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When the Law Fails to Protect Children with Disabilities from Sexual Abuse

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Original Article

Abstract

Sexual abuse of children with disabilities represents a particularly complex form of sexual violence and poses significant challenges to the criminal justice system in Indonesia. This study aims to analyze the differences in the application of criminal law to perpetrators of child molestation against children with disabilities and those without, to assess the extent to which national legal frameworks have incorporated the principle of substantive justice for victims with disabilities, and to identify the key factors contributing to weak legal protection—both in terms of legal substance, institutional structure, and socio-cultural context. The study employs a normative legal approach, utilizing doctrinal analysis of statutory regulations alongside selected case studies. The findings reveal that, despite the existence of relevant legal instruments—such as Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, and Law No. 12 of 2022 on Sexual Violence—legal protections for children with disabilities remain largely formalistic and fail to adequately address the specific needs of these vulnerable victims. The study concludes by emphasizing the urgent need for a fair and substantive reformulation of laws and policies, as well as a comprehensive restructuring of the criminal justice system to make it more responsive and inclusive toward vulnerable populations.

Keywords: *Children with Disabilities, Substantive Justice, Sexual Violence*

Abstrak

Pencabulan terhadap anak penyandang disabilitas merupakan bentuk kejahatan seksual yang kompleks dan menimbulkan tantangan serius dalam sistem hukum pidana di Indonesia. Penelitian ini bertujuan untuk menganalisis perbedaan penerapan hukum pidana terhadap pelaku pencabulan anak disabilitas dan non-disabilitas, mengkaji sejauh mana hukum nasional telah mengakomodasi prinsip keadilan substantif bagi korban disabilitas, serta mengidentifikasi faktor-faktor yang menyebabkan lemahnya perlindungan hukum, baik dari aspek substansi, struktur, maupun kultur. Metodologi yang digunakan adalah pendekatan yuridis normatif dengan analisis terhadap peraturan perundang-undangan dan studi kasus. Hasil penelitian menunjukkan bahwa meskipun telah terdapat regulasi seperti UU No. 35 Tahun 2014, UU No. 8 Tahun 2016, dan UU No. 12 Tahun 2022, perlindungan hukum terhadap anak disabilitas masih bersifat formalistik dan belum responsif terhadap kebutuhan khusus korban. Kesimpulan penelitian menegaskan perlunya reformulasi regulasi dan kebijakan yang adil serta penataan ulang sistem peradilan pidana yang lebih adaptif terhadap kelompok rentan.

Kata kunci: *Anak Disabilitas, Keadilan Substantif, Kekerasan Seksual*

1. INTRODUCTION

Children are essential actors in a nation's development, including in Indonesia, as they represent the next generation and play a strategic role in ensuring the continuity of national aspirations. Within the framework of a legal state grounded in Pancasila and the 1945 Constitution of the Republic of Indonesia, the recognition of children's rights has received special emphasis. This is reflected in Article 28B, paragraph (2) of the 1945 Constitution, which states that "every child has the right to live, grow, and develop, and has the right to protection from violence and discrimination." This constitutional provision serves as a normative foundation that obligates the state to protect children from all forms of rights violations, including sexual crimes that can cause profound psychological and social harm to victims.

Furthermore, the protection of children with disabilities necessitates a more affirmative and inclusive approach. Children within this group not only face the same risks of sexual violence as other children but also experience compounded vulnerability due to physical, mental, and/or sensory impairments. Such vulnerabilities are often exploited by perpetrators who perceive children with disabilities as weak and less capable of resisting abuse or providing effective legal testimony. Consequently, many cases of sexual violence against children with disabilities remain unreported or fail to receive just legal resolution.

Although Indonesia has enacted several legal instruments—such as Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, and Law No. 12 of 2022 on the Crime of Sexual Violence (TPKS)—the application of these laws to cases involving children with disabilities remains problematic. A significant issue that is often overlooked is the absence of specific criminal law provisions that distinguish the handling of cases involving disabled versus non-disabled child victims, despite the fact that children with disabilities have unique needs that require equitable yet proportional legal protection.

Moreover, discrepancies in the implementation of these laws contribute to limited access to justice for children with disabilities. Insufficient legal aid services, inadequate training for law enforcement personnel in handling vulnerable victims, and pervasive social stigma toward persons with disabilities further aggravate the situation. Law enforcement practices that prioritize formal neutrality, without accounting for victims' specific vulnerabilities, risk undermining the principle of substantive justice that underpins the Pancasila legal philosophy.

