

Legal Protection and Access to Justice for Sexual Violence Victims with Mental Disabilities in Indonesia

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Abstract

Legal protection for people with mental disabilities who are victims of sexual violence in Indonesia continues to face complex challenges. Although Law provides a clear legal framework, its implementation has not fully ensured equal access to justice for this group. This study aims to identify structural, normative, and social issues arising in practice, while also evaluating the effectiveness of existing legal protections. The research employs a normative legal method using legislative and conceptual approaches, supported by qualitative analysis of primary and secondary legal materials. The findings reveal a significant gap between legal norms and their implementation. Key issues include judicial procedures that are not disability-friendly, limited access to legal aid, and the lack of appropriate accommodations for victims' mental conditions. Furthermore, persistent social stigma and the limited capacity of law enforcement officials further weaken the protection provided. Consequently, existing legal protection remains ineffective, both substantively and procedurally. This study proposes an integrative approach through regulatory harmonization, capacity building for law enforcement officials, and the development of inclusive and responsive judicial mechanisms to enhance legal protection and improve access to justice.

Keywords: Access to Justice, Mental Disabilities, Human Rights, Sexual Violence Law, Victim Protection

A. INTRODUCTION

Law Number 8 of 2016 concerning Persons with Disabilities serves as a legal basis that guarantees human rights, equality, and protection against discrimination. These provisions align with the principle of equality before the law in the theory of the rule of law, which affirms that every citizen must be treated equally before the law without exception.

This law emphasizes the fulfillment of the right to accessibility, public services, health, education, employment, as well as equality before the law and legal assistance in the judicial process (Abrianto et al., 2025). This protection is also consistent with the principles of human rights as stipulated in Law Number 39 of 1999 concerning Human Rights (Fidiyani et al., 2023). Indonesia still needs specific legislation that addresses sexual violence in more detail (Efendi et al., 2021). Vulnerable groups remain at higher risk without such detailed legislation.

Women and children with disabilities are groups that are highly vulnerable to discrimination and sexual violence under Law No. 19 of 2011 and Law No. 8 of 2016 (Pratiwi, 2024). This situation is exacerbated by social stigma, environmental barriers, and limitations in communication and daily activities (Anwar, 2021). Approximately 79,637 people aged 10-19 have intellectual disabilities according to the 2010 Population Census. Overall, the prevalence of intellectual disabilities in Indonesia is estimated to be around 1 to 3 percent of the total population, or approximately 6.6 million people. This estimate is nearly consistent with data released by the Ministry of Health in 2011. West Java Province has 5,215 children with intellectual disabilities from various sources enrolled in Type C Special Education Schools (SLB) (Directorate of Special Education, Indonesia, 2003).

The sexual abuse case that occurred at a Special Education School (SLB) in Tasikmalaya City in 2022 was an incident that drew public attention. This incident reflects the abuse of power within educational institutional relationships. In this case, a teacher was found guilty of sexually abusing several female students with hearing and speech disabilities, exploiting the position of authority and trust inherent in his role as an educator. These actions reflect the theory of abuse of power, wherein an individual in a more dominant position tends to exploit a weaker counterpart. The vulnerability of the victims as individuals with disabilities can exacerbate the power imbalance between the perpetrator and the

victims; this incident also reveals significant weaknesses in the mechanisms of educational institutions responsible for the supervision and protection of children with disabilities. This incident further highlights the urgent need for specialized training and clear protocols to prevent abuse in educational settings (Maharani et al., 2025).

The protection of persons with disabilities at the international level is also governed by the Convention on the Rights of Persons with Disabilities (CRPD). This convention emphasizes the importance of respecting the dignity and autonomy of individuals, as well as the full participation of persons with disabilities in society (Hulinggato, 2025). The Convention emphasizes that persons with disabilities must be recognized as legal subjects possessing the same legal capacity as others before the law. The implementation of the CRPD requires states to provide appropriate accommodations in judicial proceedings, such as legal representation. This principle has been adopted in Indonesia in regulations but remains hindered by issues of accessibility and the sensitivity of officials, particularly toward people with mental disabilities. The implementation of the CRPD in Tunisia of the CRPD is being developed through a multisectoral approach with WHO support, although it still faces challenges in integrating legal and social services. Both countries still need to strengthen the application of CRPD standards so that their legal systems become more inclusive and responsive.

Several countries face similar challenges in the international context in providing legal protection for people with mental disabilities, one of which is Tunisia. The legal and human rights systems in Indonesia and Tunisia can be compared. Approximately 2.3 percent of Tunisia's population has a disability, including mental disabilities. They require special attention in the areas of health, education, and social support. A comparative study can provide insights to improve Indonesia's policies and legal framework regarding people with mental disabilities.

Indonesia has 6.6 million people with disabilities this figure represents approximately one to three percent of the total population. Every country is obligated to comply with the Convention on the Rights of Persons with Disabilities (CRPD). Policy improvements are needed to strengthen mental health services and legal protection mechanisms. Thus, these efforts are expected to support the realization of the principles of inclusive law within the legal protection system.

