

# Access to Justice for Persons with Disabilities as Victims of Sexual Violence: Fulfillment of Reasonable Accommodation

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disability; reasonable accommodation; victim; violence; judicial process; access to justice; *penyandang disabilitas; akomodasi yang layak, korban; proses peradilan; akses keadilan*

## Abstract

Examinations of cases involving persons with disabilities are often stopped halfway due to the non-fulfillment of reasonable accommodation by law enforcement officials. This study aims to determine the fulfillment of reasonable accommodation for persons with disabilities in the judicial process and the obstacles faced in the judicial process. This research is non-doctrinal research with the object of research in handling cases of persons with disabilities as victims of crime in the judicial process. Research on the fulfillment of adequate accommodation for persons with disabilities in the judicial process has never been conducted. This research is expected to provide improvements in the fulfillment of decent accommodation for persons with disabilities. The result of this study is that some accommodations are feasible to fulfill and others are not met and obstacles are found in the fulfillment of decent accommodation.

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*Pemeriksaan perkara-perkara yang melibatkan penyandang disabilitas sering terhenti di tengah jalan karena tidak dipenuhinya akomodasi yang layak oleh aparat penegak hukum. Penelitian ini bertujuan untuk mengetahui pemenuhan akomodasi yang layak bagi penyandang disabilitas dalam proses peradilan dan hambatan-hambatan yang dihadapi dalam proses peradilan. Penelitian ini adalah penelitian non-doktrinal dengan objek penelitian berupa penanganan kasus-kasus penyandang disabilitas sebagai korban tindak pidana dalam proses peradilan. Penelitian tentang pemenuhan akomodasi yang layak bagi penyandang disabilitas dalam proses peradilan belum pernah dilakukan. Penelitian ini diharapkan dapat memberikan perbaikan dalam pemenuhan akomodasi yang layak bagi penyandang disabilitas. Hasil penelitian ini adalah sebagian akomodasi yang layak terpenuhi dan sebagian lainnya tidak dipenuhi dan ditemukan hambatan-hambatan dalam pemenuhan akomodasi yang layak.*

## A. Introduction

Persons with disabilities as victims of violence need special attention because they have particular needs. There are several cases of persons with disabilities as victims of violence, including DW as a cerebral palsy, tremors, calendar age 16 years, mental age 7 years (intellectual disability). She was raped by her 70-year-old neighbour. The case did not continue to the court because it was mediated by the Village authorities (HJ, interview, June 13, 2021). In another case experienced by DS aged 17 years and 10 months who has intellectual disability in which he was raped by toll workers, the case was examined in the District Court and the judges were to sentence the defendant with a prison sentence of ten (10) years and each fine of Rp 2,500,000,000.00 subsidiary 3 months of confinement. The AN case, a person with intellectual disability and deaf who was raped by her employer. The legal process stopped at the police level due to the DNA tests were not identic and there was intervention from village officers with family settlement mechanisms. The DW case, a person with disability was raped by a close neighbour. The legal process stopped at the police level because the victim was unable to testify due to communication difficulties (PW, interview, June 13, 2021). The case did not examine by the court allegedly because of obstacles to victims with disabilities, the judicial process, law enforcement, family, and the community do not have a disability perspective to inhibit persons with disabilities from getting access to justice (Majelis Hukum dan HAM Pimpinan Wilayah 'Aisyiyah Jawa Tengah, 2017, p. 7).

The results of an interview with Sigab Indonesia's paralegal indicate that there are still many people who are indifferent and insensitive to the fulfillment of the needs of persons with disabilities who have become victims of violence because they lack knowledge about disability issues. This is exacerbated by the positivistic perspective of law enforcement officials, meaning that because criminal justice regulations do not specifically address the presence of disabled victims of crime, they are reluctant or even unwilling to go beyond these regulations. Causally, these two factors directly affect the access to justice for disabled individuals who are victims of sexual violence (Purwanti, interview, June 13, 2021). Other problems not only happen during the judicial process, but also after the judicial process, such as trauma, limited access to education, sexually active, stigma from the community, and rehabilitation efforts (Harjani, interview, June 13, 2021).

