



Reasonable Accommodations on the Legal Aid to Persons with Disabilities in the Judicial Process

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Abstract. The provision of legal aid to persons with disabilities in the judicial process often faces obstacles. They have lost the right to obtain justice due to the unfulfilled reasonable accommodation for persons with disabilities. This study aims to find the provision of legal aid to persons with disabilities in the judicial process that is appropriate to the reasonable accommodation for persons with disabilities in the judicial process. The study is empirical research with depth analysis of legal aid practice with reasonable accommodations. This research is empirical to research the handling of persons with disabilities facing the law by legal aid providers. Research on reasonable accommodation for persons with disabilities has been widely carried out. However, the research related to the provision of legal aid following reasonable accommodation has never existed. Therefore, this study is expected to improve the condition of legal assistance to persons with disabilities. The provision of legal aid without considering reasonable accommodation creates obstacles to the resolution of the case. This study concluded that removing obstacles and providing legal assistance were carried out following reasonable accommodation by knowing the needs of disability, such as the needs of disability assistants and translators, legal, health, and psychosocial needs, recovery, and reintegration. The results of this study can be a guideline for advocates or legal aid institutions in providing legal assistance for persons with disabilities.

Keywords: disability · legal aid · reasonable accommodation · judicial process

1 Introduction

Persons with disabilities should receive equal treatment before the law. Article 28D of the Constitution of the Republic of Indonesia of 1945 provides every right to obtain recognition, guarantees, protection, and legal certainty that is fair and equal before of the law. Therefore, the state must guarantee the rights of persons with disabilities (Wiarti, 2020). However, in reality the equation before the law does not correspond to constitution (Hardjaloka, 2016; Kumalasari, 2017; Syabani Korompot et al., 2021). Unfortunately, in cases where persons with disabilities face the law, many oppose the right to equality before the law (Julijanto, 2018).

Equality before of the law aims to prevent discrimination against persons with disabilities. However, discrimination often afflicts persons with disabilities. There is often double discrimination against persons with disabilities as children or women (Kumalasari, 2017; Roy, 2020). Any form of discrimination is based on class, racial ethnicity, religion, or any other basis that violates equal treatment before of the law. The discrimination can be in the form of prejudices that distinguish persons based on origin from social identity (religion, ethnicity, race, gender, social orientation) (Donnelly, 2013). Everyone born has equal and equal rights. Therefore everyone cannot be treated differently (discrimination) (Ali, 2014).

Persons with disabilities are included in vulnerable communities (Nazifah et al., 2020; Read & Barcena, 2021). Therefore, the vulnerability experienced by people with disabilities is unheard of worldwide (Jesamine et al., 2021; Velasco et al., 2021). They are vulnerable to discrimination, stigma, and violence in their lives. First, the Constitution guarantees special treatment to fulfil human rights (Purnomosidi, 2017; Romado & Subroto, 2021), for example, getting different treatment because of disability. Second, persons with disabilities are vulnerable to stigmatization (Cieza et al., 2018; Henrik et al., 2020); for example, persons with disabilities get stigmatization and don't need legal access. Third, persons with disabilities are vulnerable to being victims of violence (Maher, Janemaree; Spivakovsky, Claire; McCulloch Jude; McGowan, Jamine; Beavis, Cara; Lea, Meredith; Cadwallader, 2018). Violence can take the form of physical, mental, and sexual violence.

The rights of persons with disabilities specifically regulated in Law No. 8 of 2016 concerning persons with disabilities being the right to life, free from stigma, privacy, justice and legal protection, education, employment, entrepreneurship and cooperatives, health, politics, religion, sports, culture and tourism, social welfare, accessibility, public services, protection from disasters, habilitation and rehabilitation, and concessions.

The state guarantees the rights of persons with disabilities. Persons with disabilities must have their rights fulfilled. The rights of persons with disability are fulfilled through special treatment (Romado & Subroto, 2021). Whilst, in reality, the rights of persons with disability are still not fulfilled. Some cases of persons with disabilities face the law still receive discriminatory treatment and negative stigma (Cieza et al., 2018).

Some criminal complaints filed by persons with disabilities with the police were not processed because of circumstances and impairments that persons with disabilities had. As a result, persons with disabilities in access to the law cannot be met. The state guarantees special treatment to persons with disabilities in Article 28H paragraph (2) of the Constitution of the Republic of Indonesia of 1945, which states, "Everyone has the right to convenience and special treatment to obtain equal opportunities and benefits to achieve equality and justice."

