

## AN OVERVIEW OF THE LEGAL POWER OF DEAF DISABILITY TESTIMONY AS EVIDENCE IN RAPE CRIMINAL CASES

Oleh

Pitoyo<sup>1</sup>, Herwin Sulistyowati<sup>2</sup>, Erna Wati<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, University of Surakarta, Indonesia

Email: <sup>1</sup>[pitoyo@gmail.com](mailto:pitoyo@gmail.com)

### Article History:

Received: 06-06-2023

Revised: 19-06-2023

Accepted: 23-07-2023

### Keywords:

Disabled Person, Hearing Impaired, Witness, Investigator.

**Abstract:** Law cannot be equated with a machine tool, but the law is loaded with the role played by humans themselves (law enforcement and society). In the success of law enforcement depends on the individual man himself, because it is humans who carry out the law order itself. Since the presence of humans on earth, humans have an important role in the implementation of law enforcement itself, humans who create their own laws then humans must also follow the rules of law. This research method uses literature studies. The type of research carried out is normative legal research, which is research conducted by examining secondary data. Normative legal research in the form of legal norms of laws and regulations that are studied vertically and horizontally.

## PENDAHULUAN

The juridical foundation of the 1945 Constitution is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal vacancies by considering existing rules, which will be amended, or that will be repealed in order to ensure legal certainty and a sense of community justice. Article 1 (3) The State of Indonesia is a state of law where the law is made the commander-in-chief to realize justice and truth in Indonesia. Law is the set or set of rules of life, the order of a society and should be obeyed by the members of the society concerned. All actions must be in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia as the most essential legal basis besides other legal products. The law must always be affirmed in order to achieve the ideals and objectives of the State of Indonesia as stated in the fourth paragraph of the 1945 Constitution.

Not everyone born in the world is created equal; Some people are less than perfect from birth. However, everyone has equal rights regardless of whether they are physically disabled or not. People with disabilities include people who are born imperfect. A person is classified as disabled if they have limbs that are different from others. It is recognized that people with disabilities are able to do things in the same way as others, but in different ways.

More clearly the definition of disability according to the UN Convention On The Rights Of Persons With Disabilities (The UN Convention On The Rights Of Persons With Disabilities). Persons with disabilities as "they" with long-term physical, mental,

intellectual, or sensory impairments whose interaction with various barriers may hinder their full and effective participation in society based on the principle of equality.

The law in Indonesia still regulates the protection of people with disabilities both in terms of legal substance, law enforcement officials, judicial facilities, and legal culture. M. Syafi'ie stated that there are four legal problems that result in the legal system in Indonesia still discriminating against people with disabilities. The four problems are, legal substance that harms human values, law enforcement officials who are not progressive, judicial facilities and infrastructure that are easily accessible, and weak legal culture.

In the situation that a person with a disability can be entangled in a criminal action case, therefore the process of establishing the law is very Peruvian given accessibility both at trial and outside the court starting from the process of obstruction to the process of conviction.

## LITERATURE REVIEW

### A. *Witness*

A witness is someone who has first-hand information about a crime or dramatic event through their senses (health, hearing, smell, touch) and can help ensure important considerations in a crime or incident. A witness who sees an event directly is also known as an eyewitness, witnesses often give testimony in a judicial process.

According to the Code of Criminal Procedure (KUHAP) Article 1 Paragraph (26), "A witness is a person who can provide information for the purposes of investigation, prosecution and trial about a criminal case that he hears himself, sees for himself, and experiences for himself". This indicates that a witness is a person who is directly involved in a criminal case, both as a perpetrator, victim and witness (other than as a witness and victim).

Article 1 Paragraph (27) of the Criminal Procedure Code states that Witnesses are one of the evidence in criminal justice. Despite its important position, the Criminal Procedure Code does not consider that witnesses need to be protected or need to be protected. The protection of witnesses included in the Criminal Procedure Code only includes the protection of the rights of witnesses in a judicial process. This can be seen as follows:

Article 166 essentially says that questions asked by the public prosecutor and legal counsel to the accused or witnesses must not be entanglement.

