

Legal Counseling for Disabled Victims of Sexual Violence: Study of Assistance by Legal and Human Rights Council Leadership 'Aisyiyah Central Java Branch

Siti Kasiyati
Syariah Faculty
The State Islamic
Religion Institute
(IAIN) of Surakarta,
Indonesia

kasiyati_siti@yahoo.com

Abdullah Tri Wahyudi
Syariah Faculty
The State Islamic
Religion Institute
(IAIN) of Surakarta,
Indonesia

ap_advo@yahoo.co.id

Muhammad Julijanto
Syariah Faculty
The State Islamic
Religion Institute
(IAIN) of Surakarta,
Indonesia

mjulijanto@gmail.com

Sidik Hasan
Syariah Faculty
The State Islamic Religion Institute (IAIN)
of Surakarta, Indonesia
sidikhasan76@gmail.com

Meliana Damayanti
Syariah Faculty
The State Islamic Religion Institute (IAIN)
of Surakarta, Indonesia
liaaulia12@gmail.com

Abstract- This paper illustrates persons with disabilities as victims of sexual violence in Central Java, Indonesia. Indonesia has many Acts and regulations of Human Rights. However, in some cases there are still no justice for disability persons. In this article elaborates some cases under assistance of MHM (Law and Human Right Assembly) 'Aisyiyah Central Java Branch related to disabled persons in sexual violence cases. The method in this paper use interview, investigation, observation and also direct participation. It completed also with literature research. In short, public responsibility should be developed as a pillar and access for enforcing responses and handling violence that has to be a justice and nondiscrimination perspective.

Keywords: Legal Counseling, Disabled Person, Victim, Sexual Violence, 'Aisyiyah Central Java.

I. INTRODUCTION

The Republic of Indonesia is a state of law. It means law is the highest ground for realizing justice and truth in Indonesia. Based on Purnomo's book[1], he mentions it that "law is a series or rules of the behavior and certain actions of human beings in their communities to perform the function of enforcement." In this case, the State which means President and ministers, together with other state elements, such as governor. They have legal and moral obligations to perform their duties and functions of the administration of the state, and shall even be responsible for all actions taken.

The principle of equality before the law ensures everyone's get justice regardless of his or her background, especially for disabled person. Every citizen dealing with the

law has equal and undifferentiated rights. Human Rights are a part of human that must be considered and guaranteed by the state, especially in Indonesia which is based on Pancasila and Law. The government of this country is committed to carrying out its duties and obligations. One of the most urgent government obligations such as to respect, protect, and fulfill human rights, especially for persons with disabilities. Therefore, in Article 5 of The Convention on the Rights of Persons with Disabilities (CRPD), it explains that "the State guarantees equality of legal protection for every person and prohibits all forms of discrimination on the basis of disability".

According to Sketsa Magazine, research on legal assistance for disabled persons is needed. Especially, legal assistance for disabled persons as victims of a criminal offense in the criminal justice system. This kind of legal assistance is very important to do for several things. **First**, difable means differently abilities. Those people who classified have different abilities with their neighborhoods. With their abilities and capabilities that are not similar as those who are normal persons. Disabled people sometimes cannot fill with their own needs without help of others. As a result, when disabled people become victims of a criminal offense, they are often unaware that they have actually been victimized. It is necessary to have legal assistance in the form of the fulfillment of their rights, especially when dealing with the law (criminal justice system).

Second, based on Act No. 8 / 1981 about the criminal justice system. It considers only the victims of a criminal offense. It means that a disabled person is not more than a witness. As a witness, the disabled person is required to give testimony according to what he or she sees, he or she hears and he or she experiences. Problems will arise when the three

things are applied to the disabled person who become victims of a crime. How could they give testimonies of what their experiences? if they could not see and could not even hear? How can a criminal justice system with various stages and procedures require that the persons with disabilities explain the truth about what they see, hear and experience, meanwhile, themselves are fall into the category of mental, mental retardation? In this context, witnesses who are victims of a crime are no exception to disabled people that those who are forgotten in the criminal justice system (victim as a forgotten system in the criminal justice system) [2].

