

**THE PRINCIPLE OF EQUALITY BEFORE THE LAW FOR RAPE VICTIMS OF
PERSONS WITH DUAL SENSORY DISABILITIES IN CRIMINAL LAW
PERSPECTIVE**

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Keywords	Abstract
Equality Before Law, Victims and Persons with Disabilities.	The principle of equality before the law is fundamental to ensuring justice in any legal system. In Indonesia, however, individuals with dual sensory disabilities, particularly those who are victims of sexual violence, often face discrimination and unequal treatment within the judicial process. This study explores the application of this principle in cases involving rape victims with dual sensory disabilities, addressing how these individuals often encounter challenges in accessing justice due to their communication difficulties. The research uses a normative juridical approach, reviewing existing legal frameworks, including Law Number 8 of 2016 on Persons with Disabilities, and relevant international conventions. Through literature study and case analysis, this research finds that while Indonesia's legal framework provides for equal treatment under the law, persons with dual sensory disabilities still face barriers such as inadequate legal accommodations and discriminatory practices by law enforcement. The study highlights the need for comprehensive reforms, including better training for law enforcement and the provision of specific accommodations for individuals with sensory impairments. The implications of this research are crucial for ensuring that rape victims with dual sensory disabilities receive the same legal protections as any other individual, fostering a more inclusive legal system that guarantees equal rights for all citizens.



INTRODUCTION

Law is a rule or rule that is followed and made by the authorities. It is mandatory to be obeyed by every person/individual to create a peaceful and prosperous life. Law as the first foundation of a rule that leads to a just and prosperous society and protects every individual's

rights. The concept of law has emerged along with the formation of society, as reflected in the legal adage "ubi societas ibi ius" which means "where there is a society, there is a law."

The purpose of the legal adage "ubi societas ibi ius" is to form Indonesian society that the law will always exist in the life that exists in society for the harmony of aspects of life. This explanation is clearly stated in the Constitution, especially in Article 1 Paragraph (3), which affirms that Indonesia is a country based on the law. In this context, law has a major role as a tool that underlies various aspects of life. One of the crucial elements in this principle of the state of law is respect for human rights based on the values of Pancasila.

In the implementation of human rights based on the values contained in Pancasila, (as explained and affirmed in "Article 27 paragraph (1) of the Constitution of the Republic of Indonesia of 1945 that every citizen has the same position before the law. The application of this principle is far from one of the benchmarks of justice in the application of law in Indonesia."). The meaning of equality before the law is found in almost all state constitutions. This is the norm that protects the human rights of citizens. Equality before the law means that every citizen must be treated fairly by law enforcement officials and the Government.

The principle of equality before the law moves under the umbrella of general and single laws. The unity of the law becomes one whole face among other social dimensions, for example economic and social. If things like those mentioned above are not achieved, what is called discrimination will occur. Discrimination occurs when everyone is treated or possessed of unequal opportunities such as inequality before the law.

With various community groups, there are still some groups that do not get their rights, groups of people with disabilities often experience discrimination and inequality. The rights of persons with disabilities are not fully guaranteed by law, and discrimination is a frequent problem. In fact, they have an equal position with non-disabled people in aspects of life. Despite the limitations, people with disabilities still have the same rights and responsibilities as everyone else.

In Indonesia, based on Law No. 8 of 2016 concerning Persons with Disabilities, it is clear that equality and non-discrimination are one of the requirements for open access for people with disabilities. The variety of Persons with Disabilities in Law Number 8 of 2016 chapter 2 article 4 includes: a, physical disability; b. persons with intellectual disabilities; c. persons with mental disabilities; d. Persons with sensory disabilities. Persons with disabilities have different difficulties and problems, then the explanation in paragraph 2 as referred to in paragraph (1) can be experienced single, double, or multi in the long term.

However, the fact is that people with disabilities still receive a lot of discriminatory treatment. For example, many people with disabilities are victims of crime in society. Physical and mental limitations often make them vulnerable and become targets for crimes that often occur in the community. The cause of many crimes experienced by people with disabilities is due to their weakness to protect themselves due to these limitations.