Article 177 Witnesses are entitled to translators Article 229 Witnesses have the right to be reimbursed for costs incurred for him to appear in court. Witnesses should not be in a state of distress or pressure.

### B. *Witness testimony*

Witness testimony is evidence at trial and is useful in revealing the case of a criminal conviction which will later be used as one of the basis for the judge's consideration to determine whether or not the defendant's actions are proven and the defendant's guilt. Article 1 number 27 of the Code of Criminal Procedure explains that 'witness testimony is one of the evidence in a criminal case in the form of testimony from a witness about a criminal event that he heard himself, saw for himself and experienced himself by

mentioning the reason for his knowledge. While in Article 1 point 28 it is stated that "expert information is information given by a person who has special expertise about the matter necessary to make light of a case for the purpose of examination." Witness testimony is one of the first evidence tools in the first order to show the role of witnesses is very important. The testimony of several witnesses can convince the judge that a crime actually occurred

A witness is a mere human being or an ordinary man. He can deliberately lie, and can also honestly tell things, as if they were true, but not true. A witness must tell things that are past and depend on the memory of each person, what is reliable for the truth, as mentioned and explained by Wirjono Prodjodikoro.

#### C. *Person With Disability*

A person with a disability is a person who has a physical and/or mental disorder, which may interfere with or constitute an obstacle and obstacle for him or her to carry out activities properly.

Along with Indonesia ratifying the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which was later translated into Law no. 19 of 2011, the term persons with disabilities was introduced. The semiloka of the terminology "Persons with Disabilities" in order to encourage ratification of the International Convention on the Rights of Persons with Disabilities was held on 8-9 January 2009, attended by experts (linguistics, socio-cultural, law, human rights/human rights, psychology).

According to the Big Dictionary, Indonesian person is defined as a person who bears (suffers) something. While disability is an Indonesian word derived from the English absorption of disability (plural: disabilities) which means disability or disability.

#### D. *Deaf*

Deaf is someone who experiences a lack or loss of the ability to hear either partially or wholly. Caused by not functioning part or all of the hearing device, so he cannot use the hearing instrument in everyday life which has an impact on life in a complex way. Generally, someone with hearing loss caused by congenital factors will have an impact on the ability to speak, although not always.

The causative factor of deafness is pre-natal deafness, which is deafness that occurs when the child is still in his mother's womb. Saal Birth (natal), which is deafness that occurs when the child is born. Causes After Birth (post-natal), namely deafness that occurs after the child is born by his mother.

#### E. *Criminal Case Review*

Criminal Case Review. People with disabilities are sometimes widely used by certain individuals as the right hand of the main perpetrators of criminal acts given the limitations they have that can be easily deceived. Even if their conditions are used legally, they are always obliged to account for their actions. Seeing the limitations of a person with a disability, the state should wisely participate in providing and accompanying persons with disabilities in the process of legal proceedings. They should receive specific protection against their limitations in order to ensure a sense of justice and to always maintain their mental and psychological state.

The case reported by the complainant is the criminal act of sexually abusing children experienced by the victim on behalf of YY (pr) aged 15 years, committed by suspect XX (lk) 37 years old, on Saturday, August 13, 2022 at around 13.30 WIB the Child

Victim (Sensory Disabilities) was invited out by the Defendant and it turned out that at that time the Child Victim was invited to his house, when he arrived at the Defendant's house at around 23.00 WIB, the Defendant and the Victim's Child rested and chatted and then the Defendant said to the Victim's Child "You are beautiful, I love you, later at 1 o'clock we will have sex (with sign language)", after a short time, when the Defendant and the Victim's Child chatted, the Defendant kissed the lips of the Victim's Child while undressing the Victim's Child until naked and after that the Defendant also took off his own clothes until naked, with the position of the Victim Child below and the Defendant above pressing on the body of the Victim Child then the Defendant inserted his penis into the Victim's body.