International and national legal instruments have extensively addressed disability issues, particularly Law No. 8 of 2016 concerning Persons with Disabilities in Indonesia. The law regulates the creation of Government Regulations that govern reasonable accommodations for persons with disabilities in the judicial process. In 2020, the President issued Government Regulation No. 39 of 2020 concerning Reasonable Accommodations for Persons with Disabilities in the Judicial Process. This Government Regulation outlines the adaptations that must be made by law

enforcement officials, lawyers, and community facilitators when handling cases involving persons with disabilities, ensuring both appropriate accommodations in services and infrastructure. Reasonable accommodations in services, i.e. personal assessment, appointment of doctors, psychologists, psychiatrists, or social workers; appointment of law enforcement officials (Police, Prosecutor or Judge), who specialize in disability cases; non-discriminative treatment, fulfillment of a sense of security and comfort, effective communication, fulfillment of information related to the rights of Persons with Disabilities and the development of the judicial process, provision of remote visual audio communication facilities, provision of standard procedure for Persons with Disabilities, provision of procedure of legal aid services, Provision of Legal aid, Disability Assistants, interpreter, and facilities and infrastructure based on the obstacles specific to each person with disabilities.

Previous research on disabilities has been conducted extensively with a focus on case handling, recovery, and rehabilitation of disabled victims (Kasiyati et al., 2017). Meanwhile, specific research on the provision of appropriate accommodations for people with disabilities has only been conducted at the Immigration Inspection at the Airport (Putra & Arifin, 2020) and the provision of accommodations for people with disabilities in specialized online court proceedings (e-court) (Panggabean, 2021). The research is a new and unexplored area by other researchers because its focus is on providing accommodations for disabled individuals who are victims of sexual violence within the legal process. The study aims to comprehensively examine the fulfillment of reasonable accommodation in the judicial process for persons with disabilities as victims of sexual violence and to find obstacles experienced by persons with disabilities so that the results of this study have good implications for the judicial process of persons with disabilities, especially as victims of sexual violence to achieve access to justice.

## B. Methode

This non-doctrinal research (Wignjosoebroto, 2002, p. 158) reviewed the practice of investigation, prosecution, and court proceedings for people with victims of violence. There are two types of data, primary data and secondary data. Primary data were obtained directly from the field about behaviour or empirical data through in-depth interviews with victims of violence, victims' families, advocates, paralegals, and disability assistants (Soekanto, 2010, p. 51). Secondary data were obtained through the study of documents (Moleong, 2010, p. 176), such as books, manuscripts, journals, articles, and other relevant literature (Soekanto, 2010, p. 51).

The data obtained from cases handling of persons with disabilities from the police, prosecutors, and courts were analyzed, based on Miles and Huberman data analysis techniques (Miles & Huberman, 1992, pp. 16–20), with the concept of rea-

sonable accommodations for disabled people in the judicial process regulated in Government Regulation No. 39 of 2020. The data were presented in the form of a description so that it could be classified in the form of a cases handling patterns, then in the form of a set of information for conclusions withdrawal. Based on data, patterns, explanations, and flows obtained; conclusions about the fulfillment of reasonable accommodation in the judicial process for persons with disabilities as victims of sexual violence could be drawn.

## C. Result and Discussion

### 1. Reasonable Accommodation in Judicial Process

Persons with disabilities are any person who experiences physical, intellectual, mental and/or sensory limitations for a long period of time who, in interacting with the environment, may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights (Law No. 8 of 2016). A reasonable accommodation is a proper modification and adjustment necessary to ensure the completion or implementation of all human rights and fundamental freedoms for persons with disabilities on an equal before the law (Government Regulation No. 39 of 2020). Reasonable accommodation for persons with disabilities in the judicial process includes two meanings: 1) reasonable accommodation in the judicial process includes legal proceedings that take place at the stage of an investigation, prosecution, trial, and correctional institutions, 2) reasonable accommodation applies to all persons with disabilities, whether those with physical, intellectual, mental, sensory or multiple-disability.

