



Discourse with The Role of Experts in Cases When Persons with Disabilities Are Victims of Criminal Offences

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ABSTRACT

The objective of this study is to highlight the significance of experts, specifically doctors and psychiatrists, in the enforcement of criminal law for victims with disabilities. This is governed by Article 30 of Law Number 8 of 2016, which pertains to Persons with Disabilities. This study employs a normative legal research methodology, precisely a statutory approach. According to the findings, doctors and psychiatrists are legally required to provide evidence of criminal offenses, particularly those involving victims with disabilities. This requirement is outlined in Article 30 of Law 8/2016, which states that criminal law enforcement involving victims with disabilities must involve the input of doctors and psychiatrists to establish the factual truth in line with the objectives of the Criminal Procedure Code. Law enforcers have not fully comprehended Article 30 of Law 8/2016, particularly in cases involving victims with disabilities. They tend to disregard the provisions of this article and wrongly assume that victims with disabilities are incapable of testifying or communicating. This negates the intent of Article 30, which emphasizes the need for law enforcers to enable victims with disabilities to testify or communicate. Hence, while dealing with criminal law enforcement involving victims who have impairments, adhering to the stipulations outlined in Article 30 of Law 8/2016 is crucial. This involves using the expertise of medical professionals, such as doctors or psychiatrists, to address criminal cases involving disabled victims effectively. The urgency is to ensure that individuals with disabilities do not experience prejudice and are not hesitant to report any criminal offenses committed against them in the future.

Keywords: *Doctors, Psychiatrists, Law Enforcement, Persons with Disabilities.*

1. INTRODUCTION

The global concern for the protection and empowerment of vulnerable groups, particularly individuals with disabilities, has been heightened since December 13, 2006. On this date, the United Nations General Assembly issued resolution number A/RES/61/106, which focused on the Convention on the Rights of Persons with Disabilities. The resolution includes provisions protecting the rights of those with impairments.[1]

Indonesia, under the auspices of the Government, ratified this treaty on 30 March 2007 in New York. The signing signifies Indonesia's dedication to uphold, safeguard, accomplish, and advocate for the rights of individuals with disabilities, with the ultimate goal of enhancing the well-being of those with disabilities. The Convention on the Rights of Persons with Disabilities (CRPD) acknowledges that disability is a dynamic concept and arises from the interplay between individuals with impairments and societal attitudes and environments that hinder their complete and meaningful engagement in society on an equal footing with others. The primary focus of the CRPD is to affirm the inherent worth of all individuals and to safeguard their fundamental rights as the foundation for liberty, fairness, and global harmony.[2]

The Convention, outlined in Article 1, aims to address the obstacles that individuals with disabilities encounter when engaging in social interactions and the widespread infringements of their basic human rights globally. The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.[3]

As a country that has ratified the CRPD convention, Indonesia is not only obligated to implement the provisions of the Convention by making adjustments to its legislation, laws, and administration, but also to modify customs and practices that have historically discriminated against individuals with disabilities. The government's commitment to the CRPD Convention was made concrete through the amendment of Law Number 4 of 1997 on Persons with Disabilities, resulting in the enactment of Law Number 8 of 2016 on Persons with Disabilities.[4]

According to the definition provided in the CRPD and Law No. 8/2016 on Persons with Disabilities, individuals with disabilities are those who have long-term physical, intellectual, mental, and/or sensory limitations that may hinder their full and effective participation in society, resulting in obstacles and difficulties in interacting with their environment. These individuals are entitled to equal rights as other citizens.[5] Moreover, the prior regulation encompassed individuals who were physically disabled, mentally disabled, or both physically and mentally disabled within its definition of persons with disabilities. Upon comparing it to the definition stated in Law No. 8 of 2016, it is evident that the concept of individuals with disabilities has expanded in scope, encompassing not only physical impairments but also intellectual and sensory limits. In this scenario, it is believed that the legal product, in the form of a legislation, will serve as the legal foundation for individuals with disabilities to attain legal parity. Furthermore, this rule also seeks to enhance the capabilities and expertise of law enforcement personnel in order to ensure the protection and realisation of the rights of individuals with disabilities, particularly those who are involved in legal matters.[6]

