

# Legal Protection for Defendants with Disabilities (Decision Study: 146/PID.SUS/2025/PT MTR)

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**Abstract.** *This study examines legal protection for defendants with disabilities in the Indonesian criminal justice system, with reference to Decision 146/PID.SUS/2025/PT.MTR. Using a normative legal research approach, this research analyzes relevant laws and regulations, international legal instruments, and court decisions to assess the implementation of the principle of presumption of innocence and the right to a fair trial for persons with disabilities. The study focuses on the application of Law Number 8 of 2016 concerning Persons with Disabilities and related regulations on reasonable accommodation in judicial proceedings. The findings indicate that, although legal provisions guarantee equal treatment, accessibility, and procedural protection for defendants with disabilities, their practical implementation remains limited. In the examined case, deficiencies were identified in the provision of communication assistance, procedural adjustments, and supportive services during the trial process. These limitations affected the defendant's ability to participate effectively in legal proceedings. The study concludes that greater institutional commitment, improved professional capacity among law enforcement officials, and stronger supervision mechanisms are necessary to ensure the fulfillment of disability rights in criminal trials. Strengthening the implementation of reasonable accommodation is essential to achieve fairness, transparency, and legal certainty in the administration of justice for defendants with disabilities.*

**Keywords:** *Disability, Reasonable Accommodation, Defendant, Convict, Criminal Justice*

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## INTRODUCTION

Disability is known as a condition that makes an individual have limitations in carrying out daily activities according to Article 1 paragraph (1) of Law No. 8 of 2016, persons with disabilities are people who experience physical, intellectual, mental, or sensory limitations for a long period of time who, in interacting with the environment, can experience obstacles and difficulties in participating fully and effectively as citizens.

Although someone may be considered guilty, in general, perpetrators of crimes have rights protected by law, such as receiving an explanation of the charges against them to be able to prepare their defense (Bergelson, 2005) . The accused person has the right to be given clear information in a language they understand regarding the charges brought against them based on Article 51 letter a of the Criminal Procedure Code. This aims to allow the accused person to consider how much legal support they need for their defense.

Actions that meet certain conditions referred to in this statement are actions carried out by a person that can be subject to punishment or criminal acts. These criminal acts are divided into two, namely prohibited acts and the person who committed the violation. Furthermore, regarding criminal penalties, this statement refers to torture intentionally inflicted on a person who

commits an act that meets certain requirements. The types of punishments that can be applied are listed in Article 10 of the Criminal Code (Virjan, 2023).

Referring to this integrated explanation, legal protection can be defined as the protective efforts undertaken by the government or authorities through a number of existing regulations. In short, legal protection is the function of the law itself, providing protection. Therefore, defendants have several rights granted in court proceedings, such as the right to be represented by legal counsel. Defendants have the right to be represented by a lawyer or legal advisor from the beginning of the examination until the end of the trial (Troccoli, 2002; Colbert et al., 2001). Article 56 of the Criminal Procedure Code states that defendants facing a sentence of five years or more must be represented by a lawyer if they cannot afford one. If the defendant cannot afford one, the court must appoint legal counsel free of charge. This legal assistance aims to help defend the defendant's interests, ensure legal rights are protected, and prevent procedural errors and legal violations.

## **METHODS**

### **Type of Research**

This research is a legal study that addresses legal issues, therefore, it can also be considered normative legal research. To elaborate on legal issues, this research is conducted by examining laws and regulations, namely the norms or rules that apply in society and serve as guidelines for the actions of each member. Normative legal research includes accompanying legal sources, namely: (1) Secondary Legal Sources: Laws and regulations related to the provisions of the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 18 of 2014 concerning Mental Health, and Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in the Judicial Process, as well as decision 146/PID.SUS/2025/PT/MTR, legal journals, and books; (2) Tertiary Legal Sources, Data materials that provide information about primary and secondary law, such as legal language dictionaries, encyclopedias, magazines, mass media and the internet.

### **Nature of Research**

The primary focus of legal science is the study of the purpose of law, the values of justice, legal validity, basic legal concepts, and prevailing norms in society. In this research, a prescriptive nature is applied by analyzing how legal norms should be applied and function in the context of social life.

### **Research Approach**

In an effort to obtain information from various aspects regarding the issue under discussion, several approaches are used, including the statute approach and the case approach. These approaches begin with applicable laws and regulations. This approach also involves examining legal principles and principles relevant to the issue at hand.

