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Inequality in Legal Protection for Persons with Disabilities in the Justice System: An Analysis of Implementation and Vague Norms

Article	Abstract
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INTRODUCTION

Legal protection for persons with disabilities in the justice system is an issue that continues to be of concern, especially in terms of accessibility and equal justice. Fulfillment of accessibility for persons with disabilities, including reasonable accommodation in the judicial process, is a legal necessity¹. Although various regulations have regulated the rights of persons with disabilities in the legal system, the reality is that there are still imbalances in their implementation. These inequalities appear in various forms, such as unclear legal norms, discrepancies between regulations and implementation in court, and discriminatory treatment of persons with disabilities in the judicial process. Various studies show that persons with disabilities often face obstacles in accessing justice, whether as defendants, witnesses, or victims of crime².

One of the main problems in legal protection for persons with disabilities is the existence of vague norms in regulations governing their rights. Law No. 8/2016 on Persons with Disabilities has recognized the rights of persons with disabilities in the justice system³, including the rights to accessibility, legal assistance, and equal treatment in the legal process. However, this regulation does not provide clear technical guidance on how these rights should be implemented concretely. As a result, many judicial institutions do not have adequate mechanisms to fulfill the rights of persons with disabilities at various stages of the judicial process, from the examination stage to the court decision⁴.

The mismatch between regulations and implementation in the courts is also a major factor in the inequality of legal protection for persons with disabilities. Although there are regulations that require courts to provide accessibility for persons with disabilities, the reality is that many courts do not have proper facilities⁵. For example, the absence of sign language interpreters for people with deaf disabilities or the lack of specialized assistants for people with intellectual disabilities often prevents them from understanding and following the legal process⁶. These barriers not only reflect a lack of awareness of the specific needs of people with disabilities in the justice system, but also indicate a significant gap between legal policy and implementation on the ground⁷.

Injustices in the justice process for people with disabilities further exacerbate existing inequalities. In many cases, persons with disabilities who are defendants or victims do not receive equal treatment with non-disabled individuals. For example, in cases of sexual violence against persons with disabilities, victims often experience difficulties in providing testimony

¹ Dewa Gede Sudika Mangku, Ni Putu Rai Yuliantini, and I Wayan Lasmawan, "Legal Protection for People with Disabilities in Indonesia in the Perspective of Justice Theory," *Unnes Law Journal* 8, no. 2 (2022): 245–62, <https://doi.org/10.15294/ulj.v8i2.52406>.

² Bulan February, Anisa Fadil, and Ratu Rahma, "Akibat Perundungan Legal Protection for Children With Physical Disabilities Due To Bullying," *Law Jurnal* IV, no. 3 (2024): 70–80, <https://doi.org/https://doi.org/10.46576/lj.v4i2.4807>.

³ Alia Harumdani Widjaja, Winda Wijayanti, and Rizkisyabana Yulistyaputri, "Perlindungan Hak Penyandang Disabilitas Dalam Memperoleh Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan," *Jurnal Konstitusi* 17, no. 1 (2020): 197, <https://doi.org/10.31078/jk1719>.

⁴ Valarie K. Blake and Mark L. Hatzenbuehler, "Legal Remedies to Address Stigma-Based Health Inequalities in the United States: Challenges and Opportunities," *Milbank Quarterly* 97, no. 2 (2019): 480–504, <https://doi.org/10.1111/1468-0009.12391>.

⁵ S. N Panggabean, "Disability Access to Justice in Indonesia General Court System. Indonesian," *Journal of Disability Studies (IJDS)* 6, no. 1 (2019): 95–101.

⁶ F.I Cooke and Zhao, "Towards a Broader Understanding of Workplace Inequality and Exclusion in China: A Review of Discrimination Base on Social Class, Gender and Physical Ability," *Asia Pasific Journal of Human Resources* 59, no. 2 (2021): 184–203.

⁷ Rosa Pijar Cahya Devi et al., "Implementasi Akomodasi Yang Layak Bagi Penyandang Disabilitas Dalam Proses Penyidikan Di Kepolisian Kabupaten Sleman," *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 499–514, <https://doi.org/https://doi.org/10.21143/jhp.vol52.no2.3351>.

due to the unavailability of assistance or communication methods that suit their need⁸. This results in low success rates in law enforcement for people with disabilities, which in turn reinforces the structural injustices they have long faced in the justice system⁹. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages¹⁰.