The purpose of reasonable accommodation in the judicial process aims to eliminate the practice of distinction, exclusion, restriction, harassment, or exclusion on a disability basis and has an impact on the restriction or elimination of the recognition, completion, or exercise of the rights of persons with disabilities. Meanwhile, according to Panggabean (2021:7). To fulfil reasonable accommodation in the judicial process there must be a personal assessment by appointing a doctor to examine health, a psychologist, or psychiatrist to examine psychiatric or social workers to examine psychosocially.

Two types of reasonable accommodation in the judicial process are reasonable accommodation in services and infrastructure facilities. First, reasonable accommodation in services covers: 1) non-discriminative treatment, 2) fulfillment of a sense of security and comfort, 3) effective communication, 4) fulfillment of information related to the rights of persons with disabilities and the development of the judicial process, 5) provision of remote visual audio communication facilities, 6) provision of standard examination of persons with disabilities and standards of legal

services, and 7) provision of disability assistants and interpreter (Article 5 and Article 6 of the Government Regulations No. 39 of 2020).

Non-discriminative treatment is all actions that are carried out free from all forms of discrimination. The actions that eliminate the basic rights and fundamental freedoms of every human being to be respected and fulfilled human rights as a gift of God inherent in man by nature and impossible to deny (Rini, 2018, p. 20). Discrimination should not be treated in any form including the distinction, exclusive or other comparison based on the variety of disabilities, because it will result in the elimination of recognition, connoisseurship, and fulfillment of the rights of persons with disabilities who face the law (Kurniawan, 2015, p. 66).

The fulfillment of a sense of security and comfort is one of the basic fulfillments of human needs as stated by Abraham Maslow in his hierarchy of basic human needs. Security can be both physical and psychological (Pratama, 2022). The example of this fulfillment is that victims with disabilities who experience trauma can be attempted not to be met with the suspect during the judicial process.

Effective communication must be able to be built by law enforcement officials with persons with disabilities who are being examined using all possible communication media such as translators, visual audio tools, screen reader, props, writing, calendars, dolls, and images or photos. Effective communication can improve the quality of the exchange of information, ideas, and feelings between the messenger and the recipient of the message is established, which results in a change of attitude so that a good relationship can be established

The law enforcement officer who examines must provide information on the rights of persons with disabilities, both rights stipulated in international legal instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on the Rights of Persons with Disabilities; and national law instruments contained in the Constitution of the Republic of Indonesia Year 1945, Human Rights Act, The Persons with Disabilities Act as well as related laws and regulations the rights of persons with disabilities.

The right to information on the development of cases should be given. This provision of information is carried out at every level in the Police Department, District Prosecution General, and District Court. The information is very important for victims with disabilities because it can be used as a measure of the extent to which the case process takes place. Whether the case that befell him was processed or stopped to get legal certainty. Information about the development of the judicial process including information about the court's decision is important as a sign of appreciation for the willingness of witnesses and victims in the judicial process (Syafi'ie et al., 2014).

Audio visual communication facilities for teleconference can be used in the trial process. These facilities must be following the applicable regulations, whether the laws and regulations allow using facilities then the examination with remote audio visual communication is legal. The use of this facility must pay attention to and consider the obstacles because not all disabilities require these communication facilities.

Persons with disabilities who are faced with the law are often unable to access justice. In the processing of disability cases, special approaches are needed based on the uniqueness of the individual and the diversity of society. It is important to remove obstacles in the examination of the case so far procedures or procedures. The examination of persons with disabilities does not yet exist, thus causing injustice because the formal law does not side with persons with disabilities. Standards for the examination need to be established by individual law enforcement institutions and others related to the judicial process. The examination standard is the standard operating procedure made by the institution based on its authority including, qualifications; a) investigators, prosecutors, judges, and correctional officers, b) building facilities, c) handling facilities, and d) examination procedures. The standard of examination is regulated in the internal regulations of law enforcement institutions to be followed and implemented at every examination. In addition to law enforcement institutions, advocate organizations also create and develop standard operating procedures for providing legal services in the judicial process. The establishment of standards for the examination is carried out by involving organizations with disabilities and community organizations whose activities are aimed at persons with disabilities.