Indonesia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD) through Law No. 19 of 2011 signifies its commitment to upholding the rights of persons with disabilities, including the right to be free from violence and exploitation. Nevertheless, this normative commitment has yet to be fully translated

into concrete criminal policy measures that ensure adequate protection for children with disabilities who are victims of sexual abuse.

The legal protection of children with disabilities who are victims of sexual violence has increasingly drawn scholarly attention. Prior research has indicated that while various regulations aim to offer protection, the implementation and effectiveness of these measures face substantial challenges. Arianto explores the issue of criminal sanctions against perpetrators of sexual violence targeting children with disabilities, noting that although Law No. 35 of 2014 generally includes provisions for children with disabilities, it lacks explicit sanctions tailored to such cases.¹ Similarly, Mukmin highlights that sexual violence against children with disabilities—particularly when perpetrated by biological parents—constitutes a form of extreme cruelty that jeopardizes the future of the nation's generations. His study underscores the absence of specific legal provisions and differentiated criminal sanctions for such cases compared to those involving non-disabled children.²

A study by Kairupan confirms that women and children with disabilities continue to face both legal and social discrimination when they become victims of violence. The author underscores the urgent need for specialized service units established by the central and local governments, as well as inclusive legal aid tailored to the specific vulnerabilities of this population.³ In a similar vein, Puspa et al. demonstrate that although Law No. 8 of 2016 and Law No. 12 of 2022 provide a legal framework for protecting persons with disabilities from sexual violence, the implementation of these laws is hindered by persistent social stigma, limited accessibility, and low levels of awareness among the public and law enforcement personnel.⁴

Sari et al. reveal that the rising number of sexual violence cases against children with disabilities has not been met with corresponding, detailed, and actionable legal regulations. Although Law No. 35 of 2014 offers general protections, the researchers argue that existing legal provisions fail to address the specific needs of this vulnerable group.⁵ Similarly, Pratama emphasizes that children with disabilities are often perceived as helpless and, consequently, are more susceptible to becoming targets of sexual

¹ Iqbal Bimo Nur Arianto, "Perlindungan Anak Penyandang Disabilitas Terhadap Kekerasan Seksual," *Jurnal Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 198–203, <https://doi.org/10.46306/rj.v2i1>.

² Mukmin Zakie, "Konsepsi Hak Menguasai Oleh Negara Atas Sumberdaya Agraria," *Jurnal Hukum Ius Quia Iustum* 12, no. 29 (2016): 111–127, <https://doi.org/10.20885/iustum.vol12.iss29.art9>.

³ Stella Gita Kairupan, "Perlindungan Hukum Terhadap Perempuan Dan Anak Penyandang Disabilitas Yang Menjadi Korban Kekerasan," *Lex Administratum* 9, no. 2 (2021): 35–45, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/33174>.

⁴ Perwita Chandra Puspa et al., "Perlindungan Hukum Terhadap Korban Pelecehan Seksual Kepada Penyandang Disabilitas Dalam Lingkungan Masyarakat," *Terang: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 2, no. 1 (2025): 20–30, <https://doi.org/10.62383/terang.v2i1.737>.

⁵ Nadila Purnama Sari, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Perlindungan Hukum Terhadap Anak Penyandang Disabilitas Sebagai Korban Kekerasan Seksual," *Jurnal Preferensi Hukum* 2, no. 2 (2021): 359–364, <https://doi.org/10.22225/jph.2.2.3338.359-364>.

violence. He advocates for a model of legal protection that is both affirmative and grounded in the principles of substantive justice.⁶

A study conducted by Subastian and Rosnawati in Sidoarjo Regency, using a normative legal approach, found that while Law No. 35 of 2014 recognizes the need to protect children with disabilities, it does not explicitly define sexual violence as a distinct violation against this demographic. The study further highlights the necessity of developing more context-sensitive local regulations to ensure the safety and well-being of these children.⁷ Tjolleng et al. expand on this discourse by situating the protection of children with disabilities within the broader framework of international human rights, particularly the Convention on the Rights of Persons with Disabilities (CRPD). They conclude that despite Indonesia's ratification of various international instruments, the domestic implementation of legal protections for children with disabilities remains minimal and inconsistent.⁸ Iqbal and Indriani argue that sexual violence against persons with disabilities constitutes a serious human rights violation and warrants more severe legal repercussions than similar crimes involving non-disabled victims. They propose that Indonesia's national criminal law should be more responsive to the heightened vulnerability of individuals with disabilities when formulating sanction provisions.⁹

Collectively, these studies suggest that while national and international legal frameworks exist to support the protection of children with disabilities from sexual violence, there is still a notable absence of specific legal provisions imposing differentiated or more severe penalties for perpetrators of such crimes against this group. Furthermore, current forms of affirmative legal protection remain largely normative, lacking tangible support in key legal processes such as investigation, prosecution, and adjudication.

