

# Criminal Analysis of Depok State Court Decision Number 392/Pid.B/2018/Pn Reviewed from Protection Of Victims With Disability

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# 9 Criminal Analysis of Depok State Court Decision Number 392/Pid.B/2018/Pn Reviewed from Protection Of Victims With Disability

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## 13. ABSTRACT

Persons with disabilities have the same position and rights as normal people in general, based on Law Number 39 of 1999 concerning Human Rights. Law Number 8 of 2016 concerning Persons with Disabilities is a form of legal protection, and the fulfillment of rights that should be given to persons with disabilities. But in reality many people with disabilities have not fully received legal protection, and even when people with disabilities become victims of crimes, they experience difficulties in court proceedings due to their condition, which can be said when dealing with the law, people with disabilities are discriminated against, law enforcers and legal arrangements still assume that they are a group of people who are not normal, and are neither capable nor legally competent in the judicial process. This research is a normative legal research which is supported by a law approach and a case approach. The research aims to realize legal protection, as well as the fulfillment of the rights of persons with disabilities in court processes. Based on the results of this study, the fulfillment of the rights of persons with disabilities as witnesses and victims has not yet been implemented properly in the form of fulfilling the rights of persons with disabilities in the judicial process, which should receive special treatment and legal equality, based on existing laws and regulations regarding Persons with Disabilities. Disability.

**Keywords:** Protection of victim with disabilities, Legal protection

## 1. INTRODUCTION

Humans are creatures created by God who have dignity and are also equal before Him. In this world, not all of His creatures (humans) have normal conditions. Normal conditions are referred to as conditions where every human being has the same conditions in general, such as having a perfect physical form, not experiencing mental retardation, and excessive emotionality so that it affects all activities in the life he lives and also in social life. One form of the realization of Human Rights (HAM) is in accordance with Article 28 D paragraph (1) "everyone for fair recognition, guarantees, protection, and certainty as well as equal treatment before the law". Things like this make humans guaranteed to get their rights and also must be recognized and get treatment that is on a level equal to other humans in general. Legislation on the protection of women, Indonesia should place women with disabilities and non-disabled as the first priority to get protection. Protection is both in terms of juridical and non-juridical. Protection and legal guarantees must be provided by the State of Indonesia, especially for women with disabilities who are vulnerable to sexual violence. Laws in Indonesia have regulated the protection of persons with disabilities in Law Number 8 of

2016 concerning Persons with Disabilities in Chapter III. discrimination, neglect, harassment, and sexual crimes. However, in reality, many victims of disability have not really received specific protection, such as having a companion in their psychological recovery after experiencing a crime of rape and receiving counseling and medical assistance and also given more attention that should be received by special disabled victims to help recover the condition of victims who experience prolonged trauma due to persons with disabilities because the condition of persons with disabilities is weaker than normal people in general. Legal protection for persons with disabilities in terms of Law Number 8 of 2016 concerning Persons with Disabilities, and Law Number 39 of 1999 concerning Human Rights "HAM" and Law Number 13 of 2006 concerning Witnesses and Victims, explains the existence of protection, everyone who is a victim of the threat to become a victim again, but in the act it is still not fully realized. So that it looks unfair in giving criminal penalties, and the legal apparatus is relatively less understanding of the condition of persons with disabilities, and there is a need for guides so that they can act fairly and ethically in dealing with persons with disabilities who are in conflict with the law. The form of legal protection for persons with

