

## THE ISSUES OF IMPLEMENTING THE RIGHT ACCESS TO JUSTICE FOR PEOPLE WITH DISABILITIES

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### Abstract

This research aims to find out what are the issues of implementing right access to justice in Indonesia and what are the possible solution to overcome the issues. This research used normative and doctrinal research method. The collection of legal materials was conducted by using literature and field research. The results of this research find out that there are at least four issues in implementing access to justice for people with disabilities in Indonesia. The issues are limited access to information regarding right access to justice; physical barriers; limited access to information regarding right access to justice and; lack of support and accommodation. Possible solution to overcome those issues such as providing regular training for legal enforcement regarding treatment for persons with disability, adjusting infrastructure to be accessible for persons with disabilities, utilizing technology to ease communication in all accessible format and providing services and reasonable accommodation based on personal assessment for persons with disabilities who are encountering legal cases.

**Keywords:** People with Disabilities, Access to Justice, Indonesia

## INTRODUCTION

Every people on equal basis with others shall enjoy the right to equal protection under the law, to equality before the law, to meaningful participation and to be heard as well as to a fair resolution of disputes<sup>1</sup>. States must assure the equal access to justice for all people including people with disabilities by providing reasonable accommodation and support<sup>2</sup>. Thus, states and other parties are obliged to design, develop, modify and implement the justice system which provide equal access to justice for people with disabilities as regulated in Convention on the Rights of Persons with Disabilities (CRPD)<sup>3</sup>.

State parties of CRPD are required to ensure people with disabilities have right access to justice in order to guarantee they are not discriminated by the justice system<sup>4</sup>. However, in the global perspective it can be argued that it is quite complicated for states to ensure full participation of people with disabilities in the justice system. One of the challenges for states is how to fulfill the access to justice for all people with disabilities while at the same time the types and the level of physical and mental disabilities are varied in society<sup>5</sup>. Indonesia as parties of CRPD attempt to respect and fulfill the rights of people with disabilities which refers to general principles, such as respect for human dignity, non-discrimination; participation, respect for differences and acceptance of persons with disabilities; access; equality of opportunity; and equality of men and women<sup>6</sup>. Those principles affect the government's effort to fulfill the right access to justice for person with disabilities.

The obligations stated in CRPD to ensure right access to justice is quite complex and challenging. States must guarantee the inclusive system and access for all types of people with disabilities. Starting from the investigation process related to the polices, the availability of lawyers who understand cases of people with disabilities, the availability of psychologists, psychiatrists or doctors who understand the type of disability for persons with disabilities who are victims, witness or perpetrators<sup>7</sup>. Also, it is pivotal to ensure accessibility in the court and penitentiary shall understand the needs of people with disabilities<sup>8</sup>. Furthermore, regulation and legislation regarding the fulfillment of the right of people with disabilities shall be in line with the CRPD<sup>9</sup>.

Indonesia has attempted to fulfil the rights access to justice for people with disabilities through Law Number 8 Year 2016 regarding People with Disabilities and Government Regulation Number 39 Year 2020 regarding Reasonable Accommodation for People Disabilities in Judicial Process<sup>10</sup>. However, in the implementation of right access to justice is quite problematic due to several issues occurred in Indonesia which led to the discrimination of people with disabilities who encounter legal cases. The issues revolve on how the treatment from legal enforcement to people with disabilities who are victim, perpetrator or witness<sup>11</sup>. Besides that, the issues regarding the existing facilities have not accommodated the needs of people with disabilities also become a concern in Indonesia<sup>12</sup>. Thus, the researcher aims to find out how the issues of the implementation right access to justice for people with disabilities in Indonesia particularly people with disabilities who involved in legal cases. In order to answer the aims of this research, there are two research questions: 1) How the obligation required by CRPD to states regarding the fulfilment of right access to justice for people with disabilities; 2) How the implementation and the issues of the implementation right access to justice for people with disabilities. Furthermore, this research divided into 4 major sections. The first part discusses regarding the legal obligation stipulated in CRPD. Second part discusses the scope of access to justice, the third part

<sup>1</sup> United Nations Human Rights Special Procedures, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations High Commissioner for Human Rights, 2020).

<sup>2</sup> Ibid.

<sup>3</sup> United Nations Convention on The Rights for Persons with Disabilities 2007

<sup>4</sup> David Allen Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' (2014) 3 *Laws*, 220-238.

<sup>5</sup> Ibid.

<sup>6</sup> Anak Agung Istri Ari atu Dewi, 'Aspek Yuridis Perlindungan Hukum dan Pemenuhan Hak Penyandang Disabilitas' (2018) 13(1) *Jurnal Pandecta*

<sup>7</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>8</sup> Ibid.

<sup>9</sup> David Allen Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' (2014) 3 *Laws*, 220-238.