In addition to accessibility barriers and discriminatory treatment, society's perspective on persons with disabilities also plays a role in creating legal inequality. Stereotypes and stigmas attached to people with disabilities often lead them to be considered less competent in providing testimony in court or even unable to understand their own legal rights¹¹. Persons with intellectual disabilities, particularly those with cognitive limitations, are frequently denied the opportunity to testify despite their legal capacity to do so¹². This perspective is not only wrong, but also contributes to the marginalization of people with disabilities in the legal system. Several studies have shown that social stigmatization of people with disabilities can lead to a lack of legal support for them, exacerbating existing inequalities¹³.

Internationally, countries have sought to address legal inequalities for people with disabilities by implementing more inclusive policies. For example, Canada has adopted a rights-based approach to its legal system, emphasizing special protections for persons with disabilities in the legal process and ensuring that they have equal access to justice¹⁴. This approach can serve as a model for Indonesia in its efforts to improve its justice system to be more inclusive and responsive to the needs of persons with disabilities.

Efforts to create a fairer justice system for persons with disabilities in Indonesia still face various challenges¹⁵. In addition to the lack of clear regulations, the lack of human resources with an understanding of the needs of persons with disabilities in the legal system is also a significant obstacle¹⁶. Many law enforcement officers have not received training on how to

⁸ Sayyidatihiyaa Afra Geubrina Raseukiy and Yassar Aulia, "Membuka Cakrawala Terhadap Akses Keadilan Bagi Korban Kejahatan Seksual Di Indonesia: Tinjauan Paradigmatik Atas Penegakan Hukum," *Majalah Hukum Nasional* 49, no. 1 (2019): 151–79, <https://doi.org/10.33331/mhn.v49i1.96>.

⁹ Jumanah Nasution et al., "Mental Disability And Criminal Justice In Indonesia : A Legal And Informational Literacy Approach Based On Maqashid Al-Syari'ah," *JUPI (Jurnal Ilmu Perpustakaan Dan Informasi)* 10, no. 1 (2025): 8–17, <https://doi.org/10.30829/jupi.v10i1.24167>.

¹⁰ Dewa Gede Sudika Mangku et al., "Legal Protection for People with Disabilities in Indonesia in the Perspective of Justice Theory," *Unnes Law Journal* 8, no. 2 (2022): 245–62.

¹¹ Catherine Kramarczuk Voulgarides, Susan Larson Etscheidt, and David I. Hernández-Saca, "Educational Inequality and the Paradox of Dis/Ability Rights in a Schooled Society: Moving towards an Intersectional Discursive, Material, and Emotive Approach*," *Educational Review* 76, no. 1 (2024): 181–98, <https://doi.org/10.1080/00131911.2023.2181313>.

¹² Aah Laelatul Barkah, "Perlindungan Hak Penyandang Disabilitas Tuna Grahita Sebagai Saksi Korban Dalam Proses Peradilan Pidana Di Indonesia," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 12, no. 2 (2019): 123–40, <https://doi.org/10.15575/adliya.v12i2.4494>.

¹³ J Heymann, E Wong, and W Waisath, "A Comparative Overview of Disability-Related Employment Laws and Policies in 193 Countries.," *Journal of Disability Policy Studies* 33, no. 1 (2022): 25–34.

¹⁴ Steven J. Hoffman, Lathika Sritharan, and Ali Tejpar, "Is the UN Convention on the Rights of Persons with Disabilities Impacting Mental Health Laws and Policies in High-Income Countries? A Case Study of Implementation in Canada," *BMC International Health and Human Rights* 16, no. 1 (2016): 1–18, <https://doi.org/10.1186/s12914-016-0103-1>.

¹⁵ Uli Wildan Nuryanto et al., "Empowerment of Persons with Disabilities Based on Sharia Economics : Lessons from the Phenomenon of Equality and Social Justice in Indonesia," *Asian Journal of Multidisciplinary Studies* 7, no. 1 (2024): 19–28.

¹⁶ Baren Sipayung, Julius Ibrani, and Henri Wilson Lubis, "Performa Profesi Advokat Sebagai Officium Nobile Menurut Pandangan Netizen (Studi Kasus Sdr. RAN)," *Eksekusi : Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 3 (2023): 263–75, <https://doi.org/10.55606/eksekusi.v1i3.536>.

handle cases involving persons with disabilities in a professional manner that is sensitive to their needs. As a result, many people with disabilities feel that the justice system is not on their side and may even worsen their situation as victims or defendants¹⁷.

To address this issue, steps are needed to improve the justice system to be more inclusive for persons with disabilities¹⁸. First, there is a need to revise existing regulations to be more specific in regulating protection mechanisms for persons with disabilities in the legal system. For example, Law No. 8/2016 needs to be supplemented with technical regulations that detail how persons with disabilities can obtain accessibility at every stage of the judicial process, from investigation to trial and execution of decisions. Second, it is important to improve the capacity of law enforcement officials to understand and handle cases involving persons with disabilities¹⁹. Specialized training on the rights of persons with disabilities and how to interact with them should be provided to judges, prosecutors, police and lawyers.