The role of disability assistants in the disability examination process is very important to fight for the rights of persons with disabilities. Their roles are to bridge the interests of persons with disabilities and to mediate communications with law enforcement officials when communication would not work as expected (Syafi'ie et al., 2014, p. 77).

Communication with persons with disabilities is not an easy task due to the sensitivity understandability of the language used to and by persons with disabilities. Therefore, sign language interpretation is due in this case. The case is getting more difficult if the persons with disabilities never been taught with sign language. In this situation, the interpreter has to work harder by understanding their daily language (Syafi'ie et al., 2014, pp. 77–78). Interpreter are required to have good socialization skill, interaction, and communication in order to get their approval.

The second reasonable accommodation in the judicial process is the infrastructure facilities. The provision of infrastructure facilities is adjusted to the obstacles each person with disabilities has: 1) obstacle to vision; facilities and infrastructures



provided for those with visual impairments, at least cover computers with screen reader applications; pages that are easy to read; documents printed in Braille and/or audio communication; 2) obstacles to hearing, speech, and communication; facilities and infrastructure those with obstacles on hearing, speech, and communication at least must be provided with visual information boards; communication media using writing and other visual forms; and/or props; 3) obstacle of mobility; infrastructure facilities provided are at least wheelchairs; wheeled beds; and/or other mobility aids as needed; 4) obstacle to memory and concentration; infrastructure facilities provided at least cover images; mockups; dolls; calendars; and/or other props according to the needs; 5) obstacle of intellectual; infrastructure facilities provided at least cover medicines; health facilities; and other facilities based on the needs; 6) obstacle of behaviour and emotion; facilities and infrastructure provided at least cover medicines; health facilities; comfortable and noiseless rooms; and/or other facilities as needed; 7) obstacle of taking care of themselves; infrastructure facilities provided at least cover medicines; accessible dressing room; and/or necessity and/or other necessities concerning the needs; 8) other obstacles; infrastructure facilities provided who have other obstacles are determined based on the results of personal assessments.

## 2. Cases of Persons with Disabilities as Victims of Sexual Violence in the Judicial Process

### a. DS Case

DS became a victim of sexual violence against a special needs child. The incident was perpetrated by three toll booth workers between Solo and Kartasura. The case took place in an empty field in the Boyolali area. Several weeks later, DS encountered the perpetrators again, but they abandoned DS, causing DS to experience fear and cry. At that moment, a neighbor saw DS crying and called the DS's family. It was then that the survivor disclosed the rape committed by the abusers. Subsequently, the victim's family sought information about the perpetrators and brought them to the house. Arriving at the victim's house, the victim was immediately emotional and fainted (MS, interview, June 3, 2021). The defendants were sentenced by the district court with a prison sentence of 10 years each with a fine of two billion five hundred million rupiahs with the provision that if the fine is not paid then the defendant is exposed to imprisonment for three months (Supriyanto, interview, June 11, 2021).

### b. VL Case

Sexual violence against VL was carried out by his teacher precisely in the classroom at a special needs school in Sukoharjo. The victim is a 22-years-old Deaf person with intellectual disability. He has shortcomings and does not grow like his peers so when asked for information has not been able to give a clear description because

previously the victim was also threatened by the suspect with his movement signal that clenched the grip of his right hand and then beaten to the left hand as a signal will hit and right hand cut the neck as a sign to be killed.

