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Rights of Victims of Sexual Violence with Disabilities Based on Law Number 12 of 2022

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ABSTRACT Sexual violence is a phenomenon of human rights violations that can occur in various countries, including Indonesia. Based on the annual disability data of the Indonesian Women's National Commission recorded in 2019 there were 89 cases and in 2020 there were 87 cases with a specific increase in sexual violence cases from 69% in 2018 to 79% in 2019. Although it does not have a variable pandemic situation, but in 2020, the picture of cases of violence experienced by women with disabilities is dominated by rape. From the case of violence against women with disabilities, it is illustrated that women with intellectual disability are the most vulnerable group with a percentage of 47%. The purpose of this study is to find out the legal protection and rights of victims of sexual violence for persons with disabilities. This research uses normative research methods with a statutory and literature approach. The results of the study examined the rights of victims of sexual violence for persons with disabilities stipulated in Law No. 12 of 2022 concerning Sexual Violence Crimes including Special Enforcement by Law Enforcement Officials, handling procedures, protection, and recovery, state responsibility in guaranteeing the rights of persons with disabilities, and education related to public sexual violence. As the regulation to protect the rights of persons with disabilities in Law No. 8 of 2016 concerning Persons with Disabilities which contains: (a) The right to be free from torture, exploitation, discrimination for persons with disabilities. (b) Interact and socialize in society, family, state, and get protection from all forms without fear of a segla form.

KEYWORDS : Handling, Sexual Violence, Victims' Rights, Disability

INTRODUCTION

Humans are born with a variety of different types, humans cannot choose how their body shape when born into the world, some are born with physical, interctual, mental perfection and vice versa some are born with retardation (disability) that they did not expect before. Imperfections should not be the cause of the loss of dignity and dignity of persons with disabilities (Sodiqin, 2021).

Every human being who is born has the same rights as a subject of law, has the same rights as there are human rights in Indonesia. The existence of

human rights is a conception of human awareness of the rights inherent in each individual (Harahap & Bustanuddin, 2015).

Sexual violence is a phenomenon of human rights violations that can occur in various countries, including Indonesia. Anyone can be a victim of sexual violence both parents, teenagers, and children, and perpetrators of sexual violence can be confessed by anyone ranging from people who are believers, as well as foreigners and even many family members who are perpetrators of sexual violence crimes (Irawan et al., 2021).

The Deputy Chairman of the Victim Witness Protection Agency said that his party is increasingly receiving requests for protection and assistance from people with disabilities who are victims of sexual violence, although it does not disclose details of how many people with disabilities victims of sexual violence report to Victim Witness Protection Agency but certainly the phenomenon becomes a record for Victim Witness Protection Agency to be able to as much as possible protect people with disabilities who are victims of sexual violence. Based on annual disability data presented by the National Commission on Women of the Republic of Indonesia, there were 89 cases in 2019 and in 2020 there were 87 cases with a specific increase in sexual violence cases from 69% in 2018 to 79% in 2019. Available on website: <https://www.cnnindonesia.com/gaya-hidup/20201203182940-284-577722/jangan-abai-79-persen-wanita-difabel-alami-kekerasan-seksual>

Although it does not have a variable pandemic situation, but in 2020, the picture of cases of violence experienced by women with disabilities is dominated by rape. From the case of violence against women with disabilities, it is illustrated that women with intellectual disability are the most vulnerable group with a percentage of 47%. Available on website: <https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lembar-fakta-dan-poin-kunci-5-maret-2021>

In the Data center for advocacy of disabled women and children over the past 10 years out of a total of 140 cases accompanied, as many as 59% of sexual violence against women with disabilities, almost 40% of cases occurred in intellectual disabilities. Sexual violence in persons with

disabilities is caused because people with mental or intellectual disabilities are considered to have no prostuteity, do not have legal skills, do not have sufficient education and lack of access to information. Available on website: <https://sapdajogja.org/2020/11/akar-kekerasan-seksual-terhadap-perempuan-disabilitas/>