In addition, collaboration between the government, disabled people's organizations, and academics also needs to be strengthened in an effort to create a more inclusive legal system²⁰. Organizations of persons with disabilities can play a role in providing input on legal policies that are being designed, while academics can conduct more in-depth research on the barriers faced by persons with disabilities in accessing justice. With the synergy between various stakeholders, it is hoped that the resulting policies can be more effective in protecting the rights of persons with disabilities in the justice system. The United Nations Convention on the Rights of Persons with Disabilities introduces a new definition of discrimination into international public law. The underlying equality concept can be categorized as transformative equality this new model acknowledges that structural, environmental, communicative or other barriers exist in society which amount to discrimination against disabled persons.

Legal protection for persons with disabilities within the justice system remains a significant concern, particularly regarding accessibility and the pursuit of equal justice. The provision of accessibility, including reasonable accommodations in judicial processes, is a fundamental legal requirement. Despite various regulations designed to safeguard the rights of persons with disabilities in the legal system, practical implementation often reveals significant disparities. These inequalities manifest in several ways, such as ambiguous legal norms, inconsistencies between regulations and their application in court, and discriminatory treatment of persons with disabilities throughout the judicial process. Numerous studies indicate that persons with disabilities frequently encounter barriers when attempting to access justice, whether they are involved as defendants, witnesses, or victims of crime²¹.

A primary challenge in ensuring legal protection for persons with disabilities lies in the vagueness of the norms within existing regulations that pertain to their rights. While Law No. 8/2016 on Persons with Disabilities acknowledges the rights of persons with disabilities in the justice system, including rights to accessibility, legal assistance, and equal treatment in legal

¹⁷ Siska Naomi Panggabean, "Disability Access to Justice in Indonesia General Court System," *Indonesian Journal of Disability Studies (IJDS)* 6, no. 1 (2019): 95–101.

¹⁸ Ni Luh, Kurnia Dharma Pertiwi, and Nyoman Bagiastra, "Legal Protection of Workers With Disabilities in Fulfilling Work Safety and Health Rights," *Sibatik Journal | Volume 3*, no. 2 (2024): 325–34, <https://publish.ojs-indonesia.com/index.php/SIBATIK>.

¹⁹ H A Maulidina et al., "Analisis Perspektif Jaksa Dalam Akses Keadilan Bagi Penyandang Disabilitas Pada Proses Peradilan Di Kabupaten Karanganyar," *Jurnal Ekonomi ...* 4, no. 4 (2022): 114–28, <https://www.jurnalintelektiva.com/index.php/jurnal/article/view/917%0Ahttps://www.jurnalintelektiva.com/index.php/jurnal/article/download/917/676>.

²⁰ LL.M. Rahayu Repindowaty Harahap, S.H., LL.M./Bustanuddin, S.H., "Perlindungan Hukum, Difable/Disabilitas, CRPD. 17," *Jurnal Inovatif VIII*, no. 1 (2015): 17–29.

²¹ Mohamad Ashraff and Mitro Subroto, "The Legal Protection of Prisoners with Disabilities in Class IIA Prison of Pekalongan," *Law Research Review Quarterly* 8, no. 2 (2022): 217–32, <https://doi.org/10.15294/lrrq.v8i1.51099>.

proceedings, it lacks clear technical guidelines for their concrete implementation. Consequently, many judicial institutions lack adequate mechanisms to effectively uphold the rights of persons with disabilities at various stages of the judicial process, from preliminary examinations to court decisions²².

The disparity between regulations and their actual implementation in courts is a major contributing factor to the unequal legal protection experienced by persons with disabilities. Despite regulations mandating courts to provide accessibility, many courts still lack proper facilities. For instance, the absence of sign language interpreters for individuals with hearing impairments or the scarcity of specialized assistants for those with intellectual disabilities often hinders their ability to comprehend and participate in legal proceedings. These barriers not only highlight a lack of awareness concerning the specific needs of persons with disabilities within the justice system but also signify a considerable gap between legal policy and practical execution on the ground²³.

Furthermore, injustices within the judicial process for persons with disabilities exacerbate existing inequalities. In many instances, persons with disabilities, whether as defendants or victims, do not receive treatment equal to that of non-disabled individuals. For example, victims of sexual violence with disabilities often face difficulties in providing testimony due to the unavailability of appropriate assistance or communication methods. This contributes to low success rates in law enforcement for persons with disabilities, thereby perpetuating the structural injustices they have long endured within the justice system. States Parties are obligated to ensure effective access to justice for persons with disabilities on an equal footing with others, which includes providing procedural and age-appropriate accommodations to facilitate their active participation, as both direct and indirect participants, including as witnesses, in all legal proceedings, encompassing investigative and other preliminary stages²⁴.