<sup>10</sup> Suparman Marzuki, Muhamad Syamsudin dan Despan Heryansyah, 'Akses Keadilan Bagi Penyandang Disabilitas Dalam Proses Peradilan' (Kreasi Total Media, 2021)

<sup>11</sup> Hasil Wawancara dengan Rezky Pratiwi (Kepala Divisi Perempuan, Anak dan Disabilitas LBH Makassar) pada tanggal 29 Juli 2022 di Kantor LBH Makassar

<sup>12</sup> ASH, 'Penyandang Disabilitas Masih Sulit Akses Keadilan' (Hukum Online, 2015) <<https://www.hukumonline.com/berita/a/penyandang-disabilitas-masih-sulit-akses-keadilan-lt55cc60eb88339/>> accessed on 14 October 2022

discusses the implementation and fourth part discusses the issues and solution. A final section concludes how the legal obligation, implementation and issues encounter by Indonesia to fulfill the right access to justice for people with disabilities.

## METHOD

This research uses normative and doctrinal research method. The collection of legal materials was conducted by using literature and field research.<sup>13</sup> Primary legal materials used in this research are laws, regulation, documents, journals and online media. Meanwhile field data obtaining by interviewing relevant informant for this research.

## DISCUSSION

### The People with Disabilities and The Right of Access to Justice

#### A. Legal Obligation Right Access to Justice for People with Disabilities

The regulations regarding the fulfillment right access to justice have existed both in international and national level. The international instruments such as Universal Declaration of Human Rights (UDHR) has stipulated that every people are equal before the law and are entitled without any discrimination to equal protection of the law<sup>14</sup> as well as the full equality to a fair and public hearing<sup>15</sup>. In UDHR even if it does not write specifically regarding the basis of discrimination but it refers to "everyone", it indicates that everyone in here means all people regardless of race, gender and disability. This right also emphasized in the International Covenant on Civil and Political Rights (ICCPR) 1966<sup>16</sup>. Although right access to justice has been stipulated in UDHR and ICCPR but those international instruments do not specifically regulate the rights of people with disabilities.

The regulation regarding the rights of people with disabilities specifically regulate in the Convention on the Rights on Persons with Disabilities on 2007<sup>17</sup>. The right access to justice regulated in article 13 in CRPD. CRPD obliged the state parties to ensure the access to justice for people with disabilities without discrimination<sup>18</sup>. Also, states shall provide the procedure and reasonable accommodation to facilitate the active participation of people with disabilities including as a witness in legal process. Besides that, states shall promote the training for legal enforcers such as policeman, judges, prosecutors, lawyers and prison officers, so they are aware how to treat people with disabilities who encounter legal cases.

Indonesia as one of the state parties of CRPD committed to fulfill the right access to justice for people with disabilities. In the Law Number 8 Year 2016 about People with Disabilities in Article 9 has ensured the right to justice and equal recognition before the law<sup>19</sup>. The article 9 is also supported by the issuance of Government Regulation Number 39 Year 2020 about Reasonable Accommodation for People with Disabilities in Judicial Process. This regulation is quite comprehensive in providing direction on how Legal Enforcements should treat people with disabilities who encounter legal cases. This regulation also emphasizes the need for 'Personal Assessment' for persons with disabilities in the judicial process<sup>20</sup>.

#### B. The Scope of Right Access to Justice for People with Disabilities

##### 1. Accessibility and Access to Information

The persons with disabilities might face difficulties for accessibility, for instance physical barriers that complicate them to enter police offices or court<sup>21</sup>. Also, communication barrier could complicate them to access information, understand the legal procedure or understand the judges, lawyers and other interlocutors<sup>22</sup>. Furthermore, to fulfill the access to information can be used accessible information and communication technology. It is in line with the Article 9 (2) (h) of CRPD which

<sup>13</sup> Kadarudin, *Mengenal Riset dalam Bidang Ilmu Hukum: Tipologi, Metodologi, dan Kerangka*, (Ponorogo: Uwais Inspirasi Indonesia, 2020)

<sup>14</sup> Article 7 of Universal Declaration of Human Rights 1945

<sup>15</sup> Article 10 of Universal Declaration of Human Rights 1945

<sup>16</sup> Article 14 of International Covenant on Civil and Political Rights 1966

<sup>17</sup> Ridwan Arifin, Iqbal Baiquni, Januari Nasya Ayu Taduri, Rasdi Rasdi, Zikkri Zikkri, 'The International Law Principle for People with Disabilities: Analyzing Access to Justice' (2021) 7(2) *Jurnal Hukum Universitas Negeri Semarang*, 371-404

<sup>18</sup> Convention on the rights of People with Disabilities 2007

<sup>19</sup> Law Number 8 Year 2016 about People with Disabilities

<sup>20</sup> Government Regulation Number 39 Year 2020 about Reasonable Accommodation for People with Disabilities in Judicial Process

<sup>21</sup> Anna Lawson and Eilionoir Flynn, 'Disability and Access to Justice in the European Union: Implications of the UN Convention on the Rights of Persons with Disabilities' (2013) 4 *European Yearbook of Disability Law*

<sup>22</sup> Eilionoir Flynn, 'Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities' (Routledge, 2016)

promotes accessible legal information to persons with disabilities by used all types of formats and modes of communication<sup>23</sup>.