Crime is still a problem that often arises in society. This kind of behavior is undesirable because it can cause harm to the other party. More than that, criminal acts also have the potential to damage the harmony and social relationships that are established in daily life. Crimes that often occur among the community are the crime of rape where one of the mentally damaging victims is the crime of rape, namely by forcing the victim to commit sexual

intercourse. The criminal law in Indonesia regulates this rape, namely Article 285 of the Criminal Code:

"Whoever by force or threat of violence forces a woman to have sexual intercourse with him outside of marriage, shall be threatened with rape, with imprisonment for a maximum of twelve years."

As explained above, one of the dimensions of human rights protection is through national criminal law instruments. The criminal law itself touches the perpetrators, victims, and law enforcement officials. Along with the increasing number of rape cases in Indonesia, there is a phenomenon of lack of adequate attention from the Government to rape cases experienced by individuals with disabilities. In Article 1 paragraph 2 of Law No. 13 of 2006 concerning Witnesses and Victims, it is stated that the victim is a person who experiences physical, mental and/or economic suffering caused by a criminal act.

According to Arif Fosita, what is meant by victims are those who suffer physically and spiritually as a result of the actions of others that are contrary to their own interests or others who seek the fulfillment of their own interests or others who are contrary to the interests of human rights who suffer. The protection of human rights for women who are victims of rape is an important responsibility for the government and society as a whole. Law No. 12 of 2022 was made to prevent all forms of sexual violence, and also to handle, protect, and recover victims. In Law No. 8 of 2016 concerning Persons with Disabilities Article 5 Paragraph 3 a persons with disabilities have the right to "obtain special protection from discrimination, neglect, harassment, exploitation, as well as violence and sexual crimes". The protection of victims is essentially the protection of human rights.

The problem that will be discussed in this paper is sensory disability. A case of a person with sensory disabilities experienced twice in Bima, West Nusa Tenggara: A girl with a disability with the initials NU (18) was allegedly raped by a village staff with the initials C in March 2021. The case was initially not upgraded to the investigation stage by the Bima City Police, citing a lack of evidence and witnesses, and the case in Sukoharjo, Central Java: a woman with multiple disabilities, 22 years of calendar age but mentally equivalent to an 8-year-old child, was raped. The victim's report was rejected by the police because it was considered invalid memories and communications.

This kind of approach often ignores the rights of victims and does not provide a deterrent effect for the perpetrator. Therefore, it is important for law enforcement officials and the public to ensure that cases of sexual violence against people with mental disabilities are dealt with seriously through the applicable legal process, in order to provide justice for victims and prevent similar incidents from happening in the future. Therefore, it must always be paid more attention to people with disabilities which is to remove the paradigm of doubt from law enforcement in handling cases of disabilities, where when people with disabilities become victims of rape.

This condition is characterized by limitations in cognitive, linguistic, motor, and social development, which significantly affects their quality of life. (Wijayanti, 2020). In general, people with disabilities should have the same position and get their rights, there is no discrimination against people with disabilities, but in reality there are still many people with

disabilities who do not get their rights which are not in accordance with the principle of equality before the law.

The principle of equality before the law is a cornerstone of justice systems around the world, and its application in Indonesia has been a subject of increasing focus, particularly in cases involving individuals with disabilities. Persons with dual sensory disabilities, who face challenges in both hearing and seeing, often experience heightened vulnerability to crime, including sexual violence. Despite the legal guarantees of equality under the law, individuals with disabilities frequently face discrimination and unequal treatment in the judicial process. This issue is particularly evident in cases of sexual violence, where individuals with sensory disabilities are often disregarded or their testimonies deemed invalid due to their inability to communicate effectively. In Indonesia, several cases have highlighted the failure of law enforcement to properly address crimes against persons with disabilities, with many cases being dismissed due to a lack of evidence or improper handling of victim testimonies.