Given these gaps, there is an urgent need to establish a legal system that is responsive to the unique needs of children with disabilities. Such a system must adapt its protective and enforcement mechanisms to the physical, psychological, and social vulnerabilities of this population. This includes ensuring their recognition as equal legal subjects, the provision of effective legal aid, the availability of alternative communication methods, and protection from discrimination throughout the criminal justice process.

Although numerous studies have explored legal protections for children with disabilities who are victims of sexual violence, most have remained within the normative

⁶ Seno Widya Pratama, "Perlindungan Hukum Terhadap Anak Penyandang Disabilitas Korban Pemerkosaan," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 2, no. 2 (2024): 243–57, <https://doi.org/10.51903/hakim.v2i2.1777>.

⁷ Perta Wida Subastian and Emy Rosnawati, "Legal Protections for Disabled Child Victims of Sexual Violence in Sidoarjo, Indonesia," *Academia Open* 8, no. 1 (2023), <https://doi.org/10.21070/acopen.8.2023.6198>.

⁸ Arfah Tjolleng et al., "Perlindungan Ham Bagi Anak Penyandang Disabilitas Dari Perlakuan Pelecehan Seksual," *Innovative: Journal of Social Science Research* 5, no. 1 (2025): 2149–2167, <https://doi.org/10.31004/innovative.v5i1.17773>.

⁹ Muhamad Iqbal and Iin Indriani, "Hukum Dalam Tantangan Perlindungan Penyandang Disabilitas Terhadap Kekerasan Seksual," *Pamulang Law Review* 7, no. 1 (2024): 112–119, <https://doi.org/10.32493/palrev.v7i1.43288>.

legal domain. Few have critically examined disparities in criminal law enforcement between cases involving disabled and non-disabled children, particularly with respect to recognizing vulnerability and ensuring equitable legal treatment. The originality of this study lies in its explicit focus on the differential treatment of perpetrators of sexual violence against children with disabilities and the extent to which Indonesian criminal law ensures substantive justice for these victims. This study aims to:

- 1) Analyze the disparities in the application of criminal law to perpetrators of sexual abuse against children with disabilities compared to those involving non-disabled victims, based on prevailing legal instruments in Indonesia;
- 2) Assess the extent to which national legislation—specifically Law No. 35 of 2014, Law No. 8 of 2016, and Law No. 12 of 2022—has incorporated the principles of substantive justice for children with disabilities who are victims of sexual violence; and
- 3) Identify the key factors contributing to weak legal protection in such cases, including deficiencies in legal substance, the structure of law enforcement, and prevailing socio-cultural norms.

2. RESEARCH METHODOLOGY

This study employs a normative legal approach combined with a descriptive qualitative method, beginning with an analysis of relevant statutes, legal doctrines, and jurisprudence. This approach was selected because the primary focus of the research is to examine the legal protection afforded to children with disabilities who are victims of sexual abuse, and to assess the extent to which existing legal norms provide justice and equal protection for this vulnerable group. The study is descriptive-analytical in nature, aiming to systematically outline applicable legal provisions while identifying and analyzing normative gaps in their implementation.

The data used in this study are entirely secondary in nature and are categorized into three types of legal materials. First, primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, Law No. 12 of 2022 on Sexual Violence Crimes (TPKS), the Convention on the Rights of Persons with Disabilities (CRPD) ratified by Law No. 19 of 2011, the Indonesian Criminal Code (KUHP), and relevant judicial decisions. Second, secondary legal materials consist of textbooks, peer-reviewed journal articles, academic writings, and expert opinions that discuss the protection of children and other vulnerable groups. Third, tertiary legal materials include legal dictionaries and legal encyclopedias used to support the conceptual and terminological interpretations throughout the study.

Data analysis is conducted qualitatively through the application of three key legal research methods: the statute approach, the conceptual approach, and a limited comparative approach. Legal norms are critically evaluated and then contextualized by linking them with actual legal practices in the field, in order to identify normative gaps, inconsistencies, and areas where criminal policy reform is necessary. The validity of the data is ensured by relying solely on authoritative legal sources and academically credible literature, thereby grounding the research not only in formal legal analysis but also in the socio-legal realities faced by children with disabilities.