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disabilities in Law No. 8 of 2016 concerning Persons with Disabilities, namely protection from all pressures, violence, persecution, discrimination, and also deprivation or expropriation of rights. Legal protection is all efforts to fulfill rights and provide assistance, to give a feeling or sense of security, to witnesses and or victims, which are legal <sup>22</sup> in all regulations or rules that exist in a society's life. Legal protection for crime victims as part of protection in society can also be realized in various forms, through the form of providing restitution, compensation, medical services, and other legal assistance. The criminal justice system is a system created to tackle crime problems, which can disrupt public order and threaten the public's sense of security, in controlling crime. The occurrence of a crime, so that it is within acceptable tolerance limit <sup>32</sup>. According to Van Boven, the rights given to victims are the right to know, the right to justice and the right <sup>35</sup> to reparation (recovery), namely rights that refer to all types of remedies, both material and non-material for victims who have experienced violations, human rights. Even if the rights of victims of crime have been adequately provided, ranging from the right to financial financial assistance to the right to medical services and legal assistance, it does not mean that the rights of victims are neglected because through the role of victims and their families it is expected to prevent the occurrence of crimes that have occurred, experienced by the victim in order to have a deterrent effect on the perpetrator of the crime. The importance of the victim getting recovery is as an effort to balance the condition of the victim, who has experienced a disorder, namely disability, appropriately so as not to experience prolonged stress and trauma, this was stated by Mulyadi when stating that victims of crime need protection and protection, with reference to the application of protection rights, which should be given to victims of crime as a result of the violation of the relevant human rights that have been violated by the perpetrators of the crime.

## 2. METHOD

In this study using normative legal research, the definition of normative research is research that <sup>26</sup> provides a systematic explanation of the rules governing a particular legal category, as well as analyzes of a relationship between regulations that describe areas of difficulty and may predict future development. And the nature of the research used is descriptive <sup>28</sup>. The type of research data that is normative in <sup>28</sup> are, the type of data used in this study consists of, Primary legal material, which is data obtained directly from the first source consisting of statutory regulation <sup>10</sup> official records and or court decisions. Secondary legal material is a legal material that supports and strengthens existing primary legal materials so that a deeper analysis and understanding of the research can be carried out. In addition to primary and secondary legal materials, this study uses non-legal materials if deemed necessary. Non-legal materials in the form of journals and books.

## 3. DISCUSSION

### 3.1 Regulation of Forms of Legal Protection for Person with Disabilities in Indonesia

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Regulation of forms of protection for Persons with Disabilities according to Law Number 8 of 2016 concerning Persons with Disabilities, namely those who have physical, mental, intellectual, or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively <sup>21</sup> with other citizens based on equal rights. This can hinder their full and effective participation in society on an equal basis with others. On May 30, 2008 the social approach for people with disabilities, getting equal opportunities such as education, work <sup>37</sup> and roles in society, this is the reason for the issuance of the United Nations <sup>6</sup> convention on equal rights for people with disabilities. The Government of Indonesia has signed the <sup>6</sup> Convention on the Rights of Persons with Disabilities Convention on the Rights of Persons with Disabilities on March 30, 2007 in New York. The signing shows the seriousness of the State of Indonesia to respect, protect, fulfill, and promote the rights of persons with disabilities, which in the end is <sup>31</sup> expected to fulfill the welfare of persons with disabilities. At the time of signing the Convention on the Rights of Persons with Disabilities, Indonesia has a commitment to ratify this convention. In the process of protecting, respecting, promoting, and fulfilling the rights of persons with disabilities, the Government of Indonesia has established various laws and regulations governing the protection of persons with disabilities. the <sup>15</sup> new thought emerged in 2016 regarding the regulation of persons with disabilities which specifically regulates Law Number 8 of 2016 concerning Persons with Disabilities. Protection in Indonesia for people with disabilities is still lacking. This is so clear when compared to other countries such as the United States (US), for example, there is a special law to protect people with disabilities called The American with Disabilities Act. This law contains the obligation of the state to provide protection for persons with disabilities in the field of education. The United States even provides protection for students with disabilities with a foundation called The Learning Disabilities Association of American. With this protection, several United States campuses, such as St. Francis Xavier University and the University of Washington, protect and help students with disabilities to study as high as possible. At the University of Washington, since 1978 it has been modifying the campus environment in such a way that it is friendly to people with disabilities. For example, the road conditions are flat and not hilly, as well as special pickup car facilities. This facility is to make it easier for people with disabilities who have mobility difficulties, easy access to technology, both in laboratories and special libraries, which help blind and deaf people, special parking, and academic counseling. According to Law Number 8 of 2016 concerning Persons with Disabilities in Chapter III article 4, persons with disabilities

