

Harmonizing Access to Justice and Legal Protection for Victims of Sexual Violence with Intellectual Disabilities

Sarah Fitri Salsabillah¹, Reva Arfika Sukma², Luthfiyya Layalia Azzahra³,
Muhammad Amar Adni Bin Mukhairil Azni⁴, Suwidia Indah Indriyani⁵

¹Consumer Dispute Resolution Body Panel, Padang, Indonesia,
Sarahfitrisb@gmail.com

²Consumer Dispute Resolution Body Panel, Padang, Indonesia,
Revaarfikasukma08@gmail.com

³Consumer Dispute Resolution Body Panel, Padang, Indonesia,
Luthfiya1223@gmail.com

⁴Students at Mara University of Technology Shah Alam, Selangor, Malaysia
Amaradni1@gmail.com

⁵Consumer Dispute Resolution Body Panel, Padang, Indonesia,
suwidiaindah08@gmail.com

Corresponding Author: Sarahfitrisb@gmail.com

Abstract

Victims of sexual violence involving people with intellectual disabilities face two major barriers in Indonesia's criminal justice system: a high risk of victimization and limitations in giving effective testimony. Although Indonesia's substantive legal framework guarantees protection for persons with disabilities, implementation is hindered by procedural rigidities in the Criminal Procedure Code (KUHP). This gap between normative rights and procedural practice risks procedural discrimination that obstructs access to justice. Using a normative juridical method with statutory, conceptual, and comparative approaches, this study examines KUHP, national disability-related instruments, and Malaysian legal instruments. Findings show Indonesia still relies heavily on law enforcement discretion to provide procedural accommodations, while Malaysia has adopted more adaptive mechanisms such as live-link testimony, intermediaries, and admissible pre-recorded statements. As a novelty, this study proposes a procedural harmonization model: expanding the definition of witness, mandating special counsel involvement, and implementing trauma-informed individual assessments in KUHP. This model aims to strengthen equal, inclusive, and non-discriminatory access to justice for victims with intellectual disabilities in Indonesia's criminal justice system.

Keywords: access to justice, rights of persons with disabilities, human rights, intellectual disabilities, legal protection

A. INTRODUCTION

The Criminal Procedure Code (KUHAP) has not yet normatively accommodated the procedural needs of persons with intellectual disabilities as victims of sexual violence. Existing provisions, particularly Article 1 number 26, Articles 54–56, and Articles 116–118, are still formulated based on conventional assumptions regarding legal capacity and communication skills, without explicitly recognizing cognitive limitations or requiring procedural adjustments. Consequently, the KUHAP does not establish a clear legal obligation for investigators, public prosecutors, or judges to provide appropriate accommodations, such as trained companions, alternative communication methods, or adaptive examination procedures. This condition also reflects disharmony within the Indonesian legal system because various legal instruments requiring procedural accommodations have not been integrated into the KUHAP (Habeahan et al., 2025), which is further exacerbated by structural barriers such as limited infrastructure, poor understanding among law enforcement officials, and inadequate standard operating procedures in court (Marzuki & Heryansyah, 2024). In addition, the absence of clear standards in assessing the accountability of vulnerable groups, including people with intellectual disabilities, also reflects the failure to fulfill the principle of *equality before the law* substantively in criminal justice practices (Zainuddin & Rosidi, 2025). Empirically, this gap is reflected in the low access to assistance and expert support for victims with intellectual disabilities, where only 9% of victims received an interpreter, 18% received no assistance at all, and 82% did not have expert representation in court (Ravanti & Monica, 2025). This data is also reinforced by the existence of 105 female victims with disabilities out of a total of 289,111 cases of violence against women throughout 2023, which is

believed to be much higher due to the phenomenon of underreporting (Larasati et al., 2025). Therefore, the main legal issue that arises is whether the absence of explicit norms regarding procedural accommodation in the Criminal Procedure Code constitutes a violation of the principle of *equality before the law* and the right to a fair trial for victims with intellectual disabilities, and how this normative gap should be addressed within the framework of Indonesian criminal procedure law.

Studies on legal protection for persons with disabilities in the criminal justice system have developed from various perspectives, but still leave significant normative gaps. Sari et al. (2021) show that children with disabilities as victims of sexual violence require stronger legal protection, but these studies are still limited to material legal aspects and have not addressed the need for adaptive examination mechanisms in procedural law. Furthermore, Kurniawati et al. (2022) shift the focus to the procedural dimension by identifying the problematic nature of Article 1 number 26 of the Criminal Procedure Code, indicating that the problem lies not only in the substance of the law but also in the design of the criminal procedure mechanism. However, neither study specifically examines the procedural needs of persons with intellectual disabilities as a group with distinct vulnerability characteristics. On the other hand, Ali et al. (2021) recommend standard operating procedures in the pre-trial phase, but by positioning persons with disabilities as perpetrators, thus eliminating the perspective of victim protection from the study. Meanwhile, Asrun & Maududi (2025) emphasize the urgency of reforming the Criminal Procedure Code based on the principle of *due process of law*, but have not yet linked it to the need for procedural accommodations for people with intellectual disabilities as victims of sexual violence. Thus, it can identified existence emptiness studies that are normative

Not yet integrate analysis to weakness arrangement procedural in the Criminal Procedure Code with need specific accommodation for person with disabilities disability intellectual. Emptiness This at a time show urgency normative for formulate a harmonization model criminal procedural law that does not only responsive to the principle of due process of law, but also able to ensure fulfillment right on fair and equal justice for victims of disabilities disability intellectual.