Moreover, the lack of adequate legal protection mechanisms for individuals with dual sensory disabilities, especially in cases of sexual violence, poses significant challenges. The principle of equality before the law should ensure that all individuals, regardless of their disability, are treated fairly and given equal opportunities in legal proceedings. Unfortunately, current practices and systems in Indonesia do not always align with these principles, leading to a need for more inclusive and effective legal frameworks that provide better protection for people with disabilities.

The urgency of this research stems from the critical need for legal reform to ensure that persons with dual sensory disabilities receive the same legal protections as any other individual, particularly in cases of sexual violence. Despite existing laws that guarantee equal treatment before the law, such as Law Number 8 of 2016 on Persons with Disabilities, implementation is inconsistent. Victims of sexual violence with disabilities often face additional barriers to justice due to their impaired communication abilities, highlighting the need for a more inclusive legal framework that acknowledges the unique challenges these individuals face. By addressing these gaps, the legal system can be improved to ensure better protection, justice, and support for people with disabilities.

Previous studies have explored the application of the principle of equality before the law for individuals with disabilities, but these studies have often focused on physical disabilities or single-sensory impairments. A study by Setiawan (2020) examined the challenges faced by individuals with physical disabilities in accessing justice, highlighting the difficulties in navigating legal processes. However, this research did not consider the specific challenges faced by individuals with dual sensory impairments, who require specialized legal accommodations to participate fully in the justice system.

Research by Gunawan (2019) explored the legal protection for rape victims in Indonesia, focusing on the inadequacy of the justice system in handling cases involving vulnerable populations, such as people with disabilities. However, Gunawan's work primarily addressed the procedural failures in the legal system for general rape victims and did not delve into the specific nuances required for handling cases involving dual sensory disabilities.

Another significant study by Prasetyo (2021) analyzed the legal framework for sexual violence crimes against persons with disabilities in Indonesia, emphasizing the limitations of

current laws. Although this research acknowledged the need for better protection and accommodations for disabled individuals, it lacked a detailed examination of the intersection of disability and sexual violence, especially concerning individuals with sensory impairments. This research, therefore, sets the foundation for further investigation into the application of equality before the law for victims of sexual violence with dual sensory disabilities.

Despite the significant body of research on disability rights and legal protection, there is a clear gap in studies that specifically address the legal challenges faced by individuals with dual sensory disabilities in cases of sexual violence. While existing literature discusses disability and access to justice in general terms, it fails to focus on the unique difficulties experienced by victims with both hearing and visual impairments, particularly in the context of sexual violence. This study aims to bridge this gap by exploring how the principle of equality before the law can be applied effectively to this marginalized group, ensuring that they receive equal treatment and protection under the law.

The novelty of this research lies in its focus on the intersection of dual sensory disabilities and the principle of equality before the law in the context of sexual violence cases. Unlike previous studies, this research specifically addresses the complexities faced by individuals with both hearing and visual impairments when navigating the justice system. It introduces a new perspective on legal protection for these individuals by examining the gaps in the current legal framework and proposing necessary reforms to improve their access to justice and ensure their rights are upheld during legal proceedings.

The objective of this study is to investigate how the principle of equality before the law can be applied to individuals with dual sensory disabilities who are victims of sexual violence. The study aims to assess the effectiveness of existing legal frameworks in ensuring fair and equal treatment for these victims and to propose reforms that can enhance legal protection, accessibility, and support for individuals with sensory disabilities in sexual violence cases.

This research will provide critical insights for legal reform in Indonesia, ensuring that persons with dual sensory disabilities are given equal protection and opportunities in legal processes, particularly in sexual violence cases. The findings will help policymakers, legal practitioners, and advocacy groups develop more inclusive legal frameworks that accommodate the specific needs of individuals with sensory disabilities. Furthermore, this research will contribute to the ongoing dialogue about disability rights, promoting greater social justice and equality for all citizens, regardless of their abilities.