## 2. Procedural and age-appropriate accommodation

Procedures and equality are components of the right to a fair trial which ensures equal procedural rights are granted to all parties to ensure access to equal information and equal opportunities to present and challenge evidence. Persons with disabilities are often prevented from enjoying procedures and equal status due to inaccessible documentation. Beyond accessibility, states parties to the CRPD must also provide procedural and age-appropriate accommodations that persons with disabilities may require in accessing justice. Procedural accommodation serves as a means to effectively realize the right to a fair trial and the right to participate in the administration of justice. The Committee on the Rights of Persons with Disabilities has provided a number of examples of how procedural accommodation for persons with disabilities can be seen in practice, for example, through the provision of sign language interpretations, legal and judicial information in accessible formats for, various means of communication, easy-to-read versions of documents, Braille and video link testimony<sup>24</sup>. Procedural accommodation should also include procedural flexibility to accommodate special requirements for participation, for example allowing sign language interpreters to participate in secret jury debates, extending or adjusting procedural deadlines and adjusting procedural formalities<sup>25</sup>.

## 3. Right to claim justice and stand trial

The Committee on the Rights of Persons with Disabilities has highlighted the relations between access to justice and equal recognition before the law and support for the recognition of decision-making stipulated in the Article 12(3) of CRPD<sup>26</sup>. This is the tools to ensure the rights access to justice. Provisions related to decision-making support can facilitate how to instruct lawyers, direct a person's defense in court and self-representation. Support for decision-making requires further development of access to justice; protocols and guidelines that support the work of judges, lawyers and other law enforcers in carrying out judicial processes or administrative matters are the most basic. The provision of procedural accommodation in this context can also contribute to establishing relevant practice<sup>27</sup>. States should involve their national legal professional associations in developing these tools in consultation with persons with disabilities and representatives of disability organizations<sup>28</sup>.

## 4. Legal Aid

The lack of free legal aid is one of the most common barriers to equality and legal standing and access to justice, especially for persons with disabilities who have limitations in accessing legal aid. The Committee on the Rights of Persons with Disabilities has raised concerns regarding the lack of free legal aid available to persons with disabilities, including for those living in institutions and for women and girls with disabilities who face violence and abuse<sup>29</sup>. Legal aid for people with disabilities guarantee in Article 14(3)(d) ICCPR under certain situations, the right to free legal assistance in criminal case<sup>30</sup>. Also, The Human Rights Council suggest states to extend free legal aid to other cases. Article 13 CRPD also assure that free legal assistance could be an appropriate accommodation necessary to guarantee effective access for people with disabilities<sup>31</sup>. The provision with decision-making support could facilitate how to instruct the lawyers, direct a person's defense in a court and self-representation<sup>32</sup>. Support for decision-making requires further development of access to justice, protocols and guidelines that support the work of judges, lawyers and other law enforces in conducting

<sup>23</sup> Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 'Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' 2017

<sup>24</sup> CRPD Committee, General Comment Number 32 on the right to equality before courts and tribunals and to a fair trial tahun 200

<sup>25</sup> Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 'Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' 2017

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 'Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' 2017

<sup>30</sup> Markus Schefer, 'The Right to Access to Justice- Article 13 CRPD' on Annual Conference on the Rights of Persons with Disabilities 2020: Access to Justice <  
[https://www.markusschefer.ch/admin/data/files/asset/file\\_en/47/presentation-on-access-to-justice-2020-10-21.pdf?lm=1626280674](https://www.markusschefer.ch/admin/data/files/asset/file_en/47/presentation-on-access-to-justice-2020-10-21.pdf?lm=1626280674)> accessed on 14 October 2022

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

judicial process or administrative matters are the most basic<sup>33</sup>.

I. Implementation of Right to Justice for People with Disabilities

In this section it will be divided into three categories where the legal enforcers are the prominent stakeholders in the implementing right access to justice for people with disabilities.

- Police Officers

The practical role of investigators and service officers in fulfilling the rights of the disabled as witnesses, victims or suspects at the investigation stage. Without discrimination, everyone is entitled to justice through a judicial, impartial, and procedural law that guarantees an objective examination. Including people with disabilities, they are entitled to protection.