This research departs from the normative gap in previous studies, namely the absence of research that integratedly analyzes three procedural weaknesses in the Criminal Procedure Code, including the weak construction of victim testimony, the absence of the obligation to provide special assistance, and the lack of adaptive examination procedures for persons with intellectual disabilities as victims of sexual violence. Based on these research gaps, this research takes the position of a normative legal study that focuses on the reconstruction of procedural regulations in the Criminal Procedure Code through a comparative legal approach with Malaysia as a system that has accommodated the procedural needs of persons with disabilities more progressively, with the aim of formulating a procedural harmonization model based on the principles of *due process of law*, *equality before the law*, and *reasonable accommodation*. Thus, the novelty of this research lies in the effort to integrate the analysis of the three procedural weaknesses in the Criminal Procedure Code while simultaneously building a normative construction in the form of a procedural harmonization model that can be used as a basis for formulating more inclusive regulations. This research is positioned as an effort to provide a normative basis for the reform of the Criminal Procedure Code that is responsive to the needs of victims

with intellectual disabilities, so that the material legal framework that has been progressive can be truly operationalized in Indonesian criminal justice practice.

B. RESEARCH METHODS

This study uses normative legal research, which places positive law as the main object of analysis Abrianto & Tinambunan (2025), particularly in examining procedural protection for victims with intellectual disabilities in cases of sexual violence. The approaches used include the statute approach, the conceptual approach, and the comparative approach (Yuliana et al., 2025). The legal approach is carried out by examining national laws and regulations related to disability, sexual violence, and criminal procedure law, while the conceptual approach is used to analyze legal principles such as due process of law and equality before the law. The comparative approach is carried out by comparing the legal systems of Indonesia and Malaysia. Malaysia was chosen as the object of comparison by considering the similarity of the legal systems, the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by both countries, the existence of specific regulations regarding disability, and the similarity of practical issues related to procedural protection for victims with intellectual disabilities (Ali et al., 2021).

The collection of legal materials was conducted through literature study by systematically identifying, classifying, and reviewing relevant legal sources. The legal materials used consisted of primary legal materials in the form of national legislation and Malaysian legal instruments, as well as secondary legal materials in the form of scientific literature, journal articles, and relevant legal doctrines. The validity of the legal materials was ensured through hierarchical and relevance-based

source selection, prioritizing binding legal norms and authoritative doctrines, and cross-referencing between legal sources and expert opinions.

Analysis material law done in a way qualitative with use method reasoning law. Approach legislation analyzed through interpretation grammatical and systematic for identify emptiness arrangement in the Criminal Procedure Code. Approach conceptual used for evaluate conformity to existing norms with principles law, in particular *due process of law*, *equality before the law*, and *reasonable accommodation*. Temporary that, approach comparison used for identify difference normative as well as practice best (*best practices*) in system Malaysian law that can adapted to in Indonesian context. Next, the analysis prescriptive used for formulate law as should (*das sollen*), through harmonization model development procedural as well as construction of norms for fill in emptiness the settings that have been identified.

C. RESULTS AND DISCUSSION

1. Legal Protection Regulations for Persons with Intellectual Disabilities as Victims of Sexual Violence from a Human Rights Perspective

a. Human Rights Framework and Principles of Legal Protection

A human rights perspective is an important foundation for understanding procedural legal gaps. Legal protection is the state's obligation to guarantee the fulfillment and protection of individual rights through effective regulations and law enforcement mechanisms (Yunfa & Khofivantunnisa, 2024). However, even though regulations regarding disabilities exist, their implementation still faces obstacles such as a lack of clear procedures and limited understanding among law enforcement officers. A study in ten cities

in Indonesia showed that the accessibility of public services for people with disabilities is generally suboptimal, where many facilities provided by the government do not support the real needs of people with disabilities, including in the context of legal and judicial services. (Pramashela & Rachim, 2022). In the context of persons with intellectual disabilities, legal protection is not sufficient to be realized only through normative recognition of rights, but must be accompanied by procedural mechanisms that ensure that these rights are accessible in actual criminal justice practices.