Law Number 8 of 2016 recognizes the rights of persons with disabilities to access justice and protection from violence, discrimination, and inhumane treatment. These regulations remain general in nature and do not comprehensively address how persons with disabilities, particularly those with mental disabilities, are protected during the criminal justice process in cases of sexual violence. There are no clear laws or regulations governing examination procedures for victims with disabilities, support tailored to the victim's mental condition, or accessibility to the criminal justice process (Nasution et al., 2025). The provisions of Article 285 further emphasize of the Criminal Code, which emphasizes of the Criminal Code, which emphasizes the element of violence or the threat of violence, are considered insufficient to fully address the plight of victims with mental disabilities who struggle to give free consent. This problem reflects the structural failure of Indonesian criminal law, which remains oriented toward the paradigm of physical violence, thus neglecting the concept of capacity to consent as an essential element in the crime of sexual violence. The law suffers from a normative vacuum as a result from a normative vacuum but also results in systemic injustice for victims with mental disabilities due to the lack of adaptive evidentiary standards in the criminal justice process. In cases where the victim does not have the capacity to understand the situation or give free consent, violence or the threat of violence is often a key element in proving the crime of rape (Larasati et al., 2025).

People with mental disabilities may be vulnerable in certain situations vulnerable to abuse or manipulation of power, even without direct physical violence. The formulation of Article 285 is therefore not fully effective of the Criminal Code, which emphasizes the presence of violence or the threat of violence, is not fully effective in providing legal protection for victims with mental disabilities. This highlights the limitations of the legal framework in addressing the vulnerability of victims with mental disabilities (Widyatama et al., 2022). This issue highlights potential legal loopholes regarding the protection of people with mental disabilities who become victims of sexual violence. The provisions of Article 285 of the Criminal Code demonstrate a normative bias oriented toward physical violence, thus ignoring the dimension of the inability to provide valid consent in victims with mental disabilities. This reflects the failure of Indonesian criminal law to adopt a consent-based approach as the primary indicator in determining the occurrence of sexual violence.

The normative gap is reflected in the lack of regulation of reasonable accommodation in the criminal justice process, which implies the lack of procedural standards related to psychological assistance, special examination techniques, and alternative communication methods for victims with mental disabilities. The legal system has three main normative gaps in the Indonesian legal system. The first gap is substantive, namely the lack of recognition of the inability to give consent in the formulation of sexual violence crimes. The second gap is structural, in the form of the lack of examination mechanisms that adapt to the mental state of victims in the criminal justice system. The third gap is cultural, reflected in the persistent stigma and bias of law enforcement officers against people with mental disabilities, resulting in low sensitivity in case handling. This analysis shows that a transformative reconstruction of criminal law is needed, focusing on a consent-based approach and a vulnerability-based approach. Reformulation of criminal norms,

explicit regulation of reasonable accommodation, and development of technical guidelines for law enforcement officers are urgent steps to realize an inclusive and non-discriminatory justice system.

Although Indonesia has various laws, such as Law Number 8 of 2016 concerning Persons with Disabilities and the Criminal Code concerning Crimes of Sexual Violence, there is still no comprehensive law regulating protection mechanisms for persons with mental disabilities in the judicial process. There are no clear regulations governing the provision of testimony, examination procedures, and legal assistance appropriate to the mental and psychological conditions of persons with disabilities. As a result, the needs of persons with mental disabilities are often not adequately met during the evidentiary process in court. Persons with mental disabilities face difficulties during the examination process due to limited communication. This situation indicates that the judicial system has not fully provided examination mechanisms tailored to the needs of victims. Therefore, professional support is needed to facilitate communication during the examination.

This support can be provided by psychologists, psychiatrists, or social workers competent in working with people with mental disabilities. Several studies also indicate that there is still a gap between legal norms and their implementation in the justice system, particularly due to the lack of accessibility facilities, specialized assistance, and the persistence of stigma and discrimination against people with disabilities. This situation indicates that law enforcement mechanisms in the criminal justice system are not aligned with standards designed to protect the rights of people with disabilities. As a result, people with mental disabilities may face difficulties in obtaining justice and receiving adequate legal protection. Ultimately, this can lead to legal uncertainty and increase the likelihood of human rights violations against vulnerable individuals (Syafi'ie, 2024).

Based on the background of the problem explained above, the following research questions can be formulated: (1) What are the legal regulations governing the protection of people with mental disabilities as victims of sexual violence in the Indonesian legal system? (2) To what extent have the applicable legal norms fulfilled the principles of justice, equality before the law, and access to justice for people with mental disabilities? The purpose of this study is to analyze the structure of the legal system in Indonesia regarding people with disabilities based on Law No. 8 of 2016, and to identify obstacles and challenges in implementing legal protection for people with mental disabilities who are victims of sexual violence. In addition, this study aims to formulate steps that can be taken to improve legal protection and access to justice for people with mental disabilities in the criminal justice system in Indonesia.

Several previous studies, including those conducted by (Polii & Polii, 2025), explicitly show that the implementation of disability protection policies in Indonesia still faces various challenges. These challenges primarily relate to limited access to public services and the suboptimal nature of available legal protection mechanisms. Another study, by (Yusar et al., 2026), also confirms that the Indonesian justice system remains unresponsive to the needs of vulnerable groups, including people with disabilities. This indicates that structural weaknesses persist within the legal system related to accommodating vulnerable groups. Furthermore, research conducted by (Andriyan & Wibowo, 2024) shows that the existing legal framework has not been fully and effectively implemented. This situation is caused by limited accessibility infrastructure and a lack of an inclusive perspective in law enforcement practices.