are categorized into four types. First, people with physical disabilities are disabilities that cause disturbances in body functions, including body movement, vision, hearing, and speaking abilities. Physical disabilities include leg defects, back defects, hand defects, finger defects, neck defects, visual impairments, deafness, speech defects, touch defects (taste), congenital defects. Both people with intellectual disabilities are disorders characterized by mental abilities or intelligence that is below average with other people in general. The three persons with mental disabilities are mental and/or behavioral disorders, both congenital and as a result of disease, including mental retardation, functional psychiatric disorders, alcoholism, organic mental disorders and epilepsy. <sup>121</sup> our people with sensory disabilities are disturbances in one of the functions of the five senses, such as blind, hearing and or speech disabilities. Blind disabilities are people who have visual accuracy of less than 6 per 60 after correction, or have no vision at all. Since the <sup>8</sup> in of Law Number 8 of 2016 until now, there has been Government Regulation (PP) number 52 of 2019 concerning the <sup>18</sup> of Social Welfare for Persons with Disabilities is a condition where the material, spiritual and social needs of citizens are fulfilled so that they can live properly and be able to develop themselves, so that they can carry out their social <sup>8</sup> actions. Persons with Disabilities on an equal basis. Government Regulation number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process has the aim of realizing a fair judicial process, especially for Persons with Disabilities, it is necessary to carry out a judicial process based on equal rights and opportunities and <sup>3</sup>minate discriminatory practices. Presidential Regulation number 67 of 2020 concerning Terms and Procedures for Awarding and Respecting, Protecting, and Fulfilling the Rights of Persons with <sup>5</sup> Disabilities is stipulated to implement the provisions of Law Number 8 of 2016 article 141 concerning Persons with Disabilities. The consequences that then arise as a result of the absence of implementing regulations for the Law on Persons with Disabilities are the insecurity of legal certainty, for persons with disabilities, the inability to enforce real rules, which have been contained in the articles in question and the birth of legal loopholes, and can trigger individuals to make inappropriate policies, so that the rights of <sup>17</sup> sons with disabilities may not be fulfilled as regulated in Law Number 8 of 2016 concerning Persons with Disabilities. Cases in criminal acts related to the testimony of persons with disabilities themselves are increasing. However, the support of the justice system for the condition of persons with disabilities is still very minimal. It can be said that when dealing with the law, persons with disabilities are discriminated against, law enforcers and legal arrangements still think that they are a group of abnormal people and are neither capable nor legally competent in the judicial process. In principle, Indonesia is morally bound to the Universal Declaration of Universal Human Rights Declaration of Human Rights and international treaties, on human rights International Bill Human Rights including persons with disabilities. In this moral bond, Indonesia has

an obligation to respect, to respect, to protect, and to fulfill these basic rights.