## RESULT AND DISCUSSION

People with disabilities, especially deaf people, cannot be separated from the problems that entangle them, especially in the legal field. One of the problems faced by deaf people with disabilities such as in the judicial process is when he becomes a witness where his testimony is still doubtful whether his testimony can be equated with normal people in general, capable or incompetent to be a witness, the difficulty of access to participate in the criminal justice process and whether or not his statement is valid in the criminal justice process.

The strength of the testimony of witnesses with deaf disabilities is based on the provisions that people with deaf disabilities can also access the judicial process and also become witnesses who can explain their statements in the criminal justice process. In accordance with the Code of Criminal Procedure (KUHP). Article 34 Paragraph (1) of Law Number 26 of 2000 concerning Human Rights Courts states: (1) Every victim and witness to a genuine violation of human rights has the right to physical and mental protection from threats, harassment, terror and violence from any party. (2) Protection as referred to in paragraph (1) shall be imposed by law enforcement officials and security forces free of charge. (3) Provisions regarding procedures for the protection of victims and witnesses are further regulated by Government Regulations.

From the limitations of the Law on witnesses and witness statements, it can be explained: (1) The purpose of witnesses giving testimony is for the purposes of investigation, prosecution, and trial. This provision also contains provisions that witnesses are required and give testimony at 2 levels, namely at the level of investigation and at the level of prosecution at the court hearing.

In the view of the law, everyone, including people with deaf disabilities, is equal to normal people in general who have the same rights and opportunities, this equality which is contained in Article 5 of Law Number 19 of 2011 concerning Ratification. Based on these provisions, a person with a deaf disability can also access the investigation process and also become a witness who can explain his statement in the investigation process.

Human rights are basic rights that are inherently inherent in human beings. As a basic right possessed by every human being, human rights cannot be deprived, taken away, abused, or reduced in fulfillment by others, human rights play an important role in maintaining human existence as social beings and individual beings who have dignity and dignity. The form of human rights includes a person's right to life, the right to obtain a

sense of security, social and political rights, the right to be heard.

From this case, it can be analyzed that deaf people with disabilities in Sukoharjo who experienced the incident began with social media. Reporting the case by the victim to the Sukoharjo Police until the decision of the Sukoharjo District Court judge.

Related to the mentoring process for persons with disabilities. When dealing with the law, there are several obstacles and the problems encountered include: (1) there are no laws and regulations governing law and justice that has a gender and disability perspective. (2) there is no mechanism for handling women or girls with disabilities. (3) there is no policy that provides expert witnesses, translators, and visum psychiatric, disability-related examinations. (4) the state does not provide referral systems related to experts disability field.

## CONCLUSION

In line with the description mentioned above, the author concludes that the government should facilitate people with disabilities in the form of opening formal education for underprivileged people with disabilities so that there is no social gap of self-restriction between those with special needs and norm people! So that these people with disabilities are not vulnerable to adversity caused by not having the confidence that they are able to be the same as normal people and there is no limit in the form of reasons for inequality as well as men and women we all have the same rights and obligations legally, because if people with deaf disabilities receive formal education in the form of understanding academic learning, of course it can refer to the quality of the people persons with disabilities, In addition, people with disabilities can learn to communicate using sign language taught by teachers where people with disabilities get formal education, so that people with disabilities can have the same qualities as normal people in general. Please note that our country is one of the countries that has a large population of us with special needs which we often call people with disabilities. Thus, persons with disabilities can be equal before the law so that what is said by witnesses or victims in the investigation process of deaf persons with disabilities is successful and equal to the testimony of normal people in general.