The results of the psychological examination explained that the age of the victim was 22 years but his mental age was equivalent to that of a 9-year-old and 10-month-old child, there were prominent barriers to socializing and communicating. And it has been implemented visum et repertum and showed evidence of sexual violence results. (Harjani, interview, June 13, 2021). This case process is processed by the police then carried out prosecution by the state prosecutor and has been decided by the District Court by criminally charged against the defendant with a prison sentence of 8 years 6 months (Supriyanto, interview, June 13, 2021)

### c. SF Case

SF has shortcomings and does not grow up like his child but the victim can tell the events that happened to him. The victim is a person with intellectual disability. The results of psychological examinations explain the potential intelligence of SF far below the child's age with IQ of 59, the scale of social problems of victims equivalent to children aged 7 years 6 months there are prominent obstacles in socializing and communicating.

SF is a victim of a sexual abuse case done by someone who close to the victim. The victim's relationship with the suspect is very close and has been considered a brother. The suspect was very familiar with the victim's family. The suspect committed his heinous deeds to the victim which were done in the victim's house and were directly contested by the victim's sister. The suspect confessed his deeds and has done them twice. Then the victim and family reported to the Police. Finally, the report had been processed at the Police level. And it has been implemented visum et repertum and shown evidence of sexual violence results (Harjani, interview, June 13, 2021).

## 3. Fulfillment of Reasonable Accommodations in the Police Department

The examination conducted by police on the DS case, they were accompanied by the family without any legal consellor reporting it to the police. The Police appointed a legal consellor to accompany the case. In this process, the Police appointed regular investigators who handle cases of persons with disabilities. At the beginning of the examination, the investigator did not conduct a personal assessment by appointing a doctor, a psychologist/psychiatrist, or a social worker. The appointment was made in the middle of the examination process experiencing obstacles. Investigators pointed to or referred to Regional Mental Hospital of Surakarta, except in the case of SF who directly referred the victim to the hospital for personal assessment.



The police conducted discriminatory actions against DS and VL by distinguishing legal treatment between persons with disability and non-disability, while the lens of law regulates equality before the law and regulates access to justice. Meanwhile, SF had non-discriminative treatment. The police did not meet the victim and the suspect but to ensure the information that the suspect, the victim was shown with the suspect by investigators. However, DS and VL felt scared and traumatized and VL several times fainted. In the process of examination, investigators were not hasty and tended to be communicative by adjusting the condition of the victim so that the examination process could be done in detail by using props such as calendars, dolls, writing, photos, and pictures.

The police were cooperative in providing information on the development of cases to the complainant through a lawyer or escort. Whenever the family, legal counsel, or disability assistants asked for information on the development, the police did not provide information, but instead it was the initiative of the companion himself. The police appointed disability assistants except in SF case. So, with the disability's assistants, it makes easier for the police to complete the evidence of cases, because previously the police had difficulty. In addition, it also makes it easier to communicate and how interact with victims.

The examination process is still in the standard of ordinary case examination even though the examination of persons with disabilities requires special examination standards to make it easy in the resolution of cases. The provision of legal services when receiving a criminal case report is not appointed advocates/legal counsellors to provide legal assistants to victims. It is precisely the family that appoints an advocate in the middle of the examination process (Purwanti interview, June 13, 2021 and Harjani, interview, June 13, 2021).

Considering the condition of the victim as a person with a mental disability, there are some obstacles experienced such as communication, and intellectual. However, in the process of examination of victims are not met with facilities and infrastructure that can remove communication barriers. While to remove intellectual barriers the police provide health facilities to victims for examination by referring to mental hospitals to be carried out visum et repertum and visum et pshicotrum (Harjani, interview, June 13, 2021).

The fulfillment of reasonable accommodation in the case of victims of sexual violence in the police is fulfilled and not fulfilled. Reasonable accommodation that has been fulfilled by the police is a personal assessment in providing doctors and psychologists/psychiatrists, effective communication, providing information related to the development of the judicial process, provision of disability assistants, provision of an interpreter, provision of legal aid, provision of facilities and infrastructure.

Reasonable accommodation that is not fulfilled by the police is to appoint a special investigator who handles cases of persons with disabilities, personal assessment, provision of social workers, non-discrimination treatment, fulfillment of security and comfort, and the provision of information related to the rights of persons with disabilities. Provision of standards of examination and provision of legal services, and provision of infrastructure facilities based on emotional and communication barriers.