Based on the discussion above, it can be concluded that the primary focus of previous studies has been on legal protection for persons with disabilities in general, particularly

regarding the fulfillment of basic rights and accessibility to public services. However, these studies have not specifically examined the normative gaps related to the protection of persons with mental disabilities as victims of sexual violence, particularly in the context of access to justice and protection during the criminal justice process. Thus, the research gap in this study explicitly lies in the absence of a comprehensive analysis of how the Indonesian legal system regulates, accommodates, and protects persons with mental disabilities as they face the legal process as victims of sexual violence, as well as the normative barriers that prevent such protection from functioning effectively. The novelty of this research lies in its specific focus on legal protection for persons with mental disabilities who are victims of sexual violence, a topic that has not previously been explored in depth in previous studies. Although Indonesia has enacted Law No. 8 of 2016 concerning Persons with Disabilities and Law No. 39 of 1999 concerning Human Rights, the implementation of these two legal instruments continues to face various challenges. In addition, there remains significant legal uncertainty regarding how and under what circumstances people with mental disabilities can effectively obtain legal protection, particularly during the judicial process.

B. RESEARCH METHOD

This research uses normative legal research methods with a statute approach, a conceptual approach, a case approach, and a comparative approach, enriched with the perspectives of feminist legal theory and law and economics as an analytical framework. The statutory approach is used to analyze various related regulations, especially Law Number 8 of 2016 concerning Persons with Disabilities and Law Number 25 of 2009 concerning Public Services, in order to assess the consistency, synchronization, and adequacy of norms in providing legal protection. The conceptual approach is used to examine the concepts of discrimination, equality, human rights, and legal protection based on relevant doctrines and scientific literature. The case approach is carried out through a

review of court decisions and law enforcement practices related to persons with mental disabilities to identify the gap between *das sollen* and *das sein*. A functional comparative approach was employed between Indonesia and Tunisia, emphasizing legal protection, access to justice, and non-discrimination policies. Tunisia has demonstrated relatively progressive developments in human rights protection. The legal materials used comprise primary legal materials in the form of laws and regulations, court decisions, and international legal instruments, and secondary legal materials in the form of books, scientific journals, and relevant previous research. This research collects legal materials through literature review this research analyzes the data qualitatively using descriptive-analytical methods through grammatical, systematic, and teleological interpretations to assess the effectiveness of legal protection, identify forms of discrimination, and formulate recommendations based on comparative law.

C. RESULTS AND DISCUSSION

1. What are the legal regulations governing the protection of people with mental disabilities as victims of sexual violence in the Indonesian legal system?

1.1 Definition of Persons with Disabilities and Their Legal Protection

The term “different ability” in English which means “everyone has different abilities,” is equivalent to the term “disability.” People with disabilities are referred to by various terms in different written works. The Ministry of Education refers to them as people with special needs. According to Health Minister Budi Gunadi Sadikin, the number of Indonesians experiencing mental health issues has reached 28 million, and 2.45 million adolescents have been identified as having mental disorders (ODGJ) or at risk of mental disability, with high prevalence of depression and anxiety among adolescents. As can be seen from these figures, it is clear that the situation for those with special needs particularly those of a mental nature is

already very serious and cannot be dismissed as an issue confined solely to the affected group.

Legal Protection for Children with Disabilities refers to all individuals who have physical, mental, intellectual, or sensory limitations when interacting with their environment. These limitations create various difficulties or barriers that prevent them from actively and effectively participating in society alongside others. Law No. 8 of 2016 on Persons with Disabilities in Indonesia guarantees their rights, including access to inclusive education and equitable health services. However, the implementation of this law still faces significant obstacles on the ground, such as a lack of adequate facilities and limited awareness among officials regarding the needs of people with mental disabilities, resulting in their rights often not being effectively fulfilled. The government is also promoting social rehabilitation programs so that children with special needs can thrive within the community. However, practices on the ground are still far from expectations. There remains a gap between what is stipulated in the law and the actual conditions on the ground (Hidayat & Ibrahim, 2023).

A progressive legal approach emphasizes the Law on Persons with Disabilities needs to be revised to be more responsive to the real needs of people with mental disabilities. According to the theory of access to justice, limited court services, social stigma, and a shortage of legal advocates make it difficult for people with mental disabilities to fully access legal protection. In a broader context, this issue is also linked to the theory of access to justice for people with intellectual disabilities, which emphasizes the need for inclusive and fair legal mechanisms (Listiwati et al., 2023).

A person with a disability is someone who has a physical, mental, intellectual, or sensory impairment that limits their ability to fully participate in society. This indicates that people with disabilities continue to face significant challenges, such as stigma and discrimination, which are still quite common in daily life. Therefore, adequate legal protection is necessary to ensure that the rights of people with disabilities are upheld fairly and without discrimination, even though, in reality, implementation has not always gone smoothly.