### **Data Analysis Techniques**

The data analysis technique used in this research is a deductive approach. The analysis will be conducted comprehensively on legal issues based on court decisions used as material for case studies, books, news reports, and scientific articles. Deductive logic comprehensively describes a general matter and then interprets it to form a specific conclusion.

### **Theory**

Based on Ahmad Rifai's opinion, decisions taken by judges should pay attention to various matters related to law, philosophical thought, and social conditions. In this way, the justice that is to be achieved and upheld in the judge's decision is a type of justice that focuses on legal justice, moral justice, and justice that exists in society, by referring to applicable laws, the juridical aspect is the first and most important, as an applicator of the law, the judge must understand and find

laws related to the case at hand. The judge must assess whether the law is fair, has its benefits, or provides legal certainty if enforced because one of the purposes of the law is to create justice.

Furthermore, the use of the Legal Protection Theory is defined as the protection of the dignity and recognition of human rights of legal subjects based on provisions of arbitrariness. The Theory of the Purpose of Law states that to maintain balance in relations between members of society, legal regulations are necessary, whereby anyone who violates the law will be punished. The Theory of the Purpose of Law also applies, stating that legal regulations must be made for anyone who violates the law, according to the Theory of the Purpose of Law, to maintain balance in society. The final use of the Theory of Justice is the Theory of Justice, which, according to Aristotle, provides a more in-depth explanation of what justice is. He argued that balance is the definition of justice. Aristotle identified two measures of balance: (1) Numerical equality, meaning that all humans are treated equally within a single unit. For example, everyone is equal before the law; (2) Proportional equality, meaning that everyone is given their due, according to their abilities and achievements

## **RESULTS AND DISCUSSION**

### **Legal Protection for Defendants With Disabilities**

Article 41 states that anyone who commits a crime while experiencing mental health problems, mental illness, mental retardation, or other mental disabilities cannot be punished or held accountable for the act, but may be subject to certain measures. Article 42 further explains the responsibility of defendants with disabilities. Any individual who, at the time of committing a crime, is less accountable due to mental health problems, mental illness, mental retardation, or other mental disabilities, may have their sentence reduced or be subject to other measures. Criminal responsibility for persons with disabilities is crucial in regulating criminal acts.

Criminal responsibility is the implementation of the idea of balance, between the principle of no punishment without fault (the principle of culpability/the principle of geen straf zonder schuld), a humanitarian principle, and the principle of legality (the principle of legality), a societal principle. In criminal law, fault (schuld) is a primary concern. Fault is a prerequisite for criminal punishment. However, the capacity to be responsible is not accepted as a general requirement for determining whether a perpetrator can be subject to criminal sanctions. Determining whether or not a person can be held accountable depends largely on the prevailing social circumstances and conditions, including the nature and context of the specific crime committed.

In an effort to protect persons with disabilities, the Government of the Republic of Indonesia signed the CRPD on March 30, 2007, in New York, United States, as a form of effort to protect, respect, promote, and fulfill the rights of persons with disabilities. This agreement was later ratified by Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities (Szmukler et al., 2014; Palmer, 2013; Duffy & Kelly, 2017).

Article 13 of the Convention on the Rights of Persons with Disabilities stipulates that states must ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including during the investigative and other preliminary stages.

In the Law on Persons with Disabilities, protection for persons with disabilities is regulated in Article 9 (Björgvinsson, 2009; Shinekeneva et al., 2022; Pinilla-Roncancio et al. 2022) The rights to justice and legal protection for persons with disabilities include the following rights: (1) equal treatment before the law; (2) recognition as a legal subject; (3) ownership and inheritance of movable or immovable property; (4) control financial matters or appoint someone to represent their interests in financial matters; (5) access to banking and non-banking services; (6) accessibility in judicial services; (7) protection from all pressure, violence, abuse, discrimination, and/or confiscation or expropriation of property rights; (8) selection and appointment of

someone to represent their interests in civil matters inside and outside the court, and protection of their intellectual property rights.

From the provisions above, it can be seen that in legal aspects, persons with disabilities have the right to equal treatment before the law, to obtain accessibility in judicial services, and the right to choose and appoint someone to represent their interests in civil matters inside and outside the court. The aspect of persons with disabilities as victims, protection for which is regulated by Government Regulation Number 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in the Judicial Process. As stipulated in Article 5 paragraph (1) of PP No. 39 of 2020, law enforcement agencies must provide Reasonable Accommodation consisting of services and facilities and infrastructure in the judicial process. Services in terms of reasonable accommodation consist of: (1) non-discriminatory treatment; (2) ensuring a sense of security and comfort; (3) effective communication; (4) providing information regarding the rights of persons with disabilities and developments in the judicial process; (5) providing long-distance audio-visual communication facilities; (6) providing standards for examining persons with disabilities and standards for providing legal services, and providing disability advocates and/or translators.