#### 4. The Fulfillment of Reasonable Accommodations in The District Prosecution General

The investigation conducted is considered complete that the filing of the case file in the District Prosecution General is carried out. The appointed prosecutor is not a prosecutor whose expertise is investigating cases of persons with disabilities. Moreover, there is no procedure established by the institution in that investigation. The case file from the Police went back and forth from the District Prosecution General to the Police so that the case process took so long because it was considered not enough to prove the case. For these difficulties, legal counsellors and disability assistants conducted hearings with the prosecutor related to the characteristics of persons with disabilities by bringing the victims' results of psychological examinations. The prosecutor then examined the victims to complete the case file.

The prosecutor, at the time of receiving the first file from the police, knew there has been no personal assessment. Hence, the instructions to conduct a personal assessment was given. The personal assessment was carried out by the police in the middle of examining the cases. The prosecutors did not conduct the victims' personal assessment, make doctor's appointment to check the health, or make psychologists' or psychiatrists' appointment to examine the psyche because it has been done in the examination process conducted by the police. Based on the report of the psychological examination from the Mental Hospital of Surakarta, the prosecutor's office did not appoint social workers to examine psychosocial in the proceedings.

The victims' examinations were carried out in a comfortable and quiet room so that the victims were not distracted by the surroundings. There was no discrimination regarding these processes, neglecting the fact that the victims have disability. The communication with the victims was done directly and occasionally as well as mediated by victims' companion in case there was something difficult for the victims to understand.

In providing the information, the prosecutor tended to be passive to the victims or the families. On the other hand, it was the disability assistants who actively requested the information from the prosecutor's office. Regarding to the

appointment of disability assistants, the disability assistants are appointed by the family. In conducting the examinations, the prosecutor did not have a standard examination conducted for persons with disabilities. In the case of the appointment of legal aid, the prosecutor also did appoint an advocate or legal counsellor because the victims have been accompanied by an advocate or legal counsellor appointed by his family starting from the examination process in the Police.

Considering the condition of the victims as persons with mental disability, there are several obstacles faced such as communicational, intellectual, and emotional issues. However, in the examinations, there were no infrastructure facilities that could eliminate the communication barriers. The communication barriers could be overcome by communicating slowly. Moreover, the mediator played a big role. The prosecutor did not provide health facilities to the victims because it has been provided earlier in the examination process done by the police (Supriyanto and Aripin, interview, June 11, 2021).

There were some accommodations fulfilled while some were not by the District Prosecutor General. One reasonable accommodation that has been fulfilled was a personal assessment in providing doctors and psychologists or psychiatrists. It was also confirmed that the victims felt secured and comfortable and that the communication was effective. There was a presence of disability assistants, an interpreter, legal aid, facilities and infrastructures to eliminate the communication barriers. The reasonable accommodation that was not fulfilled by the prosecutor was to appoint a special prosecutor who handled cases of persons with disabilities, provisions of social workers, non-discrimination treatment, and provision of information related to the rights of persons with disabilities as well as provision of standard examination and facilities based on the intellectual barriers.

## 5. The Fulfillment of Reasonable Accommodations in the District Court

Cases trial process of persons with disabilities as a victim of sexual violence at the District Court did not involve a special judge for disability cases. Judges did not conduct personal assessments of the victims as well as the appoint doctors to check the health as well as psychologists or psychiatrists to examine the psyche because it has been done in the examination process in the prosecutor's office and police. Neither does it appoint social workers to examine the victims' psychosocial in the process. The trial examination of the victims was carried out in a comfortable and quiet courtroom so that the victims did not feel bothered by the surroundings. The judge conducted the trial process judiciously.

Communication with the victims was done directly and occasionally with the help of the disability assistants. The information on the case development could be accessed by the victims or the lawyer through the trial process information.