RESEARCH METHODS

In this study, the author uses a Literature Study with a method that uses normative juridically. Normative juridical is a research method by collecting data to understand and study theories from various literature related to this research. The data collected and understood are relevant laws and norms and those that apply in society with various perspectives from several applicable sciences and other sources such as articles, journals, proceedings, large dictionaries, and legal cases. This research focuses on the model of the Principle of Equality Before The Law for Rape Victims of Persons with Dual Sensory Disabilities in the Perspective of Criminal Law. Using the approach used in this study, namely the statute approach, and the conceptual approach. The statute approach is carried out by examining all the 1945 Constitution, Law

Number 1 of 1946 concerning Criminal Law Regulations, Law Number 13 of 2006 concerning the Protection of Victim Witnesses, Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 12 of 2022 concerning the Crime of Sexual Violence and related regulations related to the legal issues being handled in cases of persons with sensory disabilities experienced twice in Bima, West Nusa Tenggara: A girl with a disability with the initials NU (18) was allegedly raped by a village staff with the initials C in March 2021. The case was initially not upgraded to the investigation stage by the Bima City Police, citing a lack of evidence and witnesses, and the case in Sukoharjo, Central Java: a woman with multiple disabilities, 22 years of calendar age but mentally equivalent to an 8-year-old child, was raped. The victim's report was rejected by the police because it was considered invalid memories and communications.

RESULTS AND DISCUSSION

The principle of equality before the law in rape victims of persons with disabilities

Equality before the law is a very important principle in modern law. The rule of law, which also spreads in developing countries such as Indonesia, makes this principle one of the doctrinal joints. The principle of the state of law is that there is equality in law. In this principle, every citizen has an equal position in the eyes of law and government. There is no such thing as differentiating from each other. No matter the difference in background. All are the same in the eyes of the law. Discriminatory attitudes are also prohibited in countries that have a legal basis. The principle of equality before the law if it is associated with rape victims, means that everyone who gets rape violence is "Sensory disability cases. A case of a person with a sensory disability experienced twice in Bima, West Nusa Tenggara: A girl with a disability with the initials NU (18) was allegedly raped by a village staff with the initials C in March 2021. The case was initially not upgraded to the investigation stage by the Bima City Police, citing a lack of evidence and witnesses, and the case in Sukoharjo, Central Java: a woman with multiple disabilities, 22 years of calendar age but mentally equivalent to an 8-year-old child, was raped. The victim's report was rejected by the police because it was considered invalid memory and communication."

Regarding the case of rape against perpetrators who have committed rape of persons with disabilities, serious criminal sanctions can be imposed to provide a deterrent effect on the perpetrator. The regulations and regulations in Indonesia regarding rape are regulated in the Criminal Code (KUHP) in Article 285 which states "Whoever by sexual violence or threat of violence forces a woman to have sexual intercourse with him outside of marriage, shall be threatened for committing rape with a maximum penalty of twelve years".

From the above cases, it is clear that the principle of equality before the law does not exist for the rights of persons with disabilities, how can a perpetrator of the crime of rape be committed peacefully and also in 15 cases only 4 cases have been successfully resolved legally. How is the sense of justice and protection for the victim, this is very far from the rights of victims with disabilities that have been taken away by the perpetrator. Equality before the law must be interpreted dynamically and not statically interpreted. This means that if there is equality before the law for everyone, it must also be balanced with equality for everyone. On

the basis of this concept, in order to achieve the achievement of every citizen getting his rights who have the same position. This is closely related to the norms and sense of justice in the law.

Everyone has the same standing before the law, which means that everyone has the same position when people with disabilities become victims of rape. Everyone is subject to the law, including people with disabilities. There should be no difference in rights, dignity, and standing before the law between individuals with disabilities and those without. Every human being has the right to equal treatment and fair access in various aspects of life, in accordance with the principles of justice and equality. Indonesia is one of the countries in Asia that since November 2011 has ratified the convention on the protection of the rights of persons with disabilities, or known as CPRD (Convention On the Rights of People with Disabilities). Some of the important things in the ratification of the Convention on the Rights of Persons with Disabilities (CPRD) include :

- 1) Recognition that discrimination against everyone based on disability is a violation of the inherent dignity and value of every person
- 2) Persons with disabilities should have the opportunity to be actively involved in decision-making processes regarding policies and programs, including those directly related to them.
- 3) The importance of accessibility to the physical, social, economic and cultural environment, health and education, and information and communication, which enable persons with disabilities to fully enjoy all human rights and fundamental freedoms.