Victims of criminal acts have rights and obligations, in which: refusing to be witnesses if it will endanger him and the victim is obliged not to retaliate (vigilante). The handling of criminal acts against victims of disability (over 18 years old) still refers to the Criminal Code and the Criminal Procedure Law. Because there is no specific provision, it is still very difficult to uncover the crime of the perpetrator of the crime against the victim of diasibility. In addition, in general, the role of community institutions has been very large in controlling cases of sexual abuse with victims with disabilities. This can be seen in the handling process, the role of organizations with disabilities providing translators, then developing case investigation strategies for victim witnesses and other witnesses related to the case being investigated. Because the victim is a person with a disability, there are three methods of providing eavesdropping, namely, telling the incident through pictures, digging for information from victims and other witnesses through props, and the crime scene (Djauhari & Riyanto, 2018).

The rights that should be obtained by persons with disabilities when litigating in the judiciary are the right to get a companion, the right to get a translator, the right to get an expert, the right to be free from entanglement and condescending questions, the right to be examined by investigators, prosecutors, judges, who understand the disabled, the right to get information about court decisions. Law enforcement officers who have a role to protect the rights of victims are considered victims to lack the fulfillment of rights for persons with disabilities in the judicial process. This is evidenced because law enforcement officials are very dependent on non-governmental organizations (NGOs). Assistance of victims in the settlement of cases that ngo notaben not state is a law enforcement agency; Of the seven rights for persons with disabilities that must be fulfilled when litigating in the judiciary

five rights are violated and two rights are fulfilled (Muhammad Yusuf Alfiyanto, 2018).

The update in this study examines the rights of victims of sexual violence for persons with disabilities stipulated in Law No. 12 of 2022 concerning Sexual Violence Crimes and legal violations for persons with disabilities, because the judicial settlement in cases of sexual violence in persons with disabilities still refers to kuhppidana and KUHAPidana.

METHODOLOGY

This research method is normative legal research, using a statutory and literature approach. The statutory approach is used to solve the formulation of the issue of legal protection and the rights of victims of sexual violence for persons with disabilities. The literature approach is used to examine the formulation of problems related to the victims of sexual violence for people with disabilities. The primary legal materials used to analyze the formulation of the problem are:

1. Constitution of 1945
2. Law Number 8 of 2016 concerning Persons with Disabilities
3. Law No. 12 of 2022 concerning Sexual Violence Crimes

As for secondary legal materials used to discuss the issue of the rights of victims of sexual violence in persons with disabilities, namely, legal materials that provide explanations of primary legal materials such as works or writings of legal circles, research results, and draft laws.

RESULTS AND DISCUSSION

Legal Protection for Persons with Disabilities Based on Law No. 8 of 2016 concerning Persons with Disabilities

As Indonesian citizens, persons with disabilities also have the same rights, obligations and participation as other Indonesian citizens. In the Opening of the 1945 Constitution, the fourth paragraph and the rules of several torsos have expressly guaranteed the fulfillment of the rights of citizens, including persons with disabilities in their daily lives (Itasari, 2020).

Disability is a new term to describe the condition for people who have retardation both emotionally, mentally, and intellectually.(Sugiharto et al., n.d.)

The constitutional basis for the legal protection of persons with disabilities is the 1945 Constitution. Especially in: article 28 D paragraph 1: "everyone has the right to the recognition, assurance, protection, and certainty of fair law and fair treatment and equal treatment in public" Article 28 G Paragraph (1) that everyone has the right to personal protection. entitled to a sense of security and protection from all threats of fear because it is part of human rights. This article instructs that victims of disability should have an equal position in fighting for their rights, anyone should not castrate their rights with inhumanity, either through neglect of the problem or deliberately silencing the unethical event so that it becomes a dark secret for the victim on the one hand and provides a second chance for the perpetrator because of the punishment that is not appropriate. 28 H verse 2 "everyone deserves the convenience and special treatment to obtain equal opportunities and benefits to achieve equality and justice" and 28 I paragraph 2 "(1) the right to embrace religion and worship according to his religion, choose education and teaching, choose employment, choose citizenship, choose residence in the territory of the country, and leave it. (2) the right of freedom to believe in beliefs, express thoughts, and attitudes, in accordance with his conscience" The three articles contain special aspects related to legal protection for Indonesian citizens. Aspects generally apply to all citizens indiscriminately, aspects in particular become the basic guidelines for guaranteeing legal equality and protection from discriminatory treatment for persons with disabilities.

