



Legal Protection for Women and Children with Disabilities in Indonesia

Dewa Gede Sudika Mangku¹

¹Fakultas Hukum dan Ilmu Sosial Universitas Pendidikan Ganesha
E-mail: sudika.mangku@undiksha.ac.id

Info Artikel

Received: 19th January 2021
Accepted: 4th April 2021
Published: 9th April 2021

Keywords:

Women, children, disability; legal protection; Indonesia

Corresponding Author:

Dewa Gede Sudika Mangku, email
: sudika.mangku@undiksha.ac.id

DOI:

10.24843/JMHU.2021.v10.i01.p01

Abstract

The state has an obligation to protect its citizens, including the protection of women and children with disabilities. Given that people with disabilities remain the most vulnerable and marginalized group in every society, even though the international and national human rights movements have improved, in general this group is still in the last row enjoying it. The purpose of this research is to analyze and study legal protection for women and children with disabilities and the obstacles that exist in Indonesia. The research method used in this research is normative juridical, with the approach used the statutory approach. The results of his research show that women and children with disabilities in Indonesia have obtained legal protection based on human rights law and international treaties that have been ratified by the Indonesian government, although in implementation there are still obstacles that occur but this does not prevent fulfillment of the rights of persons with disabilities in Indonesia, especially for women and children.

1. Introduction

The state of Indonesia is a state based on law, must be able to provide protection for all its citizens from all forms of discrimination and acts of violence (Prakasa& Septias, 2020). Legal protection and guarantees must be provided by the state, especially for individuals who are vulnerable to acts of violence, such as women and children with disabilities. All forms of action that can be detrimental to the lives of women and children must be able to be eliminated, however special attention and protection must be given to women and children, without exception women and children with disabilities. Law enforcement must also be able to be enforced for all citizens who violate the law, so that justice and legal certainty can be properly enforced.¹

The existence of women and children with disabilities must receive special protection and place, however the immediate environment such as parents, families and communities must pay more attention to women and children with disabilities. The existence of women and children with disabilities as individuals who have special needs, must continue to have the same place and position as Indonesian citizens. The existence of women and children with disabilities must have equal opportunities in all areas of life. Protection of women and children with disabilities can be carried out by

¹ "Handbook of Learning Disabilities, Second Edition - Google Buku," n.d.

the immediate environment, such as parents and families. This protection can be provided in all aspects of life, both in terms of welfare in the form of social security, legal protection as well as education and development for women and children with disabilities. Protection for women and children with disabilities can also be provided in the form of protection against acts of violence, such as acts of abuse and other acts of violence.²

However, the general condition of persons with disabilities in Indonesia still tends to be concerning. Persons with disabilities experience various human rights violations, such as acts of discrimination, stigmatization, harassment, expulsion, violence and even murder. These various forms of human rights violations result in the undermining of the dignity of persons with disabilities as human beings. The perpetrators of human rights violations come from state officials, law enforcers, the general public, including from their own families. These various human rights violations have resulted in the unfulfilled rights of persons with disabilities.³

The real law must provide protection for all parties according to their legal status because everyone has an equal position before the law. It is clear that every law enforcement apparatus is obliged to enforce the law and with a duty to make the rules of law work.⁴ Law is also a legal interest that is useful for dealing with human rights and interests. The legal instrument referred to is the ratification of international legal instruments concerning the Convention on the Rights of Persons with Disabilities (CRPD) in the form of Law Number 19 of 2011 concerning the Ratification of the CRPD.⁵

Protection of women and children with disabilities is provided in all areas of life, including legal protection against acts of violence. Regulations that guarantee the position and existence of women and children with disabilities in all areas of life are a form of enforcement of human rights. The inherent dignity of women and children with disabilities must be maintained and protected, as a form of respect for human rights and responsibility to God Almighty. The inherent rights of women and children with disabilities must be prioritized and protected, both in terms of statutory regulations and law enforcement.⁶

The existing regulations must also be able to guarantee the existence of women and children with disabilities, from all forms of discrimination and acts of violence. Actions that are detrimental to women and children with disabilities should be punished accordingly. With all forms of violence that have been committed, where the act violates the human rights inherent in the victim, the perpetrator's actions should be punished. which is worth it. Basically, the actions of perpetrators who commit violence

² "Learning About Learning Disabilities - Google Buku," n.d.

³ Yossa AP Naingolan, *MENDORONG PENGSAHAN OPTIONAL PROTOCOL CRPD*, n.d.

⁴ Regi Alexander et al., "Guidance for the Treatment and Management of COVID-19 among People with Intellectual Disabilities," *Journal of Policy and Practice in Intellectual Disabilities* 17, no. 3 (2020): 256-69.

⁵ Satjipto Raharjo, "Ilmu Hukum, Bandung," *PT Citra Aditya Bakti*, 2000.

⁶ C Mercer and D Hallahan, "Learning Disabilities: Historical Perspectives," *Identification of Learning Disabilities: Research to Practice*, 2002, 1-65.

against women and children with disabilities have violated the provisions of the Criminal Code (KUHP).⁷

The existence of legal regulations is very important as a basis for efforts to realize the rights contained in the convention regarding the rights of persons with disabilities. Therefore, Indonesia as a party to the disability convention, is obliged to provide legal protection to women and children with disabilities, considering that inequality in this regard is a form of social problem, and considering that empowerment of women and child protection, in this case persons with disabilities, are mandatory for the government. Therefore, the authors are interested in conducting research related to how legal protection is provided to persons with disabilities, especially women and children and what obstacles are obstacles to the effectiveness of legal protection provided in Indonesia so that inequality continues to occur.