The Indonesian government, through the Ministry of Social Affairs, has launched various vocational training programs for people with disabilities to help them become more independent; however, not all programs have the same impact on every participant. In addition, more and more inclusive schools are being built to support the education of children with special needs from an early age. These programs are also supported by partnerships with local NGOs to ensure broader access in rural areas, although in reality, such access is not yet fully equitable.

Classical legal doctrine explains that protection for vulnerable groups can be viewed through Aristotle's theory of justice, which distinguishes between distributive and corrective justice. In this context, distributive justice requires the state to provide special treatment to vulnerable groups, including people with mental disabilities, in order to achieve substantive equality. Furthermore, A.V. Dicey's theory of equality before the law emphasized that every individual should be treated equally before the law. However, this concept has been criticized for ignoring the differing factual circumstances of individuals. Therefore, the concept of equity has developed, emphasizing needs-based justice. In the context of victims of mental disabilities, an equity approach is crucial because formal equal treatment can actually result in substantive injustice. Therefore, the law must not only

guarantee formal equality but also be able to provide adaptive protection to the victim's circumstances. This approach is relevant for encouraging reform of the justice system to be more inclusive and responsive.

1.2 Legal Protection and Challenges in Law Enforcement in Cases of Sexual Violence Against Persons with Disabilities

Indonesia has established various legal frameworks guaranteeing protection for persons with disabilities, including Law No. 8 of 2016 on Persons with Disabilities, Law No. 39 of 1999 on Human Rights, and Law No. 35 of 2014 on Child Protection. Persons with disabilities, particularly children with mental disabilities, constitute a vulnerable group requiring special legal protection due to their limited capacity and ongoing psychological development. This vulnerability places them at a higher risk of experiencing violence, especially sexual violence, compared to other groups. In the perspective of Aristotle's theory of justice, justice is not merely defined as equal treatment, but also as proportional treatment based on individual conditions, particularly for vulnerable groups. Therefore, legal protection for children with mental disabilities should not rely solely on formal equality, but must also consider their specific needs and conditions. This approach is essential to ensure the realization of substantive justice within the legal system (Mamluatil Hikmah, 2025).

Legal protection in practice remains for children with mental disabilities remains ineffective and has not fully addressed their vulnerabilities. Empirical findings indicate that perpetrators of sexual violence often originate from the victim's immediate environment, including family members and close acquaintances. This situation creates unequal power relations that further increase the vulnerability of victims and hinder their ability to report incidents. In addition,

victims frequently experience difficulties in communicating their experiences due to cognitive and psychological limitations. As a result, their testimonies are often considered less credible in legal proceedings, leading many cases to fail at the investigation stage. This condition reflects significant weaknesses in law enforcement mechanisms (Tjolleng et al., 2025).

These challenges are further exacerbated by structural and socio-cultural barriers within the legal system . Women with disabilities often experience stigma and are perceived as lacking legal capacity, which affects how their testimony is treated in court. Law enforcement officers frequently doubt their statements, causing their evidence to be easily dismissed during judicial proceedings (Maulidina et al., 2022). In addition, limited institutional capacity and the lack of disability-sensitive approaches contribute to ineffective case handling. The absence of adequate coordination among institutions further complicates the process of delivering justice. Consequently, many perpetrators evade punishment due to stalled legal processes.

The lack of adequate communication support in legal proceedings further worsens this situation. Provisions in the Criminal Code (KUHP), particularly Article 178, mainly focus on individuals with hearing and speech disabilities, leaving other forms of disabilities insufficiently accommodated. Persons with visual impairments, intellectual disabilities, or mental health conditions often do not receive appropriate assistance during court proceedings. As a result, their ability to provide testimony is significantly limited, and important evidence may be overlooked by judges. This condition demonstrates that the judicial system has not fully adapted to the diverse needs of persons with disabilities. Therefore, the

absence of procedural accommodations becomes a major barrier in accessing justice.

These conditions indicate, from the perspective of access to justice these conditions indicate that the existence of legal norms alone is insufficient to ensure effective protection. Structural barriers, social stigma, and procedural limitations collectively hinder persons with disabilities from fully accessing the legal system. Comprehensive efforts are therefore needed to strengthen the capacity of law enforcement officials, improve coordination among relevant institutions, and provide reasonable accommodations in legal proceedings. Establishing specialized units within law enforcement agencies that understand the needs of persons with disabilities can also be an effective solution. In addition, inclusive approaches and policies must be consistently implemented to ensure that legal protection is not merely normative but also effective in practice. Without such reforms, access to justice for persons with mental disabilities will remain limited and unequal.

1.3 Analysis of Case Law on Sexual Violence Against Persons with Mental Disabilities

Court rulings indicate that legal protection for persons with mental disabilities in cases of sexual violence remains inconsistent in judicial practice. Some rulings, such as No. 42/Pid.B/2019/PN.Lbb, show that judges still place primary emphasis on the presence of physical violence or threats as the main requirement for proving a criminal offense. This approach reflects that the legal interpretation employed remains rooted in a conventional paradigm that emphasizes purely physical aspects. For victims with mental disabilities, the primary issue the primary issue does not always lie in the presence of physical violence but rather in the victim's inability to provide valid consent. This inability

is often not given primary consideration in the evidentiary process in court, resulting in legal protection that should be provided to the victim becoming suboptimal.