Beyond accessibility barriers and discriminatory practices, societal perceptions of persons with disabilities also contribute to legal inequality. Stereotypes and stigmas frequently lead to persons with disabilities being deemed less competent to testify in court or even incapable of understanding their own legal rights. Individuals with intellectual disabilities, particularly those with cognitive limitations, are often denied the opportunity to testify despite possessing the legal capacity to do so. This viewpoint is not only erroneous but also fosters the marginalization of persons with disabilities within the legal system. Several studies have demonstrated that the social stigmatization of persons with disabilities can lead to a deficiency in legal support, intensifying existing inequalities²⁵.

Internationally, various countries have strived to address legal inequalities for persons with disabilities through the implementation of more inclusive policies. For example, Canada has embraced a rights-based approach to its legal system, emphasizing special protections for persons with disabilities in legal proceedings and ensuring their equal access to justice. This

²² Swati Ray et al., "Analisis Pertanggungjawaban Pidana Dan Perlindungan Hukum Terhadap Pelaku Penyandang Disabilitas Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Hukum Dan Kewarganegaraan* 11, no. 1 (2025): 195–222, <https://doi.org/10.1201/9781032622408-13>.

²³ T. W Rahmatillah, R., Arnita, A., & Kurniasari, "Perlindungan Hukum Terhadap Penyandang Disabilitas Berdasarkan Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 8, no. 1 (2025), <https://doi.org/https://doi.org/10.29103/jimfh.v8i1.19521>.

²⁴ Dianah Msipa Juan Bornman, "Accommodating Persons With Communication Disabilities in Court: Perspectives Of Law Students," *African Journal of Disability* 13, no. 0 (2024): a1385, <https://doi.org/https://doi.org/10.4102/ajod.v13i0.1385>.

²⁵ Eta Yuni Lestari et al., "Reformulasi Peraturan Tentang Disabilitas Dalam Bidang Pendidikan Berdasarkan Nilai Keadilan Sosial," *Jurnal Litigasi* 25, no. 2 (2024): 150–71, <https://doi.org/dx.doi.org/10.23969/litigasi.v25i2.18342>.

Canadian approach can serve as a valuable model for Indonesia as it endeavors to enhance its justice system to be more inclusive and responsive to the needs of persons with disabilities²⁶.

Efforts to establish a more equitable justice system for persons with disabilities in Indonesia continue to face numerous challenges. In addition to the absence of clear regulations, a significant impediment is the lack of human resources within the legal system who possess a comprehensive understanding of the needs of persons with disabilities. Many law enforcement officers have not received adequate training on how to professionally and sensitively handle cases involving persons with disabilities. Consequently, many persons with disabilities perceive the justice system as unsupportive, and in some instances, it may even worsen their circumstances as victims or defendants²⁷.

To effectively address this critical issue, proactive measures are essential to foster a more inclusive justice system for persons with disabilities. Firstly, there is an urgent need to revise existing regulations to explicitly outline protection mechanisms for persons with disabilities within the legal system. For instance, Law No. 8/2016 requires supplementation with technical regulations that detail how persons with disabilities can secure accessibility at every phase of the judicial process, from investigation to trial and the execution of decisions. Secondly, it is imperative to enhance the capabilities of law enforcement officials to comprehend and effectively manage cases involving persons with disabilities. Specialized training on the rights of persons with disabilities and appropriate interaction methods should be provided to judges, prosecutors, police officers, and lawyers²⁸.

Moreover, reinforcing collaboration among the government, disabled people's organizations, and academics is crucial for establishing a more inclusive legal system. Organizations representing persons with disabilities can offer valuable input on proposed legal policies, while academics can conduct more in-depth research into the obstacles faced by persons with disabilities in accessing justice. Through synergistic efforts among various stakeholders, it is anticipated that the resulting policies will be more effective in safeguarding the rights of persons with disabilities within the justice system. The United Nations Convention on the Rights of Persons with Disabilities introduces a new definition of discrimination into international public law. This new model is built upon a concept of equality categorized as transformative equality, which recognizes that structural, environmental, communicative, or other societal barriers constitute discrimination against disabled persons²⁹.

RESEARCH METHODS

This research will use a normative juridical method to analyze the inequality of legal protection for persons with disabilities in the justice system. The approach used includes a statute approach, which will examine various relevant regulations, such as Law No. 8/2016 on Persons with Disabilities, Law No. 16/2011 on Legal Aid, as well as KUHAP and other technical rules in the justice system. Furthermore, this research also applies a case approach by analyzing Decision Number 14/Pid.Sus/2024/PN JPa to examine the extent to which the court has accommodated the rights of persons with disabilities in the judicial process.