The purpose of this research is to determine how far our Indonesian Law and/or International law protect the rights and interests of woman and children with disabilities in Indonesia. The existence of women and children with disabilities must have equal opportunities in all areas of life. Protection of women and children with disabilities can be carried out by the immediate environment, such as parents and families. This protection can be provided in all aspects of life, both in terms of welfare in the form of social security, legal protection as well as education and development for children with disabilities. Protection for women and children with disabilities can also be provided in the form of protection against acts of violence, such as acts of abuse and other acts of violence.

2. Literature Review

The concept of Human Rights includes three main elements for human existence both as an individual and a social being, namely human integrity, freedom and equality.⁸ The three elements are conceptualized into definitions and understandings of what human rights are.⁹

The understanding of this definition becomes clear when recognition of these rights is given and is seen as a humanization process by other parties in a vertical (individual to state) and horizontal (between individuals) context, both *de facto* and *de jure*.¹⁰ Although the values are universal, human rights can be divided into several normative academic groupings, namely, first, personal rights or "personal rights". Second,

⁷ Muhamad Arganata, "PERLINDUNGAN HUKUM BAGI PENYANDANG DISABILITAS UNTUK MEMPEROLEH PERSAMAAN HAK DIDALAM PEMERINTAHAN," *Legal Spirit* 3, no. 1 (2020).

⁸ Asbjorn Eide, Catarina Krause, and Allan Rosas, *Economic, Social and Cultural Rights, 1995) Economic Social and Cultural Rights A Textbook, Netherlands: Kluwer Academic Publishers, 1995.*

⁹ Ni Made et al., "IMPLEMENTASI UNDANG-UNDANG NOMOR 11 TAHUN 2012 TENTANG SISTEM PERADILAN PIDANA ANAK TERHADAP CURANMOR YANG DILAKUKAN OLEH ANAK DI KABUPATEN BULELENG (STUDI KASUS PERKARA NOMOR: B/346/2016/RESKRIM)," *Tahun*, vol. 2, September 2019, <https://doi.org/10.23887/JATAYU.V2I2.28776>.

¹⁰ Ketut Arianta et al., "PERLINDUNGAN HUKUM BAGI KAUM ETNIS ROHINGYA DALAM PERSPEKTIF HAK ASASI MANUSIA INTERNASIONAL," *Jurnal Komunitas Yustisia*, vol. 3, September 2020, <https://doi.org/10.23887/JATAYU.V3I2.28849>.

economic rights or the right to own something ("property rights"). Third, the right to get equal and equal treatment in law and government or the "right of legal equality". Fourth, political rights or "political rights". Fifth, social and cultural rights or "social and cultural rights", such as obtaining and choosing education, develop a preferred culture. Sixth, the right to litigate and protect it or "procedural rights". The meaning and understanding of human rights in terms of substance becomes complex and complex based on developments, existing realities and the complexity of other determinants.¹¹

Human rights concepts and values change over time through both evolutionary and revolutionary processes from normative forces into processes of social and political change in the entire order of human life.¹² Thus, the understanding and understanding of the meaning of human rights in terms of substance must be returned to the basic concept of why human rights exist. Human rights exist and arise because these human rights are very basic in nature in the sense that their implementation is absolutely necessary so that humans can develop according to their talents, aspirations, and dignity as human beings regardless of differences that cause discrimination based on nation, race, religion and gender. The principles of understanding human rights must be the main foundation so that the understanding and understanding of human rights from a substantive perspective can be applied. These principles are the application of the concept of indivisibility and the interdependence of human rights values (UNICEF, 1998).¹³

Human rights, as understood in human rights documents that emerged in the twentieth century such as the human rights treaty, has a number of prominent characteristics, namely: (Nickel, James W., 1987) First, so that we do not lose the firm idea, human rights are rights. The meaning of this term is not clear, but at least it shows that it is a definite and high priority norm for which enforcement is mandatory. Second, these rights are considered to be universal, possessed by humans solely because they are human.¹⁴

Sixth, these rights establish minimum standards for proper societal and state practice. Not all problems born of cruelty or selfishness and ignorance are human rights problems. For example, a government that fails to provide national parks for its people can be denounced as incompetent or not paying enough attention to opportunities for recreation, but that will never become a human rights issue.¹⁵

¹¹ S Awaliyah et al., "Ruslan,(2020). Enforcement Of Illegal Fishing Laws That Was Done By Foreign Ships In The Indonesian Sea Region, Viewed From International Sea Law," *International Journal of Criminology and Sociology* 9 (2020): 1164-73.

¹² Bonanza Perwira Taihutu, "Penaatan Indonesia Pada Standar-Standard HAM Internasional Dalam Kurun Waktu 1991-2002" (Thesis pada Fakultas Ilmu Sosial dan Politik Departemen Ilmu Hubungan ..., 2003).