The principle of non-discrimination as stipulated in Article 5 of *the Convention on the Rights of Persons with Disabilities* (CRPD) requires states to guarantee equal legal protection without distinction based on disability, including through the provision of reasonable accommodations in the judicial process (Itasari, 2020). From this perspective, discrimination is not only direct, but can also occur indirectly (*indirect discrimination*), namely when a norm that appears neutral actually has a detrimental impact on certain groups (Sodikin, 2021). However, the provisions of Article 1 number 26 of the Criminal Procedure Code, which defines a witness as a person who can provide testimony based on what he or she has heard, seen, and experienced, in practice requires conventional communication skills and consistency of testimony without considering the cognitive limitations of people with intellectual disabilities. This norm does not provide space for alternative forms of communication or procedural adjustment mechanisms. Based on this construction, Article 1 number 26 of the Criminal Procedure Code is a form of indirect discrimination, because although formulated in general, this

norm places people with intellectual disabilities in an unequal position in the evidentiary process. This contradicts the principle of non-discrimination in the CRPD, as states are not only prohibited from making direct distinctions but are also obliged to ensure reasonable accommodation in the judicial process. Although the principle of non-discrimination has been adopted in instruments for the protection of victims of sexual violence, its implementation still faces various structural obstacles that require serious attention (Lubis & Sari, 2023). This condition is reflected in judicial practices, such as in the handling of cases at the Semarang Police UPPA, where the testimony of victims with intellectual disabilities was not recognized because it was considered inconsistent, even though this inconsistency is a cognitive characteristic inherent in disabilities, not an indicator of untruth (Aprilia, 2024). This fact reinforces that the non-adaptive provisions of the Criminal Procedure Code have contributed to discriminatory practices in the criminal justice process, as also emphasized by Alike et al. (2025) that accessibility barriers and social stigma against people with disabilities mutually reinforce structural injustice in the justice system.

The second principle is *equality before the law* confirm that everyone should treated in a way equal before law without discrimination, which in the context of disability does not interpreted as identical treatment, but rather proportional treatment according to individual needs (Yunfa & Khofivantunnisa, 2024). Principle This requires that capacity law for provide mechanisms that allow they participate in a way effective in the judicial

process. Namn thus, the provisions Articles 116-118 of the Criminal Procedure Code regulate procedure inspection witnesses and victims still formulated in a way general and uniform without accommodate need special person with disabilities disability intellectual. The norm No give room for adjustment method examination, such as use communication alternative, mentoring special, as well as technique adaptive inspection to limitations cognitive. Based on construction said, the settings procedure inspection in Articles 116-118 of the Criminal Procedure Code not reflect principle equality before law, because treat all over subject law identically without consider difference conditions and needs. This is result in person with disabilities disability intellectual No can participate in a way effective in the judicial process, so that in a way substantive experience inequality in access to justice. In this perspective, uniform treatment actually results in injustice, because substantive equality requires proportional treatment according to individual conditions, not identical treatment (Rahmadani et al., 2025). Thus, the failure of the Criminal Procedure Code in provide adaptive procedural mechanisms No only is problem technical, but also reflects violation to principle equality before law, because the state does not fulfil obligation for ensure proportional treatment and equal access for every individual in the judicial process criminal.

The third principle is *reasonable accommodation*. as regulated in Article 5, paragraph 3 CRPD, requires existence necessary and proportional adjustments For ensure person with disabilities disability can access and run his rights in a way equivalent (Gulati et al., 2024). This principle places a

positive obligation on the state to provide procedural support, including through the use of intermediaries, specialized interviewers, and alternative forms of testimony appropriate to the circumstances of the disability. However, the provisions of Articles 54–56 of the Criminal Procedure Code (KUHP), which regulate the right to legal aid, focus only on suspects and defendants, without regulating the obligation to provide special assistance to victims, particularly those with intellectual disabilities. Furthermore, the KUHP does not regulate procedural accommodation mechanisms such as the use of alternative communication methods or adjustments to examination techniques to suit the victim's needs. Based on construction said, the absence of arrangement about accommodation procedural in the Criminal Procedure Code shows that system criminal procedure law Not yet fulfil principle *reasonable accommodation*, because no provide necessary adjustments for ensure participation effective person with disabilities disability intellectual in the judicial process. This is no only is void of norms, but also can qualified as violation right basic humans , considering that the state has obligation For in a way active ensure fulfillment access inclusive justice. With thus, the failure of the Criminal Procedure Code in arrange accommodation procedural reflect no fulfillment state obligations in ensure equal protection, as well as strengthen existence obstacle systemic for person with disabilities disability intellectual in access to the judicial process criminal.

The fourth and most central principle is *access to justice*, which is the most central principle in protecting the rights of persons with disabilities, as guaranteed in Article 13 of *the Convention on the Rights of Persons with*

Disabilities (CRPD), which requires states to ensure effective access to justice for persons with disabilities, including through the provision of procedural accommodations at every stage of the legal process. The CRPD Committee in *General Comment* No. 6 of 2018 emphasized that this obligation includes providing mechanisms that enable victims and witnesses with disabilities to participate fully and effectively in the judicial process. However, the Criminal Procedure Code (KUHAP), as the primary criminal procedural law in Indonesia, does not comprehensively regulate adaptive access to justice mechanisms for persons with intellectual disabilities. Provisions in the KUHAP, particularly those governing examination and evidentiary procedures, are still general in nature and do not provide systematic guarantees of procedural accommodations throughout all stages of the judicial process. Based on this construction, it can be concluded that the KUHAP does not fulfill the principle of access to justice as stipulated in the CRPD, because it does not guarantee effective participation for persons with intellectual disabilities in the criminal justice process. The absence of adaptive procedural mechanisms not only reflects a normative vacuum but also demonstrates the state's failure to fulfill its national and international obligations to provide an inclusive and non-discriminatory justice system.

b. Analysis of Procedural Legal Gaps in the Criminal Procedure Code

An analysis of the Criminal Code, based on the human rights framework outlined, reveals three major procedural gaps that systematically hinder the participation of victims with intellectual disabilities in the criminal justice process.

