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## Fulfilling the Needs of Person with Disabilities in the Courtroom

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### ABSTRACT

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The purpose of this article is to examine the necessity for a special criminal procedure for disabled people in the Indonesian court system. This study used legislation and conceptual techniques to conduct doctrinal legal research. According to the conclusions of this study, the criminal justice system is built on the normality principle, which states that everyone is physically and mentally normal. As a result, the investigation, prosecution, and examination processes in court proceedings are solely designed and geared at ordinary people. Disabled people have been pushed to the outskirts and may be disregarded. The rights of people with disabilities are routinely violated, both as perpetrators and as witnesses/victims of criminal activity. For the criminal justice system to be pro-people, the medical method should be abandoned in favor of a social approach. Law enforcement must perform its duties at each level of the criminal justice system to ensure that people with disabilities receive a fair trial. A profile assessment is required in the early stages of the criminal justice process to evaluate the character, difficulties, and needs of people with disabilities.

### 1. Introduction

The criminal justice system was not designed with disabled persons in mind from the beginning. Witnesses or victims of crimes with disabilities are treated the same as other witnesses or victims.<sup>(1)</sup> They are required to testify based on what they have seen, heard, or experienced. In fact, not all of them will be able to hear or see a crime because they are deaf or blind; or because they have intellectual and psychological barriers, such as those experienced by slow learners or mentally retarded, causing difficulties in giving testimony during the investigation and examination stages of court proceedings.<sup>(2)</sup> When examined closely, the Criminal Procedure Code is mostly influenced by a shared philosophy or point of view. Legal restrictions (statutory standards) are designed and intended primarily for regular people, neglecting the realities of disabled persons. The way law enforcement officers handle perpetrators, witnesses, and victims of individuals with disabilities reflects this sense of normalcy. Indeed, given the character, challenges, and requirements of persons with disabilities, whom some people define as abnormal, this worldview is not only inaccurate from the start, but also prejudiced. Under the pretense of equality before the law, police, prosecutors, and courts need witnesses to be people who have seen, heard, or experienced a criminal crime without exception. Law enforcement investigators also questioned whether the attitude of retardation's testimony was given only to clarify confusing replies to a query.<sup>(3)</sup>

People with disabilities are more likely to be victims of criminal acts such as rape, assault, or sexual abuse; hence they should be given legal protection, including the establishment of a pro-disability criminal justice system.<sup>(4)</sup> The idea is to make sure they get a fair trial.<sup>(5)</sup> If the major purpose of building the criminal justice system is to seek material truth, this goal will be defeated if the architecture of the criminal justice system is still based on the normality ideology.<sup>(6)</sup> This paper aims to explore the needs of a person with disabilities in the criminal justice system. The paper focuses on the regulatory framework for the need of the person with a disability in criminal cases in the courtroom. This study also explores the proposal for fulfilling the needs of such persons in the criminal justice system.

The first part of this study shows why a shift in theoretical approach is required to understand impairments. Until now, the medical approach/model has dominated how disability is seen as a notion or issue. Persons with impairments are assumed to be unwell people who require medical attention. This method is, without a doubt, ineffective and skewed. As a result, discussing disabilities must be done with the goal of breaking down barriers and educating people about bias, with the goal of inclusion

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in mind. The conceptual underpinning of the Indonesian Criminal Code, which is built on the ideology of normalcy, is examined in the second section of this study. People with impairments were not considered when the Criminal Procedure Code was written. As a result, they are commonly used as scape goat. The paper's conclusion underlines the importance of a criminal justice system that is pro-disabled. Investigators, public prosecutors, and judges must pay attention to and fulfill the rights of persons with disabilities who are suspects, defendants, witnesses, or victims of criminal acts, rather than the barriers to interaction that prevent persons with disabilities from enjoying their rights to a fair trial.