¹³ D. P. Bradley, R., Danielson, L., & Hallahan, "Identification of Learning Disabilities: Research To Practice - Google Buku," n.d.

¹⁴ Kathryn M. Burke et al., "A Meta-Analysis of Interventions to Promote Self-Determination for Students With Disabilities," *Remedial and Special Education* 41, no. 3 (June 2020): 176-88, <https://doi.org/10.1177/0741932518802274>.

¹⁵ Sri Bayu Ciptantri et al., "PERTANGGUNGJAWABAN NEGARA UNI SOVIET ATAS PENEMBAKAN PESAWAT KOREA AIR LINES DITINJAU DARI PERSPEKTIF HUKUM

The state and each individual have their own role in the implementation of human rights. The role of individuals is related to the principle of balance as stated above, namely that human rights do not only contain authority or freedom but also individual responsibilities or obligations, and every individual as a human rights subject has an obligation or responsibility to respect the human rights of others, as well as other people being demanded. to respect his human rights. Violation of one's human rights by another individual is an act that can be held accountable legally.¹⁶

Regardless of the capacity of the economic resources or other resources, a country should move as soon as possible towards the realization of these rights.¹⁷ In addition, there are several rights guaranteed in the ICESCR which relatively do not require large economic resources. The state, for example, can immediately reform laws that are discriminatory in nature, or that cause people to be prevented from enjoying their rights,¹⁸ or laws and regulations that "facilitate" violations of rights by the state. Such measures do not have to wait for the country to truly prosper.¹⁹

When a country ratifies an international human rights instrument, it can directly incorporate the provisions of that instrument into its domestic legislation and/or through other measures. Human rights implementation can be carried out as well as possible if good legislation,²⁰ an independent judiciary, and established democratic institutions are available. In addition, education and dissemination of human rights values are very important efforts in the context of implementing human rights.²¹

3. Research Methods

According to Lawrence M. Friedman²² legal research consists of three elements, first, legal substance which consists of norms, rules, legal principles, doctrine, and statutory regulations, second, legal structure (legal structure) is the process of forming and

UDARA INTERNASIONAL," *Tahun*, vol. 1, September 2018, <https://doi.org/10.23887/JATAYU.V1I2.28732>.

¹⁶ Khushboo Patel, "Mental Health Implications of COVID-19 on Children with Disabilities," *Asian Journal of Psychiatry* (Elsevier B.V., December 2020), <https://doi.org/10.1016/j.ajp.2020.102273>.

¹⁷ Endah Rantau Itasari, "MEMAKSIMALKAN PERAN TREATY OF AMITY AND COOPERATION IN SOUTHEAST ASIA 1976 (TAC) DALAM PENYELESAIAN SENGKETA DI ASEAN," *Jurnal Komunikasi Hukum (JKH)* 1, no. 1 (February 2015), <https://doi.org/10.23887/jkh.v1i1.5010>.

¹⁸ Endah Rantau Itasari, "Perlindungan Hukum Terhadap Penyandang Disabilitas Di Kalimantan Barat," *Integralistik* 32, no. 2 (2020): 70–82.

¹⁹ Muhammad Julijanto, "Membangun Perspektif Difabel Dalam Upaya Perlindungan Hukum," *Solider.id*, 2013, <https://www.solider.id/2013/09/27/membangun-perspektif-difabel-dalam-upaya-perlindungan-hukum>.

²⁰ Julita Melissa Walukow, "PERWUJUDAN PRINSIP EQUALITY BEFORE THE LAW BAGI NARAPIDANA DI DALAM LEMBAGA PEMASYARAKATAN DI INDONESIA 1," *LEX ET SOCIETATIS*, vol. 1, March 2013.

²¹ Dewa Gede Sudika Mangku, "Suatu Kajian Umum Tentang Penyelesaian Sengketa Internasional Termasuk Di Dalam Tubuh ASEAN," *Perspektif* 17, no. 3 (2012): 150–61.

²² N D Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum: Normatif & Empiris* (Pustaka pelajar, 2010).

implementing law,²³ consisting of law making, legal bureaucracy, law enforcement, and judicial institutions, including the program, and third, legal culture which is a form of public appreciation for the law, with regard to where, when, and how people obey and deviate from the law based on their values. Based on Friedman's view, legal research is a study of legal symptoms that is limited to research on norms, rules and principles as legal substances, law enforcement through the understanding of legal structures, and legal observations in their interactions in society as a legal culture.²⁴

Normative legal research is research related to the substance of the law, and empirical research (sociology) is research related to the structure and culture of law.²⁵ Empirical legal research uses primary²⁶ data through an approach that emphasizes the aspect of observation, while normative legal research uses secondary data with the nature of research which is generally descriptive or descriptive-explorative in nature, with qualitative analysis, and the approach emphasizes abstraction. Legal research in order to explain or seek answers to something that exists in society by fulfilling certain scientific principles²⁷. Of course, legal research that is carried out must be able to provide benefits, both theoretically and practically. The benefits of research, both theoretically and practically, can only be obtained through a certain procedure or method. Procedures or methods in legal research are ways that are taken scientifically to obtain scientific truth.²⁸

According to Bernard Arief Sidharta, that normative legal research (legal dogmatics, rechtsdogmatiek), scientific activities include inventory, explanation, interpretation, and systematization including evaluation of the overall positive law (authoritative text) that applies in society or the state. Supported by concepts (meanings), categories, theories, classifications, and methods specially formed and developed to carry out this activity. All activities are directed at preparing efforts to find juridical solutions to micro and macro legal problems that occur in society.²⁹

The approach method used in this research is the normative juridical approach, the research specification used is descriptive.³⁰ Withdrawing conclusions from the research results that have been collected is done by using qualitative normative analysis methods. Normative, namely using secondary data sources, namely statutory

²³ Maria S W Sumardjono, "Pedoman Pembuatan Usulan Penelitian," *Universitas Gajah Mada, Yogyakarta*, 1989.