Many cases are experienced by people with disabilities, especially as victims who rarely even hope not to reach the police. Such conditions are generally because they feel fear that arises from assumptions such as officers not paying enough attention to their cases, not understanding how to communicate with victims, witnesses and or perpetrators with disabilities, cases are difficult to prove, so the violence experienced by people with disabilities is sometimes considered non-existent.<sup>34</sup>

Services for Persons with Disabilities in the Investigation process if referring to Government Regulation Number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process, also regulate the treatment of Law Enforcement Officers when dealing with Persons with Disabilities, such as by not providing discriminatory treatment and being able to provide a sense of security and comfort to persons with disabilities. That way, it is necessary to understand the Investigator's needs and effective communication patterns between the Investigator and persons with disabilities during the investigation process. Persons with Disabilities in undergoing the investigation process also obtain companions, translators and other officers who have met the requirements to facilitate the course of the investigation process. In fulfilling this, the Indonesian State Police can coordinate with local governments and institutions/organizations of persons with disabilities.

In addition to services, the fulfillment of facilities and infrastructure for persons with disabilities is something that needs to be considered, because persons with disabilities consist of various varieties and obstacles that certainly have different needs. In this case, the Indonesian National Police can request a Personal Assessment in advance to determine the infrastructure that needs to be provided.

The obligation in Article 5 of the Government Regulation of the Republic of Indonesia Number 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in the Judicial Process, explains that the form of reasonable accommodation for Persons with Disabilities is services and facilities and infrastructure provided to persons with disabilities in the judicial process. The scope of services in the Government Regulation is the provision of disability assistants and/or translators, doctors/health workers, psychologists or psychiatrists and/or social workers regarding psychosocial conditions. Meanwhile, the infrastructure that must be met refers to the variety of persons with disabilities and is adapted to the conditions of persons with disabilities who have obstacles, such as documents printed in braille letters; and / or audio communication media for persons with disabilities with visual impairments and visual information boards and / or media communication using writing and other visual forms for Persons with Disabilities with hearing impairments.<sup>35</sup>

Weaknesses in seeking justice for people with disabilities at the level of investigation by the police, namely: a) Refusal of reporting cases in the police. This often occurs when legal aid agencies accompany victims to report to the police, due to difficulties from the police in the process of examining victims because victims have difficulty communicating and the absence of evidence; b). Low knowledge of law enforcement officers and police on disability issues including their rights. The police were less sensitive in seeing the victim of a disabled person. Because people with disabilities are often discriminated against among the public. In addition, there is low training for police officers to understand persons with disabilities and the specific needs of accessing justice and how to provide the necessary accommodations; c) Unavailability of supporting means such as braille instructions, sign language interpreters, which is the cause of difficulties in the examination process; d) The rejection of people with disabilities as witnesses. Often the testimony of people with disabilities is rejected, because at the time of giving testimony, they are inconsistent in illustrating the chronology of events. Also, the belief that people with psychiatric problems cannot be recognized for their testimony; e) Laws that are impartial and do not protect people with disabilities. In Law Number 23 of 2002 concerning

<sup>33</sup> Ibid.

<sup>34</sup> Solider, Perkokoh Keberagaman dan Inklusi, Konferensi Pengarusutamaan HAM 2022 Harapan Indonesia Harmonis (Solider, 2022) <https://www.solider.id/baca/6993-peran-kepolisian-dalam-tangani-difabel-hadapi-kasus-hukum> accessed on 24th July 2022

<sup>35</sup> Ombudsman of the Republic of Indonesia Final Report on the Complete Disability Study "Fulfillment of Proper Accommodation for Persons with Disabilities in the Course of Investigation"

Child Protection, it only accommodates based on calendar age. Consequently, the police will have difficulty when it comes to determining what article will be sentenced to the perpetrator. It is due to the absence of a law that mandates this that many perpetrators can be free and cases cannot be processed.<sup>36</sup>

- Prosecutors Institution

Most judicial office, the police station, the prosecutor's office, and the judge's office serving in the court show that the infrastructure in these institutions have not been accessible for persons with disabilities. Unreachable infrastructure also occurred at the prosecutor's office and the place of trial. Hamper can be said to be physical infrastructure such as prosecution files, verdicts, and information on the development of cases, all of which have not been universally designed. Many people with disabilities do not understand and become connoisseurs of indifference when visiting the judicial office. The service and communication process are also still not present with a disability perspective.<sup>37</sup>

- Tribunal/Courts

Access to justice is a fundamental right for every human being, including for persons with disabilities. The implementation of Access to justice for persons with disabilities means that there must be equal treatment and full access to all court services. Guidelines for the Implementation of Persons with Disabilities for The High Court and District Courts are arranged so that the process of service to persons with disabilities in court can run better and in accordance with the needs of each person with a disability. This guideline applies and must be enforced by all High Courts and District Courts in Indonesia.