²⁶ Mutiah Wenda Juniar et al., "The Issues of Implementing the Right Access To Justice for People With Disabilities," *Awang Long Law Review* 5, no. 1 (2022): 215–44, <https://doi.org/10.56301/awl.v5i1.552>.

²⁷ RR. Putri A. Priamsari, "Hukum Yang Berkeadilan Bagi Penyandang Disabilitas," *Masalah-Masalah Hukum* 48, no. 2 (2019): 215, <https://doi.org/10.14710/mmh.48.2.2019.215-223>.

²⁸ Jefri Tamba, "A Juridical Study toward Indonesian Disabilities Right for Public Services Accessibility According to Law No. 8 Year 2016," *IJDS Indonesian Journal of Disability Studies* 4, no. 1 (2017): 63–68, <https://doi.org/10.21776/ub.ijds.2017.4.1.9>.

²⁹ Jonas Ruškus, "Transformative Justice for Elimination of Barriers to Access to Justice for Persons with Psychosocial or Intellectual Disabilities," *Laws* 12, no. 3 (2023), <https://doi.org/10.3390/laws12030051>.

RESULT AND DISCUSSION

1. Analysis of the Regulation and Implementation of Law No. 8/2016 on Persons with Disabilities

Law No. 8/2016 on Persons with Disabilities (PWD Law) is an important step in providing legal protection to persons with disabilities in Indonesia³⁰. This law regulates the rights of persons with disabilities in various aspects of life, including the right to access public services, education, employment, and protection in the justice system. However, despite the existence of clear regulations, its implementation in the field still faces various challenges that affect the effectiveness of legal protection for persons with disabilities, especially in the justice system. Law enforcement institutions are required to provide reasonable accommodation for persons with disabilities during judicial processes³¹.

One of the main aspects regulated in the Law on Persons with Disabilities is the right of persons with disabilities to obtain adequate accessibility in various services, including legal and judicial services. The articles stipulate that persons with disabilities are entitled to facilities that support their access to justice, such as sign language interpreters for persons with sensory disabilities and companions for persons with intellectual disabilities in the judicial process³². In practice, many courts have not fully met these accessibility needs. This shows that there is a gap between regulations and implementation in the field.

One of the biggest obstacles in the implementation of the Law on Persons with Disabilities is the lack of clarity in the norms regarding the judicial procedures that must be followed to ensure the right to accessibility for persons with disabilities³³. Although regulations stipulate the right of persons with disabilities to legal aid and accessibility in court, there are no clear technical guidelines on how courts should systematically provide these facilities. For example, while there is an obligation to provide sign language interpreters or specialized assistants, the reality is that not all courts have staff trained in this, nor are such facilities easily available in all courts³⁴. The Government and Regional Governments must provide legal assistance to persons with disabilities during all examinations by law enforcement agencies in civil and/or criminal matters. This makes it difficult for persons with disabilities to obtain fair treatment in the judicial process, and increases the risk of legal injustice.

Implementation of the Law on Persons with Disabilities is also affected by a lack of understanding among law enforcement officials about the rights of persons with disabilities. Although the law provides clear guidelines on their rights, many courts have yet to fully adopt an inclusive approach to the judicial process. For example, in some cases involving persons with disabilities, the courts do not provide the necessary

³⁰ Denda Devi Sarah Mandini, "Pro Dan Kontra Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas," *Caraka Prabhu* 4, no. 8 (2018): 164–74.

³¹ Rosa Pijar Cahya Devi, "Implementasi Akomodasi Yang Layak Bagi Penyandang Disabilitas Dalam Proses Penyidikan Di Kepolisian Kabupaten Sleman," *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 499–514, <https://doi.org/https://doi.org/10.21143/jhp.vol52.no2.3351>.

³² Moh. Prajamuda Sudirman, "Tinjauan Perlindungan Hukum Bagi Kesetaraan Penyandang Disabilitas," *Jurnal Pendidikan, Sosial Dan Humaniora* 1, no. 1 (2025): 33–41, <https://jurnal.valamqa.com/index.php/pesolah>.

³³ Nur Paikah, "Implementasi Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Dalam Perlindungan Dan Pemenuhan Hak Penyandangdisabilitas Di Kabupaten Bone," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 16, no. 1 (2019): 335, <https://doi.org/10.30863/ekspose.v16i1.91>.