3. RESEARCH RESULT AND DISCUSSION

3.1. The Implementation of Criminal Law Against Perpetrators of Sexual Abuse of Children with and Without Disabilities

This study seeks to analyze and evaluate the differential application of criminal law to perpetrators of sexual abuse against children with disabilities compared to non-disabled children, based on prevailing legal provisions in Indonesia. The primary focus is to identify regulatory and implementation gaps within the criminal justice system regarding this vulnerable group and to propose normative solutions to ensure equal justice and protection. An analysis of the Indonesian Criminal Code (KUHP) and relevant statutory frameworks reveals that criminal law provisions in Indonesia generally address the offense of child sexual abuse. For instance, Articles 81 and 82 of Law No. 35 of 2014 on Child Protection impose severe penalties on perpetrators of sexual violence against children, including additional sanctions such as chemical castration and public disclosure of the offender's identity.

However, in cases involving child victims with disabilities, there are no specific legal provisions that explicitly mandate enhanced protection or harsher sentencing in light of the victim's heightened vulnerability. While Law No. 8 of 2016 on Persons with Disabilities clearly affirms the state's obligation to protect persons with disabilities from all forms of violence, exploitation, and sexual harassment, it falls short in mandating a fair and accommodating legal process that accounts for the limitations associated with disability.

The findings of this study suggest that, although general legal protections exist, Indonesia's criminal law framework fails to differentiate substantively between disabled and non-disabled child victims. This lack of differentiation undermines the effectiveness of legal protections for groups requiring special legal recognition and accommodation. The study identifies a significant normative gap in the application of criminal law to perpetrators of sexual abuse against children with disabilities. While general provisions criminalize such offenses, they do not adequately adjust the legal response to address the specific needs and vulnerabilities of disabled child victims. The law, while formally neutral, fails to realize the demands of substantive justice for vulnerable groups.

Additionally, the legal process is often inaccessible and non-accommodating to children with disabilities—from the initial stages of reporting and witness examination to the trial proceedings. Many child victims with disabilities face communication barriers, lack professional assistance, and encounter a legal infrastructure that is not inclusive. These conditions frequently result in perpetrators evading accountability or receiving penalties that are disproportionate to the severity of the offense.

These findings align with those of Puspa et al., who note that despite the existence of regulatory frameworks such as Law No. 8 of 2016 and the Law on Sexual Violence Crimes (TPKS), practical implementation is hindered by low public awareness and inadequate, non-inclusive legal infrastructure.¹⁰ Similarly, Kairupan underscores the necessity of dedicated service units and legal support mechanisms for child victims with disabilities to prevent systemic injustice throughout legal proceedings.¹¹ Furthermore, studies by Arianto and Mukmin highlight the absence of explicit sentencing enhancements for perpetrators of sexual abuse against children with disabilities.¹² Current legal provisions remain general and do not reflect the differentiated vulnerabilities of victims, despite the fact that disability status should function as an aggravating factor in criminal sentencing.

The study concludes that the principle of formal justice, as currently applied in the Indonesian criminal justice system, has not succeeded in achieving substantive justice for child victims with disabilities. In the context of modern criminal law, justice should not only be assessed based on equal treatment but also by ensuring equitable outcomes and protections for groups with special vulnerabilities.¹³ From a retributive justice perspective, perpetrators of sexual violence against children with disabilities should receive harsher penalties due to the compounded harm and trauma suffered by victims.¹⁴ Conversely, from a rehabilitative standpoint, the current legal system lacks adequate provisions for psychosocial rehabilitation of victims, who often experience

¹⁰ Puspa et al., “Perlindungan Hukum Terhadap Korban Pelecehan Seksual Kepada Penyandang Disabilitas Dalam Lingkungan Masyarakat.”

¹¹ Kairupan, “Perlindungan Hukum Terhadap Perempuan Dan Anak Penyandang Disabilitas Yang Menjadi Korban Kekerasan.”

¹² Arianto, “Perlindungan Anak Penyandang Disabilitas Terhadap Kekerasan Seksual”; Ahmad Mukmin, “Perlindungan Hukum Bagi Anak Penyandang Disabilitas Sebagai Korban Pencabulan Oleh Orang Tua,” *Dinamika: Jurnal Ilmiah Hukum* 26, no. 3 (2020): 381–94, <https://jim.unisma.ac.id/index.php/jdh/article/view/5482>.

¹³ Zainal Abidin Pakpahan, “Kepastian Hukum Atas Hak Penyandang Disabilitas Sebagai Warga Negara Dalam Mendapatkan Pekerjaan Di Indonesia,” *Jurnal Warta Dharmawangsa* 18, no. 2 (2024): 379–98, <https://doi.org/10.46576/wdw.v18i2.4439>; Rodliyah Rodliyah, Widodo Dwi Putro, and Cahyowati Cahyowati, “Perlindungan Hukum Bagi Perempuan Dalam Sistem Peradilan Pidana Di Indonesia,” in *Prosiding Sainstek*, vol. 3, 2021, 237–60, <https://jurnal.lppm.unram.ac.id/index.php/prosidingsaintek/article/view/228>.