## 2. Literature Review

Examining the concept of people with disabilities from the standpoint of building models will be more appropriate. When it comes to the presence of persons with disabilities, the medical paradigm was the first to emerge. According to this perspective, a person with a handicap is considered as a sick person who requires care, rehabilitation, medication, and compassion. Disability is viewed as a problem that affects persons with disabilities rather than society in this approach. He also holds persons with impairments accountable for rehabilitating or treating them so that they can adjust to society. Medical model adherents use the term "person with a record" or "handicap" to denote someone who has a physical aberration.<sup>(7)</sup>

Professionals and persons with disabilities themselves argued against the medical model, leading to the development of the Minority Group Model of Disability. In this approach, people with disabilities are designated as a marginalized minority group. According to this paradigm, which was first proposed by a British Disability Studies expert, people with disabilities, as well as disadvantaged groups based on race, gender, or sexual orientation, are victims of humiliation, discrimination, and exclusion from the community. People with disabilities will always be marginalized since they are considered outliers having a smaller population than the general population.

Many groups, notably those with disabilities, find the minority group's disability paradigm inadequate. Physical defects are a gift from God, and they do not need to be treated as a problem, so that whether a person is normal or not, they are more concerned with their profession and social function. As a result of this approach, a social paradigm for dealing with handicap issues has emerged (social model of disability). In this concept, disability is considered as a social construct and a part of the human experience. The link between people with impairments and society's still discriminatory attitudes is complicated by disability. As a result, the goal is to tear down barriers and educate people on how to overcome prejudice to achieve insulation. A condition that prohibits a person from interacting with their surroundings is referred to as a disability. The surrounding environment contributes to this hindrance by making it difficult for people with disabilities to interact with others.<sup>(8)</sup>

Law Number 19 of 2011 about the Ratification of the Convention on the Rights of Persons with Disabilities incorporates the content of the social model, the barrier-based approach to understanding disability. "Disability is a changing concept," states the letter e in the preamble, "and it is the result of the interplay between physically and intellectually deficient people and environmental constraints that prevent their full and effective participation in society on an equal footing with other people." This prologue explains that disability is a notion that refers to the problems that people have as a result of chronic physical, mental, intellectual, or sensory discomfort that prohibits full and effective participation in society.

The obstacles that a person confronts impact his or her capacity to interact with other people and their environment. A deaf person, for example, is not considered impaired if he is unable to speak with others. When a person uses sign language to communicate with someone who does not understand it, they are referred to as a handicapped person. The disability will be removed if the other person uses sign language that the deaf person understands. Another example is a blind man. He is not regarded a person with a disability if he does not interact with his environment, such as while reading non-braille styles of writing. When a blind person reads an article intended for non-blind people in a newspaper, book, or on the internet, he is referred to as a person with a disability. If he had access to written knowledge in braille, his disabilities would vanish.<sup>(9)</sup>

## 3. Methodology

This study used doctrinal legal research to examine the legal norms promulgated in Indonesia's Criminal Procedure Code that govern the special procedure for disabled people. Furthermore, the study took a conceptual approach. The fundamental understanding of medical and social theories of disability plays a significant role in explaining the comprehensive regulatory framework for the criminal justice system's specific criminal procedure for disabled people. The data for this study was gathered through the usage of literature. The results of this study were then analyzed qualitatively.

#### 4. Results and Discussion

##### A Regulatory Framework of Indonesian Criminal Procedure Code for Person with Disability

At least two sorts of interests must be balanced in the criminal justice system: the public interest, the interests of citizens who are victims of crime, either directly or indirectly, and the interests of criminals. The proportional evaluation of these two objectives must be one of the major intellectual underpinnings in the formation of the criminal justice system. Examining the legal norms in Law Number 8 of 1981 governing the Criminal Procedure Code, it emerges that the fundamental impetus for the Code's establishment was the necessity to protect criminals' human rights, which were routinely infringed by criminal law enforcement personnel.