1. Lack of Provision of Special Companions/Spokespersons

The first and most fundamental gap is the absence of a binding legal obligation to provide special counsel for victims with intellectual disabilities throughout all stages of a criminal investigation. The provisions of Articles 54–56 of the Criminal Procedure Code, which regulate the right to legal assistance, explicitly only apply to suspects and defendants, excluding victims, particularly those with intellectual disabilities (Kurniawati et al., 2022). Meanwhile, Article 116 of the Criminal Procedure Code, which regulates witness examination, also does not require the presence of special counsel for witnesses with communication disabilities (Irawan, 2023). If interpreted systematically with Article 5 of *the Convention on the Rights of Persons with Disabilities* (CRPD) and Article 5 of Government Regulation Number 39 of 2020, which explicitly require the provision of counsel as a form of reasonable accommodation, a discrepancy between the norms is apparent. Norms in substantive law have recognized the obligation to provide counsel, but the Criminal Procedure Code, as procedural law, does not provide a mechanism to operationalize it. Based on this construction, it can be concluded that the Criminal Procedure Code (KUHAP) contains normative flaws in the form of a normative gap and disharmony of norms, as it fails to integrate the procedural accommodation obligations recognized in other legal instruments. Consequently, the fulfillment of the right to assistance is non-binding and relies on the discretion of law enforcement officials.

Empirically, these conditions have a direct impact on obstructing access to justice for people with intellectual disabilities. People with intellectual disabilities are often unrecognized or misdiagnosed by law enforcement officers who are not trained in conducting intellectual disability assessments, including due to individuals' tendency to conceal their disabilities (Gulati et al., 2024). Without a companion who can facilitate communication between victims and investigators, victims' statements are potentially misunderstood or ignored, ultimately leading to violations of the right to be heard as a fundamental part of *due process of law* (Asrun & Maududi, 2025). Obstacles in the process of investigating sexual violence against victims with disabilities have been proven significant, where victims' communication limitations are often exploited by perpetrators as a loophole to avoid legal accountability because the crimes committed are difficult to prove without adaptive investigative mechanisms (Hoke & Tuasikal, 2025). Other empirical findings indicate that in judicial practice, victims with intellectual disabilities do not receive adequate assistance. Research on case handling at the Women and Children's Service Unit (UPPA) of the Semarang City Police showed that children with intellectual disabilities who are victims of sexual violence do not receive adequate assistance and communication support during the examination process (Aprilia, 2024). Furthermore, women with intellectual disabilities who are victims of sexual violence often do not receive their full rights in the judicial process because their testimony is questioned due to limited communication skills (Listiawati et al., 2023). Similar findings are confirmed by Pratiwi (2024),

who shows that female victims with intellectual disabilities still need special protection that includes counseling services, legal aid, and violence prevention (Pratiwi, 2024).

This situation also indicates a discrepancy between legal norms and judicial practice. Article 5 of Government Regulation Number 39 of 2020 mandates the provision of companions as a form of accommodation, but because this norm is not integrated into the Criminal Procedure Code (KUHAP), this obligation lacks operational force in the criminal justice process. This aligns with findings Hutabarat et al. (2025) that indicate that the regulatory disharmony regarding persons with intellectual disabilities as victim-witnesses has not been systematically addressed in criminal justice practice. In fact, empirically, it was found that in the three law enforcement agencies studied, not a single case involving persons with intellectual disabilities had been handled in the past three years, indicating that access to justice for this group remains very limited (Listiawati et al., 2023). Thus, the absence of norms regarding companionship in the Criminal Procedure Code not only represents a regulatory vacuum but also reflects a normative failure to guarantee effective legal protection, as it does not provide a mechanism that allows victims with intellectual disabilities to participate equally in the criminal justice process. In this context, the presence of a sworn companion is crucial, because testimony facilitated by a companion can have valid evidentiary power in the judicial process (Grace & Feronica, 2024).