²⁴ Bernice Wong and Bernice Y L Wong, *Learning about Learning Disabilities* (Academic press, 2004).

²⁵ Sulistyowati Irianto, "Praktik Penelitian Hukum: Perspektif Sosiolegal," *Metode Penelitian Hukum: Konstelasi Dan Refleksi. Jakarta: Yayasan Obor Indonesia*, 2011.

²⁶ D. D. Hammill et al., "A New Definition of Learning Disabilities.," *Journal of Learning Disabilities* 20, no. 2 (February 1987): 109-13, <https://doi.org/10.1177/002221948702000207>.

²⁷ "Handbook of Learning Disabilities, Second Edition - Google Buku."

²⁸ N P R Yuliantini and D G S Mangku, "Legal Protection for Women Victims of Trafficking in Indonesia in an International Human Rights Perspective," *International Journal of Criminology and Sociology* 9 (2020): 1397-1404.

²⁹ Dewa Gede Sudika Mangku, "Perlindungan Hukum Terhadap Anak-Anak Disabilitas Terkait Hak Pendidikan Di Kabupaten Buleleng," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (2020): 353-65.

³⁰ Gusti Ayu et al., "PERLINDUNGAN HUKUM TERHADAP KORBAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA DI KABUPATEN BULELENG," *Tahun*, vol. 2, September 2019, <https://doi.org/10.23887/JATAYU.V2I3.28786>.

regulations, legal theories and opinions of leading legal scholars.³¹ Qualitative because it is a data analysis process without using formulas and numbers derived from the information from the literature study conducted with the problems discussed. This research includes research on legal protection for women and children with disabilities as well as barriers to legal protection. Based on the formulation of the problem and the objectives of the research which is a normative juridical study, the approach used in this study is a statute approach and an analytical approach. Based on the statutory approach, the author will analyze the CRPD and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and several other legal instruments at both national and international levels and the author analyzes related areas of women and children getting legal protection.³²

4. Result and Discussion

4.1 Forms of Legal Protection through Various Legal Regulations

a. Legal Protection Under the Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD or the convention on the rights of persons with disabilities/persons with disabilities, has been ratified by the Republic of Indonesia in the Republic of Indonesia Law Number 19 of 2011 concerning Ratification of the CRPD. CRPD is an international and national human rights instrument in an effort to respect, fulfill and protect the rights of people with disabilities in Indonesia (Development Tools and Human Rights Instrument).³³ The aim of this convention is to promote, protect and guarantee the basic equal rights and freedoms for all persons with disabilities including women and children, as well as respect for the dignity of persons with disabilities as an inherent dignity. Judging from its objectives, this convention is not only to promote, protect and guarantee persons with disabilities to enjoy human rights as fundamental freedoms, more complex than that persons with disabilities should be able to enjoy them fully and without discrimination based on disabilities. In addition, this convention also aims to increase respect for the human rights inherent in every human being indiscriminately. From these two objectives, it can be seen that the CRPD convention emphasizes that persons with disabilities, including women and children, have human

³¹ Ronny H. Soemitro, *Metodologi Penelitian Hukum* (Semarang: Ghalia Indonesia, 1982).

³² Januardi Andhi, "IMPLEMENTASI UNDANG-UNDANG NO. 4 TAHUN 1997 TENTANG PENYANDANG CACAT TERHADAP PEMENUHAN HAK ATAS PEKERJAAN DAN PENGHIDUPAN YANG LAYAK," *Jurnal Hukum* 2, no. 2 (2015): 133-41; M Syafi'ie, "Sistem Hukum Di Indonesia Diskriminatif Kepada Difabel," *Jurnal Difabel Adalah Media Ilmiah Yang Diterbitkan Oleh Sasana Integrasi Dan Advokasi Difabel* 2, no. 2 (2015): 161.