It is not unexpected that victims are disregarded and forgotten in the criminal justice system because the emphasis in the Criminal Procedure Code is on the protection of criminals. The victim is reduced to a witness who is required to tell what he saw and felt, both morally and legally. The existence of the information is forgotten if it was presented both during the investigation and at the court hearing. It is only logical that the subject of individuals with disabilities did not come up at the time, given this mindset. With the number of persons with impairments rising year after year, paired with their vulnerability, it seems unthinkable that this could happen.<sup>(10)</sup>

The normality notion was also used to construct the Procedure Code, which is still in use today. The officer must not be deaf and must have a whole and undamaged physique. A person with a lame, dwarf body, one eye, one hand, or one leg cannot be a public prosecutor. You must be in good physical and mental health to serve as a judge. It is impossible to judge a person with one hand, one long leg, who only sees the right or left eye, or a midget for the rest of their lives if they have this disease. Because police officers, prosecutors, and judges are descended from physically perfect people, even if their morals and integrity are corrupted. People with disabilities who are victims of criminal acts must be treated as ordinary victims of criminal acts, not as people with disabilities.<sup>(11)</sup>

A person who appears to be physically normal is referred to as a suspect or defendant. The rights of suspects and defendants in the Criminal Procedure Code are also based on this notion of respect, and they do not take sides with the legal interests of people with disabilities, whether they are suspects, defendants, witnesses, or victims of a crime. First, a suspect's or defendant's right to be clearly informed about what he is suspected or charged off in a language he understands is restricted to Indonesian and has nothing to do with sign language. Second, while a suspect or defendant may request interpretive assistance at any time, this clause only applies to suspects, defendants, and witnesses. Third, the Criminal Procedure Code regulates interpreters for deaf or mute defendants or witnesses, but it is unclear what criteria are used to ensure that the translation understands the language, personality, and habits of people with disabilities.<sup>(12)</sup>

The primary idea in relation to the investigation and prosecution procedures is that, while there is a relationship between them, they are still independent entities. Although the investigator has a moral obligation to notify the public prosecutor when an investigation begins, this does not mean the two are irrevocably linked. Because the public prosecutor can determine that the investigator's Investigation Report is incomplete and must be completed, this is the case. During this process, the report will most likely be transmitted back and forth between the investigator and the public prosecutor. This condition is plainly hazardous to persons who have disabilities, especially those who have communicative and intellectual issues such as autism, slow learners, and mental retardation. Furthermore, the process of processing the Crime Scene, which may be repeated several times, has a psychological influence on the active participation of witnesses or victims with disabilities.<sup>(13)</sup>

Judges who are chosen to hear cases apply to people with disabilities in general during the examination procedure in court. In other words, judges who deal with cases involving people with impairments are not bound by any rules. Judges are also prohibited from adopting attitudes or making statements that throw doubt on the credibility of witnesses or victims. In situations of rape, revocation, or sexual abuse, however, it is well recognized that the judge's questioning frequently turns the

victim into a second victim. Victims of criminal offences are re-victimized because of the attitude of law enforcement employees who are unconcerned about their rights and interests.<sup>(14)</sup>

To testify in court, witnesses and victims must swear or promise to speak the truth. Typically, oaths or pledges are taken under the assumption that the witness or victim is physically and mentally healthy, and that they have never met anybody with a disability. Without the defendant present, judges can hear witness/victim testimony about specific themes, although this is not needed. The judge would generally order the defendant to leave the courtroom if the facts of the case demonstrate that the witness was traumatized or was not free while testifying in the presence of the defendant. This means that when the witness/victim testifies, the order to prosecute the defendant will only be carried out if the witness/victim is guilty. This structure clearly does not protect the rights of individuals with disabilities, especially those with intellectual disabilities who are frequently exposed to trauma over time.<sup>(15)</sup>

The previous explanation indicates that the criminal justice system, as contained in the Criminal Procedure Code, continues to be biased towards people with disabilities and is based on the concept of normalcy. In fact, in the criminal justice system, the rights and needs of suspects, defendants, witnesses, and victims with disabilities differ from those of suspects, defendants, witnesses, and victims without disabilities. By comparing the two, the criminal justice system effectively fails to protect and support persons with disabilities. As a result, it is critical to build a criminal justice system for individuals with disabilities, so that their rights, on the one hand, are honored, and the material reality, on the other, is protected.<sup>(16)</sup>