2. Investigations Equated to Non-Disabled Victims

The second gap lies in the absence of adaptive examination standards in the Criminal Procedure Code (KUHAP) for victims with intellectual disabilities. Article 1, number 26 of the KUHAP defines a witness as a person who can provide testimony based on what they have heard, seen, and experienced. Grammatically, this provision does not explicitly limit the forms of communication used by witnesses. However, in judicial practice, the phrase "providing testimony" is interpreted narrowly as the ability to convey information verbally, coherently, and consistently. This interpretation demonstrates an implicit assumption that witnesses must possess conventional and structured communication skills, thus indirectly excluding individuals who experience difficulties in verbal expression, including those with intellectual disabilities. Systematically, this provision must be read in conjunction with Articles 116–118 of the KUHAP, which regulate witness examination techniques. These three articles demonstrate that Indonesian criminal procedure law adopts a uniform examination approach without differentiating communication needs based on individual circumstances. There are no provisions regarding adaptive questioning methods, adjustments to examination duration, or recognition of alternative forms of testimony such as gestures, images, or augmentative communication media. Thus, the Criminal Procedure Code normatively establishes a uniform (one-size-fits-all) examination standard, which in practice is incompatible with the diversity of witnesses' cognitive capacities. If interpreted systematically and teleologically with the principles of non-

discrimination and *reasonable accommodation* as stipulated in the Convention on the Rights of Persons with Disabilities (CRPD), and linked to the provisions of Government Regulation Number 39 of 2020 which recognizes the importance of procedural adjustments, there is a visible inconsistency between the procedural norms in the Criminal Procedure Code and higher legal obligations. Within this framework, the state's obligation is not only limited to providing equal treatment, but also ensuring proportional adjustments so that each individual can participate effectively in the judicial process. Based on this construction, the provisions of Article 1 number 26 and Articles 116–118 of the Criminal Procedure Code can be qualified as containing normative defects in the form of normative incompleteness, because they do not provide a mechanism that allows alternative forms of communication to be recognized as valid testimony. Furthermore, the norm also reflects indirect discrimination, because even though it is formulated in a general and neutral manner, its application has a disproportionate impact on people with intellectual disabilities who are factually unable to meet the communication standards assumed by law. This condition indicates that the Criminal Procedure Code has not yet internalized the principle of substantive equality in the evidentiary process, thus potentially hindering access to justice for vulnerable groups (Kurniawati et al., 2022).

Empirically, the construction of norms in Article 1 number 26 and Articles 116–118 of the Criminal Procedure Code has a direct impact on the low sustainability of case handling involving victims with intellectual

disabilities. There is strong and consistent evidence of high levels of victimization for this group, yet many cases are not followed up in the investigation or prosecution process due to discrimination, low trust in victims, and stereotypes that doubt their ability to provide credible testimony (Stancliffe & Frantz, 2024). The 2024 Annual Report of the National Commission on Violence Against Women also shows that persons with disabilities still face barriers in accessing justice in cases of sexual violence, reflecting indirect discriminatory practices in the justice system.

In judicial practice, the inconsistency between uniform examination methods and the cognitive condition of victims often results in inconsistent or non-credible testimony from people with intellectual disabilities. This is not due to the lack of relevant information from the victim, but rather because the examination method used is not appropriate for the victim's way of processing and communicating information. Thus, the evidentiary standards applied in the Criminal Procedure Code implicitly require a specific form of communication that some victims with intellectual disabilities cannot meet. Findings Rohana et al. (2025) indicate that testimony from victims with intellectual disabilities only gains equal legal force if supported by a personal assessment from a psychologist or psychiatrist, as stipulated in Government Regulation Number 39 of 2020. This indicates that recognition of the victim's capacity does not originate from the Criminal Procedure Code as the primary procedural law, but rather relies on other legal instruments outside the Criminal Procedure Code. Thus, uniformity procedure inspection in the Criminal Procedure Code no only

show absence standard adaptive, but also affirming existence disabled normative in the form of inability of procedural norms in ensure fulfillment principle *fair trial* and equality substantive. In context this, the failure of the Criminal Procedure Code is not solely lies in the absence arrangement technical, but not he admitted diversity capacity communication as part from right for heard in the judicial process criminal.

3. Equalizing Disability Conditions Without Individual Assessment

The third gap lies in the absence of an individual assessment mechanism in the Criminal Procedure Code (KUHP) that allows for adjustments to examination procedures based on the victim's specific circumstances. The KUHP does not differentiate between physical, sensory, mental, and intellectual disabilities in the examination process, so that all types of disabilities are treated identically as "witnesses" subject to the same examination standards. This approach ignores the different characteristics and needs of each individual, particularly those of persons with intellectual disabilities who require different communication and examination approaches. When interpreted systematically in conjunction with Article 12 *of the Convention on the Rights of Persons with Disabilities* (CRPD), which emphasizes that legal capacity must be recognized equally and assessed based on individual circumstances, and linked to the principle of *reasonable accommodation*, it is clear that the provisions in the KUHP do not provide a mechanism for conducting a personal assessment before the examination. This indicates that the KUHP has not adopted the principle of individualized justice *in* criminal procedure law.