The implementation of the right to access to justice for persons with disabilities according to the Decree of the Director General of Badilum concerning guidelines for the implementation of persons with disabilities for persons with disabilities in the High Courts and District Courts in Indonesia can be seen from the substance of these guidelines which contain;

1. Decent accommodation based on a variety of persons with disabilities;
2. Services and facilities and infrastructure according to the variety of disabilities;
3. Service and trial procedures;
4. Training and funding in budgeting for the procurement of facilities and infrastructure to support disability services.<sup>38</sup>

## The Issues and Solution for the Fulfillment Right to Justice for People with Disabilities

### A. Lack of Understanding from Legal Enforcement regarding Treatment to People with Disabilities

In Indonesia many laws enforcement including police officers lack of awareness of disability or understand how to treat persons with disabilities as a victim, many police officers still believe that persons with disabilities lack capacity to report a crime or as a witness<sup>39</sup>. Also, it is difficult to police officers to distinguish the type of disabilities which impact to the absent of support<sup>40</sup>. Thus, bad experience with legal enforcement and worry that reported crimes will not be held seriously, it could lead to barriers in the reporting of crimes<sup>41</sup>.

Besides that, in many cases lawyers and judges also do not have background in disability law<sup>42</sup>. For lawyers itself, lack of background of disability law will hamper them to provide best service for clients with disability and influence the quality of service attained by the clients with disabilities<sup>43</sup>.

Furthermore, in order to overcome these issues, according to the concluding observation by CRPD Committee it is pivotal by states to provide regular training for law enforcement officials (such as police, prosecutors, judge and prison officials) including in rural areas and remote island<sup>44</sup>. Also training

<sup>36</sup> Anggun M., Ekha NM., M. Yasin A. Legal Assistance to Disabled Victims of Criminal Acts Efforts to realize Access to Justice

<sup>37</sup> Komisi Yudisial, 'Akses Hukum dan Keadilan bagi Difabel' (KY, April-June edition 2018) <https://www.komisiyudisial.go.id/storage/assets/uploads/files/Majalah-KY-April-Juni-2018.pdf>

<sup>38</sup> Decree of the Director General of the General Judicial Agency Number 1692 / DJU / SK / PS.00 / 12/2020 concerning Guidelines for the Implementation of Services for Persons with Disabilities in the High Court and District Courts

<sup>39</sup> The result of interview with Hamzah Yamin (Perkumpulan Penyandang Disabilitas Sulsel) 1 Agustus 2022

<sup>40</sup> Ibid.

<sup>41</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>42</sup> The result of interview with Hamzah Yamin (Perkumpulan Penyandang Disabilitas Sulsel) 1 Agustus 2022

<sup>43</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>44</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Indonesia' (October, 2022)

for other people who work for the law or provide legal consultation<sup>45</sup>. The training shall contain a disability component, accessible communication and reasonable accommodation to enable them respond effectively to crimes involving people with disabilities<sup>46</sup>.

One of the good examples has been done in Indonesia is the conducting of training for paralegal by Lembaga Bantuan Hukum (LBH) Makassar. The training involve paralegal from three different regions which are Bone Regency, Bulukumba regency and Makassar City<sup>47</sup>. Also, LBH Makassar has run a program with Police, Prosecutor and Court Institution in Bone and Bulukumba regency<sup>48</sup>. The head of those institutions visited Police, Prosecutor and Court Institution in Wonosobo, Gunung Kidul Regency, Yogyakarta. From their visitation in Wonosobo they learn how to provide inclusive justice system for people with disabilities<sup>49</sup>. Furthermore, the head of District Court in Bone and Bulukumba participated in AIDRAN Conference in Universitas Brawijaya<sup>50</sup>. The conference discusses about the Advocacy and Research about Disability Policies and Social Inclusion. Thus, by joining this program, the head of Police, Prosecutor and Court Institution in Bone and Bulukumba regency learn, sharing and interact with People with Disability Organization and expert from national and international level<sup>51</sup>.

#### B. Physical Barriers

The physical barriers that still exist and impede the access to justice for persons with disabilities is the lack of the accessibility of relevant physical environments such as police stations, court houses and the offices of lawyers or other services such as health care facilities where forensic evidence is assembled<sup>52</sup>. In the courthouses for instance, the minimum adjustment was bathrooms for persons with disability and in some cases, there still lack of accessibility of the courtrooms, witness boxes, counsel tables and jury<sup>53</sup>.

In order to overcome the existing physical barriers to ensure access to justice in the facilities sector, the government or relevant institution shall consult with DPOs<sup>54</sup>. DPOs will provide input on the accessibility before the conducting of renovation or new construction the facilities<sup>55</sup>. Moreover, to ensure the accessibility, the government or institution shall collaborate with DPO for monitoring all existing infrastructure with the aims to develop low-cost strategies to guarantee physical accessibility in justice sector<sup>56</sup>.