³⁴ Adelia Ayu Rama, Universitas Binawan, and Hastin Trustisari, "Literatur Review : Aksesibilitas Pelayanan Fasilitas Publik Bagi Penyandang Disabilitas Tunanetra," *Jurnal Multidisiplin Ilmu Akademik* 1, no. 3 (2024): 659–68, <https://doi.org/10.61722/jmia.v1i3.1674>.

aids or companions, or even worse, do not provide space for persons with disabilities to fully participate in the legal process. This situation is certainly contrary to the principle of equality guaranteed by the law³⁵.

2. Unclear Norms in the Regulation of Legal Protection of Persons with Disabilities

The lack of clarity in regulations on legal protection for persons with disabilities is a significant problem that affects the implementation of their rights, especially in the justice system. Law No. 8/2016 on Persons with Disabilities, which serves as the main legal foundation, should provide comprehensive protection for persons with disabilities in all aspects of life, including in the legal process. However, while there are clear rules regarding the rights of persons with disabilities, the vagueness of the norms contained in the law often leads to confusion in its implementation. This contributes to the inequality that occurs in the application of legal protection for persons with disabilities in the justice system³⁶.

One example of this lack of clarity is regarding the accessibility procedures in court that should be provided for persons with disabilities. Although the law stipulates that persons with disabilities are entitled to equal access in the judicial process, there is no further explanation of the technical mechanisms that should be implemented in the field. This legal ambiguity has been highlighted in previous legal studies, which confirm that the vagueness of disability related provisions contributes significantly to their weak implementation in courts³⁷. As a result, courts in Indonesia are often unable to provide adequate access for persons with disabilities. For example, sign language interpreters or specialized assistants for people with intellectual disabilities are not always available in every court, despite this being mandated in law. The lack of clarity on who is responsible for providing these services, as well as the funding mechanism, further deteriorates the implementation of accessibility rights in the justice system³⁸.

In addition, unclear norms also exist in terms of legal aid for persons with disabilities. Law No. 16/2011 on Legal Aid gives every individual, including persons with disabilities, the right to free legal aid if they are incapacitated. However, the norms in this law do not clearly regulate how such legal aid should be tailored to the needs of persons with disabilities, especially those who have limitations in communicating or interacting with other parties. In many cases, people with disabilities experience difficulties in accessing legal aid that suits their needs. For example, people with disabilities who are blind or have hearing impairments often do not receive adequate legal aid due to a lack of human resources trained in overcoming communication barriers³⁹.

Legal protection for persons with disabilities in the justice system is also hampered by the lack of clarity in the regulations governing their rights as victims or

³⁵ Ino Susanti and Andi Metra Wijaya, "Prospektif Penegakan Hukum Terhadap Tindak Pidana Perkosaan Korban Wanita Penyandang Disabilitas," *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 168–88, <https://doi.org/10.24967/jcs.v7i1.1712>.

³⁶ Arif Firdaus Ananda, Azum Syaifana Achraf, and Jihan Khonitillah, "Implementasi Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Pada Diskriminasi Kaum Disabilitas Dalam Pemilihan Umum," *Amnesti: Jurnal Hukum* 5, no. 2 (2023): 225–36, <https://doi.org/10.37729/amnesti.v5i2.2991>.

³⁷ Ali Sodikin, "Ambiguitas Perlindungan Hukum Penyandang Disabilitas Dalam Perundang-Undangan Di Indonesia," *Jurnal Legislasi Indonesia* 18, no. 1 (2021): 31, <https://doi.org/10.54629/jli.v18i1.707>.

³⁸ Sudirman, "Tinjauan Perlindungan Hukum Bagi Kesetaraan Penyandang Disabilitas."

³⁹ Universitas Binawan Hastin Trustisari. Rama, Adelia Ayu, "Literatur Review: Aksesibilitas Pelayanan Fasilitas Publik Bagi Penyandang Disabilitas Tunanetra," *Jurnal Multidisiplin Ilmu Akademik* 1, no. 3 (2024): 659–68, <https://doi.org/https://doi.org/10.61722/jmia.v1i3.1674>.

defendants in legal cases⁴⁰. One example of this lack of clarity is the regulation on the examination of witnesses or defendants with disabilities⁴¹. Law No. 8/2016 is supposed to regulate special procedures for the examination of persons with disabilities in court, such as the use of easy-to-understand language or the appointment of a companion. However, in practice, many courts do not apply these procedures, and persons with disabilities are often denied the opportunity to present their defense in a manner appropriate to their needs. This creates inequality in the legal process, where people with disabilities do not have an equal opportunity with non-disabled people to obtain justice⁴².

The lack of clarity in the regulations also relates to the lack of clear technical guidance for institutions involved in the judicial process, including prosecutors, lawyers, and judges, in handling cases involving persons with disabilities. In the absence of detailed guidelines, the judicial process becomes less friendly to persons with disabilities, leading to gaps in their legal protection⁴³. For example, there are no clear standards on how judges should assess the mental capacity or communication skills of people with disabilities in making legal decisions. This leads to discrimination and unfairness in the judicial process, as people with disabilities are often not treated in a way that is appropriate to their physical or mental condition⁴⁴.

