philipus M. Hadjon's Theory of Legal Protection	Predominantly victim-oriented; the rights of disabled defendants were not considered in sentencing proportionality.
4	Roscoe Pound's Responsive Legal Theory	Not evident: decisions prioritized societal interests (deterrence) over balancing the rights of victims and offenders.
5	Theories of Punishment	Dominated by retributive and utilitarian approaches; restorative justice was absent, as the defendants' conditions were disregarded.

Source: Author's Research Findings, 2025

The analysis of the Ambon District Court Decision No. 236/Pid.Sus/2024/PN Amb and the Mataram District Court Decision No. 23/Pid.Sus/2025/PN Mtr demonstrates that the judges consistently applied the theory of criminal liability, as the elements of *actus reus* and *mens rea* were fulfilled, thereby holding persons with disabilities criminally responsible.

³⁴ Muhammad Irsyadi Ramadhany, *Ilmu Perundang-Undangan*, ed. Royfan A, I (Yogyakarta: Deepublish Digital, 2025).21

³⁵ Rasji, William Chandra, and Marcellius Kirana Hamonangan, "Hukum Sebagai Alat Rekayasa Sosial: Gagasan Roscoe Pound Dan Relevansinya Bagi Reformasi Hukum Di Indonesia," *Rewang Rencang : Jurnal Hukum Lex Generalis* 5, no. 10 (2025): 1-11.

However, from the perspective of John Rawls's theory of justice, the decisions reflect only formal justice while neglecting substantive justice for vulnerable groups. A similar pattern is evident when viewed through Philipus M. Hadjon's theory of legal protection, in which the courts prioritized the rights of victims while disregarding the rights of disabled defendants in sentencing proportionality. Roscoe Pound's responsive legal theory was also absent, as the courts emphasized societal interests and deterrence rather than balancing the rights of victims and offenders. In terms of theories of punishment, both decisions were dominated by a retributive approach which views punishment as retribution for wrongdoing and a utilitarian approach which emphasizes prevention by deterring both offenders and society at large. The dominance of these approaches made sentencing primarily oriented toward retribution and deterrence, while the dimension of *restorative justice*, which should aim at recovery and consider the condition of disabled offenders, was entirely absent.

Policy and Judicial Practice Recommendations for Offenders with Disabilities

The suggested normative reform, aimed at embedding disability-sensitive provisions within Indonesia's criminal justice system, resonates with the broader demand for integrated and coordinated policies to address sexual violence.³⁶ An analysis of the Ambon District Court Decision No. 236/Pid.Sus/2024/PN Amb and the Mataram District Court Decision No. 23/Pid.Sus/2025/PN Mtr demonstrates that the defendants' disabilities had no substantive influence on sentencing. This finding reveals that the Indonesian legal system continues to prioritize victim protection as its primary focus, while failing to adequately accommodate the principle of substantive justice for offenders with disabilities. From a statutory approach, the gap is evident in the absence of explicit provisions in the Penal Code (KUHP) or the Sexual Violence Law (UU TPKS) that recognize disability as a mitigating factor, unlike factors such as advanced age or good behavior which are often considered. Although Law No. 8 of 2016 on Persons with Disabilities affirms the principles of protection and non-discrimination, it does not provide clear integration into criminal sentencing practices. This normative vacuum leads to inconsistent judicial reasoning.

From a conceptual approach, theories of justice underline the necessity of reform. John Rawls's theory of justice as fairness highlights the importance of ensuring equal treatment while recognizing the vulnerabilities of marginalized groups. Philipus M. Hadjon's concept of legal protection stresses the state's obligation to safeguard the rights of all legal subjects, including disabled offenders. Roscoe Pound's notion of law as a tool of social engineering supports the idea that legal reforms should create harmony between victim protection and humane treatment of offenders. From a case approach, both the Ambon and Mataram decisions illustrate how courts neglected to weigh disability as a mitigating factor. In Ambon, the defendant's deafness and muteness were acknowledged only procedurally—through a sign language interpreter—but not substantively in sentencing. In Mataram, despite the defendant's severe physical disability (absence of both arms), the court imposed a ten-year prison sentence without judicial consideration of his condition. These cases exemplify the systemic disregard of proportionality in Indonesian criminal adjudication.

³⁶ Krisnawati and Wikansari, "Addressing the Challenges in Protecting Child Victims of Sexual Violence within Non-Formal Education Institutions."

To address these shortcomings, normative reforms are needed through revision of the Penal Code and clarification of the integration of the Sexual Violence Law with the Disability Law, thereby mandating judges to apply the principle of non-discrimination consistently. The Supreme Court should also issue clear judicial guidelines, whether in the form of a Circular (SEMA) or a Regulation (PERMA), to ensure uniform consideration of disability as a mitigating factor. At the technical level, practical measures are required to guarantee meaningful participation of disabled offenders in criminal proceedings. Law enforcement officials—including police, prosecutors, and judges—should receive standardized instructions and disability-awareness training to ensure fair treatment. Correctional facilities must also be adapted with disability-friendly infrastructure, so that the execution of sentences complies with humanitarian principles. At the institutional level, stronger collaboration is necessary among the Ministry of Law and Human Rights, the Supreme Court, the National Commission on Disability (Komnas Disabilitas), and the National Human Rights Commission (Komnas HAM). These institutions should jointly establish monitoring mechanisms to ensure compliance with the principle of non-discrimination in cases involving disabled offenders. These recommendations are not aimed at defending offenders, but at ensuring that Indonesia’s criminal justice system functions proportionally, humanely, and without discrimination. Victim protection must remain paramount, yet the condition of disabled offenders should also be considered so that judicial decisions genuinely reflect the principle of substantive justice. The insufficient consideration of disability conditions may result in legal and social interventions that inadvertently reinforce the vulnerability of persons with disabilities within judicial proceedings.³⁷

Conclusion

This study confirms that persons with disabilities who commit sexual offenses remain fully subject to criminal liability. As shown in the Ambon District Court Decision No. 236/Pid.Sus/2024/PN Amb and the Mataram District Court Decision No. 23/Pid.Sus/2025/PN Mtr, physical or sensory impairments were neither recognized as grounds for exculpation nor substantially considered as mitigating factors. Accordingly, the central research question is answered: while the Indonesian legal system consistently upholds formal justice, it has yet to fully embrace the principles of substantive justice for vulnerable groups. Theoretically, this research illustrates the tension between the doctrine of criminal liability—which emphasizes equality before the law—and theories of substantive justice. John Rawls highlights fairness toward disadvantaged groups, Philipus M. Hadjon underscores the state’s duty to protect individual rights, and Roscoe Pound envisions law as an instrument of social engineering. Collectively, these perspectives underscore the urgent need to reconcile equality with proportionality in criminal adjudication. Practically, the findings call for comprehensive reform through three main avenues: *first*, normative revision of the Penal Code and its integration with the Disability Law; *second*, institutional measures, including judicial guidelines from the Supreme Court; and *third*, procedural improvements, such as specialized training and the development of disability-friendly correctional facilities.

³⁷ Gal Friedman-Hauser and Carmit Katz, “Where Is the Disability? A Critical Analysis of Case Reports of Online Sexual Abuse of Children with Disabilities,” *Child Protection and Practice* 6, no. August 2024 (2025): 100207, <https://doi.org/10.1016/j.chipro.2025.100207>.

These steps are essential to ensure that victim protection remains paramount while safeguarding the principles of non-discrimination and humanity in the treatment of disabled offenders.

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