The Circular Letter of the Supreme Court Number 10 of 2010 concerning Guidelines for Providing Legal Aid Number 10/Bua.6/Hs/SP/VIII/2010, in Article 19 and Article 27 explains that "people who receive legal services and assistance are who cannot afford lawyers, especially women, children, and persons with disabilities." Legal assistance to victims of crime must be provided whether requested or <sup>4</sup> of requested by the victim. This is important, considering the low level of legal awareness of the majority of victims who suffer from this crime. The attitude of letting crime victims do not get proper legal assistance can result in the worsening condition of crime victims. One of them is the crime of rape, because It is often found that rape victims are ostracized from the surrounding community, because they are considered to bring disgrace to their families and communities around them. By taking into account the condition of the victim as a person with a disability, of course the form of assistance or counseling assistance that is psychological in nature is <sup>23</sup>ely more suitable to be given to victims. The provision in Article 1 point 1 of <sup>2</sup>aw Number 16 of 2011 concerning Legal Aid states that "legal aid is legal services provided by the Legal Aid Provider free of charge to the Legal Aid Recipient" Legal aid is considered a very important part to provide justice for the community, especially those who are considered incapable, as in this case the victim who is a mentally retarded person is a person who has abilities below the average normal human being in general. Basically, the purpose of providing legal aid is to provide legal protection for its citizens, and provide equal legal protection for all citizens, regardless of religion, race/ethnicity, descent, or place of birth, and economic background, education, and others. Apart from the important legal assistance provided in the judicial process for the protection of persons with disabilities, medical services and assistance are also important to be given to victims who suffer medically as a result of a crime. Medical services can be in the form of a medical examination and a written visa report or medical certificate, which has the same legal force as evidence. This medical information is needed especially if the victim wants to report the crime that happened to him to the police for further action. Persons with disabilities have the rights as stated in <sup>7</sup>aw Number 8 of 2016 in article point 5 P which explains the rights of persons with disabilities who have the right to habilitation and rehabilitation. In Ministerial Regulation Number 7 of 2017 concerning Standards for Social Habilitation and Rehabilitation of Persons with Disabilities. Habilitation is an effort to optimize existing body functions to replace body functions that do not exist through medical, social, psychological, and skill assistance in order to achieve their functional abilities. Social Rehabilitation is a process of refunctionalization and development to enable a person to be able to carry out his social functions properly in community life. In this case medical assistance is very necessary because the victim is a mentally retarded person, who has the characteristics of low thinking ability, weak attention and memory, as well as intellectual and cognitive abilities that are below the

average person in genera and will be very useful if given medical assistance to help recover conditions for victims, in the form of physiotherapy, speech therapy, so as not to experience prolonged trauma. Providing information to victims plays a very important role regarding the problems they are facing. Regulations regarding the protection of persons with disabilities as victims and as witnesses are stated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, which is stated in Article 5 which contains the protection and rights of victims, at point 6, namely obtaining information regarding the development cases, and at point 7 get information about court decisions. The considering the condition of the victim is a mentally retarded person, which means people who have intellectual and cognitive abilities below the average compared to other people in general, the provision of this information is very useful for people with disabilities with these sufferers by providing information that is easy to understand, overall, about the problems he is facing, so that the victim can accept the conditions that have befallen him.

### 3.2 Sentencing in terms of the Protection of Victims with Disabilities

In the Decision of the Depok District Court Number 392/Pid.B/2018/PN Dpk. This case describes a victim who has a mental retardation disability named Mulyani who is 24 years old stating that she has been raped by the Defendant named Tatang Ibrahim who is housed in her rented house on Jln Kelapa Dua RT. 04/09 Ex. District Monument, Cimanggis Depok City. The perpetrator took this action, on Wednesday, April 4, 2018 at around 16.00 WIB in the Defendant's rented house, based on the information given by the victim to the Witness who helped report the incident. By force or threat of violence forcing a woman to have sex with him outside of marriage. As is known, the actions that have been carried out by the defendant in this case, attack and take advantage of the situation of the victim who has a disability, on the basis of the benefits obtained by the perpetrator, in terms of satisfying his desires and causing harm to the victim who has mental retardation and added the treatment he experienced which caused injuries to his vital organs. Criminal law recognizes various principles that apply to the entire existing criminal legislation, and there are things that have been specifically regulated in certain laws lex specialist. For example, in a criminal case, a person with mental retardation who is a victim of rape is often cornered by questions such as "why didn't you scream for help when you were raped?" Law enforcers should know and understand that people with mental retardation have intellectual and cognitive abilities that are below average compared to normal people in general. With abilities and skills that are not the same as those of non-disabled persons, in certain cases persons with disabilities are often unable to meet their own needs and require assistance from others. As a result, when persons with disabilities become victims or perpetrators of a crime, they often do not realize that they have rights with special needs, which can be fulfilled,