Third, it is seldom to find the law enforcement officers namely investigators, prosecutors and judges, that they have sensitive of sense to the existence of disabled persons who become victims of a crime. Investigators are still reluctant to process a criminal case in which the disabled is victimized by reason of no other witness than the victim who saw the incident.

Fourth, there are still many people who are unconcerned and insensitive to the fulfillment of the disabled persons who are victims of a criminal action. By doing this, people are reluctant to make report of a criminal action, because the disabled person with mental retardation is not need to be defended and will only make a shame [3].

According to the statements above, there are two reasons why people are not too sensitive to disabled persons who are victims of a crime. **First**, they have absolutely no abilities and knowledge of all matters concerning disability issues, especially to those who are victims of a crime. **Second**, the perspective of law enforcement officers who are still dominated by positivistic perspectives in the sense that due to legal regulation related to the criminal justice process does not have specifically regulate to the existence of disabled persons who become victims of crime. They are reluctant or unwilling to do creations that overrule of those regulations. It means these two things directly affect how the legal assistance to the rights of persons with disabilities who are victims of sexual harassment.

Related to Law enforcement and community which some of them are in situations of ignoring disability rights encourage legal aid organizations and disability organizations to engage in advocating for disabled person cases who are victims of criminal offenses. The existence of legal aid organizations and disability organizations in many cases is very significant. Law enforcement officers who initially do not understand, disrespect, and assume cases of crimes against disabled victims are lacking in evidence, with advocacy and the role of legal aid agencies and disability organizations, law enforcement officers that involved in this case are appear helpful and prosecutions such as in perform prosecutions and justice proceeds

Based on the above explanation, we would like to describe comprehensively the assistance to the disabled victims of sexual violence, especially the obstacles to fulfill the rights of disabled persons by victims of sexual violence from the time of investigation, trial and recovery.

1. What are the rights of disabled victims of sexual harassment?

2. What are the disability barriers that are victims of sexual violence to obtain justice?
3. How is the role of the Assembly of Law and Human Rights of Regional Leadership of 'Aisyiyah Central Java Branch in assisting fulfillment of the right of persons with disabilities who are victims of sexual violences?

II. METHOD

A. Type of Research

According to Soetandyo [4], legal research is known for two types of research. Such as legal doctrinal research (legal research) and non-doctrinal legal research (socio legal research). In another dimension, there are two research typologies. Which are normative and sociological. From the above categorization, this study belongs to the type of non-doctrinal legal research or empirical legal research, because the investigation is the practice of investigation, prosecution and justice for disabled persons who become victims of criminal acts, as well as the rights of persons with disabilities who are violated in the judicial system process criminal at the stage of investigation, prosecution and trial.

B. Object of Research

The object of this research includes non-litigation assistance, litigation assistance and assistance of disabled rights. These assistances are conducted by Majelis Hukum and HAM (Human Right) PWA in Central Java. Litigation assistance ie investigation, prosecution and trial for disabled persons who become victims of crime. Then, assistance the rights of the disabled who have been violated in society because they are not reported. All recovery process is done by MHH PWA Central Java Branch.

C. Data Source

Source of data in this research comes from primary data, secondary data and tertiary data. Primary data of this research is field research in the form of interview, observation research and direct participation, related to behavior of society, family, practice of investigation, prosecution and justice for disabled people who become victim of crime. Secondary data from this research are literature study, dissertation, thesis, journal, paper, workshop result and some other scientific works related to fulfillment of the rights of persons with disabilities who become victims of crime in criminal justice system. While tertiary data from this research are dictionary and encyclopedia that support this research.

D. Data collection

The data in this study are collected in two ways. First, the researchers collect the data by conducting interviews. Interview with the disabled person who become victims of crime and his case has been in the criminal justice process and has passed the process of investigation, prosecution and judiciary or not to the process investigation. At this stage the researcher also interview and visitation with disabled family who become victim of crime, the parties involved in advocate,

observation on police investigation process, prosecution by prosecutor and court and judge's decision who has handled criminal case whose victim is disabled person. Second, the researchers conduct literature study and supporting documents on field research.

