



# Legal Protection for Persons with Disabilities as Victims of Sexual Violence (Study of Medan District Court Decision No. 1245/Pid.B/2023 Pn Mdn)

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**Abstract:** This research is a type of normative legal research with the aim of the research to find out how legal protection is for people with disabilities as victims of sexual violence and to find out whether in the Medan District Court Decision Number 1245/pid. b/2023 PN Mdn people with disabilities as witnesses and victims receive maximum legal protection. The results of the study indicate that people with disabilities have the right to legal protection from the criminal acts of sexual violence they experience, while the Medan District Court Decision Number 1245/Pid.B/2023/PN Mdn has not been maximized in providing legal protection for people with disabilities who are victims of such actions, one of which is the article used by the judge in sentencing the defendant is Article 12 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, where through this article the Medan District Court judge did not consider the victim who was a person with intellectual disabilities at all because the article is an article that regulates criminal sanctions for sexual violence for victims who do not have physical limitations. In this case, the judge ignored the existence of Article 15 paragraph (1) letter (h) of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, which stipulates that for sexual harassment of persons with disabilities, the criminal sanction is increased by 1/3 of the main sentence.

**Keywords:** Legal protection, Sexual Violence, People With Disabilities

## 1. Introduction

The preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) in the fourth paragraph states that the aim of the Indonesian state is, among other things, to protect the entire Indonesian nation and all of Indonesia's blood (Hanifah, 2020), (Susanto, 2021). This goal must be interpreted as comprehensive protection for citizens, in line with this article. In principle, Indonesia is a country of law, this is clearly stated in the Constitution of the Republic of Indonesia, Article 1 paragraph (3) of 1945 (Usman, 2019), (Zaini, 2020). According to LM Friedman, law in reality has three (3) goals, namely legal certainty, justice and benefit, where in achieving these three legal goals, law enforcement is influenced by several elements, namely, the substance of the law, the structure of the law, and legal culture. (Rahman & Tomayahu, 2020) (Aviva, 2023).

In social life, it can be seen that not everyone is born perfect, many are born with deficiencies which we often know as diffables or handicaps. Disability is a term that we may often hear or know about (Maftuhin et al., 2020), (Wiguna, 2022). In reality, disability is not just a term that describes a person's shortcomings in terms of physical or social aspects, but disability is a struggle for the recognition of rights and equality between people with special needs and other people in general (Rovner, 2003), (Putri, 2021).

So far, people with disabilities have always faced discrimination from various parties because their physical form is always different from someone who does not have special limitations (Mulyani, Sahrul, & Ramdoni, 2022), (Azhar, Hidayat, & Raharjo, 2023). People with disabilities, especially deaf people, are very vulnerable to becoming victims of violence, including sexual violence, rape. Apart from being a vulnerable group, the situation of disabled people who are victims of sexual violence is increasingly

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worrying because many do not receive legal protection (TAHUNAN & PEREMPUAN, 2020), (LEGISLASI, n.d.). Disabled people often become victims of violent acts which make it difficult for the perpetrators to be prosecuted by the police or even the courts. The government does not fully provide special facilities to people with disabilities who are in conflict with the law. There should be clear and firm regulations for people with disabilities who are victims of harassment which is necessary to ensure protection for people with disabilities with clear laws (Mokalu, 2022), (Samsyudin, 2022).

This is what was also experienced by a person with a disability in the city of Medan, he was a victim of a criminal act of sexual violence who did not receive significant justice in his life, because he was a person with an intellectual disability who experienced forced sexual violence by his neighbor (Risal, 2022), (Siagian, Kurniawan, Hidayati, & Marasebessy, 2022). So the impact of these actions is that the victim experiences mental and emotional disorders for the rest of his life. Intellectual disability is a condition characterized by below average intellectual functioning and a lack of skills for daily life. Impaired intellectual function is a person's ability to reason scientifically, make decisions, communicate and even be unable to interact with other people and look after himself (Noviana, 2024), (Nafil, 2020).

However, what is problematic for the victim's family is the Medan District Court Decision Number 1245/Pid.B/2023/PN Mdn which only sentenced the defendant, namely Wahyu Syahputra, to imprisonment for 7 (seven) years 6 (six) months minus the time the defendant was in prison. in detention, and a fine of IDR 1,000,000,000 (one billion rupiah) subsidiary 5 (five) months in prison. Of course, this burdens the hearts of the victim's parents who see that the light punishment for the victim is not commensurate with the impact their child is experiencing, namely a lifetime of severe psychological disorders. Apart from that, the articles taken into consideration by the judge in imposing criminal penalties on the perpetrators were also not fulfilled optimally, because Article 12 of Law no. 22 of 2022 concerning the Crime of Sexual Violence states that the sentence for the perpetrator in this article is a maximum of 15 years, but the judge only imposed a sentence of 7 years and 6 months. Apart from that, the verdict also did not mention any criminal aggravation against the defendant even though the victim was a person with disabilities. intellectual disability (Medan District Court Decision).