Special treatment is given to persons with disabilities who face the law as victims, witnesses, or perpetrators of crimes. This special treatment is regulated by Government Regulation No. 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in the Judicial Process. The state is obliged to fulfil reasonable accommodations (Kivijärvi & Rautiainen, 2021). A reasonable accommodation is adjustments to accommodate the needs of disabled people (Velasco et al., 2021), including access to

the law. Therefore, one of the things regulated in this Government Regulation is how to fulfil reasonable accommodation in providing legal aid for persons with disability.

The provision of legal aid to persons with disabilities is still far from the purpose of Government Regulation. However, persons with disabilities who face the law should receive reasonable accommodation in the form of appropriate modifications and adjustments necessary to ensure the enjoyment or exercise of all human rights and fundamental freedoms for persons with disabilities based on equality. A reasonable accommodation is to remove the barrier and guarantee persons with disabilities the enjoyment of equal rights and to participate fully in society (Ferri, 2018) see also (Melin & Sivonennn, 2022) and provide protection for the dignity of persons with disabilities (Kamga, 2020). Refusing to fulfil reasonable accommodation is a form of discrimination and destruction of the fundamental rights of persons with disabilities (Ruškus, 2020).

This research is important for improving the provision of legal aid to persons with disabilities who face the law. In addition, the fulfilment of reasonable accommodation has implications for fulfilling justice for persons with disabilities. The results of this study can be a guide and guideline for advocates or legal aid institutions in providing legal assistance for persons with disabilities.

2 Method

This socio-legal research examines the implementation of legal aid to persons with disabilities carried out by legal aid institutions in Surakarta, Central Java, Indonesia. Data collection is carried out through interviews and documentation. Interviews were conducted with disability assistants (R1), two paralegals (R2 and R3), and two advocates (R4 and R5). Data collection through documentation is carried out by tracing library materials related to research. There are three steps to data analysis in research. First, selecting data to be classified into classifications following the research. Second, presenting data in graphs, networks, and charts so that conclusions can be drawn. Third, conclude/verifications based on regularity, patterns, explanations, configurations, causal flows, and propositions. Finally, conclusions were made during the study to test the truth, robustness, and matchmaking so that the validity of the data was found.

3 Result and Discussion

Legal aid to persons with disabilities is carried out upon request to legal aid agencies by the victims' parents, to organizations for persons with disabilities, and referrals from government agencies that handle cases of persons with disabilities. It is carried out to discover the events being experienced based on the stories of the assisted/victims, which will then be analyzed related to the next treatment.

Paralegals or advocates accept legal aid applicants to make a consultation. It is carried out to discover the events being experienced based on the stories of the assisted/victims, which will then be analyzed related to the next treatment. If the consultation is insufficient, an investigation is needed to search for data, information, and evidence relevant to the case. Investigations are needed to get clarity on the case.

Legal aid providers submit legal opinions and provide recommendations for resolving cases faced by legal aid applicants based on consultation and investigation. The legal aid applicant approves the recommendations of the legal aid provider. Then continued to sign a power of attorney to accompany the applicant for legal aid. Finally, the provision of legal assistance is carried out by accompanying the victim's parents to make a report to the police.

Police followed the report by examining the victim's parents, witnesses, and alleged perpetrators. Examination of victims with disabilities is carried out as is usually done for non-disabled persons. However, in handling cases, it turns out that law enforcement officials still find it difficult to accept cases and follow up on the process of examining cases because the testimony of witnesses as persons with disabilities is considered incompetent and is considered insufficient evidence. In addition, sufficiently evidenced cases require a long legal process because the police have never handled a case of a person with a disability who faces the law.

In assisting cases of persons with disabilities, it is hoped that it will facilitate the process of handling cases in the police. However, handling cases could not run smoothly because the assistant did not pay attention to reasonable accommodation for persons with disabilities. Based on the above problems, the author offers a solution in providing legal assistance based on reasonable accommodations for persons with legal disabilities. A reasonable accommodation is any form of appropriate and proper change and adjustment necessary to ensure persons with disabilities can enjoy and exercise human rights based on equality. Furthermore, reasonable accommodation for persons with disabilities in the judicial process aims to eliminate the practice of discrimination, exclusion, restriction, harassment, or exclusion based on disability and has the effect of limiting or eliminating the recognition, enjoyment, or exercise of the rights of persons with disabilities (Ferri, 2018; Lejeune, 2022).