¹⁴ Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010); Syarif Saddam Rivanie et al., “Perkembangan Teori-Teori Tujuan Pemidanaan,” *Halu Oleo Law Review* 6, no. 2 (2022): 176–188, <https://doi.org/10.33561/holrev.v6i2.4>.

compounded trauma resulting from both the criminal act and the exclusionary nature of the legal process.¹⁵

These findings underscore the urgent need for a comprehensive reformulation of Indonesia's criminal policy—spanning regulatory frameworks (substantive law), procedural mechanisms (procedural law), and implementation practices within law enforcement institutions. The development of specific legislation (*lex specialis*) that imposes enhanced criminal sanctions on perpetrators of sexual abuse against children with disabilities would serve as an explicit affirmation of the state's commitment to upholding the rights of persons with disabilities, as mandated by the Convention on the Rights of Persons with Disabilities (CRPD) and Article 28B of the 1945 Constitution of the Republic of Indonesia. This study affirms the following key conclusions:

- 1) There is no significant differentiation in the regulation or application of criminal sanctions between perpetrators of sexual abuse against children with disabilities and those against non-disabled children. The existing legal provisions remain general in nature and fail to recognize disability status as an aggravating factor in sentencing.
- 2) The criminal justice system in Indonesia remains largely inaccessible and non-accommodative for persons with disabilities. Procedural shortcomings—including inadequate examination protocols, limited access to legal aid, and non-inclusive courtroom infrastructure—undermine the effectiveness of legal protections and increase the risk of re-victimization for child victims with disabilities.
- 3) The implementation of existing legal provisions continues to face both structural and cultural barriers, such as insufficient awareness among law enforcement personnel, societal stigma against persons with disabilities, and the lack of adequate facilities during the reporting and judicial processes.
- 4) There is a pressing need for normative and institutional legal reform, particularly through the amendment of existing legislation—such as the Child Protection Law and the Law on Sexual Violence Crimes (TPKS)—to incorporate explicit provisions concerning the protection of and penalties for crimes against children with disabilities.
- 5) Criminal justice reform must also include targeted training for law enforcement officers, the expansion of inclusive legal aid services, and the provision of accessible communication tools and facilities to ensure meaningful participation of disabled victims throughout the legal process.

¹⁵ Faidatul Hikmah and Rio Armanda Agustian, "Konvergensi Konsep Retribusi Dan Rehabilitasi Dalam Filsafat Hukum Pidana Kontemporer Indonesia," *Crepido: Jurnal Mengenai Dasar-Dasar Pemikiran Hukum: Filsafat Dan Ilmu Hukum* 5, no. 2 (2023): 217–28, <https://doi.org/10.14710/crepido.5.2.217-228>.

3.2. Substantive Justice Principles for Children with Disabilities as Victims of Sexual Violence in the Context of National Law

This study seeks to examine the extent to which Indonesian national law—through legal instruments such as Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, and Law No. 12 of 2022 on Sexual Violence Crimes (TPKS)—has incorporated the principles of substantive justice in providing legal protection to children with disabilities who are victims of sexual violence. The focus lies in assessing both the normative and practical effectiveness of these three legal frameworks in ensuring protection, access to justice, and respect for the dignity of vulnerable groups.

Normatively, these three legal instruments offer a regulatory framework for the protection of children, persons with disabilities, and victims of sexual violence. However, there are notable differences in their orientation and degree of accommodation of substantive justice principles. First, Law No. 35 of 2014 on Child Protection provides broad protections against violence, exploitation, and abuse. Nevertheless, it lacks specific provisions that distinguish or reinforce protections for children with disabilities, who require a more affirmative and targeted legal response due to their heightened vulnerability.

Second, Law No. 8 of 2016 on Persons with Disabilities represents a significant advancement in the recognition of the rights of persons with disabilities, including children. The law explicitly affirms the right to be free from violence, exploitation, and discrimination. However, its role within the domain of criminal law enforcement remains largely declarative, as it does not comprehensively regulate operational mechanisms within the criminal justice process, particularly in terms of procedural accommodation and victim support.

Third, Law No. 12 of 2022 on Sexual Violence Crimes marks substantial progress by explicitly recognizing victims with multiple vulnerabilities, including persons with disabilities. This law stipulates stringent criminal sanctions and regulates the provision of support services, legal aid, and psychosocial rehabilitation. Despite this normative progress, challenges persist in the consistency of implementation and coordination among law enforcement agencies and auxiliary institutions.