A critical perspective shows that judges' considerations in cases of sexual violence against individuals with mental disabilities still place greater emphasis on formal aspects rather than substantive justice. Judges should adopt a more progressive approach more progressive approach by considering expert testimony, such as from psychologists or psychiatrists, to assess the victim's mental condition. This approach is crucial for understanding the victim's capacity to give consent as well as the psychological impact they have experienced. Furthermore, the use of a victim-centered approach can strengthen legal protections within the judicial process. This analysis of case law reveals a gap between legal norms and their implementation in practice. Reforms are therefore needed in evidentiary standards and judicial approaches to make them more inclusive and responsive to the needs of people with mental disabilities.

2. To what extent have the applicable legal norms fulfilled the principles of justice, equality before the law, and access to justice for people with mental disabilities?

2.1 Legal Harmonization and National Policy Commitments

Sexual violence can occur in both public and private settings, including educational institutions, workplaces, and the home environment (Azhar et al., 2023). Although women are generally the most frequent victims of sexual violence, anyone can become a victim of sexual violence. Cases of sexual violence against children are currently on the rise. Children are targeted for sexual exploitation by people around them, particularly adults seeking sexual pleasure or gratification. Perpetrators typically exploit children's vulnerability because they are easily

persuaded or intimidated. The most effective prevention comes from education provided by parents or teachers.

Legal protection is generally divided into two categories: preventive and repressive. Preventive legal protection (prevention) This form of legal protection, provided by the government, aims to prevent violations before they occur. It is regulated by law to prevent criminal acts and establish boundaries regarding the fulfillment of obligations. The goal is to prevent conflicts. These preventive measures typically involve public education about the law so that the public understands its boundaries. In this way, it is hoped that crime rates such as violence against children can be reduced to the lowest possible level.

Preventive legal protection places significant emphasis on government actions, based on the freedom to act due to the existence of legal protection. The government is committed to exercising caution when making decisions based on its discretion. Repressive legal protection (law enforcement) Repressive legal protection is the final form of protection, consisting of penalties such as fines, imprisonment, or additional penalties imposed when conflicts or legal violations occur. This form of repression is crucial for deterring criminals; for example, imposing severe penalties for cases of child rape. In this context, the integration of preventive and repressive legal protection is essential to ensure both the prevention of potential violations and the effective enforcement of justice when violations occur.

The government must take strategic measures are needed from the government, such as legal harmonization to enhance legal protection for women with disabilities who are victims of sexual violence, given the challenges faced by people with disabilities in the judicial process. This harmonization is expected to

provide better protection for women with disabilities who are victims of sexual violence. The first step could involve amending the Criminal Code to include specific provisions regarding interpreters for victims with disabilities. Additionally, a specialized unit should be established within the police force to handle cases of sexual violence against women with disabilities. Training programs for judges and prosecutors on disability sensitivity should also be conducted on a regular basis. In this way, access to justice for them will no longer be just a dream.

Legal harmonization is the process of ensuring that laws and regulations are aligned, consistent, and balanced within a single national legal system (Huring & Prasetyo, 2025). Because disability-related issues encompass various aspects of life such as education, employment, politics, access to information, and legal protection legal harmonization is crucial for the protection of people with disabilities. This process can help bridge the gaps in laws that make it difficult for people with disabilities to exercise their rights. For example, aligning the Disability Act with the Criminal Code to make court proceedings more inclusive. Without such harmonization, protection remains incomplete. Therefore, the government must accelerate the creation of a comprehensive legal framework for all people with mental disabilities.

Indonesia must adapt or amend its policies to align with the Convention on the Rights of Persons with Disabilities (CRPD) following its ratification through Law No. 19 of 2011. Furthermore, the government has developed a National Action Plan (NAP), which is a mandate of the convention to ensure the protection, promotion, and fulfillment of the rights of persons with disabilities in various aspects of life. The NAP stipulates that the state must take concrete actions to ensure the protection, enforcement, and fulfillment of the rights of persons with

disabilities in the social, cultural, civil, economic, and political spheres. This National Action Plan serves as a guide for ministries to develop concrete programs, such as initiatives to improve employment access for people with disabilities. However, its implementation remains slow in many regions; therefore, strict monitoring by the National Human Rights Commission is essential. In this way, the rights of people with disabilities can be realized fairly throughout Indonesia.

The 2015–2019 National Action Plan for Persons with Disabilities was developed by the government to serve as a national guideline for all sectors and as a reference for local governments to implement programs to fulfill the rights of persons with disabilities in a more systematic, targeted, and effective manner. Specifically for persons with mental disabilities, this plan calls for the establishment of more accessible and affordable psychiatric hospitals. Social rehabilitation programs are also designed to help them become independent through basic skills training. Local governments are urged to provide specialized counselors at community health centers to identify mental health disorders. Unfortunately, funding for these initiatives remains limited in many districts. Therefore, the next National Action Plan must place a much higher priority on mental health services for people with disabilities.