According to data from the World Health Organisation (WHO), a global survey on health and disability was conducted in 70 countries. Out of these countries, 59 (excluding Indonesia) accounted for 64% of the world's population from 2002 to 2004. The survey revealed that 15.3% of the world's population experienced moderate or severe disability, while approximately 2.9% or 185 million people experienced severe disability. The prevalence of individuals aged 0-14 years was 5.1%, which corresponds to 93 million people. Similarly, the prevalence of individuals aged 0-14 years was 0.7%, equivalent to 13 million people. In the population aged 15 years or over, the respective percentages were 19.4% (892 million people) and 3.8% (175 million people).[7]

According to data from the Central Statistics Agency (BPS) obtained from the National Social and Economic Survey (SUSENAS) in 2012, the percentage of people with disabilities in Indonesia was 2.45%. The majority of individuals with disabilities, accounting for 39.97%, face multiple types of limitations. The next most prevalent limitations are related to vision, affecting 29.63% of people. Difficulties with walking or climbing stairs are experienced by 10.26% of individuals, while hearing impairments affect 7.87% of the population. Problems with memory or concentration are reported by 6.70% of people, while 2.83% struggle with self-care tasks. Communication difficulties are experienced by 2.74% of individuals.[8]

According to the 2012 Susenas Survey, the proportion of individuals with disabilities in Indonesia is 2.45%, which corresponds to a total of 6,515,500 people out of an estimated population of 244,919,000. Among the provinces, Bengkulu has the highest percentage of people with disabilities at 3.96%, while Papua has the lowest at 1.05%. Furthermore, the Basic Health Research (Riskesmas) conducted in 2013 revealed that 11% of Indonesians aged 15 years and older have moderate to severe disability. This prevalence was determined based on the provincial data. Central Sulawesi had the greatest disability prevalence rate at 23.8%, while West Papua had the lowest rate at 4.6%.[9]

According to the data provided, it is evident that there is a significant number of individuals with disabilities in Indonesia, exceeding 6 million people. The challenges faced by these individuals, both internally (personal barriers) and externally (societal factors that hinder support), particularly in terms of accessing legal protection, remain a concerning issue in the implementation of law in Indonesia. This is because in certain circumstances, the current legal procedures are still construed strictly based on the text, which appears to impede the rights of individuals with disabilities when they are involved in legal matters as witnesses, victims, or perpetrators.[10]

For instance, a visually impaired individual who has experienced sexual assault is deemed incapable of giving testimony due to their inability to visually see and identify the perpetrator of the crime. Another frequently encountered concern is the matter of knowledge. Doddy Agustinus Tumanduk, in his thesis for the Master of Law course at Hasanudin University, uncovered instances where individuals with disabilities frequently encountered unfair treatment within the legal system. For instance, in a case of sexual assault where the victim was hearing-impaired, the police were unable to proceed with the investigation due to their inability to gather or extract information from the victim.[11] In light of these reasons, it is necessary to adopt different strategies to guarantee that individuals with disabilities who are involved in legal conflicts, particularly as victims, can access justice and have their rights as victims upheld. This paper aims to emphasise the significance of psychological experts in addressing the challenges faced by individuals with disabilities who are victims of criminal offences. These cases are frequently overlooked and prematurely closed, as explained by the author.

II. Research Methods

This research employs a normative legal research methodology, utilising both a statute approach and a conceptual approach.[12] The author examines multiple laws and regulations, including the Criminal Procedure Code, Law Number 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities, Law Number 8 of 2016 on Persons with Disabilities, Law Number 39 of 1999 on Human Rights, and Law Number 31 of 2014 on the Witness and Victim Protection Agency. Various regulations are implemented to address the legal concerns expressed by the author. These regulations aim to establish a legal framework for the involvement of specialists in addressing problems related to individuals with disabilities.[13]