Articles 2–3 of Government Regulation Number 39 of 2020 explicitly require a personal assessment by a psychologist or psychiatrist prior to the examination of persons with disabilities. However, because this provision is not integrated into the Criminal Procedure Code (KUHAP), the obligation for individual assessment is not binding in investigative practice or trials. Based on this construction, the KUHAP contains normative flaws in the form of incomplete norms and disharmony of norms, because it does not integrate individual assessment mechanisms stipulated in other legal instruments. Empirically, the absence of an individual assessment mechanism has an impact on limited access by victims with disabilities to procedural accommodations. Although normatively persons with disabilities have the right to request accommodations at every stage of the judicial process, in practice they are often reluctant to make such requests due to concerns about negative treatment or previous negative experiences (Gulati et al., 2024). This condition is exacerbated by the absence of a proactive obligation for law enforcement officials to assess victims' needs. In judicial practice, this normative vacuum even encourages judges to make legal discoveries (*contra legem*) to fill the regulatory gap. This can be seen in Decision No. 116/Pid.Sus/2024/PN.Agm which was analyzed by Rohana et al. (2025), where judges must take steps outside of normative provisions due to the absence of procedural rules explicitly governing the examination of witnesses with intellectual disabilities. This fact indicates that the normative gap in the Criminal Procedure Code is not merely theoretical, but has a direct impact on judicial practice. Furthermore, although Government

Regulation Number 39 of 2020 requires the provision of adequate accommodations, its implementation in the field is still far from optimal, such as the lack of sign language interpreters and mobility aids other than wheelchairs in several district courts (Syafiqoti & Hadiati, 2023). Thus, the absence of an individual assessment mechanism in the Criminal Procedure Code not only reflects a regulatory gap but also demonstrates a normative failure to ensure an individual-needs-based approach, which is a key prerequisite for a fair and inclusive trial.

2. Comparison of Regulations and Their Implications for the Criminal Justice System

1. Comparison with Malaysia

Table 1
Comparative Comparison

No	Comparative Aspects	Indonesia	Malaysia	Crisis Analysis
1.	Disability legal instruments	Law Number 8 of 2016 concerning Persons with Disabilities guarantees access to justice and adequate accommodation.	The 2008 Disability Act recognizes the right of access to justice.	Both countries recognize the right of access to justice, but their procedural implementation differs.
2.	Criminal procedure law	The Criminal Procedure Code does not regulate adaptive procedures for victims of intellectual disabilities.	The 1976 Criminal Procedure Code provides judges with flexibility in examining witnesses.	Malaysia provides greater procedural flexibility.

3.	Witness competence	Article 1 number 26 of the Criminal Code defines witnesses conventionally based on their ability to provide information.	Article 133 of the Criminal Procedure Code assesses a witness's competence based on his or her ability to understand the questions.	Malaysia takes context into account when assessing witness capacity.
4.	Companion/intermediary	Not explicitly regulated in the Criminal Procedure Code	Can be used through witness assistance communication mechanisms in judicial practice .	Indonesia does not yet have a clear procedural basis.
5.	Witness examination technology	There is no explicit provision regarding live linking or recording of testimony.	The Evidence Act 1950 allows for testimony via live link and pre-recorded statements .	Malaysia has more operational procedural instruments .
6.	Protection victims of disability in sexual matters	Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence recognizes vulnerable groups.	The Anti-Sexual Harassment Act 2022 allows victims to be represented by a next of kin or guardian ad litem.	Malaysia is starting to recognize special legal assistance services for victims of disabilities.
7.	Integration of material law and procedural law	Progressive material regulations but not integrated into the Criminal Procedure Code.	Procedural mechanisms are more accessible although they are discretionary.	Indonesia is strong in material norms, while Malaysia is more operational in procedures.

Source: Compiled by the author based on primary legal materials and comparative analysis of Indonesia and Malaysia.

From the table above, several important differences are worth highlighting. First, while both countries recognize the right to access justice through their respective disability legal instruments, Indonesia lacks an operational procedural mechanism within its procedural law, while Malaysia provides procedural flexibility through judicial discretion. Second, regarding witness competence, Malaysia's approach through *Article 133* of the Criminal Procedure Code, which assesses the ability to understand questions contextually, is more adaptive than *Article 1(26)* of the Criminal Code, which requires conventional verbal communication skills. Third, the most significant difference lies in the availability of witness examination technology. Malaysia has integrated *live-streamed testimony* and *pre-recorded statements* into the *Evidence Act 1950*, while the Criminal Code does not recognize these mechanisms at all. Fourth, while neither country has a specific binding procedural standard for adult victims with intellectual disabilities, Malaysia goes a step further by recognizing special legal representation through *next of kin* or *guardian ad litem* in sexual abuse cases. These differences have practical implications that are immediately felt by victims. In terms of witness competence, when victims with intellectual disabilities are unable to answer questions verbally and in a structured manner, the Indonesian justice system tends to dismiss their testimony as not meeting the standards of *Article 1 number 26* of the Criminal Code, whereas the Malaysian justice system allows for a more contextual assessment through the judge's discretion. Similarly, in terms of examination technology, the absence of *live link mechanisms* and *pre-recorded statements* in the Criminal Code forces victims with intellectual disabilities to face the defendant face-to-face in the

courtroom, a situation that can actually worsen their communication skills and exacerbate the trauma they experience.

2. Malaysian Legal Instruments and Their Relevance

Malaysia, as a country with *a common law system*, CRPD ratification, and a legal structure nearly identical to Indonesia's, provides a relevant comparison. The Malaysian legal system recognizes at least four instruments addressing procedural protections for victims with intellectual disabilities.