In addition, in the National Action Plan on Human Rights (RANHAM) for the 2015–2019 period, the government established six key strategies: first, strengthening implementing agencies; second, preparing and compiling reports on the ratification and implementation of international human rights instruments; third, drafting and preparing regulations; fourth, harmonizing and evaluating legislation from a human rights perspective; fifth, enhancing public education and awareness regarding human rights; and sixth, implementation. Thus, it is clear that

legal harmonization is one of the key strategies for protecting and fulfilling the rights of persons with disabilities, including women with disabilities who are victims of sexual violence. This strategy is specifically designed to help revise laws that discriminate against people with disabilities. For example, the Criminal Code must be reviewed to include specific provisions protecting victims of sexual violence with mental disabilities. Human rights education is also crucial for changing the mindset of police officers and judges regarding testimony from people with disabilities. As a result, cases of sexual violence will no longer be dismissed in court.

The 2015–2019 National Action Plan on Human Rights (RANHAM 2015–2019) identifies legal harmonization and increased awareness of human rights as key means of protecting vulnerable groups. However, in practice, protection for women and children with mental disabilities who are victims of sexual violence still faces a number of structural barriers, such as weak implementation at the local level, a lack of consideration for persons with disabilities in the law enforcement process, and discrimination against persons with disabilities. As seen in many cases of sexual violence against children and women with mental disabilities that occur at home or in the surrounding community, perpetrators exploit the victims' mental limitations and their lack of awareness regarding their own bodily autonomy. Perpetrators often go unpunished because victims cannot clearly explain what happened to the police. Victims need expert psychological witnesses to help prove their trauma in court. Local governments must act quickly to establish specialized reporting centers for cases involving people with mental disabilities.

Sexual violence often involves vulnerable groups, such as women and children with disabilities, and can occur in various settings. Therefore, legal

protection is needed in two forms: preventive, which aims to prevent violations from occurring, and punitive, which imposes sanctions on perpetrators. To provide better protection for people with disabilities, another crucial step is the harmonization of legislation. This is also in line with Indonesia's commitment following the ratification of the Convention on the Rights of Persons with Disabilities through Law No. 19 of 2011. However, more integrated efforts are needed to implement protections for women and children with mental disabilities, as significant structural challenges remain in practice. For example, the establishment of specialized police units with expertise in mental health to ensure that cases of sexual violence are handled more promptly.

2.2 Mental Health Care and Services for People with Disabilities in Tunisia

The Tunisian Ministry of Health played a key role in 1990 played a key role in medical care and the early diagnosis of mental disabilities through programs and institutions at the national and subnational levels. The Tunisian Ministry of Health also launched the National Mental Health Plan, which was subsequently developed into the National Multisectoral Action Plan in collaboration with the WHO, completed in 2024 and scheduled for publication in 2025 (Ouali et al., 2025). This plan aims to improve access to mental health services for people with disabilities across all regions of Tunisia. Collaboration with the WHO ensures the integration of a multisectoral approach involving other ministries. The program also includes training for health workers on managing cases of mental disabilities. Implementation of this plan is expected to strengthen the protection system for this vulnerable group.

This plan includes a national strategy to improve mental health among children and adolescents. The strategy involves prevention campaigns and early

intervention in schools. Tunisia has been a party to the CRPD since 2008 to support the implementation of this strategy. Indonesia ratified the CRPD in 2011 with a similar commitment. Both Tunisia and Indonesia therefore need to align their policies and legal frameworks with international human rights standards, particularly those outlined in the Convention on the Rights of Persons with Disabilities (CRPD) (UNPRPD, 2023). This alignment will accelerate the achievement of national mental health targets.

Tunisia's mental health care system indicates that all primary health care facilities are managed by physicians, and most have procedures in place to conduct assessments and provide initial care for mental disorders. According to statistics, there are approximately 8 mental health professionals per 100,000 inhabitants, indicating an adequate workforce for mental health services. This ratio remains higher than that of neighboring countries in North Africa. The Tunisian government plans to recruit more psychiatrists through a national training program. Conversely, civil society organizations are not heavily involved in the mental health sector and generally focus on child psychiatry and rehabilitation. It is hoped that this civil society engagement can be enhanced through partnerships with the Ministry of Health (Zineddine et al., 2025).

Findings from a recent study show indicate that Tunisia's mental health care system still faces several structural challenges in serving people with mental disabilities. Although the number of professionals such as psychiatrists and psychologists is increasing, the distribution of mental health services remains concentrated in major cities. The Tunisian Ministry of Health plans to establish service centers in rural areas starting in 2025. This project will be supported by local medical personnel for early diagnosis. As a result, people with mental

disorders in remote areas are unlikely to be able to self-diagnose, let alone receive program support. Efforts to create decentralized services are expected to bridge this access gap.