E. Data Analysis

This research uses data analysis in the form of inductive and qualitative. One of the most important features of non-doctrinal research (socio legal research) is on the point of emphasis on empirical reality so that the process of thinking is inductive. The process of thinking that focuses on the things that are special in the form of empirical facts. Then switch to things that are a general set of concepts or theories, and then concludes with a conclusion. While qualitative analysis more emphasis on quality compared with quantity of data, so that emerge is not words of row of numbers. In qualitative analysis generally the data described in the form of narrative that is arranged in a systematic, logical and is the result of the process of interpretation of researchers to the resulting data. In the form of narrative texts, and such as data reduction, the presentation of data is part of the analytical activity.

Data analysis on this research are using qualitative descriptive method. According Sugiyono [5] on the definition of data analysis, as stated as follows "The process of searching and systematically compile data obtained from interviews, field notes, and documentation, by organizing data into categories, describe into units, synthesize, organize into patterns, choose what is important and what will be learned, and make conclusions so easily understood by self and others".

III. Result and Discussion

A. Rights of the disabled victims of sexual violence

The law instruments are already protected, including:

1. UNCRPD (Convention on the Right of Persons with Disabilities): especially in article 12 and 13.

a. Article 12 concerning: Equality of Recognition before the Law.

b. Article 13 concerning: Access to Justice. Based on this article, the disabled is a very vulnerable community victims of violence, especially women and children with disabilities.

2. Law No.39 of 1999: Human Rights. Every person who belongs to a vulnerable group of people is entitled to receive more treatment and protection with respect to its specificity. In the elucidation of the article, it is stated that what is meant by vulnerable groups is among the elderly, children, the poor, pregnant women and people with disabilities. It also mentions according to Human Rights Reference 3 mentioned, belonging to Vulnerable Groups are: a. Refugees, b. Internally Displaced Persons (IDPs); c. National Minorities, d. Migrant Workers; e. Indigenous Peoples, f. Children; and g. Women.

3. Law No. 8 of 2016: Disabled Person

Article Implementation of The Rules

Article 28	Equality Before the Law
Article 29	Legal Assistance
Article 30	Involving doctors or health workers; psychologist or psychiatrist; and social worker before the examination
Article 31	Assistance for children with disabilities against the law
Article 36	Decent accommodation in trial
Article 96	Social Rehabilitation, social security, social empowerment, and social protection
Article 113	Habilitation and Rehabilitation Services

Additionally, it also collaborated with other laws related to the rights of victims. Such as

a) **The Right of Medical Recovery and the Right to Psychological Restoration**

This right is regulated in Law No. 23 of 2004 on PKDRT (Abolition of Domestic Violence), Law No. 21 of 2007 on PTPPO (Human Trafficking), Law No. 23 of 2004 jo Law No 35 of 2014

b) **Right of Legal Assistance**

This right is regulated in Law No. 23 of 2002 on Child Protection, Law No. 23 of 2004 on PKDRT (Abolition of Domestic Violence), Law No. 16 of 2011 on Legal Aid.

c) **The Right of Service / Psycho-Social Recovery**

This right is regulated in Law No. 23 of 2004 on Domestic Violence, Law no. 23 of 2002 on child protection.

d) **Right of Reintegration**

This right is regulated in Law No. 23 of 2004 on PKDRT, Law No. 21 of 2007 on PTPPO, Law No. 23 of 2002 on Child Protection.

e.) **Right of Assistance**

This right is regulated in Law No. 23 of 2004 on Domestic Violence.

f) **Right of Information Case Progress**

This right is regulated in Law No. 23 of 2004 on PKDRT, Law No. 21 of 2007 on PTPPO, Law No. 23 of 2002 on Child Protection.

g) **Right of Service Shelter**

This right is regulated in Law No. 23 of 2004 on PKDRT, Law No. 21 of 2007 on PTPPO, Law No. 23 of 2002 on Child Protection.

h) **The Right of Spiritual Service**

This right is regulated in Law No. 23 of 2004 on PKDRT, Law No. 21 of 2007 on PTPPO, Law No. 23 of 2002 on Child Protection.

i) **The Right of Restitution**

(in case of Human Trafficking and Rape)
Regulated in Law No. 21 of 2007 on PTPPO / Elimination of the Crime of Trafficking in Persons.