³³ Dewa Gede and Sudika Mangku, "THE EFFORTS OF REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE (TIMOR LESTE) TO BE A MEMBER OF ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) AND TAKE AN ACTIVE ROLE IN MAINTAINING AND CREATING THE STABILITY OF SECURITY IN SOUTHEAST ASIA," *South East Asia Journal of Contemporary Business, Economics and Law* 13 (n.d.): 4.

rights and dignity which they must fully enjoy and without discrimination based on disabilities.³⁴

b. Legal Protection Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Through Law Number 7 of 1984 concerning the Ratification of the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination Against Women) so that the enforcement of CEDAW is not limited to being on the plain of international law which is considered soft law. The ratification of this convention requires the Indonesian government to adopt the entire strategy of the convention, implement the Committee's recommendations and be continuously involved in various international developments and decisions related to women (such as: Beijing Platform for Action, results of international conferences on reproductive health, violence against women etc). With regard to the position of women who are persons with disabilities, of course the legal provisions regulated in CEDAW³⁵ can be applied without exception and it is even possible that there is special treatment from the specificities that exist for the women concerned. The specificity of the treatment is regulated in the 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (2), which states "Everyone has the right to get special facilities and treatment to get the same opportunities and benefits in order to achieve equality and justice".³⁶

c. Legal Protection Under the Convention on the Rights of the Children

The adoption of an instrument, namely the UN Convention on the Rights of the Children or known as the Convention on the Rights of the Child (KHA) in 1989. In the perspective of international law, the CRC binds participating countries and signatory countries to implement it in their respective countries. As an instrument that regulates children, the CRC has 54 articles which can be categorized into 4 (four) rights, namely the right to protection (protection rights); and maintain existence (survival rights); the right to develop physically, psychologically, and biologically (development rights); and the right to participation (participation rights). In line with the international responsibility to provide protection for children, the Indonesian government since August 1990, has ratified the CRC through Presidential Decree Number 36 of 1990 concerning the CRC. The ratification of the CRC has resulted in Indonesia being bound internationally. The implementation of the CRC can be realized in the formation of national laws, action programs and the obligation to make national reports on the efforts and developments of the enforcement of the CRC in Indonesia.³⁷

³⁴ Dewa Gede et al., "INDONESIA'S ROLE IN ENABLING ASEAN 2025 MASTERPLANS TO PROMOTE AND PROTECT DISABILITY RIGHTS IN ASEAN," *South East Asia Journal of Contemporary Business, Economics and Law* 18 (n.d.).

³⁵ Satria Unggul Wicaksana Prakasa and Aulia Septias, "Legal Protection for Children with Disabilities as a Victim of Sexual Violence" (Atlantis Press, 2020), 1149-52, <https://doi.org/10.2991/assehr.k.200529.241>.

³⁶ Nainggolan, *MENDORONG PENGESAHAN OPTIONAL PROTOCOL CRPD*.

³⁷ James W Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Univ of California Press, 1987); Willy Putra and Aji Wibowo,

d. Legal Protection Based on Law Number 39 Year 1999 concerning Human Rights

Women and children with disabilities are legally formally regulated and their protection is regulated nationally through Law Number 39 Year 1999 concerning Human Rights. Among them are contained in Article 3 Paragraph (2) that: "Everyone has the right to recognition, guarantees, protection and fair legal treatment as well as to legal certainty and equal treatment before the law". Human rights are basic rights, given by God and are owned by humans throughout life and cannot be revoked at will (Effendi, 1994: 58). Recognition of the protection of human rights, including for women and children with disabilities, is further strengthened in Article 5 Paragraph (3) which states that: "Every person belonging to a vulnerable group of society has the right to receive treatment and protection with regard to his particularity". Apart from that, the main provisions that support the rights of persons with disabilities are Law Number 39 of 1999 concerning Human Rights, which is contained in Article 41 Paragraph (2) which states that everyone with a disability has the right to facilitation and special treatment.³⁸

4.2 Barriers in the Implementation of Legal Protection

a. Problem Legal Substance

In civil cases, diffables, especially women and children, are always placed as parties who are under interdiction and cannot be considered as independent legal subjects. As a result, people with disabilities in civil relations and conflicts are always victims, such as not being able³⁹ to have inheritance rights and not being a party to banking and insurance agreements. When conflicts in civil law, law enforcement officers usually refer to Article 433 Book I of the Civil Code which states that every adult, who is always in a state of ignorance, insane or dark eyes, must be placed under interdiction, even if he is sometimes able to use his mind. In addition, because of disability, women are one of the legal requirements for a man to be polygamous. This provision is contained in Article 4 of Law no. 1 of 1974 concerning Marriage.⁴⁰ The article states that when a husband is going to have more than one wife, he is obliged to submit an application to the court. This article only gives permission to a husband who will marry more than someone if the wife is unable to carry out her obligations, the wife has a physical disability or disease that cannot be cured or cannot bear offspring. In other legal regulations such as the Teacher and Lecturer Law, the Police Law, the General Court Law and several others, they still put requirements for being physically

"Pelaksanaan Perlindungan Hukum Terhadap Persamaan Hak Bagi Kelompok Penyandang Disabilitas Dalam Angkutan Penerbangan," *Jurnal Hukum Adigama* 1, no. 1 (2018): 217-41.

³⁸ Unicef, "A Human Rights Approach to UNICEF Programming for Children and Women: What It Is, and Some Changes It Will Bring," *New York: UNICEF*, 1998; Kadek Radhitya Vidianditha, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini, "Perlindungan Hukum Yang Diberikan Oleh Indonesia Kepada WNI Sebagai Pelaku Perompakan Kapal (Studi Kasus: Perompakan Kapal Orkim Harmony Milik Malaysia)," *Jurnal Komunitas Yustisia* 3, no. 1 (2020): 59-68.

³⁹ Rule Of Law Setiono, "Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret" (Surakarta, 2004).