Regarding the appointment of disability assistants, the Judges did nothing as the disability assistants have already been appointed by the family. In conducting the examinations, the judges did not have a standard examination of cases of persons with disabilities. In the case of the appointment for legal aid, the Judges also did not appoint an advocate or legal counsellor because the victims have been accompanied by his family starting from the examination process in the Police Department.

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## 6. The Obstacles in the Reasonable Accommodations Fulfillment

According to the cases above, ranging from the investigation process at the Police Department and the District Prosecution General to the District Court. There are obstacles faced, i.e.

### a. Society, family, educational institutions, and law enforcement officials do not have a perspective on disability.

Law enforcement officials, in receiving reports or complaints from victims or their families, consider reports or complaints untenable because victims with disabilities are considered unable to legally provide information or become witnesses in criminal cases. This shows that law enforcement officials have ignored the right of equality before the law, as well as the rights of persons with disabilities to access the law and justice. The actions of the community, families, educational institutions and law

enforcement officials illustrate that the perspective on disability has not been well awakened. Whereas for cases of persons with disabilities, all parties involved must have a disability perspective to provide justice to persons with disabilities.

**b. The Police Department, District Prosecutor, and District Courts do not yet have special investigators, prosecutors, or judges in handling persons with disabilities cases.**

Law enforcement Investigators, Prosecutors, and Judges appointed to conduct examinations of disability cases have no expertise for handling disability cases. As the Police Department has special investigators and the District Prosecutor has juvenile court prosecutors, a special official is needed so that the examination process can run well and fair.

**c. Personal assessments are not carried out at the beginning of the examination, especially in the Police Department.**

There is no personal assessment carried out for DS and VL cases at the beginning of the examination that cause obstacles in understanding the characteristics of persons with disabilities. Many communication problems happen. Moreover, obstacles regarding to finding evidences are also faced as persons with disabilities are not considered to be legally competent.

**d. No legal counsel provided.**

There is no provided legal counsellor in DS case from the beginning of the examination. There should be provision of legal counsellors for persons with disabilities according to the requirements regulated in the legislation. Legal counsellors for persons with disabilities must have the ability to get along and interact well, understand the needs and obstacles, and can facilitate persons with disabilities to follow the judicial process properly.

The provision of a legal counsellor for persons with disabilities is useful for the examination process so that it does not drag on and take a long time. Moreover, it is beneficial to ensure persons with disabilities to get legal assistants. In this case, legal counsellors are provided by the family because in the process of examination, the investigators have difficulty in proving criminal acts committed by the suspect.

**e. No interpreter provided.**

For VL case, there is no interpreter provided by the police though the presence of interpreter for the persons with disabilities is a must. The requirements of the

interpreters regulated in the regulation are people who are good at getting along, interacting, and communicating so that the victims can communicate effectively with the investigators without facing communication barriers. That way, the evidences may be easily collected and proven.

**f. No disability assistants provided.**

Disability assistants are not provided in DLS and VL cases even though according to the requirements regulated in the legislation, there should be disability assistants who have the ability to get along and interact, understand the needs and obstacles, facilitate the judicial process, and shorten the examination process. The disability assistants also make it easier for the investigators to corroborate evidence based on the information from persons with disabilities. In this case, disability assistants are provided by the family because in the process of examination, the investigators have difficulty in proving the criminal acts committed by the suspect.

**g. No adequate accessible infrastructure facilities for persons with disabilities.**

The examination of cases must meet the standards of minimal infrastructure facilities based on obstacles owned by persons with disabilities. There is no communication media in the form of writing or picture even though DS has obstacles in communicating. The examination can be completed quickly if the infrastructure facilities regarding communication have been fulfilled.

**h. The impartial procedure to persons with disabilities.**

The Code of Indonesia Criminal Procedure (KUHAP) regulates persons with disabilities as witnesses in article 168 paragraph 1 which reads "If the defendant or witness is mute or deaf, or unable to write, the presiding judge of the trial appoints a person who is good at associating with the accused or the witness as an interpreter." This regulation is only regulated for persons with disabilities who have a speech impediment (mute) and hearing (deaf) while others with sensory, mental, and intellectual disabilities are not regulated in the Code of Indonesia Criminal Procedure. The absence of this arrangement results in the obstacles faced in the examination so that the process drags on and takes a long time.