## REFERENCES

- [1] Alaysius Wisnubroto, (2009), Teknis Persidangan Pidana. *Penerbil Universitas Atma Jaya, Yogyakarta*, him 9
- [2] Ali, M. (2022). Dasar-dasar hukum pidana. Sinar Grafika.
- [3] Andi Hamzah, (2012). Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta, hlm. 262
- [4] Arief, B. N. (2010). Perbandingan hukum pidana.
- [5] Asyhabuddin, A. (2008). Difabilitas dan Pendidikan Inklusif: Kemungkinannya di STAIN Purwokerto. *INSANIA: Jurnal Pemikiran Alternatif Kependidikan*, 13(3), 406-519.
- [6] Dapartemen Pendidikan Nasional, (2008), Kamus Besar Bahasa Indonesia Pusat Bahasa , Edisi Ke Empat. Gramedia, Jakarta.
- [7] Darwan Prinst, (1998). Hukum Acara Pidana Dalam Praktik, Jakarta; Djambatan
- [8] Eddyono, S. W., & Kamilah, A. G. (2015). Aspek-Aspek Criminal Justice Bagi Penyandang Disabilitas. Jakarta: Institute for Criminal Justice Reform.
- [9] Gunarto, M. P. (2009). Sikap memidana yang berorientasi pada tujuan pemedanaan.



- Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada, 21(1), 93-108.
- [10] H. Riduan Syahrani. (2009). Buku Materi Dasar Hukum Acara Pidana, PT. Citra Aditya Bakti Bandung, Cet. V.
  - [11] H.B. Sutopo. (2006). Metodologi Penelitian Kualitatif (Surakarta: UNS Press, 2006), h. 93
  - [12] H.B. Sutopo. (2006). Metodologi Penelitian Kualitatif (Surakarta: UNS Press, 2006), h. 93
  - [13] Hamzah, A. (2017). Hukum Pidana Indonesia. Sinar Grafika.
  - [14] Hari Sasangka dan Lily Rosita, (2003). Hukum Pembuktian Dalam Perkara Pidana, Mandar Maju, Bandung, hlm.24.
  - [15] Hasil pendampingan Majelis Hukum dan HAM Pimpinan Wilayah Aisyiyah Jawa Tengah, (2018).
  - [16] 'http://Id/mAVikipedia-Org/wiki/Disabilitas- Wikipediabahasaindonesia/. diakses pada 01 Mei 2023.
  - [17] http://Id/m/Wikipedia- Org/ wiki/ saksi/. diakses pada tanggal 01 Mei 2023
  - [18] Indonesia, Undang-Undang tentang Hukum Acara Pidana, UU No. 8 Tahun 1981, LN No. 76, TLN No. 3258, Pasal 54-56.
  - [19] Indonesia, Undang-Undang tentang Perlindungan Saksi dan Korban, UU No. 13 Tahun 2006, LN No. 64, TLN No. 4635, Pasal 5 ayat (1).
  - [20] Ismawansa, I., Ablisar, M., Sunarmi, S., & Mulyadi, M. (2021). Penyelidikan Dan Penyidikan Tindak Pidana Pencabulan Terhadap Anak Tuna Rungu (Studi Pada Polres Langkat). Law Jurnal, 1(2), 68-93.
  - [21] Julijanto, M. (2018). Perempuan Difabel Berhadapan Hukum. Muwazah, 10(2), 183-197.
  - [22] Kasiyati, S. (2016). Problema Perlindungan Anak Di Indonesia (Studi Pendampingan Majelis Hukum Dan Ham Pimpinan Wilayah Aisyiyah Jawa Tengah). Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum, 1(1).
  - [23] Kawengian, T. A. (2016). Peranan Keterangan Saksi Sebagai Salah Satu Alat Bukti Dalam Proses Pidana Menurut KUHAP. Lex Privatum, 4(4).
  - [24] M. Syafi'ie dan Purwanti, (2014), Potref Dtfabel Berhadapan dengan Hukum Negara, Sigap, Yogyakarta, him 4
  - [25] Makarao Mohammad Taufi dan Suhasril, (2010), Hukum Acara Pidana Dalam Teori Praktik, Ghalia Indoneisa, Bogor, him 50.
  - [26] Moeljatno, S. H. (2002). Asas-asas Hukum Pidana. Rineka Cipta, Jakarta.
  - [27] Novianti, D. (2013). KEBERMAKNAAN HIDUP PENYANDANG DISABILITAS FISIK YANG BERWIRAUSAHA: Penelitian Fenomenologi Pada Tiga Orang Penyandang Disabilitas Fisik yang Berwirausaha di Kota Bandung (Doctoral dissertation, Universitas Pendidikan Indonesia).
  - [28] Pengadilan Negeri Sukoharjo. (2023).
  - [29] Purwoleksono, D. E. (2014). Hukum Pidana.
  - [30] Putusan Pengadilan Sukoharjo (2023).
  - [31] R. Soesilo, 19S2, Hukum Acara Pidana (Prosedur Penyelesaian Perkara Pidana Menurut KUHAP Bagi Penegak Hukum). Politea. Bogor, him 5
  - [32] Rijali, A. (2019). Analisis data kualitatif. Alhadharah: Jurnal Ilmu Dakwah, 17(33), 81-95.
  - [33] Ro'fah, Teori Disabilitas: Sebuah Literatur Review, dalam Jurnal Difabel Volume 2 No.2/2015, (Yogyakarta: SIGAB, 2015), Hlm. 137
  - [34] Ryandani, O. (2015). Pemaknaan Orang Tua Terhadap Anak Inklusi (Doctoral dissertation, UNIVERSITAS AIRLANGGA).