⁴⁰ B.R. Mangku, D.G.S., Purwendah, E.K., Itasari, E.R., Nurhayati, "Compensation for Oil Pollution Due to Tanker Accidents in The Indopnesian System in a Justice Value Perspective - Unika Repository," n.d.

and mentally healthy.⁴¹ In its implementation, physically and mentally healthy is always associated with disabilities, which in turn results in the disability from being accepted as civil servants in the police, general court, even to become teachers and lecturers (Syafi'ie, 2015).

b. Less Progressive Law Enforcement Officials

Legal protection measures for disabilities, for example, for blind people with disabilities, whose criminal cases are often not processed by law enforcers because victims cannot see the perpetrators directly, as in the majority of cases of rape, which often occur in women and abuse children. In fact, law enforcers in this case should understand that people with visual impairments have barriers to seeing and have other five senses that can recognize the perpetrator. In addition, for persons with disabilities who are deaf and whose cases are in the investigation stage, investigators are often not involved in the question and answer process of their investigations. He left the assignment and authority to the translator. Whereas law enforcers should understand that translators are only media and cannot replace investigators' duties as law enforcement officers (Syafi'ie, 2015). Even a gradual increase in cases of sexual violence against women and children with disabilities. Komnas Perempuan data shows that the number of women with disabilities who experience sexual violence has increased from 40 cases in 2015 to 89 cases in March 2019. Legal protection efforts for women and children with disabilities should be further strengthened by the passing of the Bill on the Elimination of Sexual Violence (PKS). However, the bill that has been included in the National Legislation Program since 2016 has not yet been passed.

c. Judicial infrastructure not yet accessible

Various facilities for judicial offices, both the police station, the prosecutor's office and the judge's office serve in the courts, the majority of the facilities and infrastructure in these institutions are not yet accessible for the disabled. Physical and non-physical facilities are not facilitated at all. In the police, for example, physical infrastructure such as arrest warrants and administrative documents do not yet exist in the form of braille and audio, examination rooms where disabled access is not yet available, toilets have not yet been accessed, entry / exit doors are narrow, office door positions are high and not flat, there is no guiding. blocks, information boards that are not yet accessible and incomplete, counters that are too high, mobility aids that are not available and detention rooms that are not yet accessed. Likewise, non-physical facilities such as employee services, ways of interacting and communication processes within the judiciary. All of these are still questions and recurring complaints when people with disabilities have to proceed in the court office (Syafi'ie, 2015).

d. Legal Culture in Society

If the law should be useful, of course it cannot be said that the protection provided by the government is not yet achieved, so that again the legal objectives have not been achieved if it is focused on its legal benefits, indeed this is influenced by the legal

⁴¹ Raharjo, "Ilmu Hukum, Bandung."

culture that exists in the community, there is still low public awareness so as to create a legal culture. those who do not follow positive thinking, are still discriminating, due to the lack of education and socialization from the government. The legal culture of the community certainly affects how discriminatory treatment can occur, for example when a person with a disability uses facilities at the airport, then it turns out that other people also stay away from this group of people, because they see themselves as different.

5. Conclusion

Convention on the Rights of Persons with Disabilities (CRPD), which is a convention on the rights of persons with disabilities, which has been ratified by Indonesia through Law no. 19 of 2011 concerning Ratification of the CRPD, which aims to promote, protect and ensure equal rights and fundamental freedoms for all persons with disabilities, including women and children as well. The CEDAW Convention, which applies unqualified treatment and it is even possible that there is special treatment for women with disabilities, is the main basis for the protection of women and children with disabilities, but in its implementation it experiences various obstacles, such as problematic legal substances, legal court facilities and infrastructure. inadequate, as well as less progressive law enforcement officers. Persons with disabilities have the right to be free from torture or other cruel, inhuman, degrading treatment, violence or abuse, and have the right to respect for their mental and physical integrity on the basis of equality with others, the various existing legal regulations are key There are equal rights given to women and children with disabilities, but in its implementation they experience various obstacles that result in ineffective legal protection. It is true that the responsibility rests with the government, but the legal culture of the community also creates discrimination against groups of persons with disabilities themselves, limited facilities available, lack of education and socialization are also factors that cause existing protection to be ineffective.

Efforts to reduce/eliminate inequality that occurs to women and children with disabilities is not a light problem, it requires seriousness from all parties so that this problem can be resolved properly. So it requires synergy from various parties and related institutions in efforts to prevent and handle various acts of discrimination that make women and children with disabilities as victims. In this case, each institution can play a role by conducting socialization and education related to the importance of providing protection for women and children with disabilities. In addition, what is important in legal protection for women and child victims is the existence of various laws and regulations that can be used as a legal basis, however, it is necessary to create harmonization of various regulations. So that the fulfillment of the rights of persons with disabilities is not only the task of the government, all levels of society must also support and view that the fulfillment of rights for persons with disabilities is a human right.