Tunisia is one of the countries developing a multisectoral approach to addressing mental health issues through health, social, and institutional policies. Through its National Mental Health Plan, which integrates various sectors, Tunisia seeks to increase access to services for people with mental disabilities more equitably. While primarily focused on the health sector, this approach has impacted the legal protection system, particularly in supporting individuals' capacity to participate in legal proceedings. However, like Indonesia, Tunisia still faces challenges in integrating mental health services with the justice system. Limited coordination between institutions and suboptimal legal protection mechanisms indicate that the existing approach is not yet fully comprehensive. Nevertheless, despite progress in service delivery, legal protection for people with mental disabilities still requires strengthening (Charfi et al., 2023). Based on the description of the conditions in Indonesia and Tunisia, the following comparison of strengths and weaknesses can be presented:

Table 1
Comparative Analysis Table of Legal Protection and Access to Justice for Victims with Mental Disabilities in Indonesia and Tunisia

NO	Aspect	Country	Excess	Lack
1	Legal framework	Indonesia	There is already a clear legal framework regarding disability and human rights, as well as recognition of the right to access justice.	There are currently no specific or detailed regulations regarding the protection of victims with mental disabilities in the judicial process.

2	Legal framework	Tunisia	Has adopted international standards (CRPD) and begun developing integrated policies.	The integration between the legal system and social services is still not optimal.
3	Enforcement of the law	Indonesia	There are efforts to harmonize laws and national action plans.	Implementation has not been effective; there is a gap between theory and practice.
4	Enforcement of the law	Tunisia	Begin developing a multisectoral approach (health, social, legal).	Inter-agency coordination remains weak and is not yet comprehensive.
5	Access to justice	Indonesia	It guarantees equality before the law.	Court proceedings are not yet disability-friendly, with limited accommodations and legal assistance.
6	Access to justice	Tunisia	There is a health care system in place to support participation in the legal process.	Access to justice remains limited because it has not yet been integrated with mental health services.
7	Mental Health Policy	Indonesia	There is a national action plan and efforts to improve services.	Funding and implementation remain slow at the local level.
8	Mental Health Policy	Tunisia	Have a multisectoral National Mental Health Plan.	Access in remote areas remains low.

Sources : Author's Work, (2026)

Based on the table, it is evident that Indonesia has strengths in the area of legal frameworks but remains weak in implementation and access to justice. Meanwhile, Tunisia excels in the development of multisectoral mental health services, although it still faces challenges in ensuring equitable service delivery and integration with the legal system.

2.3 Legal Protection and Measures to Prevent Sexual Violence Against Children with Intellectual Disabilities

Sexual violence against children and women with intellectual disabilities can be linked to various personal, social, and structural factors. The inability to understand concepts of the body, personal boundaries, and consent is a consequence of a lack of access to comprehensive sex education (Salim & Yusoh, 2025). The state and families often neglect children's sex education, particularly for children with intellectual disabilities. An understanding of bodily autonomy remains crucial of bodily autonomy and the ability to say "no" are crucial components of self-protection against violence (Siswanto et al., 2024). This can be supported by the National Child Protection Agency.

Protecting children is the responsibility of the state, society, and families. Cases of sexual violence against children threaten their physical and mental health as well as their future. The state is obligated to enact specific laws to protect children from sexual violence. Child protection must therefore be a top priority in national development. Because children lack sufficient cognitive ability to distinguish between right and wrong, it is crucial to provide legal protection for children (Stevanny & Laksmiwati, 2023).

Law No. 12 of 2022 ensures that children are protected from sexual violence. This law regulates the effective prevention and response to sexual violence; the handling, protection, and restoration of victims' rights; coordination between the central government and local governments; and international cooperation to ensure the effective prevention and response to sexual violence. Implementation of this law involves the establishment of Regional Child Protection Task Forces. These task forces are responsible for reporting and investigating cases of violence. Training for law enforcement officers focuses on handling child

victims with disabilities. This law also requires schools to provide education on the prevention of sexual violence.

This law also regulates how the public participates in prevention and victim recovery to ensure an environment free from sexual violence. The objectives of the Law on Sexual Violence Crimes are: first, to prevent all forms of sexual violence; second, to address, protect, and rehabilitate victims; third to enforce the law and rehabilitate perpetrators; fourth, to create an environment free from sexual violence; and fifth, to ensure that sexual violence does not occur again. The public is engaged through public awareness campaigns. Victims receive free counseling and medical rehabilitation services. Offenders undergo mandatory rehabilitation programs prior to parole. This law is uniformly enforced across all local governments.

Various individual, social, and structural factors can contribute to sexual violence against children and adolescents with intellectual disabilities, including inadequate sex education and a lack of understanding regarding bodily autonomy and personal boundaries. Children with disabilities are highly vulnerable to sexual violence due to these circumstances. Inclusive sex education must be provided in special schools for people with disabilities. Families are trained to recognize early warning signs. Therefore, the state, families, and society must take responsibility for protecting children for the sake of their safety and future. This collaboration is regulated under the latest Child Protection Law.

In addition, Government Regulation No. 44 of 2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, as well as Law No. 12 of 2022 on Sexual Violence Crimes which governs the prevention, handling, protection, and restoration of victims' rights have established a legal

framework for victim protection. Victims receive financial restitution and psychological assistance through state institutions. The implementation of these regulations may involve coordination between the Ministry of Social Affairs and the Police. Victim recovery programs are facilitated at specialized rehabilitation centers. Therefore, comprehensive protection efforts are crucial to ensure children's rights are upheld and sexual violence is stopped.