III. Discussion

CRIMINAL CASE EXPERTS: DOCTORS AND PSYCHIATRICIANS

Law enforcement is a crucial endeavour aimed at establishing order, security, and peace in society. It encompasses preventive measures as well as the elimination and prosecution of law violations. The KUHAP rules explicitly state that the objective of criminal law enforcement is to ascertain the material truth, which refers to the comprehensive truth of a criminal case achieved by the honest and accurate application of the provisions of criminal law.[14] The imposition of sanctions in criminal law must satisfy specific criteria, particularly those pertaining to substantive criminal law and procedural criminal law. Formal criminal law, also known as criminal procedural law, is a mandatory process that must be followed in every instance of criminal law enforcement. To successfully pursue the objective of seeking and discovering factual truth, criminal law must necessarily engage and rely on other disciplines beyond its own boundaries. Sudarto emphasises the need of pursuing material truth, which involves a lengthy process including police investigation, the prosecutor's office, and ultimately the court session. Hence, anyone from any field or subject, regardless of their expertise in law or criminal law, have the opportunity to contribute towards uncovering the most comprehensive factual truth. Implicit in this is the requisite expertise in the domain of healthcare, encompassing both physical and mental well-being (specifically referring to medical doctors and psychiatrists).[15]

In essence, during an inquiry conducted in the pursuit of justice, the investigator is granted the authority to formally request expert testimony. Article 133 of the Criminal Procedure Code explicitly allows investigators to request expert testimony from judicial medical specialists, doctors, or other experts when it is necessary for the pursuit of justice. If the expert testimony is "solicited", the expert produces a "document" according to the investigator's specifications. The expert report is incorporated into the minutes of the investigation. The confirmation of this is found in Article 186 of the Criminal Procedure Code, which states that expert testimony can be provided by the investigator or public prosecutor during the examination process. This testimony is given in the form of a report and is made under oath, in accordance with Article 179 paragraph (2) of the Criminal Procedure Code. The purpose of this testimony is to provide accurate and reliable information based on the expert's knowledge in their field of expertise.[16]

Essentially, any specialist involved in the trial should have the capability to respond to any query related to the criminal case at hand, with the purpose of aiding the panel of judges in reaching a conclusion. Andi Hamzah explains that expert testimony represents the informed viewpoint of an expert who possesses knowledge in a specific scientific field. As an expert witness, this individual can provide insights and opinions on relevant matters that the judge deems within their area of expertise.[17]

The Urgency of Experts in Handling Cases with Victims with Disabilities.

Indonesia has declared itself as a legalistic state, meaning that every activity taken by society must adhere to the norms of the law. Franz Magnis Suseno outlines four interconnected conditions in the concept of the rule of law. Firstly, the Principle of Legality ensures that the government operates strictly within the boundaries of the law. Secondly, judicial power must be free and independent, particularly in its role of upholding law and justice. Thirdly, there must be a guarantee of human rights protection. Lastly, the government must be founded on a constitutional system or basic law. Suseno's understanding of the rule of law bears remarkable resemblances to the conceptions put out by Julius Stahl and A.V. Decey. Both parties prioritise the protection and promotion of human rights as an essential aspect of upholding the rule of law. The essential aspect is that the implementation of human rights is indisputable.[18]

The constitution of Indonesia include the legislation and enforcement of human rights, namely in Article 28A to 28J, and further elaborated in Article 29 of the 1945 Constitution. Examining the wording of the articles in the 1945 Constitution reveals a clear indication of a significant historical problem regarding the protection of human rights in Indonesia prior to the reformation period. This is evident in the extensive inclusion of human rights regulations in the constitution, which is typically reserved for fundamental principles. Prior to the reformation, particularly during the New Order era, the regulation of human rights lacked transparency in governance, with individual rights being severely suppressed.[19]

Prior to the statute, there was a lack of equality since only the privileged class received preferential treatment due to their financial resources and ability to pursue legal disputes up to the highest level of appeal. After the revision, the constitution's drafters decided on the most effective approach to safeguard the authenticity of the people's intentions. Every individual is entitled to equal rights under the law, irrespective of their social status, race, religion, or membership in specific organisations.[20]