One of the objectives of the Convention on the Rights of Persons with Disabilities (CPRD) is to provide guarantees for the protection of human rights for people with disabilities. Several provisions on regulating the right to justice and legal protection for persons with disabilities in full in Article 9 of Law Number 8 of 2016 concerning Persons with Disabilities which reads as follows:

The right to justice and legal protection for Persons with Disabilities includes the right to:

- 1) For equal treatment before the law;
- 2) Recognized as a subject of law;
- 3) Owning and inheriting movable or immovable property;
- 4) Controlling financial matters or referring persons to represent their interests in financial matters;
- 5) Obtaining access to banking and non-banking services;
- 6) Obtaining the provision of accessibility in the service of the press;
- 7) For protection from all pressure, violence, persecution, discrimination, and/or usurpation or expropriation of property rights;
- 8) Selecting and appointing persons to represent his or her interests in civil matters in and out of court; and
- 9) Protected intellectual property rights

Thus, based on the CPRD, the rights of persons with disabilities and Law Number 8 of 2016 must be protected by the state with the aim of obtaining equal treatment and status before the law and the state. The End of a Good Law Rule.

Application of Legal Protection to Rape Victims of Persons with Dual Sensory Disabilities

The terminology of legal protection starts from two words that are combined, namely protection which can be interpreted as a place of refuge or act of protection and law with the meaning of a rule or custom that is considered legally binding through a decision issued by the ruler or government. Legal protection can be interpreted as an effort to protect through regulations set by the government or authorities. Legal protection means protection given to the law so that it is not misunderstood by law enforcement officials. The law must actually provide protection to all parties in accordance with their legal status because everyone has the same position before the law.

The guarantee of legal protection in Indonesia is clearly stated in Article 28D paragraph (1) of the 1945 Constitution which reads that everyone has the right to be recognized and receive the same guarantee of legal protection in the eyes of the law

According to Fitzgerald, as quoted by Satjipto Raharji, the beginning of the emergence of this legal protection theory originated from the theory of natural law or the school of natural law. This school was acquired by Plato, Aristotle (a student of Plato), and Zeno (the founder of the Stoic school). According to the school of natural law, it is stated that the law comes from God which is universal and eternal and that law and morality are not separated.

Regarding the framework of legal protection, the following Philipus M. Hadjon by focusing on "government action" (bestuutshandeling) or (administrative action) distinguishes legal protection for the people into two types:

- 1) Repressive legal protection, which is legal protection that aims to resolve disputes, including the handling of legal protection for the people by the general court and administrative courts in Indonesia
- 2) Preventive legal protection, which is legal protection that aims to prevent disputes. In preventive protection, the people are given the opportunity to submit their objections (inspraak) or opinions before the government's decision takes a definitive form, preventive legal protection is very meaningful for government actions based on freedom of expression because the government is encouraged to be cautious in making decisions based on discretion.

The derivatives of the mandate ordered from the Constitution can be seen from the existing regulations, one of which is the legal protection of the rights of persons with disabilities affirmed in various laws in Indonesia, including in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 8 of 2016 concerning Persons with Disabilities, and Law Number 12 of 2022 concerning the Crime of Sexual Violence.

Based on the rights of victims of disabilities in Law 13 of 2006 concerning the Protection of Witness Victims, it provides a legal basis for the protection of witnesses and victims, including persons with disabilities, which is clarified in article 1 paragraph 6 which reads "Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be carried out by LPSK or other institutions in accordance with the provisions of this Law." The protection provided includes aspects of physical, psychological, medical, and rehabilitative security.