- 
- [35] Sheila A.M. McClean & Laura Williamson, *Impairment and Disability: Law and Ethics at the Beginning and End of Life*, (Oxon: Routledge & Cavendish, 2007), Hlm. 13
  - [36] Siswono Yudo Husodo, *Menuju Welfare State*, Kumpulan Tidsan tentang kehangasaan, Ekonomi dan Poiitik, Bans Baru, Jakarta 209, him 5.
  - [37] Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.
  - [38] Soetodjo, W. (2006). *Hukum pidana anak*.
  - [39] Sulistyowati Irianto, (2006), *Perempuan Di Persidangan Pemanlauan Peradilan Berspektif Perempuan*, Yayasan Obor Indonesia, Jakarta, him 224.
  - [40] Syafi'ie, M. (2015). *Sistem Hukum di Indonesia Diskriminatif kepada Difabel*. Jurnal Difabel adalah media ilmiah yang diterbitkan oleh Sasana Integrasi dan Advokasi Difabel (SIGAB). Jurnal Difabel akan memublikasikan hasil penelitian dan tulisan-tulisan ilmiah yang, 161.
  - [41] Tim Pengembangan Umu Pendidikan FIP-UPI, Loc.Cit, him. 50
  - [42] Tomalili, R. (2019). *Hukum Pidana*. Deepublish.
  - [43] Undang-Undang Nomor 4 Tahun 1997 tentang Penyandang Cacat
  - [44] Undang-Undang Dasar Republik Indonesia Tahun 1945 Amandemen ke- empat
  - [45] Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi Dan Korban
  - [46] Undang-Undang Nomor 19 Tahun 2011 tentang Pengesahan Convention on The Rights of Person with Disabilities (Konvensi Hak-Hak Penyandang Disabilitas)
  - [47] Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan Atas Undang- Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban
  - [48] Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia
  - [49] Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana
  - [50] Usfa, F. (2006). *Pengantar Hukum Pidana*.
  - [51] Vudiman, (2013), *Konflik Sosial dan Anarkisme* Andi Offset, Yocyakarta, him 187
  - [52] Wajdu, F. (2019). *Pemenuhan Hak-Hak Kaum Difabel Dalam Kerangka Hak Azasi Manusia*. Palita: Journal of Social Religion Research, 4(2), 137-160.
  - [53] Wawancara Harjanti paralegal MHH PWA Jateng, (2016).
  - [54] Widinarsih, D. (2019). *Penyandang disabilitas di indonesia: perkembangan istilah dan definisi*. Jurnal Ilmu Kesejahteraan Sosial, 20(2), 127-142.
  - [55] Wirjono Prodjodikoro, *Hukum Acara Pidana di indonesia*, PT Sumur, Bandung, (1970), hlm. 7.
  - [56] Yahya Harahap, (2006), *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*, Sinar Grafika, Jakarta, him 42
  - [57] Zed, M. (2008). *Metode penelitian kepustakaan*. Yayasan Pustaka Obor Indonesia.

HALAMAN INI SENGAJA DIKOSONGKAN