Persons with disabilities according to Law No. 8 of 2016 concerning persons with disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long time who in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. Equality of opportunity is a situation that provides opportunities and / or

provide access to persons with disabilities to channel potential in all aspects of state and community organization. The presence of Law No. 8 of 2016 provides a new direction for the protection of persons with disabilities. Philosophically, as stated in article 1 paragraph 5 "that the protection of persons with disabilities is a conscious effort to protect, protect and strengthen the rights of persons with disabilities. Today there are still many people whose lives are far from welfare, as well as those felt by people with disabilities (Aprillia et al., 2021).

The following, the rights for persons with disabilities specifically regulated in Article 5 of Law No. 8 of 2016, for the protection and fulfillment in accordance with the specificity of the conditions and needs possessed, namely: the rights of persons with disabilities, the rights of women with disabilities and the rights of children with disabilities, as follows: The rights of persons with disabilities in general include the right to life, the right to freedom from stigma, the right to privacy, the right to justice and legal protection, the right to education, employment rights, entrepreneurship, and cooperative rights, health rights, political rights, religious rights, sports rights, cultural and tourism rights, social welfare rights, accessibility rights, public service rights, protection rights from disasters, habilitation and rehabilitation rights, concession rights, data collection rights, the right to live independently and be involved in society, the right to expression, communicating, and obtaining information, the right to transfer places and citizenship; and free from acts of discrimination, neglect, Torture, and exploitation. In addition to the rights of persons with disabilities as referred to above, women with disabilities have the right to reproductive health, the right to receive or refuse the use of contraceptives, the right to more protection from layered discrimination treatment, the right to more protection from acts of violence, including violence and sexual exploitation.

In Law No. 8 of 2016 concerning Persons with Disabilities the Right to Justice and Legal Protection contained in Article 9 which includes: For the same treatment in public, Recognized as a subject of law, Owning and inheriting mobile or immovable property, Controlling financial matters or

appointing people to represent their interests in financial affairs, gaining access to banking and non-banking services Obtaining the provision of accessibility in judicial services, For the protection of all pressure, violence, persecution, discrimination, and/or deprivation or expropriation of property rights, selecting and appointing persons to represent their interests in civil matters in and out of court, and protected intellectual property rights. Like other normal human beings regardless of physique, can interact in family life, stateless without fear of intimidation by people who hate them Therefore it needs comprehensive and integrated handling efforts (Yuniantoro, 2018).

In addition, people with disabilities should be protected from physical, psychological, economic, and sexual forms of violence. As the regulation to protect the rights of persons with disabilities in article 26 of Law No. 8 of 2016 concerning Persons with Disabilities which contains:

A. The right to be free from torture, exploitation, discrimination for persons with disabilities.

B. Interact and socialize in society, family, state, and get protection from all forms without fear from all forms.

Law No. 8 of 2016 on Persons with Disabilities provides a guarantee of protection for women with disabilities in its protection efforts in article 3 letter b "ensuring the efforts of respect, promotion, and fulfillment of rights as an inherent dignity in persons with disabilities". Article 28 also states that "Local governments and governments are obliged to guarantee and protect the right of persons with disabilities as legal subjects to take the same legal action as others". As well as in article 29 affirms "the government and local government shall provide legal assistance in every assessment at every law enforcement agency in civil and criminal matters in accordance with the provisions of the laws and regulations". Where in the statement of the article the government is required to guarantee and, protect and carry out other legal actions against persons with disabilities. Based on the results of the research obtained, the form of legal protection for persons with disabilities who are victims of sexual violence is the assistance, psychological recovery,

and medical assistance to victims and the efforts made by the UPTD PPA Implementation Unit Office are approached by each region.