#### **The Need for Psychological and Legal Treatment for Person with Disabilities in the Courtroom**

The barrier technique is used in order for the criminal justice system to be pro-disability for individuals with disabilities, as stated in the social model. What's needed here isn't a list of the rights of people with disabilities who are suspects, defendants, witnesses, or victims of criminal acts that investigators, public prosecutors, and judges must consider and fulfill, but rather a list of the barriers to interaction that prevent people with disabilities from enjoying their right to a fair trial. The rights of people with disabilities will be known, and law enforcement personnel will be able to perform their obligations by understanding and assessing these obstacles. Because the social model views disability as a matter of contact between people with disabilities, it is the job of law enforcement personnel to detect these roadblocks. Once these constraints have been recognized, the rights and needs of people with disabilities can be identified.<sup>(17)</sup>

Identifying the hurdles and needs of people with disabilities dealing with the criminal justice system must happen during the investigation stage, as the findings will be used as guidelines for dealing with cases during the prosecution and examination stages of the court proceedings. As a result, investigators, public prosecutors, and judges dealing with cases involving people with disabilities must be knowledgeable with the topic of disability, which takes the form of competency certification and necessitates a great deal of patience. 10,4 The conclusion is that investigations, prosecutions, and exams in court procedures involving persons with disabilities are null and void if they are handled by investigators, public prosecutors, and judges who do not have competency certifications. Investigators, public prosecutors, and judges are all jobs that people with disabilities can do. What is the rationale for this? The explanation is that they can perceive the barriers and needs of people with impairments. Furthermore, it is critical to instill a sense of four in investigators, public prosecutors, and judges when dealing with persons with disabilities so that they can better fulfill their tasks.<sup>(18)</sup>

It is simple to identify the hurdles and needs of individuals with disabilities by presenting disability psychologists, psychiatrists, interpreters, and teachers, friends of deans of persons with disabilities, or their parents, as well as organizations of persons with disabilities. This evaluation must be done during the investigation stage, and the findings will have an impact and be used to fulfill the rights of individuals with disabilities in the future. Following the profile assessment, it will be determined what type of disability a person with a disability has, whether he or she requires a companion from the investigation stage to the examination stage at the court hearing, whether it is necessary to meet the defendant when giving information, how to communicate and ask law enforcement officials, psychological resilience of persons with disabilities during the examination process, and what kind of intelligence a person with a disability pose.<sup>(19)</sup>

The profile assessment must include a mentally retarded and deaf and mute crime victim, as well as a disability psychologist, psychiatrist, sign interpreter, teacher, playmate, or the victim's family. The most prevalent challenges that people with disabilities face are legal and communication issues. The amount of time for examinations, examination procedures,

examination room design, and help from the investigation stage to the examination stage during court proceedings are all presented to psychologists with disabilities. All costs are covered by the government.

In a case where the victim becomes traumatized during the police interview, the interview is moved to a location that the victim appreciates, such as a park, the victim's house, or even the playground where the victim used to play with his friends. The judge must remove his large shirt during the courtroom examination if the victim will be disturbed by viewing it. The defendant was swiftly issued by the judge during the victim's examination if the victim was traumatized when he saw the defendant. The question-and-answer process must be broken up with pauses if the victim can only commit 30 minutes to answering questions from investigators and judges. If the victim requires psychological aid, the psychologist must be present during the investigation and the court hearing.<sup>(20)</sup>

Presenting psychiatrists must be psychologists with experience dealing with disabilities. It must be present both throughout the investigation and in court to avoid bad consequences, as well as to analyze the victim's mental state to generate medical records related to his psychiatric condition. Certain medications, such as antidepressants, are essential to alleviate the victim's mental state. Sign language interpreters are brought in to help with communication issues. Translators should be deaf people, individuals close to and trusted by the deaf, or others who are not deaf but understand and have long communicated and interacted with the deaf. It is desirable if investigators, public prosecutors, and courts are required to provide not one, but three translators. The first is a deaf interpreter who instantly translates the statements of the deaf perpetrator or victim. The non-deaf translator's job is to provide investigators, public prosecutors, and courts with the deaf translator's translation. To ensure that the deaf translation is correct, a third person who understands deaf sign language is required.<sup>(21)</sup>