References

Alexander, Regi, Ambiga Ravi, Helene Barclay, Indermeet Sawhney, Verity Chester, Vicki Malcolm, Kate Brolly, Kamalika Mukherji, Asif Zia, and Reena Tharian. "Guidance for the Treatment and Management of COVID-19 among People

- with Intellectual Disabilities." *Journal of Policy and Practice in Intellectual Disabilities* 17, no. 3 (2020): 256–69.
- Andhi, Januardi. "IMPLEMENTASI UNDANG-UNDANG NO. 4 TAHUN 1997 TENTANG PENYANDANG CACAT TERHADAP PEMENUHAN HAK ATAS PEKERJAAN DAN PENGHIDUPAN YANG LAYAK." *Jurnal Hukum* 2, no. 2 (2015): 133–41.
- Arganata, Muhamad. "PERLINDUNGAN HUKUM BAGI PENYANDANG DISABILITAS UNTUK MEMPEROLEH PERSAMAAN HAK DIDALAM PEMERINTAHAN." *Legal Spirit* 3, no. 1 (2020).
- Arianta, Ketut, Dewa Gede, Sudika Mangku, Ni Putu, and Rai Yuliantini. "PERLINDUNGAN HUKUM BAGI KAUM ETNIS ROHINGYA DALAM PERSPEKTIF HAK ASASI MANUSIA INTERNASIONAL." *Jurnal Komunitas Yustisia*. Vol. 3, September 2020. <https://doi.org/10.23887/JATAYU.V3I2.28849>.
- Awaliyah, S, D G S Mangku, N P R Yuliantini, and N I Suastika. "Ruslan,(2020). Enforcement Of Illegal Fishing Laws That Was Done By Foreign Ships In The Indonesian Sea Region, Viewed From International Sea Law." *International Journal of Criminology and Sociology* 9 (2020): 1164–73.
- Ayu, Gusti, Novira Santi, Ni Putu, Rai Yuliantini, Dewa Gede, and Sudika Mangku. "PERLINDUNGAN HUKUM TERHADAP KORBAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA DI KABUPATEN BULELENG." *Tahun*. Vol. 2, September 2019. <https://doi.org/10.23887/JATAYU.V2I3.28786>.
- Bradley, R., Danielson, L., & Hallahan, D. P. "Identification of Learning Disabilities: Research To Practice - Google Buku," n.d.
- Burke, Kathryn M., Sheida K. Raley, Karrie A. Shogren, Mayumi Hagiwara, Cristina Mumbardó-Adam, Hatice Uyanik, and Sarah Behrens. "A Meta-Analysis of Interventions to Promote Self-Determination for Students With Disabilities." *Remedial and Special Education* 41, no. 3 (June 2020): 176–88. <https://doi.org/10.1177/0741932518802274>.
- Ciptantri, Sri Bayu, Dewa Gede, Sudika Mangku, Ni Putu, and Rai Yuliantini. "PERTANGGUNGJAWABAN NEGARA UNI SOVIET ATAS PENEMBAKAN PESAWAT KOREA AIR LINES DITINJAU DARI PERSPEKTIF HUKUM UDARA INTERNASIONAL." *Tahun*. Vol. 1, September 2018. <https://doi.org/10.23887/JATAYU.V1I2.28732>.
- Eide, Asbjorn, Catarina Krause, and Allan Rosas. *Economic, Social and Cultural Rights*. 1995) *Economic Social and Cultural Rights A Textbook*, Netherlands: Kluwer Academic Publishers, 1995.
- Gede, Dewa, and Sudika Mangku. "THE EFFORTS OF REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE (TIMOR LESTE) TO BE A MEMBER OF ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) AND TAKE AN ACTIVE ROLE IN MAINTAINING AND CREATING THE STABILITY OF SECURITY IN SOUTHEAST ASIA." *South East Asia Journal of Contemporary Business, Economics and Law* 13 (n.d.): 4.
- Gede, Dewa, Sudika Mangku, Ni Putu, and Rai Yuliantini. "INDONESIA'S ROLE IN ENABLING ASEAN 2025 MASTERPLANTS TO PROMOTE AND PROTECT DISABILITY RIGHTS IN ASEAN." *South East Asia Journal of Contemporary Business, Economics and Law* 18 (n.d.).
- Hammill, D. D., J. E. Leigh, G. McNutt, and S. C. Larsen. "A New Definition of