The findings of this study indicate that while legal instruments exist to safeguard children and persons with disabilities who are victims of sexual violence, the principle of substantive justice has not been fully operationalized. These laws have not been systematically harmonized to ensure differentiated and special treatment for children with disabilities throughout the criminal legal process—particularly in the stages of reporting, investigation, prosecution, and sentencing.

Substantive justice, by its nature, requires unequal treatment for unequally situated individuals—recognizing and addressing structural disadvantages. However, Indonesia's legal system remains largely rooted in formal justice principles, applying

equal treatment to all parties without sufficiently accounting for the distinct circumstances of child victims with disabilities. As a result, the protections afforded under the law often prove ineffective in practice, failing to respond to the real needs of those who are most vulnerable.

This study supports the findings of Kairupan, who asserts that although a legal foundation exists for the protection of children with disabilities, its implementation remains incomplete, and law enforcement officers lack the necessary inclusive competencies.¹⁶ Similarly, research by Puspa et al. reveals that persons with disabilities—including children—encounter severe obstacles in accessing justice due to communication barriers, societal stigma, and the absence of adaptive legal infrastructure.¹⁷ Mukmin argues that the provisions under the Child Protection Law and the Law on Persons with Disabilities do not prescribe specific or enhanced sanctions for perpetrators of sexual violence against children with disabilities.¹⁸ Arianto further critiques the weak implementation of legal protections for disabled children, despite the existence of general legal safeguards.¹⁹

Unlike previous studies, this research adopts an integrated approach by comparatively analyzing legal substance, institutional enforcement structures, and legal culture as interdependent components of a unified legal system. The goal is to demonstrate that these elements must function cohesively to achieve substantive justice. Based on the findings presented, it can be concluded that Indonesian national law, while providing a formal legal framework, has not effectively internalized the principle of substantive justice in its protection of children with disabilities who are victims of sexual violence. The presence of affirmative provisions in Law No. 8 of 2016 and the Sexual Violence Crimes Law (TPKS Law) is insufficient unless accompanied by a concrete, adaptive implementation mechanism responsive to the unique needs of child victims.

For example, in several documented cases, the examination of children with disabilities has been conducted without the assistance of trained professionals, leading to the dismissal or devaluation of the victims' testimonies in court. This constitutes a form of structural re-victimization, wherein the legal system compounds the suffering of victims by failing to facilitate the disclosure of facts in an accessible and supportive manner.²⁰ Such shortcomings illustrate the failure to realize the principle of access to

¹⁶ Kairupan, "Perlindungan Hukum Terhadap Perempuan Dan Anak Penyandang Disabilitas Yang Menjadi Korban Kekerasan."

¹⁷ Puspa et al., "Perlindungan Hukum Terhadap Korban Pelecehan Seksual Kepada Penyandang Disabilitas Dalam Lingkungan Masyarakat."

¹⁸ Mukmin, "Perlindungan Hukum Bagi Anak Penyandang Disabilitas Sebagai Korban Pencabulan Oleh Orang Tua."

¹⁹ Arianto, "Perlindungan Anak Penyandang Disabilitas Terhadap Kekerasan Seksual."

²⁰ Chazizah Gusnita, "Reviktimisasi Perempuan Korban Eksploitasi Seksual Revenge Porn Dan Blackmail Dalam Relasi Pacaran," *Ikraith-Humaniora: Jurnal Sosial Dan Humaniora* 8, no. 2 (2024): 124–32, <https://doi.org/10.37817/ikraith-humaniora.v8i2.3107>; David Brain Siregar, Juanrico Alfaramona Sumarezs Titahelu, and Denny Latumaerissa, "Dampak Reviktimisasi Terhadap Penyintas Kekerasan Seksual Dalam

justice. Courts—as the ultimate venue for justice—have yet to serve as safe spaces for children with disabilities to truthfully and confidently communicate their experiences. Formal equality before the law does not automatically lead to equality in legal outcomes for individuals with physical or psychological disabilities. This study reaffirms the following key findings:

- 1) Law No. 35 of 2014, while offering general protections for children who are victims of violence, has not specifically addressed the distinct protection needs of children with disabilities—both procedurally and substantively in terms of sentencing.
- 2) Law No. 8 of 2016 largely contains declarative principles and does not cover punitive provisions related to sexual violence against children with disabilities. Consequently, it requires supplemental technical regulations within the criminal law framework to ensure its practical enforceability.
- 3) Law No. 12 of 2022 (TPKS Law) recognizes persons with disabilities as victims with multiple layers of vulnerability. However, its implementation remains weak due to poor inter-agency coordination and limited awareness among law enforcement personnel.
- 4) The Indonesian criminal justice system has not yet systematically recognized disability as an aggravating factor in sentencing perpetrators of sexual violence. From a substantive justice perspective, the vulnerability of the victim should be a basis for differentiated and enhanced legal sanctions.
- 5) The principle of substantive justice has not been fully embraced as the core spirit of the national legal protection system. Legal procedures remain largely non-adaptive, insufficiently inclusive, and fail to comprehensively uphold the rights of victims with disabilities.