Teachers, playmates, or parents of the victims are called in to provide background information on the crime's timeline, the victim's daily activities, and items that the victim carries all the time, such as calendars or dolls. In some cases of rape involving a mentally retarded victim, the teacher or playmate is commonly used as a haven for the victim to confide in. It is easier for victims to tell what happened to them than it is for their parents. However, some victims were more forthcoming with their parents than with their classmates or professors. As a result, their presence is crucial in understanding the barriers and needs of victims.<sup>(22)</sup>

Case handlers for people with disabilities must work together in the same way that environmental protection and management cases and election criminal cases are handled, in addition to having certification of competence in handling cases involving people with disabilities and conducting a profile assessment. The purpose is to ensure that procedures and methods for dealing with issues concerning individuals with disabilities are not only straightforward, but that their right to a fair trial is also recognized. Persons with disabilities organizations are necessary because, in some circumstances when people with disabilities have been victims of criminal activity, the participation of this organization is crucial to the appropriate resolution of these cases. In addition, his presence is beneficial when investigators, public prosecutors, and judges face issues related to the restrictions and expectations of people with disabilities. In other words, organizations that work with persons with disabilities can provide useful information to aid the investigation's profile evaluation, such as presenting a disability psychologist, the host, and even the victim himself.<sup>(23)</sup>

## 5. Conclusion

The Criminal Procedure Code, which serves as a normative reference for the administration of the criminal justice system, is said to be based on the normalcy ideology, which argues that everyone is physically and mentally normal. As a result, the investigation, prosecution, and examination processes in court proceedings are solely designed and geared at ordinary people. Only a person who can personally observe a crime can be used as a witness; even if he can smell and "sees" the event, a blind person cannot be used as a witness. This situation clearly excludes the presence of those who are deaf, blind, or mentally ill when dealing with criminals.

Labeled as abnormal people, persons with disabilities' rights are routinely violated, both as perpetrators and as witnesses/victims of criminal actions. The Criminal Procedure Code is designed primarily for normal people. To ensure that the

criminal justice system is no longer based on normal ideologies, but rather applies proportionately to normal people and persons with disabilities in accordance with their respective characteristics and needs, criminal cases involving a disabled perpetrator or victim must be handled and examined by investigators, public prosecutors, and judges who are familiar with disability issues.

At the investigation stage, a profile assessment by a disability psychologist, psychiatrist, and special companion is required to determine the character, barriers, and needs of persons with disabilities, as the results will be used as guidelines for handling cases at the prosecution and examination stages of court proceedings. Only after a profile assessment can it be determined whether the perpetrator or witness/victim is deaf, mute, blind, mentally disabled, slow learner, or has autism, as well as how to communicate with them and what questions to ask them, the conditions of the investigation room, the examination room in the court, who must be present, and what facilities and infrastructure must be in place to fulfill their rights.

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Kepada: Mahrus Ali <mahrus\_ali@uii.ac.id>

22 Juni 2022 17.42

Mahrus Ali:

The editing of your submission, "Fulfilling the Needs of Person with Disabilities in the Courtroom ," is complete. We are now sending it to publication.

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## Correcting the author affiliation for the published manuscript

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Mahrus Ali <094100102@uii.ac.id>

22 Juni 2022 22.02

Kepada: "Al-Kindi Center for Research and Development (KCRD)" <journals@al-kindipublisher.com>

Dear editor of International journal of law and politics studies

Thank you very much for publishing my manuscript titled 'Fulfilling the Needs of the Person with Disabilities in the Courtroom. I found the incorrect author affiliation in the published paper which is **Mahrus Ali Islam Indonesia Faculty of Law, Universitas, Yogyakarta Indonesia**. The correct author affiliation is:

**Mahrus Ali**  
**Faculty of Law Universitas Islam Indonesia, Yogyakarta, Indonesia.**

I do hope that the editor would like to fix the incorrect author affiliation in the newest version of the published paper.

Regards

Mahrus Ali

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