## **D. Conclusion**

The reasonable accommodations that fulfilled are personal assessment such as doctor's as well as psychologist's or psychiatrist's appointment. The victims feel secured and comfortable so that the communication is effective. Moreover, the information on the judicial process developments is also accessible. Besides, there are



disabilities assistants, interpreter, and legal counsellors. The reasonable accommodations that have not been fulfilled are investigators, prosecutors, and judges who have no specialty in handling disability cases. Moreover, there is still unfair treatment. Furthermore, there are no social workers to do psychosocial examinations, standard examinations, and persons-with-disabilities friendly infrastructure facilities according to the obstacles owned by them.

The obstacles to the fulfillment of reasonable accommodation are communities, families, educational institutions, and law enforcement officials who have no perspective on persons with disabilities. There are no special investigators, prosecutors, or judges to deal with disability cases. Furthermore, the personal assessments are not carried out at the beginning of the examination, especially in the Police Department. Other obstacles are unavailable legal counsellors, interpreters, disability assistants, and infrastructure facilities to assist persons with disabilities.

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#### F. References

- Kasiyati, S., Wahyudi, A. T., Julijanto, M., Hasan, S., & Damayanti, M. (2017). Legal Counseling for Disabled Victims of Sexual Violence: Study of Assistance by Legal and Human Rights Council Leadership 'Aisyiyah Central Java Branch. 56-62. <https://doi.org/10.2991/icddims-17.2018.13>
- Kurniawan, H. (2015). *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*. Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII).
- Majelis Hukum dan HAM Pimpinan Wilayah 'Aisyiyah Jawa Tengah. (2017). *Laporan Kegiatan Rumah Sakinah Program Pemulihan bagi Digabel dan Anak Berhadapan dengan Hukum dan Anak Korban Perceraian Tahun 2017 [Laporan Kegiatan]*. Majelis Hukum dan HAM Pimpinan Wilayah 'Aisyiyah Jawa Tengah.
- Miles, M. B., & Huberman, A. M. (1992). *Analisis Data Kualitatif*. UI Press.

- Moleong, L. J. (2010). *Metodologi Penelitian Kualitatif* (ed. rev, cet. ke 27). Remaja Rosdakarya.
- Panggabean, S. N. (2021). Reasonable Accommodations for Persons with Disabilities in Electronics Justice System (E-Court). *Jurnal Hukum Dan Peradilan*, 10(1), Article 1. <https://doi.org/10.25216/jhp.10.1.2021.1-30>
- Pratama, C. D. (2022, January 17). Teori Hierarki Kebutuhan Abraham Maslow [Berita]. KOMPAS.com. <https://www.kompas.com/skola/read/2020/12/31/140134369/teori-hierarki-kebutuhan-abraham-maslow>
- Putra, B. H., & Arifin, R. (2020). Pemenuhan Akomodasi yang Layak bagi Penyandang Disabilitas pada Proses Pemeriksaan Keimigrasian di Indonesia. *Jurnal HAM*, 11(3), Article 3. <https://doi.org/10.30641/ham.2020.11.405-418>
- Rini, N. S. (2018). Analisis Implementasi Prinsip Non-Diskriminasi dalam Peraturan Daerah di Bidang Pendidikan dan Kesehatan. *Jurnal HAM*, 9(1), Article 1. <https://doi.org/10.30641/ham.2018.9.19-36>
- Soekanto, S. (2010). *Pengantar Penelitian Hukum*. UI Press. <https://lib.ui.ac.id/detail?id=6324>
- Syafi'ie, M., Purwanti, & Ali, M. (2014). *Potret Difabel Berhadapan dengan Hukum Negara*. Sigab.
- Wignjosoebroto, S. (2002). *Hukum: Paradigma Metode dan Dinamika Masalahnya* (Cet.1). Elsam Lembaga Studi Dan Advokasi Masyarakat.

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