First, the 2008 *Persons with Disabilities Act* (Act 685) recognizes access to justice and *reasonable accommodation* as fundamental rights. While it does not amend *the Criminal Code* to create *mandatory procedural protections*, it provides a normative basis for the development of standard operating procedures (SOPs) and practical guidance in handling cases involving persons with disabilities (Azlina, 2025). Malaysia has also developed a non-legislative procedural mechanism in the form of a Standard Operating Procedure (SOP) specifically for individuals with neurodevelopmental disorders during police arrest and detention since 2019. This SOP explicitly requires the assistance of an intermediary called 'Autism Partner' and adaptive communication techniques as practical guidance for law enforcement officers, a mechanism that has no equivalent in the Indonesian criminal justice system (Kusrin et al., 2024).

Second, the 1976 *Criminal Code* (Law 593) regulates the competence and examination of witnesses through three relevant articles. Article 133 regulates the general competence of witnesses; this article is relevant because victims with intellectual disabilities are often questioned about their competence as witnesses. Article 156 provides judges with flexibility in determining the method of

examining witnesses, including the possibility of adjustments for witnesses who require assistance. Article 159 regulates witnesses who require assistance in giving testimony. These three articles do not explicitly mention disability, but place victims with disabilities in the category of "vulnerable witnesses" *who* are subject to the judge's discretion to receive tailored treatment.

Third, the 1950 *Evidence Act* (Law 56) provides more concrete mechanisms in the form of *live-link* (remote testimony through technology), the use of *intermediaries* as communication facilitators, and *pre-recorded statements* (pre-recorded statements) as admissible evidence. These three mechanisms are particularly relevant for victims with intellectual disabilities who face barriers to providing live testimony in court. The *live-link mechanism* is particularly relevant for Indonesia to adopt because it allows victims to testify from a safe location without having to face the defendant directly in the courtroom, thereby reducing psychological stress that can worsen the communication skills of victims with intellectual disabilities. Meanwhile, *the pre-recorded statement mechanism* can be a solution to the problem of inconsistent testimony that is often questioned in Indonesian judicial practice. Statements recorded immediately after the incident, when the victim's memory is still fresh, can be used as valid evidence without requiring victims to repeatedly recount their traumatic experiences before various law enforcement officials.

Fourth, *the Anti-Sexual Harassment Act 2022* represents a significant development. This law explicitly stipulates that victims with disabilities, including those with mental and intellectual disabilities, have the right to be represented by *a close relative* or *guardian ad litem* in proceedings before the

Anti-Sexual Harassment Court. This is the first normative recognition in Malaysia that victims with intellectual disabilities require specialized representation in legal proceedings.

3. Comparative Analysis

A comparison of the Indonesian and Malaysian legal systems not only demonstrates similarities and differences but also reveals normative issues related to the fulfillment of the principle of equality before the law and access to justice. One fundamental similarity is that once victims with intellectual disabilities reach adulthood, both legal systems tend to treat them as competent legal subjects and are subject to the same examination procedures as other individuals, unless proven to have a mental disorder. In Indonesia, children with intellectual disabilities are protected through the Child Protection Act, while in Malaysia, this protection is further strengthened through the Sexual Offences Against Children Act 2017. However, this protection no longer applies once the victim reaches adulthood, even if their intellectual disability remains unchanged (Ali et al., 2021). This situation demonstrates a normative paradox in both legal systems, where the law recognizes the need for special procedural protection for children with intellectual disabilities, but does not extend that recognition to adult victims with the same cognitive condition. Based on the perspectives of equality before the law and reasonable accommodation, an approach based solely on chronological age without considering actual cognitive capacity can be qualified as a form of substantive inequality, because it results in different legal treatment for conditions that are factually the same.

The main difference between the two countries lies in the operationalization of procedural safeguards in criminal procedure. Malaysia, through the Evidence Act 1950, has recognized mechanisms such as live-link, the use of intermediaries, and pre-recorded statements as evidentiary instruments, although their application remains at the discretion of the judge. In contrast, Indonesia has a more progressive substantive legal framework, such as Law No. 8 of 2016, the Sexual Violence Crimes Act, and Government Regulation No. 39 of 2020. However, these provisions have not been integrated into the Criminal Procedure Code (KUHAP) as procedural law, thus preventing their effective operationalization in examination practice. Normatively, the mechanisms developed in the Malaysian legal system are closer to the principle of reasonable accommodation because they allow for procedural adjustments to suit the victim's needs, while the Indonesian KUHAP, which maintains uniform procedural standards, has the potential to lead to indirect discrimination. However, the Malaysian model cannot be directly adopted without considering the characteristics of the Indonesian civil law-based legal system, which requires certainty in written norms. Therefore, the relevance of the Malaysian model for Indonesia lies in the substance of its adaptive mechanisms, which need to be reconstructed in the form of explicit and binding norms in the Criminal Procedure Code, not simply implemented through the discretion of law enforcement officers.