Referring to the above explanation, legal protection can be defined as the protective efforts undertaken by the government or authorities through a number of existing regulations. In short, legal protection is a function of the law itself, providing protection. Therefore, defendants have several rights provided in court trials, such as the right to be accompanied by legal counsel. Defendants have the right to be accompanied by a lawyer or legal counsel from the beginning of the examination process until the final stage of the trial. Article 56 of the Criminal Procedure Code states that defendants facing a sentence of five years or more must be accompanied by a lawyer. If they cannot afford one, the court must appoint a free legal counsel. This legal assistance aims to help defend the defendant's interests, guarantee the protection of legal rights, and prevent procedural errors and violations of the law.

The right to defend oneself and to present a defense is granted to the defendant, either directly or through the assistance of a lawyer. This includes rejecting the prosecutor's accusations, presenting a defense (plea), providing information related to the accusations, and presenting witnesses who can mitigate the defendant's position (a de charge). The right to present and submit witnesses in court proceedings. The defendant has the right to present defense witnesses and to question witnesses directly from the public prosecutor (the right of confrontation). This right is crucial to ensure a balance between the prosecutor and the defendant, the right to fair evidence, and a fair and unbiased legal process.

The right to an open and fair trial. Except in certain cases, trials must be conducted openly to the public, and the defendant has the right to hear the entire process, raise objections (exception), and participate in direct examination. The right to file legal remedies. If dissatisfied with the court's decision, the defendant has the right to file an appeal to the High Court, file a cassation appeal to the Supreme Court, and file a judicial review (PK) against a decision that has become legally binding. The right to translation. If the defendant does not understand Indonesian, the court is required to provide an official translator so the defendant understands the charges. The convict also has the right to provide testimony freely to the investigator or judge, receive an interpreter, receive legal assistance from one or more legal counsel, and choose their own legal counsel.

### **Implementation of Law Number 8 of 2016 for persons with disabilities who are named as defendants.**

Defendants have several rights, written and guaranteed in the Criminal Procedure Code. These rights, which will be outlined, must also be fulfilled by law enforcement officials during the court process. First, is the right to the presumption of innocence. Based on this right, the defendant is presumed innocent until a court decision declares him guilty legally and convincingly. This principle is affirmed in many legal provisions and is the primary basis for

protecting the defendant's rights. Therefore, this right guarantees the principles of non-judgment before a verdict, fair treatment, and avoidance of stigmatization.

In this regard, the state must have a set of fair and firm legal regulations, law enforcement officials who care about and support people with disabilities, and community inclusion in disability issues. Some regulations related to the right to employment for people with disabilities include: (1) Law Number 4 of 1998 concerning Persons with Disabilities; (2) Law Number 13 of 2003 concerning Manpower; (3) Law Number 19 of 2011 concerning Ratification of the United Nations Convention on the Rights of Persons with Disabilities, and Law Number 8 of 2016 concerning Persons with Disabilities.

The participation of persons with disabilities in the workforce is a humanitarian issue that has been continuously and consistently championed by all countries worldwide. A concrete manifestation of this struggle is the CRPD, signed by countries worldwide, including Indonesia. Thus, the focus of all countries worldwide is no longer focused on the rehabilitation and restoration of the health of persons with disabilities themselves, but rather on respecting, protecting, and fulfilling all their rights.

In terms of law enforcement, individuals with disabilities also have the right to a fair trial, as stipulated in Article 14 of the International Covenant on Civil and Political Rights. This article details procedural guarantees to ensure that the judicial process is conducted properly and fairly. Some specific considerations that must be taken in the judicial process for persons with disabilities include the need to provide different judicial services than for individuals in general. The provision of these services relates to two aspects: physical access and procedural access. Physical access relates to the obligation of judicial institutions to ensure that physical facilities such as courthouses, parking areas, waiting rooms, courtrooms, restrooms, and other public service areas, along with examination documents, indictments, charges, and decisions, are appropriately accessible to persons with disabilities.