Based on these issues, it certainly shows that legal protection for victims of sexual violence with disabilities has not been implemented properly in this case, and the Medan court decision still results in the absence of protection for victims. Therefore, regarding the above issue, it is interesting to carry out further studies to find out the process and legal certainty of the settlement which will be outlined through research with the title "Legal Protection for Persons with Disabilities as Victims of Sexual Violence (Study of Medan District Court Decision Number 1245/Pid.B /2023 PN Mdn)".

## 2. Materials and Methods

The type of research used in writing this journal is normative juridical research. Normative juridical research is a type of legal research in which analyzing problems is carried out by means of library legal research which is carried out by examining library materials or from legal data sources originating from statutory regulations where law is conceptualized as what is written in statutory regulations.

The data sources used by the author in compiling this scientific article are divided into two, namely primary legal materials in the form of statutory regulations and secondary legal materials in the form of legal publications that are not official documents.

## 3. Results and Discussion

### 3.1 *Legal Protection for Persons with Disabilities as Victims of Sexual Violence*

Referring to the 1945 Constitution (Article 1 paragraph 3) which states that Indonesia is a legal state. This means that we must move according to applicable regulations. Law is a set of norms, both written and unwritten, which are binding on a society and if

they are violated, they will be punished. Law has a function as a tool for regulating and also protecting the aim of creating balance and harmony between members of society. A legal goal can be said to be achieved if all legal subjects receive equal rights and obligations in accordance with applicable regulations.

The rights and obligations of people who do not have special needs and those with disabilities are actually the same, but their existence must be given a special place and protection so that people with disabilities do not feel underestimated because of their shortcomings. The basis for equality is contained in Article 27 paragraph (1) of our constitution, namely "All citizens have the same position under the law and government and are obliged to uphold the law and government without exception." Then in Article 28 D paragraph (1) of the 1945 Constitution which states "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law" (Dewi & Widhiyaastuti, 2016).

Women with disabilities are vulnerable to sexual violence and the perpetrators are often from their surrounding environment or those closest to them. Women with disabilities have mental disorders which make them vulnerable to sexual violence because they are easily persuaded or seduced. This often results in women with disabilities feeling like they are living under pressure because there is no guarantee that the people closest to them can also be a threat to committing acts of sexual violence (Irawan, 2023).

People with disabilities are part of Indonesian citizens, so people with disabilities have the same rights and obligations. This is in accordance with the fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia (UUD NRI 1945) as well as statutory regulations which expressly guarantee the protection of the rights of every citizen, including the rights of persons with disabilities so that the Indonesian state is established as rule of law, guarantees a legal umbrella for people with disabilities to fulfill all their rights and obligations, including:

a. Law no. 39 of 1999 concerning Human Rights

Through this Law, the state concretely provides recognition of legal protection guarantees for persons with disabilities who experience sexual violence against themselves, especially in Article 3 paragraph (2) which states that "Everyone has the right to recognition, guarantees, protection and legal treatment. justice and legal certainty and equal treatment before the law." Then paragraph (3) states that "Everyone has the right to the protection of human rights and basic human freedoms, without discrimination".

Based on the provisions of this law, it can be interpreted that people with disabilities also have the right to receive the same rights to obtain protection before the law, apart from that, if they are victims of criminal acts of sexual violence, they are entitled to legal protection that provides more complete facilities than normal victims in general, because the a person with a disability is someone who experiences limitations in any way, especially against sexual violence, and also when he becomes a witness in a trial involving his case, he finds it very difficult to provide proof of the actions he experienced from the perpetrator.