especially when dealing with the criminal justice system. The purpose of punishment in the Draft Law (RUU) of the 2005 Criminal Code, regarding the purpose of punishment as regulated in article 54, namely, punishment is aimed at preventing criminal acts from being committed, by enforcing legal norms for the protection of the community. Socializing prisoners by conducting coaching so that they become good and useful people. Resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society, then freeing the guilt of the convict, and forgiving the convict. Punishment is not meant to suffer and mean. Protection for persons with disabilities is contained in Law number 8 of 2016 concerning Persons with Disabilities. Perpetrators of rape crimes with disabilities are often the closest people from the environment where the victim is located, as in the case in which the author analyzes the perpetrator is a relative of the victim, someone who lives close to the victim. Perpetrators assume that women with disabilities have weaknesses, so they are unable to fight back. Even though legal protection for persons with disabilities has been established, incidents of violence against persons with disabilities still occur. Regarding sanctions against perpetrators of rapists with disabilities, affirmation must be given in order to provide a deterrent effect on perpetrators, for example by increasing their sentence. The actions taken by the perpetrators against persons with disabilities in this case are violent rape, rape is based on the word rape which means to force, rape has the meaning of subjugating someone with violence, coercion, or through threats of violence to have sex with a woman. One form of violence against women that poses a threat to men, especially regarding the sexual interests of men. Article 285 of the Criminal Code explains "Anyone who through violence or threats forces a woman to have sex with him outside of marriage" with an intentional element is considered to have committed an act of rape. The element of intentionality referred to above must be proven by the public prosecutor and by the panel of judges, in the realm of trial. In this case the judge has considered to impose a sentence on the perpetrator. Based on the evidence and testimony of witnesses and victims that have been presented in the trial process. Considering, that the Defendant has been indicted by the Public Prosecutor with a single charge as regulated in Article 285 of the Criminal Code, the elements of which are as follows:

1. whoever element
2. the element "by force or threat of violence"
3. the element "by force or threat of violence".

That cause all elements of Article 285 of the Criminal Code have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed a criminal act as charged in the single indictment, in this case the Defendant has been subject to legal arrest and detention, then the period of arrest and detention is must be deducted entirely of the sentence imposed, because the Defendant is detained and the detention of the Defendant is based on sufficient reasons, it is necessary to determine that the Defendant remains in custody, and to impose a sentence on

the Defendant. The provision of criminal sanctions is inseparable from the word punishment. Criminal sanction is a law of cause and effect, because it is a crime committed and the consequences of the crime give rise to binding sanctions, imposed on the perpetrator who commits it. Criminal sanctions against the perpetrators of the crime of rape with **25** victim as a person with a disability are contained in the **Decision of the Depok District Court Number 392/Pid.B/2018/PN Dpk.** The judge rendered the decision by considering **24** article 285 of the Criminal Code where the elements are "Anyone with violence **20** threats of violence forcing a woman who is not his wife to have sex outside of marriage is threatened with rape with a maximum sentence of twelve years" with an intentional element. So the judge gave a decision stating that the Defendant Tatang Ibrahim was legally proven and guilty, had committed a criminal act of raping the victim named Mulyani because of his actions, the perpetrator received a sentence of 7 (seven) years and 6 (six) months. As has been charged against him. Determine the period of arrest and detention that has been served by the deductible entirely from the sentence imposed. If seen in positive law in Indonesia. The author gives an opinion that the crime of rape is stated in general, in Law Number 1 of 1946 concerning the Criminal which is contained in Chapter XIV concerning Crimes Against Morals, further regulated in articles 285 to 288 of the Criminal Code. Sanctions for perpetrators of the crime of rape against persons with disabilities refer to Article 285 and Article 286 of the Criminal Code where persons with disabilities are included in the powerless element, in Article 286 of the Criminal Code which explains "Whoever has intercourse with a woman in outside of marriage, even though it is known that the woman is in a state of unconsciousness or helplessness, is punishable by a maximum imprisonment of nine years." Persons with disabilities are people who experience physical, intellectual, mental and sensory limitations in the long term. And is powerless to fight or save himself because of the deficiency he has. Referring to the issue of sentencing in the Depok District Court Decision Number 392/PID.B/2018/PN in terms of the protection of victims with disabilities. So there is disability protection that has not been fully fulfilled, apart from providing a companion in the trial, which is accompanied by a Dharma Asih Special School teacher, named Emi Dwiyanti. **4** Victims should get more specific protection, based on the provisions stipulated in Law Number 8 of 2016 concerning Persons with Disabilities, in Chapter III part one **30** article 5 there are several points listed in it in the form of, Persons with disabilities have the right to justice and protection law, health, social welfare, public services, and rehabilitation. Based on these several points, the rights that should be obtained by the victim in this case, based on the events that have happened to him. The explanation described above is in order to provide more protection to victims of disability, who are generally different from other humans, who have limitations in all respects due to their weak condition. Victims of disability in this case who have not really received specific protection, such as the presence of a companion in psychological recovery after experiencing an act of rape, and receiving