3.3. Key Factors Contributing to the Weakness of Legal Protection for Children with Disabilities in Cases of Sexual Abuse

This section aims to identify and analyze the primary factors contributing to the inadequate legal protection of children with disabilities in cases of sexual abuse. The analysis focuses on three key dimensions: (1) deficiencies in the legal substance of national regulations—including the Criminal Code (KUHP), Law No. 35 of 2014, Law No. 8 of 2016, and Law No. 12 of 2022; (2) structural weaknesses in law enforcement institutions and judicial processes; and (3) socio-cultural influences, including persistent stigma toward disability, which affects both reporting and legal proceedings.

1) Substantive Legal Deficiencies

An examination of applicable regulations reveals that, although the Criminal Code and Law No. 35 of 2014 prescribe criminal penalties for perpetrators of sexual abuse against children, there is a conspicuous absence of provisions that explicitly increase sentencing when the victim is a child with a disability. This is inconsistent with the principle of substantive justice, which demands recognition of the victim's vulnerability as an aggravating factor. While Law No. 8 of 2016 on Persons with Disabilities and Law No. 12 of 2022 on Sexual Violence Crimes acknowledge persons with disabilities as groups requiring protection, these declarations have not been translated into specific criminal provisions. As a result, a significant legal gap persists: the law fails to account for the special needs and heightened vulnerability of disabled child victims in both its punitive and procedural aspects.

2) Structural Weaknesses in Law Enforcement

Children with disabilities often encounter considerable challenges in reporting abuse, due to communication barriers, physical inaccessibility, and the lack of adapted facilities. Families may also hesitate to report such incidents due to fear of stigma or social shame, resulting in underreporting. Furthermore, law enforcement personnel—including police officers, prosecutors, judges, and court staff—frequently lack the training and sensitivity required to appropriately handle cases involving victims with disabilities. Investigative and trial procedures are rarely disability-inclusive: they often lack alternative communication methods, accessible examination rooms, and the presence of qualified professionals. Many victims are not accompanied by legal advocates with expertise in trauma-informed or disability-aware practices, leading to a failure in upholding the victims' legal rights. Consequently, victim testimonies are frequently deemed less credible or are undervalued, resulting in a legal process that is procedurally unjust. In addition, repeated retellings of traumatic events without proper procedural accommodations often exacerbate the victim's psychological distress—a phenomenon that amounts to institutional re-victimization.

3) Socio-Cultural Barriers

Negative societal perceptions of individuals with disabilities continue to prevail, often portraying them as unreliable or lacking credibility. Such stigma contributes to the public's skepticism toward reports filed by disabled victims and weakens the credibility of their testimonies. In some communities, acts of violence against children are still regarded as private, familial matters. When disability is involved, these perceptions are compounded by the assumption that the perpetrator is a morally upright individual who merely made a mistake, thereby complicating efforts to initiate or sustain legal proceedings. Moreover, informal settlements through extended family negotiations often lead to the premature termination of

cases, thereby weakening the formal legal process and fostering the impression that sexual violence against children with disabilities is not a serious legal priority.

This study concludes that the legal protection afforded to children with disabilities in sexual abuse cases remains critically inadequate. Contributing factors include: (1) the absence of specific legal norms that recognize disability as an aggravating circumstance in sentencing; (2) a law enforcement infrastructure unprepared to address the specific needs of child victims with disabilities from the point of reporting through to adjudication; and (3) a socio-cultural environment that reinforces stigma and normalizes violence as a domestic issue. Addressing these challenges requires not only legislative reform, but also institutional restructuring and cultural transformation aimed at recognizing the equal dignity and legal subjectivity of children with disabilities.