Furthermore, Law Number 8 of 2016 concerning Persons with Disabilities This law specifically regulates the rights of persons with disabilities, including the right to equality

before the law. Article 5 paragraphs (1) and (2) state that the state recognizes that all human beings are equal before and under the law and are entitled to the same legal protection and benefits, without discrimination. The State is obliged to prevent all forms of discrimination based on disability and to ensure equal and effective legal protection for persons with disabilities against discrimination. The law also regulates appropriate accommodations in legal proceedings, such as the provision of sign language interpreters and accessible information formats.

There is also Law Number 12 of 2022 concerning the Crime of Sexual Violence where this law regulates various types of sexual violence and provides special protection for victims, including people with disabilities. When it comes to sexual violence against persons with disabilities, this law pays particular attention to the vulnerability of victims and ensures that they have access to comprehensive recovery and support services.

Sanctions against perpetrators of sexual violence against persons with disabilities are regulated in the Criminal Code and the TPKS Law. However, there is an opinion that the formulation of criminal sanctions for perpetrators of sexual violence against persons with disabilities must be heavier than perpetrators of sexual violence in general. This is because people with disabilities often experience injustice and are more vulnerable to becoming victims of sexual violence due to their physical and psychological limitations. One form of injustice is the lack of accessibility in the legal process. In the case of NU, the police initially did not escalate the case to the investigation stage due to a lack of evidence and witnesses. This indicates a lack of understanding and ability of law enforcement officials to communicate with people with sensory disabilities, which may require special communication methods such as sign language interpreters or other communication aids. Without adequate accommodation, people with sensory disabilities find it difficult to provide clear and convincing information, hampering the investigation and prosecution process.

In addition, stigma and discrimination against people with disabilities also play a role in this injustice. In the case in Sukoharjo, the victim's report was rejected by the police because it was considered invalid that his memory and communication were invalid. This reflects a condescending view of the ability of people with intellectual and sensory disabilities to give accurate and trustworthy testimony. This stigma can deter people with disabilities from reporting the violence they experience and makes law enforcement officials underestimate their reporting.

This injustice is exacerbated by the dual vulnerability experienced by people with sensory disabilities, especially women. They face not only discrimination based on their disability, but also based on their gender. Women with disabilities are more vulnerable to becoming victims of sexual violence and face greater barriers to accessing justice. To overcome this injustice, comprehensive efforts from various parties are needed. The government must increase awareness and understanding of the rights of persons with disabilities among law enforcement officials and the general public. Law enforcement officials should be trained to handle cases involving persons with disabilities sensitively and effectively, by providing appropriate accommodations and using appropriate communication methods. Comprehensive regulations and policies should be created to protect the rights of people with dual sensory disabilities, including in cases of sexual violence. In addition, comprehensive support and

services should be provided for victims of persons with disabilities, including medical, psychological, and legal services.

In the 1945 Constitution, Article 27 paragraph (1) emphasizes that every citizen has the right to the same position in the law. The principle of equality before the law is also a fundamental principle in justice and is an absolute requirement for the creation of a just society. The principle of equality before the law is a basic legal concept that states that everyone must be treated equally by the law without exception. With sustained and coordinated efforts, it is hoped that people with dual sensory disabilities can enjoy their rights to the fullest and receive fair and equal treatment before the law.

CONCLUSION

The application of the principle of equality before the law in cases of rape against people with multiple sensory disabilities in Indonesia remains suboptimal, as evidenced by persistent discrimination, such as rejected reports and unfair legal processes, as seen in cases in Bima and Sukoharjo. Despite Indonesia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and the enactment of Law No. 8 of 2016, which guarantees legal protection for persons with disabilities, implementation remains weak. Challenges include inadequate enforcement, lack of accommodations for disabled victims in judicial processes, and insufficient punitive measures for perpetrators. To ensure justice, comprehensive reforms—such as law enforcement training, better accessibility in legal proceedings, and stricter policies—are essential to uphold equal legal protection for persons with disabilities, particularly victims of sexual violence, in line with the principles of a just rule of law.

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