#### C. Limited Access to Information regarding Right Access to Justice

Legal awareness is pivotal for persons with disability for fighting injustice<sup>57</sup>. There is an assumption that people with disabilities are not able to participate in legal proceedings<sup>58</sup>. Thus, it is important that the information on remedies is available for them. However, many persons with disabilities and their families are not aware regarding the legal information<sup>59</sup>. They do not understand what kind of procedures they shall pursued, with whom they are asking for help and how much money. If the persons with disabilities are well educated, they tend to have better understanding about their rights and access to justice system, also they might seek for help from DPOs<sup>60</sup>. However, many persons with disabilities do not receive good quality education, thus they do not know their legal rights.

Furthermore, In Indonesia the information regarding legal rights or remedies only provided in limited accessible format<sup>61</sup>. The lack of accessible information and modes of communication hamper

<sup>45</sup> United Nations General Assembly-Human Rights Council, UN High Commissioner for Human Rights, 'making sure people with disabilities get the right support from the police, courts and law

<sup>46</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>47</sup> Abdul Rais Asmar, A.M. Fajar Akbar, Maemanah, Muh. Asy'ari Mukrim dan Mutiah Wenda Juniar, 'Mewujudkan Layanan Hukum Inklusif Disabilitas: Catatan Keberhasilan Advokasi di Provinsi Sulawesi Selatan' (LBH Makassar, 2022)

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

<sup>52</sup> The result of interview with Hamzah Yamin (Perkumpulan Penyandang Disabilitas Sulsel) 1 Agustus 2022

<sup>53</sup> *ibid*

<sup>54</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>55</sup> *ibid*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid*

<sup>58</sup> Australian Human Right Commission, 2014. Equal Before The Law: Towards Disability Justice Strategies. Australian Human Rights Commission

<sup>59</sup> The result of interview with Hamzah Yamin (Perkumpulan Penyandang Disabilitas Sulsel) 1 Agustus 2022

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

the capability of persons with disability to report crime, participate in legal proceedings or identify lawyer<sup>62</sup>. It is even more difficult for resident persons with disabilities since their interaction is restricted only to administrative staff and family. Also, some institutional may be physically isolated from the place where legal professional are located and the limited choice, they have in institution might also discourage persons with disabilities to enjoy their rights access to justice<sup>63</sup>.

Consequently, it is important to request legislation relating to access to information in accessible format and assistance to persons with disabilities<sup>64</sup>. Government shall develop exhaustive disability access that cover accessible communication for persons with disabilities, for instance sign language interpreters, Braille and etc<sup>65</sup>. Also, the development of technology can ease the communication to become more accessible for persons with disabilities in legal proceedings, such as the use of video and computer technologies as well as real-time captions<sup>66</sup>. Indonesia may learn from good practices in Ireland, Finland and Mexico. Ireland has established the (Irish) Centre for Excellence in Universal Design (hosted by the National Disability Authority) has implemented IT Accessibility Guidelines, and IT Procurement Toolkit and Web Accessibility Techniques<sup>67</sup>. The Constitutional Court of Colombia and the Constitutional Court of Mexico called for the translation of decisions on the rights of people with disabilities into an easy-to-read format for the advantages of applicants and people with intellectual disabilities<sup>68</sup>. In Finland, the police have created their website to accommodate a variety of accessible formats, such as Simplified language, content and videos in Sign Language and some of these are supported with text and complaint formulas in large print<sup>69</sup>.

#### D. Lack of Support and Accommodation

As regulated in Government Regulation Number 39 Year 2020 about Reasonable Accommodation for People with Disabilities in Judicial Process has mentioned about providing accommodation which involve services and facilities for persons with disabilities in judicial process. However, it is quite difficult to provide the accommodation due to the lack of understanding and collaboration between related institution such as police, prosecutor, court and medical institution<sup>70</sup>.

In Pre-Trials, some of person with disabilities are hardly recognized due to the absent of personal assessment conducted by the police and medical staff<sup>71</sup>. As the result, the investigation process is stranded since the persons with disabilities cannot deliver or report properly regarding their case. This situation occurs due to the absent of accommodation or support that can assist them during investigation<sup>72</sup>. This situation emphasized how important personal assessment to assess what kind of support persons with disabilities needs during the investigation process. The pre-trials stage is pivotal in criminal procedures that might affect and determine the outcome of judicial proceedings<sup>73</sup>.

Thus, it is necessary for the legal enforcement institution to provide proper accommodation and support for persons with disabilities and the first step they shall provide is the profile/personal assessment. Personal assessment is an attempt to assess variety, level, barriers, and needs persons with Disabilities both medically and psychic to determine accommodation<sup>74</sup>. After the result of personal assessment come out, the relevant institution shall provide accommodation according to the personal

<sup>62</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>63</sup> Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, 'Access to justice for persons with disabilities: From International Principles to practice' (International Bar Association, October 2017)