The findings of this study align with those of previous research. For instance, Puspa et al. identified major barriers such as social stigma and the lack of inclusive infrastructure.²¹ Kairupan concluded that law enforcement officers often lack the necessary inclusive capacity to adequately handle cases involving children with disabilities.²² Similarly, Arianto and Mukmin emphasized the absence of specific aggravating legal provisions and the inadequate criminalization of sexual violence against children with disabilities.²³ This study confirms the persistence of these common obstacles and further contributes by analyzing the interplay between legal structures and socio-cultural dynamics, thereby offering a deeper understanding of the complexity of the issue.

The absence of statutory provisions that recognize disability as an aggravating circumstance in criminal sentencing illustrates a legal framework that has yet to fully internalize the need for enhanced protections for this vulnerable group. Existing national regulations frequently remain at the level of textual commitments, lacking enforcement mechanisms such as certified training programs for law enforcement officers, internal implementation guidelines, or standardized disability-responsive procedures. As a result, not only does the legal system fail to protect victims, but it also exacerbates their psychological trauma through procedures that require victims to repeatedly recount their experiences without appropriate accommodations.

Furthermore, prevailing societal attitudes and institutional practices continue to frame cases of sexual violence—particularly those involving children—as private or domestic matters, thereby obstructing legal intervention and reinforcing the normalization of abuse. These findings suggest that the current national legal system

²¹ Puspa et al., “Perlindungan Hukum Terhadap Korban Pelecehan Seksual Kepada Penyandang Disabilitas Dalam Lingkungan Masyarakat.”

²² Kairupan, “Perlindungan Hukum Terhadap Perempuan Dan Anak Penyandang Disabilitas Yang Menjadi Korban Kekerasan.”

²³ Arianto, “Perlindungan Anak Penyandang Disabilitas Terhadap Kekerasan Seksual”; Mukmin, “Perlindungan Hukum Bagi Anak Penyandang Disabilitas Sebagai Korban Pencabulan Oleh Orang Tua.”

remains primarily oriented toward formal justice, which emphasizes procedural equality rather than substantive outcomes. In contrast, children with disabilities require a substantive justice approach that acknowledges their distinct vulnerabilities and situational disadvantages. This study confirms the following:

- 1) The inadequacy of legal protections for children with disabilities stems not only from regulatory gaps, but also from the failure of existing laws to provide special protections or to be implemented meaningfully in practice.
- 2) The law enforcement apparatus remains unresponsive, lacking accessible communication tools, specialized assistance, and victim support mechanisms tailored to the needs of individuals with disabilities.
- 3) Socio-cultural barriers—including entrenched stigma and prevailing norms that privatize violence—continue to undermine the sustainability and effectiveness of legal responses.

4. CONCLUSION

This study aims to analyze the differences in the application of criminal law to perpetrators of sexual abuse against children with disabilities compared to non-disabled child victims, assess the extent to which national legislation accommodates the principles of substantive justice for victims with disabilities, and identify the key factors contributing to weak legal protection in such cases—particularly from the perspectives of legal substance, the law enforcement structure, and socio-cultural dynamics. Employing a normative legal approach combined with analysis of selected case examples, the study finds that the legal treatment afforded to child victims with disabilities does not yet reflect the principles of substantive justice.

The findings indicate that although Law No. 35 of 2014 on Child Protection, Law No. 8 of 2016 on Persons with Disabilities, and Law No. 12 of 2022 on Sexual Violence have laid out legal frameworks for the protection of children and persons with disabilities, these regulations have not been fully translated into effective law enforcement practices. Notably, there are no explicit legal provisions that prescribe enhanced criminal penalties for perpetrators of sexual violence against children with disabilities. Furthermore, the judicial process frequently lacks disability-sensitive procedures, resulting in an environment that is not accommodating to victims with physical, mental, or communicative impairments. The current legal structure has yet to guarantee equitable access to justice for such victims, particularly in terms of reporting mechanisms, evidentiary procedures, and legal aid services. Simultaneously, discriminatory societal norms continue to serve as a significant barrier to effective protection, further marginalizing this vulnerable group.

This study confirms that the disparity in legal treatment between disabled and non-disabled child victims constitutes a form of structural injustice that must be urgently addressed. The findings serve as a critical basis for evaluating and reforming Indonesia's child criminal justice system, while also supporting the development of legal policies that prioritize the needs and rights of vulnerable populations. A key limitation of this study is its reliance on normative analysis; it does not include empirical fieldwork involving direct interviews with victims or law enforcement officials. Therefore, it is strongly recommended that the government formulate specific criminal provisions addressing sexual violence against children with disabilities, enhance the training of law enforcement personnel, and implement judicial procedures that are responsive to the needs of persons with disabilities. Future research should pursue empirical, region-based studies to evaluate the on-the-ground effectiveness of current legal protections and identify context-specific gaps in implementation.

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