This aligns with the provisions stated in Articles 28D paragraph (1) and 28I paragraph (2) of the 1945 Constitution, which state: "Every individual has the entitlement to acknowledgment, assurance, safeguard, and assurance of a just law and equitable treatment under the law", "Every individual has the entitlement to be exempt from discriminatory treatment on any grounds and has the entitlement to protection against discriminatory treatment".[21]

The Constitutional Article mentioned above serves as the constitutional foundation for ensuring equal treatment under the law for individuals with disabilities who are victims of criminal acts, despite their physical imperfections and differences

from the general population. The constitution does not clearly address the protection of individuals with disabilities, but the Legal Power within our constitution indirectly encompasses it. Therefore, particular sectoral legislation are required to provide explicit explanations. According to Law No. 39/1999 on Human Rights, namely in Article 5 paragraph (3), it states that individuals who are part of a vulnerable group in society are entitled to receive additional care and protection based on their specific needs.[22]

The article's explanation underscores that individuals with disabilities are among the disadvantaged segments of society who have the right to receive additional safeguards. One of the fundamental concepts of criminal law is the principle of legality, commonly known as *Nullum delictum, noela poena sine lege praevia*. This principle states that there can be no punishment without a prior legislation that specifically governs the offence. It is crucial for a criminal act to be clearly defined in the legislation. Law Number 8 of 2016, also known as Law 8/2016, addresses the rights of individuals with disabilities who are involved in criminal cases, either as victims or offenders.[23]

According to Article 5 of Law 8/2016, individuals with disabilities possess certain entitlements that must be satisfied and honoured. The "Right to Expression, Communication, and Obtaining Information" as stated in Article 24 of Law No. 8/2016 is directly relevant to the situation of individuals with disabilities as victims of criminal offences. This right encompasses the freedom of expression and opinion, the ability to access information and communicate through easily accessible media, and the use of sign language, braille, and augmentative communication in official interactions.[24]

Individuals with disabilities are unequivocally granted the right to access and receive information and communication. These rights can be utilised, particularly when individuals are portrayed as victims of criminal acts, to provide information regarding the criminal offences committed against them, without facing discrimination from law enforcement authorities.

How may law enforcement officials obtain information from individuals with disabilities in the case of a criminal act occurring against them? Currently, law enforcement officials are discouraged from outright dismissing information given by individuals with disabilities who have been victims of crimes, based on the assumption that these individuals are incapable of communicating effectively or due to other factors related to their disability status.[25]

Law 8/2016 includes provisions in Article 30 Paragraph 1 that allow law enforcement officials to communicate with individuals with disabilities who have been victims of criminal offences. If law enforcement officials encounter difficulties or uncertainties in communicating with these individuals, they are permitted to seek guidance or advice from professionals such as doctors, psychologists, psychiatrists, or social workers, depending on the specific health, psychiatric, or psychosocial conditions involved.[26]

According to Article 30 Paragraph 1 of Law 8/2016, law enforcement officials are allowed to include professionals like doctors, psychiatrists, or social workers to assist in enforcing the law for criminal acts involving victims with impairments. Regrettably, a contradiction arises in the realm of law enforcement when it comes to victims with disabilities. There exists a multitude of one-sided perspectives among law enforcers who are hesitant to pursue criminal crimes involving such victims. In addition, the author gives several instances and accompanying data that offer a comprehensive view of the circumstances faced by individuals with disabilities who are involved in legal conflicts.

TABLE I

Persons with Disabilities Against the Law

Type of Disability	Criminal Offences	Perpetrators	Legal Proceedings
Intellectual disability (Mental retardation) and withering of 1 hand	Rape	Own Uncle	The case stopped at the police level due to intervention from village officials with a family settlement mechanism.
People with Intellectual disabilities (Mental retardation)	Rape	Neighbours	The case stopped at the police level because the victim was unable to testify due to communication barriers and difficulties.