The 1945 Constitution of the Republic of Indonesia outlines the ease of employment for persons with disabilities. This is also stipulated in Article 53 paragraph (1) of Law Number 8 of 2016. This regulation is a guarantee provided by the state in accordance with legal provisions relating to ease of employment for persons with disabilities. There are various aspects that negatively impact persons with disabilities, one of which is the lack of information obtained and limited human potential due to limited educational levels. Law Number 8 of 2016 concerning Persons with Disabilities, Article 53, plays a crucial role for persons with disabilities, especially companies that are supposed to employ a person with a disability while providing all necessary conditions and infrastructure capable of supporting performance when carrying out tasks. Efforts need to be made to ensure ease for persons with disabilities, which is realized through the provision of equal opportunities for persons with disabilities, which is essentially a shared obligation between the government, citizens, relatives, and persons with disabilities themselves.

The application of appropriate accommodation was imposed by the relevant legal apparatus such as the Prosecutor, lawyer, panel of judges, and employees at the local court, however, based on decision 146 / PID.SUS / 2025 / PT.MTR, which is an appeal from decision number 43 / PID.SUS.2025 / PN.MTR, with the convict named I Wayan Agus Suartama alias Agus charged with sexual harassment which has been proven guilty in the courtroom, however the defendant's lawyer stated that the Panel of Judges did not apply appropriate accommodation during the criminal trial process, the Defendant did not get a special companion to help communicate with other legal officers, and the defendant did not get procedural adjustments in the form of vocabulary that can be understood by the convict and additional time for the defendant to digest questions given by other legal officers, the defendant was still sentenced appropriately without changing the verdict from decision 43 / PID.SUS / 2025 / PN.MTR during the trial process the defendant still deserves the rights and accommodation needed for transparency on the principle of the Presumption of Innocence in the courtroom.

In carrying out policy implementation there are several indicators, the author focuses on those explained by van Meter and van Horn, so that they are divided into five indicators, namely: (1) Policy Measurement and Objectives. The effectiveness of Bekasi City's policy regarding employment for people with disabilities requires defining its objectives and performance targets. This is measured by the extent to which the basic steps and objectives of the policy are realized. This is guided by Law Number 8 of 2016, Article 53; (2) Resources. These policy resources must also be available to relevant agencies in Bekasi City to facilitate the administration of policy implementation. These policy resources are divided into Human Resources, Technology, and Facilities; (3) Characteristics of Implementing Agencies. The characteristics of implementing agencies are inseparable from the bureaucratic structure. The Bekasi City Social Service, as a bureaucratic actor, must support the policies adopted, thus fostering competency, skills, commitment, and attitudes, resulting in a positive impact from implementing agents on policy implementation and inclusion of people with disabilities; (4) Inter-Organizational Communication and Implementation Activities. Knowing what they will do can be effective if communication is effective. Therefore, every policy decision and law enforcement regulation must be directed (or communicated) to the appropriate HR department. Furthermore, communicated policies must be appropriate, accurate, and consistent

## CONCLUSION

The conduct of the trial process requires adherence to various principles, such as independent justice, equality before the law, the right to self-defense, and openness to the public. These principles are formulated and implemented in the judicial process to create transparency and balance between the suspect and witnesses or victims. There is also the presumption of innocence, which states that a defendant is not presumed guilty until clear evidence is presented during the trial. Protecting the rights of the accused is also crucial to prevent abuse of power by legal authorities, who provide advice and enforce the law impartially. This legal protection must be applied to defendants with disabilities due to their vulnerability to social discrimination. To ensure fair trials, in cases involving disabled convicts, law enforcement officials need to adopt additional measures to accommodate the convict's circumstances. This includes considering transportation needs, providing appropriate assistance, communication facilities, supportive spaces for the convict, providing easily understandable documents appropriate to the type of disability, adjusting procedures, and ensuring accessibility. Disability encompasses various aspects, and therefore law enforcement must address the specific needs of each defendant; this also applies to victims with disabilities. However, based on decision number 146/PID.SUS/2025/PT.MTR, there are still shortcomings in the implementation of appropriate accommodation for disabled convicts, shortcomings in implementing the rights that should be owned by convicts make the criminal justice space not transparent and balanced due to the convict's difficulty in communicating with other law enforcement officers during the trial process, Appeal decision 146/PID.SUS/2025/PT.MTR accepts this criticism and does not change the previously handed down verdict because the defendant has been found guilty due to the evidence provided in the previous trial.

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