<sup>64</sup> UNESCO, 'ATI and Disability Rights' (Report on Public Access to Information SDG 16.10.2, 2021) [https://www.unesco.org/reports/access-to-information/2021/en/ati-disability?TSPD\\_101\\_R0=080713870fab200097510e6c2afe612581a1588f57dfb72a2b2343216a23ceb34928824c86f6de5082da182741430004cddb94a4a32e75a01bf9e51f03ae510b5a927628743dd1edb7b1a58a8b6e487e3b62bebb335bdab4f20c8c9cc7ef208](https://www.unesco.org/reports/access-to-information/2021/en/ati-disability?TSPD_101_R0=080713870fab200097510e6c2afe612581a1588f57dfb72a2b2343216a23ceb34928824c86f6de5082da182741430004cddb94a4a32e75a01bf9e51f03ae510b5a927628743dd1edb7b1a58a8b6e487e3b62bebb335bdab4f20c8c9cc7ef208) Accessed on 21 October 2022

<sup>65</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>66</sup> Ibid.

<sup>67</sup> Anna Lawson, Accessibility of Information, technologies and communication for persons with disabilities; Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities (Council of Europe, 2017)

<sup>68</sup> United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)

<sup>69</sup> Ibid.

<sup>70</sup> The result of interview with Hamzah Yamin (Perkumpulan Penyandang Disabilitas Sulsel) 1 Agustus 2022

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, 'Access to justice for persons with disabilities: From International Principles to practice' (International Bar Association, October 2017)

<sup>74</sup> Government Regulation Number 39 Year 2020 about Reasonable Accommodation for People with Disabilities in Judicial Process



assessment and it indicates that several services must be provided. The services are<sup>75</sup>:

- Disability Assistance Service
- Interpreter/Sign Language Service
- Social Rehabilitation Service
- Legal Aid Service
- Special Service for Women and Children with disabilities victims of violence

Furthermore, in order to provide exhaustive services, it is important to strengthen the collaboration between institution. Consequently, it will be better if the collaboration or cooperation based on Agreement/Memorandum of as has been done by several institution in Bulukumba and Bone Regency in South Sulawesi<sup>76</sup>. The main stakeholder such as Court District in Bulukumba and Watampone, Government Social Agency, Government Empowerment of Women and Child Protection Agency and Special Schools in Bone and Bulukumba regency, Disability People Organization in Bulukumba and Bone as well as Makassar Legal Aid Agency (LBH Makassar)<sup>77</sup>. Taking to be note that those institution are agreed to provide services for people with disability who conflict with law.

Personal assessment services will be better to be provided by the regional hospital, while Disability Assistance Services can be provided by DPO, the interpreter/sign language services can be provided by Special School, Social Rehabilitation Service provided by Government Social Agency, Legal Services provided by Legal Aid Institution and Special Service for Women and Children with disabilities victims of violence provided by Government Empowerment of Women and Child Protection Agency. Thus, good collaboration from those institution is needed to ensure right access to justice for person with disabilities particularly whom encounter legal cases. Lastly, monitoring from the central government also important.

## CONCLUSION

Implementing access to justice for persons with disabilities is quite challenging for state parties of CRPD particularly Indonesia. Legal obligation stipulated in CRPD and the scope of access to justice are quite complex and needs more attention from the government to implement it. Indonesia through its legislation has attempted to fulfill the right access to justice for instance by the issuance of Law Number 8 Year 2016 on People with Disabilities and Government Regulation Number 39 Year 2020 about Reasonable Accommodation for People with Disabilities in Judicial Process and Decree of the Director General of the General Judicial Agency Number 1692/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Services for Persons with Disabilities in the High Court and District Courts. However, in the practice, there are at least four major issues that hamper the fulfilment right access to justice. *The issues are* limited access to information regarding right access to justice; physical barriers; limited access to information regarding right access to justice and; lack of support and accommodation. Possible solution to overcome those issues such as providing regular training for legal enforcement regarding treatment for persons with disability, adjusting infrastructure to be accessible for persons with disabilities, utilizing technology to ease communication in all accessible format and providing services and reasonable accommodation based on personal assessment for persons with disabilities who are encountering legal cases. Also, the most important parts is the monitoring from central government, the good collaboration between institution who provide services and the involvement of DPO in all disability sector.

## REFERENCES

- Abdul Rais Asmar, A.M. Fajar Akbar, Maemanah, Muh. Asy'ari Mukrim dan Mutiah Wenda Juniar, 'Mewujudkan Layanan Hukum Inklusif Disabilitas: Catatan Keberhasilan Advokasi di Provinsi Sulawesi Selatan' (LBH Makassar, 2022)
- Anak Agung Istri Ari atu Dewi, 'Aspek Yuridis Perlindungan Hukum dan Pemenuhan Hak Penyandang Disabilitas' (2018) 13(1) Jurnal Pandecta
- Anna Lawson and Eilionoir Flynn, 'Disability and Access to Justice in the European Union: Implications of the UN Convention on the Rights of Persons with Disabilities' (2013) 4 *European Yearbook of Disability Law*
- Anna Lawson, Accessibility of Information, technologies and communication for persons with