Reasonable accommodations are made because sometimes there are disturbances in the individual and the physical or social environment that result in an inability to carry out activities or other activity work. The fulfilment of reasonable accommodation benefits persons with disability (Daly & Whelan, 2021). Fulfilment of reasonable accommodation is carried out by providing for the needs of persons with disabilities by making necessary modifications and following the circumstances of persons with disabilities (Kivijärvi & Rautiainen, 2021). In addition, reasonable accommodation is necessary to realize a fair trial, and the judicial process includes the process of investigation, prosecution, and trial (Panggabean, 2021). Therefore, awareness of the implementation of appropriate accommodation determines the successful handling of cases of persons with disabilities (Rangarajan et al., 2020).

Obtaining a personal assessment is a reasonable first accommodation that must be met in treating people with disabilities by submitting a personal assessment request to a doctor or psychologist/psychiatrist. The personal assessment is an assessment of people with a disability regarding the type, level, barriers and needs both medically and psychically to determine a reasonable accommodation. Personal assessments are carried out at each level of examination. If the Police have done it, it will no longer need to be done at prosecutions and court proceedings. If the Police have not conducted a personal

assessment, the prosecutor's office or the court must conduct a personal assessment (Panggabean, 2021).

The purpose of the personal assessment is: 1) to know the types and needs of persons with disabilities; 2) accurately and legally accountable information about the state of disability; 3) to prove disability is the cause of a person's powerlessness to resist violence or defend themselves when violence occurs; 4) to know the traumatic experienced by persons with disabilities including changes in behaviour that occur in persons with disabilities after the occurrence of violence; 5) to know strategies or ways of communicating effectively with persons with disabilities.

Besides that, reasonable accommodation must be met in service and infrastructure.

Reasonable accommodation in services are: 1) Non-discriminatory treatment; 2) Fulfilment of a sense of security and comfort; 3) Effective communication; 4) Fulfilment of information related to the rights of persons with disabilities; 5) Fulfilment information of the progress of judicial process; 6) Provision of online trial facilities; 7) Provision of standards for examination of persons with disabilities; 8) Provision of legal service standards; 9) Provision of disability assistants; 10) Provision of translators; 11) Provision of doctors; 12) Provision of psychologists/psychiatrists; 13) The provision of social workers; 14) The provision of other relevant officers; 15) Appoint a special officer to handle cases of persons with disabilities.

Non-discriminatory treatment; Law enforcement officials exercise free action against all forms of discrimination. Therefore, do not take actions that eliminate humans' basic rights and fundamental freedoms (human rights) in the form of discrimination, reduction, exclusion, or restrictions based on class, race, ethnicity, religion, social status, economic status, language, and gender.

Fulfilment of a sense of security and comfort; Security is a basic need that includes physical and psychic security. Physical security, for example, is safe from torture, humiliation, persecution, and other violence, and psychic security is in the form of a sense of security from fear, anxiety, and worry. For example, persons with disabilities are examined in a comfortable room that is not noisy, or there are too many people in the examination room.

Effective communication; Law enforcement officials build effective communication with persons with disabilities. Communication uses various media to get information from persons with disabilities, such as translators, audio-visual tools, screen readers, props, writing, calendars, dolls/sculptures, pictures, or photos. Effective communication is exchanging information, ideas, and feelings, which produces a change in attitude so that a good relationship is established between the giver of the message and the recipient. The measurement of the effectiveness of a communication process can be seen from the achievement of the goal of the sender of the message.

Fulfilment of information related to the rights of persons with disabilities; Provide information on the rights of persons with disabilities, both rights regulated in international and national legal instruments relating to the rights of persons with disabilities in the judicial process. The right to equality before the law, the right to justice, the right to public services, the right to be free from stigma, the right to accessibility, the right to legal protection, the right to rehabilitation, the right to obtain information, or to be free from acts of discrimination, neglect, torture, and exploitation.

Fulfilment of the progress of judicial processes; Providing information on the development of cases experienced by persons with disabilities is carried out at every level of examination, both the Police, Prosecutor's Office, and The Court to victims, witnesses, or perpetrators. The development of information is very important for victims with disabilities because it can measure the extent to which the case is processed. The case is processed or stopped to obtain legal certainty. In addition, information about the development of the judicial process, including information about court decisions, is important as a sign of appreciation for the willingness of witnesses and victims in the judicial process.