Victims' Rights for Persons with Disabilities Under the Sexual Violence Act

The House of Representatives (DPR) changed the Bill on the Elimination of Sexual Violence (PKS) to the Sexual Violence Act Bill (TPKS) this was supported by the Women's Rights Defenders Network of Victims of Sexual Violence, because it judged that the name change confirmed that sexual violence cases entered the case of sexual violence entered the special crimes. The Women's Rights Defenders Network of Victims of Sexual Violence also provides some input in the TPKS Bill by including access to people with mental disabilities and intelligence in the provisions on the provisions on the provisions on the provision of victims or witnesses. Which was later passed on April 12, 2022 into Law No. 12 of 2022 concerning Sexual Violence Crimes by formulating 9 types of sexual violence crimes that include: sexual harassment, sexual exploitation, forced contraception, forced abortion, rape, forced marriage, forced prostitution, sexual slavery and sexual torture.

With the passage of the TPKS Bill into the TPKS Law, it becomes a breakthrough and a new hope for victims of sexual violence, especially for people with disabilities, as well as having a position as a legal subject as others, as for the rights of victims stipulated in the TPKS Law include: Right of handling, protection rights, and recovery rights. Where the fulfillment of victims' rights is an obligation of the State and carried out in accordance with the conditions and needs of victims. The right of victims to handling is regulated in article 23 paragraph 1 including: a. the right to information on all processes and results of Handling, protection, and recovery; b. the right to obtain the handling documents; c. the right to Assistance and legal assistance; d. the right to psychological reinforcement; e. the right to health services includes examination, action and medical care; and f. the right to services and facilities in accordance with the special needs of the Victim.

The scope of victims' rights as stipulated in the TPKS Law article 22 paragraph 1 letter b includes: provision of information about the rights and facilities of protection, provision of access to information, protection from threats or violence from perpetrators, protection of identity confidentiality, protection from attitudes and behavior of degrading legal apparatus, protection from job loss, mutase of education work, or political access, and the protection of victims and/or whistleblowers from criminal charges or civil suits for sexual assault events that he or she reports. And the right of restoration, the right of recovery as in article 28 is implemented since the known or reported cases of sexual violence, namely: recovery before and during the judicial process, recovery after the judicial process.

As victims of sexual violence, persons with disabilities have the same legal force as non-disabled people in presenting statements as witnesses and victims before the court with special facilities provided in order to provide evidence in the trial as stipulated in article 65 this means that there are obligations that must be fulfilled by the government in the process of assistance with the law, and the accessibility of persons with disabilities in courts and correctional institutions. The right to say services and facilities according to the special needs of victims include: translators for victims who only know a certain language, experts in signaling for victims of mild and speech disabilities, special assistance for victims of certain disabilities.

Given that Indonesia has ratified the Convention on the Rights of Persons With Disabilities (Convention On The Rights Of Persons With Disabilities) has obliged the state in Article 16, to take all steps in restoring physical, cognitive and psychological, rehabilitation and social reintegration of persons with disabilities who have been victims of violence, exploitation and arbitrary acts, one of which includes providing protection services and paying attention to difficult conditions for the limitations possessed by people with disabilities. People's impartiality towards victims further weakens their condition, people often blame victims whose rights have been snatched away (Rahmi, 2019).

It taps our eyes that the problem of lust does not look at the object, when a person is embezzled on the problem of lust then what is in front of the eyes will be the target of the venting of his libido. Where we know there is a patriarchal culture in Indonesia that is not pro-women, plus when the woman is a person with a disability, it is difficult to imagine how heavy the burden that needs to be borne by women with disabilities victims of this violence (Ramadhan et al., 2021).