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<sup>75</sup> Abdul Rais Asmar, A.M. Fajar Akbar, Maemanah, Muh. Asy'ari Mukrim dan Mutiah Wenda Juniar, 'Mewujudkan Layanan Hukum Inklusif Disabilitas: Catatan Keberhasilan Advokasi di Provinsi Sulawesi Selatan' (LBH Makassar, 2022)

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

- disabilities; Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities (Council of Europe, 2017)
- Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 'Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities' 2017
- ASH, 'Penyandang Disabilitas Masih Sulit Akses Keadilan' (Hukum Online, 2015) <<https://www.hukumonline.com/berita/a/penyandang-disabilitas-masih-sulit-akses-keadilan-lt55cc60eb88339/>> accessed on 14 October 2022
- Australian Human Right Commission, 2014. Equal Before The Law: Towards Disability Justice Strategies. Australian Human Rights Commission
- Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Indonesia' (October, 2022)
- CRPD Committee, General Comment Number 32 on the right to equality before courts and tribunals and to a fair trial year 200
- David Allen Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy' (2014) 3 Laws, 220-238.
- Eilionoir Flynn, 'Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities' (Routledge, 2016)
- Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, 'Access to justice for persons with disabilities: From International Principles to practice' (International Bar Association, October 2017)
- Kadarudin, *Mengenal Riset dalam Bidang Ilmu Hukum: Tipologi, Metodologi, dan Kerangka*, (Ponorogo: Uwais Inspirasi Indonesia, 2020)
- Komisi Yudisial, 'Akses Hukum dan Keadilan bagi Difabel' (KY, April-June edition 2018) <https://www.komisiyudisial.go.id/storage/assets/uploads/files/Majalah-KY-April-Juni-2018.pdf>
- M., Ekha NM., M. Yasin A. Legal Assistance to Disabled Victims of Criminal Acts Efforts to realize Access to Justice
- Markus Schefer, 'The Right to Access to Justice- Article 13 CRPD' on Annual Conference on the Rights of Persons with Disabilities 2020: Access to Justice <[https://www.markusschefer.ch/admin/data/files/asset/file\\_en/47/presentation-on-access-to-justice-2020-10-21.pdf?lm=1626280674](https://www.markusschefer.ch/admin/data/files/asset/file_en/47/presentation-on-access-to-justice-2020-10-21.pdf?lm=1626280674)> accessed on 14 October 2022
- Ombudsman of the Republic of Indonesia Final Report on the Complete Disability Study "Fulfillment of Proper Accommodation for Persons with Disabilities in the Course of Investigation"
- Ridwan Arifin, Iqbal Baiquni, Januari Nasya Ayu Taduri, Rasdi Rasdi, Zikkri Zikkri, 'The International Law Principle for People with Disabilities: Analyzing Access to Justice' (2021) 7(2) Jurnal Hukum Universitas Negeri Semarang, 371-404
- Solider, Perkokoh Keberagaman dan Inklusi, Konferensi Pengarusutamaan HAM 2022 Harapkan Indonesia Harmonis (Solider, 2022) <https://www.solider.id/baca/6993-peran-kepolisian-dalam-tangani-difabel-hadapi-kasus-hukum> accessed on 24th July 2022
- Suparman Marzuki, Muhamad Syamsudin dan Despan Heryansyah, 'Akses Keadilan Bagi Penyandang Disabilitas Dalam Proses Peradilan' (Kreasi Total Media, 2021)
- UNESCO, 'ATI and Disability Rights' (Report on Public Access to Information SDG 16.10.2, 2021) [https://www.unesco.org/reports/access-to-information/2021/en/ati-disability?TSPD\\_101\\_R0=080713870fab200097510e6c2afe612581a1588f57fdb72a2b2343216a23ceb34928824c86f6de5082da182741430004cdbb94a4a32e75a01bf9e51f03ae510b5a927628743dd1edb7b1a58a8b6e487e3b62bebb335bdab4f20c8c9cc7ef208](https://www.unesco.org/reports/access-to-information/2021/en/ati-disability?TSPD_101_R0=080713870fab200097510e6c2afe612581a1588f57fdb72a2b2343216a23ceb34928824c86f6de5082da182741430004cdbb94a4a32e75a01bf9e51f03ae510b5a927628743dd1edb7b1a58a8b6e487e3b62bebb335bdab4f20c8c9cc7ef208) Accessed on 21 October 2022
- United Nations Division for Social Policy Development and Department of Economic and Social Affairs, 'Toolkit on Disability for Africa Access to Justice for Persons with Disabilities' (United Nations, 2016)
- United Nations General Assembly-Human Rights Council, UN High Commissioner for Human Rights, 'making sure people with disabilities get the right support from the police, courts and law
- United Nations Human Rights Special Procedures, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations High Commissioner for Human Rights, 2020).