So that protection must start from the beginning of the investigation and investigation process, prosecution and trial by placing accessibility to appropriate accommodation both in terms of infrastructure and understanding of disability by Law Enforcement Officials, as well as the importance of personal assessment which must be carried out at an early stage when women People with intellectual disabilities who are victims of sexual violence face the law.

b. Law no. 8 of 2016 concerning Persons with Disabilities

From the perspective of regulations governing people with disabilities, this law provides a broad explanation of all aspects of protection needed for people with disabilities, especially legal protection for people with disabilities who experience sexual vio-

lence. Especially in Article 3 letter (b) which clearly formulates "guaranteeing efforts to respect, promote and fulfill the rights as inherent dignity of persons with disabilities". Article 28 also states "The Government and Regional Governments are obliged to guarantee and protect the rights of Persons with Disabilities as legal subjects to carry out the same legal actions as others". And in Article 29 it is stated that "the Government and Regional Governments are obliged to provide legal assistance to persons with disabilities in every examination at any law enforcement agency in civil and/or criminal matters in accordance with statutory provisions."

c. Law no. 12 of 2022 concerning Crime of Sexual Violence

In Article 1 number 8 of Law no. 12 of 2022 concerning criminal acts of sexual violence states that, Persons with Disabilities are any person who experiences physical, intellectual, mental and/or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties in participating fully and effectively with other citizens based on equal rights (Republic of Indonesia, 2022).

This law regulates legal protection for people with disabilities, namely Article 25 of Law no. 12 of 2022 concerning criminal acts of sexual violence which states that the statements of witnesses and/or victims with disabilities have the same legal force as the statements of witnesses of victims who do not have disabilities. Paragraph (5) states that witness statements as referred to in paragraph (4) must be supported by a personal assessment as regulated in statutory regulations regarding appropriate accommodation for people with disabilities.

Furthermore, in Article 15 paragraph (1) letter h of Law no. 12 of 2022 concerning Criminal Acts of Sexual Violence emphasizes that "Criminal acts as referred to in Article 5, Article 6, and Article 8 to Article 14 plus 1/3 (one third), if committed against Persons with Disabilities".

d. Government Regulation No. 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities

The presence of this regulation accommodates two important things in providing legal protection for people with intellectual disabilities who are victims of violence which refers to appropriate accommodation and personal assessment as the entry point to provide the form of protection needed according to the case and disability. Article 1 number 2 of Government Regulation Number 39 of 2020 states that Adequate Accommodation is appropriate and necessary modifications and adjustments to ensure the enjoyment or implementation of all human rights and fundamental freedoms for Persons with Disabilities based on equality, while Article 1 number 3 explains that Personal Assessment is an effort to assess the variety, level, obstacles and needs of Persons with Disabilities both medically and psychologically to determine Appropriate Accommodations.

Conceptually, based on several regulations, the forms of legal protection for persons with disabilities who experience acts of sexual violence are as follows: (a) Obtain special legal assistance for people with disabilities; (b) get a translator to make it easier to communicate with victims with disabilities; (c) Obtaining information or input from medical experts or psychologists or therapists to strengthen evidence at trial, (d) Obtain intensive supervision from LPSK regarding the legal process so that the rights of persons with disabilities are not violated.(Barkah, 2019), (e) Perpetrators of sexual violence receive increased criminal sanctions as stated in 15 paragraph (1) letter h of Law No. 12 of 2022 concerning Crimes of Sexual Violence.

### ***3.2 Analysis of legal protection for persons with disabilities as victims who experience sexual violence in the Medan District Court Decision Number 1245/Pid.B/2023 PN Mdn***

The criminal justice system is a mechanism for resolving crime problems that disrupt public order or make society feel unsafe, and to control crime so that it does not exceed the limits of tolerance. In its implementation, the criminal justice system has the ultimate goal of enforcing the law properly and using proportional principles. Where the meaning of the proportional principle here is that law enforcement is carried out in such a way that it not only prioritizes aspects of legal certainty (normative rules), but also prioritizes the value of justice (Rahayu Harahap, 2015).

The justice system in Indonesia adheres to the principle of mutual interest and welfare for victims of criminal acts. There are two targets established in this justice system, namely: (a) Advancing the welfare of persons with disabilities based on welfare as the main goal in a justice system. (b) Prioritizing the principle of proportionality, namely a goal to provide strict punishment so that the perpetrator has a sense of deterrence from his actions.

These two objectives should be attached to the judiciary which handles cases of criminal acts of sexual violence against persons with disabilities, because in essence a person with a disability is any person who has physical, intellectual, mental and/or sensory limitations for a long period of time who interacts with the environment. may experience obstacles and difficulties in participating fully and effectively with other citizens based on equal rights. Because of these limitations, the rights of persons with disabilities must be protected and fulfilled.

This is what was also experienced by a person with a disability in the city of Medan, he was a victim of a criminal act of sexual violence who did not receive significant justice in his life, because he was a person with an intellectual disability who experienced forced sexual violence by his neighbor. So the impact of these actions is that the victim experiences mental and emotional disorders for the rest of his life (Immanuel & Samosir, nd, 2021).