3. Case Study: Application of Accessibility and Legal Aid for Persons with Disabilities in Decision Number 14/Pid.Sus/2024/PN Jpa

Case No. 14/Pid.Sus/2024/PN JPa, involving a defendant with a disability. This case illustrates how far the court can accommodate the rights of persons with disabilities in the judicial process, especially in relation to physical accessibility, provision of legal aid, and fair treatment during the legal process.

1. Physical Accessibility in the Justice Process

Physical accessibility is one of the main issues that persons with disabilities must face when involved in the justice system. Although Law No. 8/2016 on Persons with Disabilities requires the provision of accessibility for persons with disabilities in the judicial process, in practice, many courts have not fully implemented this principle of accessibility. In case No. 14/Pid.Sus/2024/PN JPa, although the defendant was a person with a disability, physical accessibility in court did not appear to have been fully met. Similar barriers have been reported in many other Indonesian courts, where the lack of ramps, visual guides, and disability friendly infrastructure remains a systemic

⁴⁰ Faissal Malik et al., "Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 538–47, <https://doi.org/10.6000/1929-4409.2021.10.62>.

⁴¹ I. Dewa Gede Palguna et al., "Indonesia's Constitutional Court Decisions on Outsourcing Scheme: Balancing Protection and Efficiency?," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 405–52, <https://doi.org/10.15294/jils.v8i2.66507>.

⁴² Harum Isnin, Arif Hidayat, and Universitas Negeri Semarang, "Strategi Peningkatan Partisipasi Politik Penyandang Disabilitas Berbasis Functional and Contextual Approach Perspektif Good Election (Studi Di KPU Kabupaten Purworejo)," *Annual Review of Legal Studies* 1, no. 3 (2024): 709–40.

⁴³ Caroline Jagoe, Pei Ying Natalie Toh, and Gillian Wylie, "Disability and the Risk of Vulnerability to Human Trafficking: An Analysis of Case Law," *Journal of Human Trafficking* 11, no. 2 (2022): 220–34, <https://doi.org/10.1080/23322705.2022.2111507>.

⁴⁴ Jurnal Eksplorasi Pendidikan et al., "Progres Pengimplementasian Sistem Pendidikan Inklusif Di Perguruan Tinggi Indonesia: Sebuah Literature Review," *Jurnal Eksplorasi Pendidikan* 7, no. 12 (2024): 29–36.

problem⁴⁵. This can be seen from the lack of adequate facilities to facilitate the presence of persons with disabilities in the courtroom, such as ramps for wheelchairs, markers for persons with visual disabilities, as well as easy access to the courtroom that does not meet universal design standards.

In relation to this, the court should pay more attention to providing physical accessibility facilities that are appropriate and in accordance with the standards set by the legislation. Accessibility not only includes the ease with which persons with disabilities can attend the courtroom, but also includes the existence of facilities that can assist them in following the proceedings smoothly. In this case, this is a major challenge, as many courts have yet to provide adequate facilities and infrastructure for persons with disabilities.

2. Provision of Legal Aid for Persons with Disabilities

In terms of the provision of legal aid, Law No. 16/2011 on Legal Aid clearly stipulates that every person who is incapacitated is entitled to legal aid. However, for persons with disabilities, the implementation of fair and equal legal aid becomes a more complex issue. In this case study, even though the defendant was a person with a disability, there were still obstacles in providing legal aid that suited their specific needs. It was seen that although there were lawyers provided by the state, there was no specific effort to ensure that the legal aid provided was truly suited to the needs of the defendant as a person with a disability. For example, the appointed lawyers do not have special training or knowledge on how to communicate or work with people with disabilities, which results in a less than optimal legal defense process. This condition reflects the findings who emphasized that many legal aid services are not adapted to the specific communication needs of person with disabilities⁴⁶.

In addition, in some cases, defendants with disabilities often do not receive adequate assistance, such as sign language interpreters or experts who can explain the legal process in a way that is easier for people with intellectual disabilities to understand. Although there was no sign language interpreter accompanying the defendant during the trial, this shows a discrepancy between the existing regulations and the reality on the ground. Law No. 8/2016 on Persons with Disabilities actually regulates that persons with disabilities are entitled to assistance to understand the legal process, including access to information in a form that they can understand, but its application is still uneven in all courts⁴⁷.