B. Barriers of Access to justice for disabled victims of sexual violence

Assistance to victims of sexual violence conducted by the law and human rights council of the region leaders 'Aisiyiyah Central Java Branch. In 2016-2017, at least there are 9 cases

of victims of sexual violence, how it happened to disabled victims of violence and the escape of various things, this began the stage of investigation, prosecution and trial. Difficulties for access to justice because of several factors. Of the 9 cases, 3 cases have good judges' verdict in which the assembly greatly folds of the disabilities aspect. On the other hand, there are 3 cases that we accompany, cannot be pitied, because the community perspective and lack of knowledge about the dysfunction that causes this case raw in the middle of the process. These following cases are:

No	Name	Type of Disabilities	Defendant	Barriers
1	VI	Deaf	OB (her teacher)	<ul style="list-style-type: none"> -Biological age 22 years, -Mental age 9 years. -Withness is equally def. -Translator gets threat from the the perpetrator -The school side initially covered up -Police have never handled a case of disability -Witnesses the perpetrator's wife -Victims of trauma -Sexual is on -The perpetrator was sentenced to 10 years in prison
2	Ank	-deaf and mute	Toga (Skipper)	<ul style="list-style-type: none"> The public knows but no wants yo be a withness. -the victim did not go to school. She does not know about sign language. So the translator could not rehabilitation physics -a poor famly and her biological mother not stay i one house. Ank live with her elderly grandmother th legal process stop her sexual is active.

				-lastly, she can be have more children.
3	Dw	CP, MR	Elderly man (70 years old) her neighbor	<ul style="list-style-type: none"> Village officials Threatening her. By saying that nobody wants to help if reported her mother is disabled and very poor. Understand the language -indicated as victim of human trafficking to cover up the actual events she has been born a child, but DNA tes there are 6 same chromosomes there are 6 which is not same. -sexual active, untouched
4	Pw	ID	Eldery man (her neighbor)	<ul style="list-style-type: none"> Victims are difficult to reach after reported. Depressed children usually are difficult to speak and feel fear to others Family closed to neighbor No reporting occurred.
5	Dst	ID	Prepetrators are 5 people as construction workers The mains perpetrator was sentenced to a term of 14 years, and the other 10 years.	<ul style="list-style-type: none"> -no withness -the offender is her boyfriend -the police did not find the trauma -unknown trauma -we propose a psychological test. -After a psychological test then can be found trauma that he experienced -after the events that he experienced, now experiencing sexually active,

				tend to be progressive when meeting with the opposite sex
6	HRT	MR with age 22 years old, mental age 6 years	Her biological Father. Now, he imprisoned with 10 years prison term	-no witnesses -After the incident, all men who come to her house are her boyfriend - aggressive with the opposite sex
7	NR	MR with 31 years old mental age 7 years old	Cousin / near neighbors	-no direct witnesses - Proof of clue - Someone saw the ride - Fear victims -Difficult to answer question -Difficult to talk
8	Mrs	Low Vision/MR	New acquaintance	-Low vision - The perpetrator

		/ tremor Biological age 16 years old mental age 5 years	/ distant neighbor	promises as a boyfriend - The house is far from the settlement - Her mother is single parent -Victims difficult to communicate -The victim considers the boyfriend
9	X	MR	Neighbor	-resolved by leader of community, -unpredictably disowned - family resigned Assisted to report to the police do not want to - finally we help her delivery and recovery

As explained above, legally, disabled persons have earned equal rights before the law. However, in the reality, the fulfillment of Human Rights is still far from being expected. In general, the problems faced by victims are because weak of their financial; psychic disorder; physical disorder; lack of knowing the legal effort to be taken. More specifically, the obstacles faced in handling cases of victims of violence, especially women with disabilities, human resources (Lawyer and paralegals does not have a maximum understanding of the disability of both variants and specificity in behavior); Limited access, (funding, information, economy,); Limited evidence, long-standing trial.