However, what is problematic for the victim's family is the Medan District Court Decision Number 1245/Pid.B/2023/PN Mdn which only sentenced the defendant, namely Wahyu Syahputra, to imprisonment for 7 (seven) years 6 (six) months minus the time the defendant was in prison. in detention, and a fine of IDR 1,000,000,000 (one billion rupiah). Of course, this burdens the hearts of the victim's parents who see that the light punishment for the victim is not commensurate with the impact their child is experiencing, namely a lifetime of severe psychological disorders. Apart from that, the article that was taken into consideration by the judge in imposing a crime on the perpetrator was also not fulfilled optimally because the article that was imposed was Article 12 of Law No. 12 of 2022 concerning Crimes of Sexual Violence. Apart from that, the decision also did not mention any criminal aggravation against the defendant. even though the victim is a child who also has intellectual disabilities (Medan District Court Decision).

In handing down prison sentences to perpetrators, judges should have considerations that prioritize the rights of victims who are people with disabilities, one of which is the formulation of criminal sentences for perpetrators of sexual violence against survivors of sexual violence with disabilities, requiring recognition of the same human rights for all elements. Recognition of equal human rights for all is very important regarding the formulation of sanctions or criminal law for perpetrators of sexual violence against people with disabilities. As humans, individuals who have limitations also have the same rights as other humans. This right includes the right to live with dignity, feel safe from discrimination, and feel safe and free from inhumane treatment, such as sexual violence. Therefore, the criminal sanctions determined must pay attention to human rights (Aura Aulia Putri S, 2023).

Sanctions imposed must be commensurate with the crime committed and must take into account the conditions and needs of persons with disabilities. This is important to avoid discrimination against people with disabilities and ensure that they receive equal and fair protection under the law. Apart from that, the criminal sanctions determined must also take into account other factors, such as the perpetrator's gender, age, and social and economic status, which can influence the successful rehabilitation of sexual violence perpetrators and minimize the risk of sexual violence occurring in the future. In formulating criminal sanctions, it is also important to involve various parties, including people with disabilities, in the policy formulation process. By taking into account their perspectives and experiences, the resulting policies can be more effective and better meet the needs and interests of people with disabilities.

Furthermore, the Medan District Court judge's decision Number 1245/Pid.B/2023/PN Mdn must also include elements of punishment in other positive Indonesian laws that are more relevant to the case that occurred, one of which is that it is known that criminal acts of sexual violence or rape against people with disabilities regulated in article 15 paragraph (1) letter h of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence confirms that "Criminal Acts as intended in Article 5, Article 6, and Article 8 to Article 14 plus 1/3 (one per three), if carried out on Persons with Disabilities" (Irawan, 2023).

Based on these provisions, it can be concluded that Judge P's decision Medan District Court No. 1245/Pid.B/2023/PN Mdn has not been optimal in providing legal protection for victims who are people with intellectual disabilities, one of the articles used by the judge is Article 12 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence which is through article In this case, the Medan District Court judge did not consider the victim who was a person with a disability at all because this article is the article that regulates criminal sanctions for sexual violence for victims who do not have special needs, and in this case the judge also did not seek to increase the sentence against the suspect and seemed to ignore the existence of Article 15 paragraph (1) Law No. 12 of 2022 concerning Crimes of Sexual Violence which regulates that for sexual harassment against people with disabilities, the criminal sanction is increased by 1/3 of the basic sentence. This is proven by the inappropriateness of the criminal sanctions provided under Article 15 of Law No. 12 of 2022 concerning Crimes of Sexual Violence.

#### 4. Conclusion

In handing down prison sentences to perpetrators, judges should have considerations that prioritize the rights of victims who are people with disabilities, one of which is the formulation of criminal sentences for perpetrators of sexual violence against survivors of sexual violence with disabilities, requiring recognition of the same human rights for all elements. Based on these provisions, it can be concluded that the Medan District Court judge's decision No.1245/Pid.B/2023/PN Mdn has not put forward the principles of complete justice for victims who are people with intellectual disabilities, one of which is the article used by the judge, namely Article 12 of the Law. Law No. 12 of 2022 concerning Crimes of Sexual Violence, through this article the judge does not take into account victims who are people with disabilities at all because this article is the article that regulates criminal sanctions for sexual violence for normal victims. and in this case the judge also did not seek to increase the sentence against the suspect and seemed to ignore the existence of Article 15 paragraph (1) of Law No. 12 of 2022 concerning Crimes of Sexual Violence which regulates that for sexual harassment of people with disabilities, the criminal sanction is increased by 1/3 of the basic punishment. This is proven by the inappropriateness of the criminal sanctions provided by Article 15.

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