counseling, as well as legal and medical assistance, as well as being given more attention that should be given to victims of special disabilities, to help recover the condition of victims who have experienced prolonged trauma. Because the purpose of the law is to provide protection for the community, and to achieve full justice. Law can also be interpreted as a rule in human life, not only that, the law also applies to people government in a country, which has been very well structured and very organized. The law has the nature of regulating the order of life in society, forcing citizens to act obediently and protecting various community rights. Justice in a state of law is the creation of the value of justice in human rights, with a guarantee of fair enforcement of the law for every citizen. And every citizen has an equal position and is entitled to guarantees of protection and legal certainty. When persons with disabilities are involved in the justice system, it is important that we take action to ensure that their views are communicated, heard and acted upon. However, in fulfilling the rights of persons with disabilities, there are several obstacles in carrying out a fair judicial process. The obstacle is the ineffective fulfillment of rights for persons with disabilities. In fact, people with disabilities are an isolated group in a society, even though internationally and nationally, human rights and the economy have improved, but still this group is still in the last position to get protection and justice due to the **13** year condition. Even though this has been regulated in **Law Number 8 of 2016 concerning Persons with Disabilities** in Chapter III **the Rights of Persons with Disabilities** who have special rights in the form of getting more protection from acts of violence including exploitation & sexual violence and getting special protection in terms of discrimination, **23** neglect, harassment and sexual crimes. Even in Article 5 of the **Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights**, it has been explained that persons with disabilities also have the right to demand, receive assistance and receive equal treatment and protection before the law. However, the legislation has not yet been fully implemented. Because the legal apparatus does not have the ability, in terms of communication with persons with disabilities. The understanding and knowledge of law enforcement officers is also limited regarding persons with disabilities, so that law enforcers are often unable to equalize on the grounds of the limitations of persons with disabilities, which in the end their rights are marginalized and the position of persons with disabilities before the law is limited by the police, prosecutors, and in the process. court. This is the reason why it is difficult for persons with disabilities to get justice and their rights, in the judicial process because they do not get services or fair treatment.

#### 4. CONCLUSION

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Arrangements for the form of protection for persons with disabilities have been stated in Law Number 8 of 2016 concerning Persons with Disabilities, which regulates general protection for persons with disabilities, who are treated with exploitation and sexual violence, discrimination, harassment and sexual crimes. Article 5 paragraph (1) and paragraph (2) which specifically regulate the rights of persons with disabilities. However, the regulation does not work as it should, although the theories that support this protection are evident which are given in various ways, such as the provision of Restitution and Compensation, Counseling, Medical Services and Assistance, and Legal Aid. This protection has been regulated theoretically in Law Number 31 of 2014.

sentencing of perpetrators of rape has been stated in Law Number 1 of 1946 concerning the Criminal Code, namely in Chapter IV concerning Crimes Against Morals, and is regulated in Article 285 of the Criminal Code. Article 288 of the Criminal Code. The decision of the Depok District Court Number 392/PID.B/2018/PN, the sanction given to perpetrators of raping women with disabilities, is article 285 of the Criminal Code. If the victim is a person with a disability, it is better to look at article 286 of the Criminal Code which reads "Anyone who has sex with a woman outside of marriage, even though it is known that the woman is unconscious or helpless, is threatened with a maximum imprisonment of nine years." Whereas persons with disabilities are included in the element of someone who is powerless and does not have the ability to fight or save himself due to the factors he has.

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