Provision of online trial facilities; Examination of trials of persons with disabilities can be carried out through video conferences according to the needs of persons with disabilities. Although the use of this facility follows the laws and regulations, the use of this facility must pay attention to and consider the impairments owned by persons with disabilities because not all various disabilities require this communication facility.

Provision of standards for examination of persons with disabilities; Law enforcement agencies and other agencies related to judicial proceedings create or develop standard examinations or standard operating procedures made in the internal regulations at each level of examination. Standard examination of the qualifications of investigators, public prosecutors, judges and correctional officers; building facilities, handling facilities, and examination procedures.

Provision of legal service standards; Advocate organizations also create and develop standards for legal services for persons with disabilities in the judicial process. In addition, the establishment of standards for the examination of persons with disabilities is carried out by including organizations of persons with disabilities and community organizations whose activities are aimed at persons with disabilities.

Provision of disability assistants; Disability assistants play a role in fighting for their rights when facing legal cases, bridging the interests of persons with disabilities, and intermediary communication with law enforcement officials. The requirements for disability assistance are to understand the needs and barriers of persons with disabilities, facilitate persons with disabilities during the judicial process, associate and interact well with persons with disabilities who are accompanied, and obtain approval from persons with disabilities or their families.

Provision of translators; Communication with persons with disabilities is not easy to do. In some types of disabilities, it will be difficult to understand the language used to avoid communication difficulties or understand the language used by persons with disabilities; translators must understand. Translation requires being good at getting along, interacting, communicating well and effectively and obtaining the consent of persons with disabilities or their families.

Provision of doctors; provision of doctors to determine the state of health of persons with disabilities. Provision of psychologists/psychiatrists; provision of doctors to know the psychological and psychiatric state of persons with disabilities. Provision of social workers; provision of doctors to know the psychosocial of persons with disabilities. Provision of other relevant officials; Other officers related to persons with disabilities such as service agencies in local government offices.

Appoint a special officer to handle persons with disabilities; The handling of persons with disabilities in the Police, Prosecutor's Office, or Court is carried out by special officers, police, prosecutors, or special judges as well as the police, prosecutors or special judges in children's cases.

Another reasonable accommodation for persons with disabilities in the judicial process is Providing facilities and infrastructure. The provision of facilities and infrastructure is adjusted to the impairment owned by each disability. Facilities and infrastructure that must be met for each disability for impairments in:

1. Vision; the facilities and infrastructure provided to persons with disabilities who have visual impairments, at least computers with screen reader applications; pages that are easy to read by persons with disabilities, documents printed in braille or audio communication media;
2. Hearing, speech, and communication; the facilities and infrastructure provided to persons with disabilities with the least hearing, speech, and communication impairments are visual information boards, communication media using writing, and other visual forms or props.
3. Mobility; the facilities and infrastructure provided to persons with disabilities with the least mobility barriers are wheelchairs, wheeled beds, or other mobility aids as needed.
4. Remembering and concentrating; the facilities and infrastructure provided to persons with disabilities with the least barriers to remembering and concentrating are images, mockups; dolls; calendars, or other props as needed.
5. Intellectual; the facilities and infrastructure provided to persons with disabilities with the least intellectual barriers are medicines, health facilities, and other facilities according to needs.
6. Behaviour and emotions; the facilities and infrastructure provided to persons with disabilities who have the least behavioural and emotional barriers are medicines; health facilities; comfortable and not noisy rooms; or other facilities according to needs.
7. Take care of oneself; the facilities and infrastructure provided to persons with disabilities who have at least self-care barriers are medicines, accessible dressing rooms, or other necessities with needs.
8. Other impairments; the facilities and infrastructure provided to persons with disabilities who have other impairments not mentioned above are determined based on the results of the Personal Assessment.

A reasonable accommodation is often overlooked in handling cases of persons with disabilities. This result in the accessibility of law and justice for persons with disabilities not being met. The practices of examining cases in the police, prosecutors, and courts do not meet the rights of persons with disabilities. The examination will run well for persons with disabilities if it is carried out based on reasonable accommodation.