Intellectual disability (Mental retardation)	Rape	Own Brother	The perpetrator was released because the victim was not traumatised
Slow learner	Rape	Neighbours	The case could not be processed and stopped at the police level because the witness was a slow learner as well.
Visual impairment	Rape	Massage Patient	Case stopped at police level due to lack of evidence
Visual impairment	Rape	People Near	Case stopped due to evidence and difficulty understanding victim's language
Paraplegia	KDRT	The Husband	Stopped at the police level due to coercion from the family to withdraw the case

Source: M. Syafi'ie, et.all., 2014

The data presented in the table demonstrates that the number of cases halted solely due to insufficient evidence gathered by investigators from both victims and perpetrators of criminal acts is a clear indication of the unjust and unequal enforcement of the law. The accessibility of justice and equitable treatment for individuals with disabilities is hindered by the challenges encountered in extracting information from disabled individuals, whether they are perpetrators or victims, during the initial stages of criminal investigations. These challenges are compounded by the limited capabilities of investigators and the social stigma faced by families who feel ashamed of their involvement in legal proceedings.[27]

Consequently, a significant number of criminal cases are halted at this early stage, preventing individuals with disabilities from receiving fair treatment under the law. Based on the available information and statistics, it can be inferred that law enforcers have not fully comprehended Article 30 of Law 8/2016, which pertains to the enforcement of laws involving victims with disabilities. Law enforcers do not consult the stipulations provided in Article 30 of Law 8/2016. Often, this is countered by asserting that victims with disabilities are deemed incapable, unable to provide testimony, or unable to communicate without first making the necessary efforts as outlined in Article 30 of Law 8/2016.[28]

Hence, while dealing with the enforcement of criminal legislation involving disabled victims, it is crucial to adhere to the stipulations outlined in Article 30 of legislation 8/2016, which necessitates the involvement of professionals such as doctors or psychiatrists in order to address criminal cases involving disabled victims. The importance is in ensuring that individuals with disabilities do not experience discrimination in the future and feel hesitant to report any criminal acts committed against them.[29]

Furthermore, according to the Ministry of Health records and statistics from the Central Statistics Agency (BPS) obtained through the National Social and Economic Survey (Susenas) in 2012, the percentage of the Indonesian population with disabilities is 2.45%. The majority of individuals with disabilities suffer multiple types of limitations, with 39.97% having more than one limitation. The most common limitations include visual impairments (29.63%), difficulty with mobility or ascending stairs (10.26%), hearing impairments (7.87%), difficulties with memory or concentration (6.70%), challenges in self-care (2.83%), and communication difficulties (2.74%).

According to the 2012 Susenas Survey, the proportion of individuals with disabilities in Indonesia is 2.45%, which corresponds to a total of 6,515,500 people out of an estimated population of 244,919,000. Among the provinces, Bengkulu has the highest percentage of people with disabilities at 3.96%, while Papua has the lowest at 1.05%. According to research indicating a significant population of individuals with disabilities in Indonesia. It is crucial to prioritise law enforcement efforts towards victims with disabilities in order to fulfil the state's objective of social justice and the legal principle of equal treatment under the law. One effective method of assisting law enforcement with victims who have impairments is by involving professionals, such as doctors and psychiatrists, through a range of approaches.

Conclusion

According to the author's discussion, doctors and psychiatrists have a legal role in the Criminal Procedure Code when it comes to proving the occurrence of a criminal offence. Specifically, for criminal offences involving victims with disabilities, Article 30 of Law 8/2016 states that the involvement of doctors and psychiatrists is necessary to establish the factual truth as required by the Criminal Procedure Code. Law enforcers have not fully comprehended Article 30 of Law 8/2016, particularly in cases involving victims with disabilities. They tend to disregard the provisions of this article and wrongly conclude that victims with disabilities are incapable of testifying or communicating without first making the necessary efforts as outlined in Article 30 of Law 8/2016. Hence, while dealing with the enforcement of criminal legislation involving disabled victims, it is crucial to adhere to the stipulations outlined in Article 30 of legislation 8/2016, which necessitates the involvement of experts such as medical professionals or psychiatrists in order to resolve criminal cases concerning disabled victims. The urgency is in ensuring that individuals with disabilities do not experience prejudice and are not hesitant to report any criminal offences committed against them in the future.

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