- Learning Disabilities." *Journal of Learning Disabilities* 20, no. 2 (February 1987): 109-13. <https://doi.org/10.1177/002221948702000207>.
- "Handbook of Learning Disabilities, Second Edition - Google Buku," n.d.
- Irianto, Sulistyowati. "Praktik Penelitian Hukum: Perspektif Sosiolegal." *Metode Penelitian Hukum: Konstelasi Dan Refleksi*. Jakarta: Yayasan Obor Indonesia, 2011.
- Itasari, Endah Rantau. "Perlindungan Hukum Terhadap Penyandang Disabilitas Di Kalimantan Barat." *Integralistik* 32, no. 2 (2020): 70-82.
- Julijanto, Muhammad. "Membangun Perspektif Difabel Dalam Upaya Perlindungan Hukum." *Solider.id*, 2013. <https://www.solider.id/2013/09/27/membangun-perspektif-difabel-dalam-upaya-perlindungan-hukum>.
- "Learning About Learning Disabilities - Google Buku," n.d.
- Made, Ni, Ita Ariani, Ni Putu, Rai Yuliantini, Dewa Gede, and Sudika Mangku. "IMPLEMENTASI UNDANG-UNDANG NOMOR 11 TAHUN 2012 TENTANG SISTEM PERADILAN PIDANA ANAK TERHADAP CURANMOR YANG DILAKUKAN OLEH ANAK DI KABUPATEN BULELENG (STUDI KASUS PERKARA NOMOR: B/346/2016/RESKRIM)." *Tahun*. Vol. 2, September 2019. <https://doi.org/10.23887/JATAYU.V2I2.28776>.
- Mangku, D.G.S., Purwendah, E.K., Itasari, E.R., Nurhayati, B.R. "Compensation for Oil Pollution Due to Tanker Accidents in The Indonesian System in a Justice Value Perspective - Unika Repository," n.d.
- Mangku, Dewa Gede Sudika. "Perlindungan Hukum Terhadap Anak-Anak Disabilitas Terkait Hak Pendidikan Di Kabupaten Buleleng." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 2 (2020): 353-65.
- — —. "Suatu Kajian Umum Tentang Penyelesaian Sengketa Internasional Termasuk Di Dalam Tubuh ASEAN." *Perspektif* 17, no. 3 (2012): 150-61.
- Mercer, C, and D Hallahan. "Learning Disabilities: Historical Perspectives." *Identification of Learning Disabilities: Research to Practice*, 2002, 1-65.
- Mukti Fajar, N D, and Yulianto Achmad. *Dualisme Penelitian Hukum: Normatif & Empiris*. Pustaka pelajar, 2010.
- Nainggolan, Yossa AP. *MENDORONG PENGESAHAN OPTIONAL PROTOCOL CRPD*, n.d.
- Nickel, James W. *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*. Univ of California Press, 1987.
- Patel, Khushboo. "Mental Health Implications of COVID-19 on Children with Disabilities." *Asian Journal of Psychiatry*. Elsevier B.V., December 2020. <https://doi.org/10.1016/j.ajp.2020.102273>.
- Prakasa, Satria Unggul Wicaksana, and Aulia Septias. "Legal Protection for Children with Disabilities as a Victim of Sexual Violence," 1149-52. Atlantis Press, 2020. <https://doi.org/10.2991/assehr.k.200529.241>.
- Putra, Willy, and Aji Wibowo. "Pelaksanaan Perlindungan Hukum Terhadap Persamaan Hak Bagi Kelompok Penyandang Disabilitas Dalam Angkutan Penerbangan." *Jurnal Hukum Adigama* 1, no. 1 (2018): 217-41.
- Raharjo, Satjipto. "Ilmu Hukum, Bandung." *PT Citra Aditya Bakti*, 2000.
- Rantau Itasari, Endah. "MEMAKSIMALKAN PERAN TREATY OF AMITY AND COOPERATION IN SOUTHEAST ASIA 1976 (TAC) DALAM PENYELESAIAN SENGKETA DI ASEAN." *Jurnal Komunikasi Hukum (JKH)* 1, no. 1 (February 2015). <https://doi.org/10.23887/jkh.v1i1.5010>.
- Setiono, Rule Of Law. "Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret." Surakarta, 2004.

- Soemitro, Ronny H. *Metodologi Penelitian Hukum*. Semarang: Ghalia Indonesia, 1982.
- Sumardjono, Maria S W. "Pedoman Pembuatan Usulan Penelitian." *Universitas Gajah Mada, Yogyakarta*, 1989.
- Syafi'ie, M. "Sistem Hukum Di Indonesia Diskriminatif Kepada Difabel." *Jurnal Difabel Adalah Media Ilmiah Yang Diterbitkan Oleh Sasana Integrasi Dan Advokasi Difabel 2*, no. 2 (2015): 161.
- Taihitu, Bonanza Perwira. "Penaatan Indonesia Pada Standar-Standar HAM Internasional Dalam Kurun Waktu 1991-2002." Thesis pada Fakultas Ilmu Sosial dan Politik Departemen Ilmu Hubungan ..., 2003.
- Unicef. "A Human Rights Approach to UNICEF Programming for Children and Women: What It Is, and Some Changes It Will Bring." *New York: UNICEF*, 1998.
- Vidianditha, Kadek Radhitya, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini. "Perlindungan Hukum Yang Diberikan Oleh Indonesia Kepada WNI Sebagai Pelaku Perompakan Kapal (Studi Kasus: Perompakan Kapal Orkim Harmony Milik Malaysia)." *Jurnal Komunitas Yustisia 3*, no. 1 (2020): 59-68.
- Walukow, Julita Melissa. "PERWUJUDAN PRINSIP EQUALITY BEFORE THE LAW BAGI NARAPIDANA DI DALAM LEMBAGA PEMASYARAKATAN DI INDONESIA 1." *LEX ET SOCIETATIS*. Vol. 1, March 2013.
- Wong, Bernice, and Bernice Y L Wong. *Learning about Learning Disabilities*. Academic press, 2004.
- Yuliantini, N P R, and D G S Mangku. "Legal Protection for Women Victims of Trafficking in Indonesia in an International Human Rights Perspective." *International Journal of Criminology and Sociology 9* (2020): 1397-1404.

Treaty/Convention

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of the Children
- Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas
- Undang-Undang Nomor 19 Tahun 2011 tentang Pengesahan Convention on the Rights of Persons with Disabilities.