4. Criminal Justice System

The three procedural gaps in the Criminal Procedure Code (KUHAP) previously identified, the absence of mandatory assistance, the absence of

adaptive examination standards, and the absence of individual assessment mechanisms, indicate a normative flaw in the form of a regulatory vacuum that directly impacts the protection of the rights of victims with intellectual disabilities. This normative vacuum results in the absence of a binding legal obligation for law enforcement officials to provide procedural accommodations, leaving the implementation of victim protection entirely at the discretion of each official.

In this construction, the first implication is the emergence of legal uncertainty. The absence of explicit norms in the Criminal Procedure Code regarding procedural accommodations results in the absence of standards that can be used as a basis for assessing whether the actions of law enforcement officers comply with the principle of due process of law. As a result, victims with intellectual disabilities do not receive consistent guarantees of access to justice, as the protection provided depends on the subjectivity of the officers handling the case (Larasati et al., 2025). This condition shows that the lack of norms is not only technical, but also has implications for the failure to fulfill the principle of legal certainty in the criminal justice system.

The second implication is the occurrence of structural victimization. When the Criminal Procedure Code does not regulate adaptive examination procedures, the examination process carried out with general standards actually has the potential to worsen the victim's condition, both psychologically and in terms of evidence. This shows that the inconsistency of procedural norms with the victim's needs not only hinders the evidence process, but also causes additional suffering for the victim in the judicial process (Larasati et al., 2025). This

obstacle even continues in the post-decision stage, where the absence of an adaptive execution mechanism makes it difficult to realize the victim's right to restitution effectively. Furthermore, the absence of a procedural obligation to consider the victim's disability also has an impact on the suboptimal implementation of the provisions on increasing sanctions as stipulated in Article 15 paragraph (1) letter h of the TPKS Law (Resia & Panjaitan, 2024).

The third implication is the state's failure to fulfill its legal obligations based on human rights principles, particularly as stipulated in the Convention on the Rights of Persons with Disabilities (CRPD). The absence of adaptive procedural mechanisms in the Criminal Procedure Code indicates that the state is not fulfilling its positive obligation to ensure effective access to justice for persons with disabilities. From this perspective, the state's failure lies not only in discriminatory actions, but also in the failure to establish a legal system that allows for effective victim participation in the judicial process (Putra et al., 2026). This is in line with the CRPD Committee's affirmation in General Comment No. 6 of 2018, which states that the state's failure to eliminate structural barriers in the justice system constitutes a violation of the right to access justice.

These implications collectively emphasize that procedural gaps in the Indonesian Criminal Code (KUHP) are not merely technical legislative issues, but rather human rights issues, with real consequences for victims with intellectual disabilities in sexual violence cases. The harmonization model proposed by this study includes four elements: expanding the definition of witness in Article 1(26) of the Indonesian Criminal Code to accommodate

communication barriers, requiring *trained intermediaries* in the revised Article 116 of the Indonesian Criminal Code in all hearings, recognizing *pre-recorded statements* and alternative testimony as valid evidence, and integrating *trauma-informed examination standards* and individual assessments into the Indonesian Criminal Code. Aligning the Indonesian Criminal Code with the existing substantive legal framework is not only an academic need, but a pressing constitutional and international obligation that must be met. In this context, the primary problem in the Indonesian legal system lies not simply in the lack of normative recognition of the rights of persons with disabilities, but rather in the failure to integrate these principles into operational criminal procedure law. Indonesia has a relatively progressive substantive legal framework, but the absence of procedural provisions in the Criminal Code prevents these rights from being effectively implemented in judicial practice. On the other hand, Malaysia shows that adaptive procedural mechanisms, although their implementation still depends on the judge's discretion, can be a relevant reform model for Indonesia in realizing an inclusive and non-discriminatory criminal justice system.

D. CONCLUSION

Protection law for person with disabilities disability intellectual as a victim of violence sexual in perspective right basic man Not yet come true in a way substantive in system justice criminal law in Indonesia. Although principle of non - discrimination, equality before law, reasonable accommodation, and access to justice has recognized in a way normative, provisions in the Criminal Procedure Code not yet internalize it to in mechanism binding procedures. As a result, the victim has not get participation effective in the process of proof and experiencing inequality access justice. Therefore, normative

reform of the Criminal Procedure Code is needed through expansion definition witnesses who admitted communication alternative, obligation companion or intermediary trained, recognition testimony media and distance based far, and individual assessment by staff professional for determine need victim procedural.

Emptiness law procedural in the Criminal Procedure Code shows disabled normative in the form of incompleteness of norms and discrimination No directly, such as No existence obligation companion, standard inspection adaptive, and mechanisms individual assessment. This hinder fulfillment principle fair trial and access equal justice for victims with diversity capacity cognitiv. Therefore, procedural and institutional reforms are needed through development of inspection models adaptive which includes assessment beginning, method customized communication, mechanisms safe testimony, as well as contextual evaluation of judges. In addition, it is necessary integrated SOPs are compiled, improvements capacity apparatus based perspective disabilities, and provision facility accessible to realize system justice inclusive and non- discriminatory criminal law.

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