In this regard, it is crucial for courts to ensure that persons with disabilities receive not only general, but also specific legal assistance, tailored to the type of disability they have. Effective legal assistance should include clear communication and adequate accessibility, both in terms of lawyers being knowledgeable about disability and the use of appropriate communication aids.

3. Equal Treatment in the Judicial Process

⁴⁵ Natangsa Surbakti, Kelik Wardiono, and Muhammad Bayu Saputro, "Perlindungan Hukum Terhadap Penyandang Disabilitas Korban Tindak Pidana Asusila: Studi Di Sasana Inklusi Dan Gerakan Advokasi Difabel (SIGAB)," *Jurnal Jurisprudence* 10, no. 1 (2020): 73–93, <https://doi.org/10.23917/jjr.v1>.

⁴⁶ Muhammad Bayu Saputro, Surbakti, Natangsa, Kelik Wardiono, "Perlindungan Hukum Terhadap Penyandang Disabilitas Korban Tindak Pidana Asusila: Studi Di Sasana Inklusi Dan Gerakan Advokasi Difabel (SIGAB).," *Jurnal Jurisprudence* 10, no. 1 (2020): 73–93, <https://journals.ums.ac.id/index.php/jurisprudence/article/view/10527/5932>.

⁴⁷ Hendra Irawan et al., "Pemenuhan Hak Bagi Penyandang Disabilitas Dalam Memperoleh Pelayanan Hukum Di Pengadilan Agama," *Jurnal Hukum Tata Negara* 03, no. 1 (2023): 61–68, <https://doi.org/10.32332/siyasah.v4i1>.

A fair trial is a basic right for every individual, including persons with disabilities. However, in this case, it appears that although the court attempted to provide equal treatment, the reality is that there is still discrimination and inequality in the treatment of defendants with disabilities. Without proper procedures and training for legal officers, defendants with disabilities are often placed in a disadvantageous position during trials. In several parts of the judicial process, such as witness examinations and trials, defendants with disabilities appeared to have difficulty fully participating in the process. One obvious example is the difficulty in understanding questions asked by judges or prosecutors, due to limitations in communication and accessibility of information. The state guarantees the constitutional right of every person to obtain recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law as a means of protecting human rights⁴⁸.

The existence of vague norms in regulations regarding the treatment of persons with disabilities is also an inhibiting factor in this regard. Although there are already regulations governing the protection of the rights of persons with disabilities in the judiciary, their implementation is often hampered by vagueness in the procedures that must be followed by the courts. For example, there are no detailed provisions on how best to accommodate the special needs of defendants with disabilities in the judicial process. This results in persons with disabilities often receiving unfair treatment, both in terms of accessibility, legal aid, and in terms of understanding the ongoing legal process.

In this regard, it is important to emphasize that discrimination against persons with disabilities in the justice system is not only about the inability to provide physical access, but also about ignoring their needs for communication, understanding, and participation in the legal process. People with disabilities should be treated equally with other individuals, without any restrictions due to their physical or mental conditions. Therefore, the implementation of clearer and more detailed legal norms regarding the treatment to be given to persons with disabilities in the judiciary is necessary to ensure true justice⁴⁹.

CONCLUSION

Based on the results of the research, it can be concluded that although the rights of persons with disabilities in the justice system in Indonesia have been normatively regulated through Law No. 8/2016, in practice there are still inequalities in legal protection due to the absence of clear technical guidelines, lack of physical and communication accessibility, and the lack of legal assistance that is sensitive and specific to types of disabilities, so that regulatory reforms and capacity building of legal apparatus are needed so that the justice system is truly inclusive and able to effectively meet the special needs of persons with disabilities.

The absence of concrete procedural standards and tailored legal aid services exacerbates the marginalization of persons with disabilities in judicial proceedings. To address these issues, it is crucial not only to revise the existing legal framework to include precise operational mechanisms and responsibilities but also to promote disability-sensitive training for legal

⁴⁸ Muhammad Maulana Nazril et al., "Implementasi Hukum HAM Di Indonesia : Tantangan Dan Solusi," *Https://Ejournal.Appisi.or.Id/Index.Php/Perspektif* 1, no. 4 (2024): 1–15, <https://doi.org/doi.org/10.62383/perspektif.v1i3.42>.

⁴⁹ Leni Widi Mulyani Thenu, Hana Mifta Rofina, "Pemenuhan Hak Korban Penyandang Disabilitas Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 6 (2024): 2192–2199, <https://doi.org/https://doi.org/10.38035/jihhp.v4i6.2591>.

practitioners. Furthermore, cross-sectoral collaboration involving government institutions, civil society, and academic bodies must be intensified to foster a rights-based, inclusive legal environment. The findings of this study can serve as a foundation for future reforms and advocacy efforts aimed at achieving substantive equality for persons with disabilities in the justice system.

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