In its implementation, such rights have not been fulfilled optimally, because so far victims of sexual violence with disabilities have not been able to participate thoroughly in determining / choosing the form of protection and security support needed because they are represented by a companion who does not necessarily understand socially and academically what kind of protection needs are needed by the victim. Facilities during the case process are also not optimal, especially in providing translator facilities to communicate in providing information. The Government still needs to strive for the provision of facilities or programs that can meet the needs of victims of sexual violence in accordance with Article 16 of the Convention on the Rights of Persons with Disabilities has guaranteed that "In order to prevent all forms of exploitation, violence and arbitrary treatment, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent bodies."

Various efforts have been made to eliminate sexual violence against persons with disabilities, but so many obstacles faced include obstacles that actually come from the individual victim himself: Not against / not defending (tuna grahita), many of them have difficulty to fight, do not understand the situation experienced, Do not understand the consequences (physical, social, psychological) Victims can not understand the consequences of sexual violence experienced, Not anticipating or rejecting the same treatment (by the same or different perpetrators), No emotional response, some of them no emotional response (anger, sadness, hate, resentment), in general only feel physically ill, No expression of negative emotions, some of them his expression and emotions could be flat, or even expressions of positive

emotions (laughing, smiling) as a result of his inability to think in understanding the violent events he experienced, Not understanding the rights he had, low knowledge and lack of information among women with disabilities made them not understand their rights in the event of violence or rape (Idris, 2020).

The above barriers make efforts to eliminate sexual violence more difficult when compared to non-disabled victims. In addition to obstacles in the elimination of violence also have obstacles in law enforcement Some factors can be seen as the cause of weak legal protection for them are social and legal factors. These obstacles include:

a. There are no witnesses and a lack of evidence. Like other incidents of violence against women, incidents of violence against women with disabilities are also often no witnesses who see the events of violence, it is also difficult to find evidence. So the absence of witnesses and evidence is the most important legal obstacle in solving this case of violence into the realm of law.

b. Victims are considered inconsistent in telling their chronology specifically for deaf people / mental retarded often can not reveal the events of violence or rape experienced so that the law enforcement is often confused and upset with his testimony. Indonesian law is not yet friendly to women with disabilities, if the victim's testimony is inconsistent it is often concluded that the victim has lied and the incident of violence or rape never happened.

c. Age of the victim (incompatibility between calendar age and mental age) Often the victim has actually matured but mentally is not yet an adult. So that the law enforcement officials doubted the testimony of the victim.

The above obstacles are still coupled with other obstacles such as the number of discriminatory policies, impunity for perpetrators that can trigger the occurrence of violence in other women. In addition, the state's slow handling of cases of violence against women, the lack of victim services and government support for them, as well as the rise of conservatism and

religious fundamentalism that emphasize textual and anti-gender equality understanding. (Rofiah, 2017)

CONCLUSION

Based on the description, it can be concluded that:

1. Form of Legal Protection for Persons with Disabilities Law No. 8 of 2016 is that the Government and Local Government are obliged to guarantee and protect the right of Persons with Disabilities as legal subjects to take legal action similar to others, must provide legal assistance to Persons with Disabilities in every examination at every law enforcement agency, before checking persons with disabilities must ask for consideration or advice from experts. This form of protection is actually in accordance with the assistance, psychological recovery, and medical assistance to victims and the efforts made by the UPTD PPA Implementation Unit Office are approached by each region. However, there needs to be a specification of witness definitions according to disability diversity, methods of determining the age of persons with disabilities, the obligation of assistance for persons with disabilities related to their legal skills, and the accessibility of persons with disabilities in courts and correctional institutions.

2. The rights of victims of Sexual Violence for Persons with Disabilities Based on the TPKS Law, are The Right of Handling, HAK Protection, and HAK Recovery. As the rights of victims that have been formulated in the TPKS Law, it is a better form of legal protection for victims of disability compared to the form of legal protection stipulated in Law No. 8 of 2016 concerning Persons with Disabilities. With the viability of disability for persons with disabilities in court, there is full occupancy, the fulfillment of special facilities for persons with disabilities, the recovery of victims both before the trial and after the trial.

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