Additionally, law enforcement officers have many difficulties regarding the implementation of the law, the law of the program, as well as the services that should be accepted as victims, lack of witnesses, communication difficulties, law enforcers who have not had perspective on the disability and barriers of the process of examination that has not been accessible to the disabled.

Other problems for people with intellectual mental disabilities where there are differences in mental age and physical age based on calendar. This age difference can be known through psychological examination that will analyze the ability of the disability intellectual. Because of it, it is possible that people with intellectual mental disabilities will never reach the mental age as in children aged 18 years in general even though his/her physical age has reached more than 18 years.

All problems above are similar to the result of the workshop of disabled barriers faced by the law organized by SIGAB

Yogyakarta, on 24-25 November 2017 in Yogyakarta where the disability to deal with the law has problems. The following problems are:

Infrastructure	<ul style="list-style-type: none"> Accessibility in the infrastructure in question is not only the ramp and the reception desk are made lower, but also the need for guidance relating to the mechanism of the trial. There is a need that can be made certain standards, but not all can be standardized infrastructure, but need to be adjusted to the needs of each type of disability • There needs to be a mapping of the existing and missing infrastructure needs of each law enforcement agency. 	<ul style="list-style-type: none"> In some District Courts and Religious Courts already have special parking, wheel chair. There is already a Circular Letter in each the judicial body relating to the provision infrastructure for persons with disabilities.
Testimony	<ul style="list-style-type: none"> The definition of testimony needs to be extended. It is not only to the viewing, listening and sensing, as set forth in the Criminal Procedure Code. It is necessary to consider the conditions of disability that can know an event in its own way without depending on its constraints. 	Decision of the Constitutional Court Number 65 / PUU-VIII / 2010 expanding the scope of the testimony into "the person who can give the inside information order of investigation,

	<ul style="list-style-type: none"> Extension of the definition can be seen in the Law on Protection of Witnesses and Victims 	<p>prosecution, and judicial a criminal offense that is not always he heard by himself, he saw by himself and he experienced by his own "</p>
Translator	<ul style="list-style-type: none"> The function of the translator is not only to be a linguist but to understand how to encourage to be able to tell stories. Therefore the concept not only provides translators but also appropriate interpreters for persons with disabilities 	<p>Kapolri Regulation No.8/2009 about the implementation of principles and human rights standards in the implementation the task of the Indonesian police (including the provision sign language interpreter)</p>
Assistance of experts	<ul style="list-style-type: none"> Required 2 (two) types of assistance for the legal process and for barriers of disability It is important to identify which experts 	<p>There are already regional police officers working as well as organizations of persons with</p>

	<p>can accommodate the needs of disabilities • Due to the limited expertise, it is necessary to support the procurement of experts despite the remote location.</p>	<p>disabilities in an effort to meet the companion or sign language interpreter</p>
Capacity of law enforcement officers	<p>Abusive stigma removal for persons with disabilities in legal process so it can give testimony</p> <ul style="list-style-type: none"> need to mandate training for law enforcement officers how to interact with PwDs (persons with disabilities) need to mandate law enforcement agencies to compile technical guidance on how to interact with PwDs (persons with disabilities) • Law enforcers need to have a special unit to handle persons with disabilities in the presence of law (either standing alone or joining an existing unit) Who handles complaints especially with regard to persons with disabilities should be police officers already educated on how to interact with disabilities knowledge and treatment Need regular and multilevel capacity building 	

From the description above can be categorized that the obstacles to fulfill the rights of disabled victims of sexual violence consist of: facilities, facility of services, law of events in all judicial process; investigation; prosecution; court; post-decision

C. Mentoring Steps against Different Victims of Sexual Violence conducted by legal and human rights councils Leadership 'Aisyiyah in Central Java Branch.