Steps for providing legal assistance to persons with disabilities based on reasonable accommodation are:

1. Persons with disabilities, their families, or other institutions providing referrals come to legal aid organizations, advocacy organizations, or advocates' offices.
2. Each head of the organization/office appoints an advocate or paralegal specifically handling disability cases.
3. Submit a personal assessment to doctors, psychologists/psychiatrists.
4. Legal aid providers provide consulting and investigation services. Consultations are conducted by legal aid providers with persons with disabilities, families, and witnesses. In addition, legal aid providers do investigate. Investigations are conducted to find data, witnesses, evidence, and information needed to handle cases. The results of the consultation and investigation are the chronology of the cases handled.
5. Legal aid providers recognize the characteristics of persons with disabilities. Recognize the types of disabilities, barriers, and solutions to overcome impairments.
6. Legal aid providers know the needs of persons with disabilities:

- a. The translator needs;

Handling cases with disabilities often experience communication, vision, hearing, and intellectual barriers requiring translators. The translator comes from the closest person who best understands, or the translator referred to in the legislation.

- b. Disability assistant;

For fighting disability rights, bridging the interests of persons with disabilities, and intermediary communication with law enforcement officials. Disability assistance understands the needs and barriers of persons with disabilities, facilitate persons with disabilities during the judicial process, associate and interact well with persons with disabilities who are accompanied and obtain approval from persons with disabilities or their families.

- c. Physical health, psychology/psychiatric, or psychosocial needs;

Legal aid providers refer and accompany persons with disabilities to hospitals or health clinics regarding physical health conditions, psychologists or psychiatrists regarding psychiatric conditions, or social workers regarding psychosocial matters.

- d. Legal assistance needs;

Legal aid providers assist in the judicial process in the Police, Prosecutor's Office, Courts, and the implementation of judgments. Assistance in the Police is carried out by assisting in reporting, complaints, and examining persons with disabilities as victims, witnesses, or perpetrators. Legal aid providers must ensure that adequate accommodations are met for persons with disabilities facing the law during investigations/ investigations. In addition, legal aid providers monitor the handling of cases while examining cases by the police.

Assistance in the Prosecutor's Office is carried out by providing legal assistance to persons with disabilities during the prosecution process at the Prosecutor's Office. Legal aid providers must ensure that appropriate accommodations are met for persons with disabilities facing the law in process at the prosecutor's office. In addition, legal aid providers monitor the handling of cases while examining cases at the prosecutor's office.

The legal assistance provider assists persons with disabilities during the process in court. Legal aid providers are obliged to ensure the fulfilment of adequate accommodations for persons with disabilities who face the law in court. Legal aid providers monitor the handling of cases during the hearing of cases in court. Suppose the person with a disability as a legal aid provider carries out a defence following applicable laws and regulations. Legal aid providers make legal remedies for cases of persons with disabilities following applicable laws and regulations.

- e. Assistance in the execution of the court decision;

Legal aid providers assist persons with disabilities during the execution of the decision, ensure the fulfilment of reasonable accommodation for persons with disabilities facing the law in the process of implementing the decision, and monitor the implementation of the decision.

7. Recovery Process

- a. Health treatment

Legal aid providers seek persons with disabilities who need health services by referring them to health facilities (clinics, doctors, public health centres, hospitals) and assisting persons with disabilities in obtaining health services.

- b. Psychological recovery

Legal aid providers seek persons with disabilities who need health services by referring psychologists, psychiatrists, and mental hospitals to obtain mental health services and assist persons with disabilities for psychological reinforcement and trauma healing. In addition, it can be done with a support group.

- c. Spiritual reinforcement

Legal aid providers provide spiritual reinforcement to persons with disabilities facing the law by referring to clergy according to their respective religions and beliefs.

- d. Economic recovery

Legal aid providers seek persons with disabilities who need economic recovery by referring to the Labor Service or institutions related to economic empowerment or carried out by Legal Aid Organizations

- e. Social reintegration

Legal aid providers refer persons with disabilities to the Social Service Of government agencies that deal with social reintegration at the District/City level.

4 Conclusion

The provision of legal aid to persons with disabilities who do not meet reasonable accommodations creates difficulties in resolving cases. The fulfilment of reasonable accommodation in the provision of legal assistance is carried out with a flow that begins with the arrival of the recipient of legal aid in the office of the legal aid institution by submitting personal assessment, appoint advocates or paralegals who specialize in handling cases of persons with disabilities, conduct consultations and investigations, know

the characteristics and needs of persons with disabilities, and assist in each examination process and social reintegration.

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