2.4 Response Strategies: Evaluation, Sanctions, and Public Awareness

The principle of equality before the law is a fundamental aspect of the rule of law, which requires equal treatment for all individuals under the law. This principle faces significant challenges in the context of legal disparities between individuals with physical disabilities and children (Zainuddin & Rosidi, 2025). This principle constitutes a form of protection and recognition of human rights. The protection and recognition of human rights take precedence and align with the objectives of the rule of law. Legal protection for people with disabilities in Indonesia can be provided through the general court system and administrative courts. This applies particularly to people with disabilities, who are in great need of legal protection. This is because, in addition to their disabilities and other factors, people with disabilities often face mistreatment and physical violence (Januarsa et al., 2021).

Law No. 8 of 2016 enables people with disabilities, people with disabilities can feel safe, both mentally and physically. This regulation also serves as the basis for the state to guarantee the protection and fulfillment of the rights of people with disabilities. People with disabilities often face unfair treatment in their daily lives; this situation frequently leads them to withdraw from social life and become reluctant to participate in various community activities. This situation demonstrates

that legal protection is necessary not only in the form of regulations but also in their implementation. Capacity building is therefore essential for legal professionals is essential to ensure that the judicial system is truly inclusive and capable of effectively addressing the specific needs of people with mental disabilities (Alika et al., 2025).

Legal protection for child victims of sexual violence is provided for in Article 1(2) of Law No. 35 of 2014, which guarantees that these children receive protection and that their rights as children are safeguarded. This provision emphasizes that the state has an obligation to protect children from various forms of violence and discriminatory treatment. This protection may include prevention, treatment, and recovery efforts for child victims of violence. With this regulation, children are expected to be guaranteed safety and well-being during their growth and development. This reflects the state's commitment to prioritizing the best interests of children. This includes the right to life, growth, and development; full and balanced participation in accordance with human dignity; and legal protection against violence and discrimination that may befall children.

Efforts to address discrimination against people with mental disabilities can be implemented through several strategies. The government can take one step by Therefore, legal protection must be improvedis to evaluate the available mental health services. The government needs to ensure that every rehabilitation facility provides services in accordance with human rights standards. Furthermore, the government must take decisive action by conducting inspections and imposing sanctions against all forms of slavery and human rights violations in mental health rehabilitation facilities, both public and private. Enforcement of these regulations is crucial to prevent harmful treatment of people with mental disabilities. These

decisive actions can help stop the deterioration of the health conditions of people with mental disabilities and raise public awareness.

Legal protection for people with mental disabilities should ideally be built through three integrated components: preventive, procedural, and punitive protections. Preventive protection is implemented through disciplinary guidelines and standard operating procedures (SOPs) that define the limits of authority for staff working with people with mental disabilities. Procedural protection is implemented through mediation mechanisms prior to criminal reporting. Meanwhile, repressive protection is implemented by establishing legal restrictions on criminal reporting related to routine disciplinary actions. Furthermore, Indonesian positive law also provides for criminal sanctions against perpetrators of sexual violence against persons with disabilities. Rape is regulated in Articles 285 through 288 of the Criminal Code, including against victims who are in a helpless state due to an intellectual disability that limits their cognitive abilities.

One of the principles of a state based on the rule of law is upholding equality before the law and respect for human rights, including through legal protection for persons with disabilities, particularly child victims of sexual violence. This protection is regulated by Law No. 8 of 2016 on Persons with Disabilities, Law No. 35 of 2014 on Child Protection, and provisions in the Criminal Code. The existence of these various regulations demonstrates the state's commitment to ensuring legal protection for vulnerable groups. However, the effectiveness of this protection depends heavily on its implementation in practice. Therefore, it is necessary to build the capacity of law enforcement officials to handle cases involving persons with disabilities appropriately. Additionally, efforts to eliminate discrimination and stigma against persons with disabilities are also required.

D. CONCLUSION

This study shows that Indonesia's legal framework, particularly through Law No. 8 of 2016, has essentially recognized and guaranteed the rights of persons with disabilities, including in terms of legal protection. However, in practice, these regulations do not specifically address how to protect persons with mental disabilities who are victims of sexual violence during the criminal justice process. The current legal system is not yet fully capable of providing equal access to justice because there are no clear rules regarding how to examine a person, what evidence should be used, or what type of assistance should be provided based on the victim's mental condition. Furthermore, various challenges in implementation further weaken this protection, including limited facilities and accessibility, insufficient availability of advocates and legal experts, as well as the persistence of stigma and skepticism among law enforcement officials regarding the victim's capacity. These conditions result in many cases not being handled effectively and may hinder the fulfillment of the victim's right to justice. We need to take more specific steps to address these issues, such as ensuring that regulations are consistently updated and clear.

Therefore, it is necessary to formulate new legal norms that specifically regulate the protection of persons with mental disabilities in the criminal justice process, including through the addition of provisions in the criminal procedure code that mandate the use of an individualized examination approach based on the victim's psychological condition, the mandatory presence of professional support personnel such as psychologists or psychiatrists at every stage of the legal process, the establishment of disability service units within the police and courts, mandatory specialized training for law enforcement officials, and the guarantee of accessible legal aid tailored to specific needs all of which must be clearly

stipulated in legally binding and operational norms, ensuring that legal protection is not merely normative but also possesses clear implementational force in judicial practice.

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