1) Litigation in Investigation, Prosecution and Judicial Process

First and foremost, in the investigation part, all of counselors and attorneys can be attempted to conduct a disabling profile assessment in order to:

- Recognize the disabled person conditions as well as to find out the needs related to the accessibility and reasonable accommodation needed for disabilities that are full of laws.
- Inform to the law enforcement and stakeholder about disabilities of the victims which is should be accurate and legally accountable.
- Prove that disability of the person may be the cause of a person's powerlessness to resist violence or self-violence.
- Knowing traumatic disabilities including behavioral changes that occur in the post-birth disability.
- Know the strategies or ways of communicating effectively to the disabled who is accompanied.

In the examination of perpetrators, witnesses and victims should prioritize the principle of nondiscrimination and humanize of human. Humanitarian examination is an

examination that uses the perspective of disabilities by law enforcement officers.

In other words, it should be providing of legal counselors who has a gender perspective and disability. Furthermore, it should be providing of translators who have sensitivity related to women and disability and have the ability to communicate to victims so that victims feel comfortable and safe. It necessary to propose and provide expert witnesses' references primarily related to medical, psychological and disability. Moreover, it should be attending for each stage of investigation, prosecution and trial.

2) Non-Litigation in Investigation, Prosecution and Judicial Process

As a lawyer at the same time the legal counselor of difabel victims of sexual violence, we should do nonlitigation assistance from various aspects. Such as to encourage family strengthening, and victim witness for easy questioning; social-psychological, mental and spiritual assistance and socialization and advocacy of public responsibility law, networking with companion disability.

Additionally, we are performing recovery for the disabled whose law case is well processed, and the one who does not get the legal justice in the house program of the Sakinah House in cooperation with Lazizmu Muhammadiyah Central Executive.

The Recovery Program, the following are:

- Psychological Counseling; Spiritual mental coaching. The outcomes are pioneering the victim to be new and conscious person; be a motivator; make a Peer group (Domestic Violence & Sexual Violence);
- Social Rehabilitation and Reintegration. For instance, training on recovery socialization to the link, the victim's residence; victims service;

building perspective on victim handling and recovery; building perspective in development planning.

- c. Post-case, such as alternative education, education personality and play

Encourage the existence of a disparate perspective policy (both from the level of the Act to the implementation regulations in every agency). Legal substance in both condition which are in procedural law and the material law (disabling in the domain of civil law is not recognized as a legal subject, discriminatory legal substance, age-fixing for disabled with mental retardation).

Furthermore, to achieve this required supporting tools include:

- Encourage the formation of a legal perspective with a disability perspective
- Examination for disabled persons at trial with fast events (procedural law)
- Standard services for disabilities in each law enforcement institution
- Ethics communicates with disabilities
- Assessment at all stages of the process and for all judicial environments (not limited to criminal cases only)

ACKNOWLEDGEMENT

1. The disabled victims of sexual violence are traumatized. However, its often very difficult to recognize the trauma. Because of that. It is necessary to require a profile assessment, especially at the time of investigation (the beginning of trial process);
2. The obstacles faced by the disabled victims of sexual violence including facilities. Facilities of Services, such as in Law Events of all judicial processes:
 - Investigation
 - Prosecution
 - Court
 - Post Decision
3. The access to justice of disabled victims of sexual violence is very difficult to be realized without the support of family, community and state, proved some cases did not reach to the police;

4. Post-case recovery no special attention has been made to the state or society. Because of that many victims become victims again;
5. Community participation is expected so that disabled people who become victims of violence can get proper accommodation. Therefore, socialization must be continuously implemented.

REFERENCES

- [1] B. Purnomo, *Purnomo, B. Asas-Asas Hukum Pidana. Jakarta: Ghalia, Indonesia, 1978.* Jakarta, Indonesia.: Ghalia, 1978.
- [2] Mudzakkir, "Posisi Hukum Korban Kejahatan dalam Sistem Peradilan Pidana. PhD Dissertation." Law Faculty of Indonesia University (UI),.
- [3] "Architecture for Differently Abled, Majalah Sketsa: Majalah Arsitektur Tarumanegara," *Majalah Arsitektur*, vol. 24.
- [4] S. Wignjosebroto, *Penelitian Hukum Sebuah Tipologi dalam Masyarakat.* 2002.
- [5] Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R&D.* Bandung: Alfabeta, 2011.