

## THE EVIDENCE SYSTEM FOR SEXUAL VIOLENCE CASES INVOLVING PERSONS WITH DISABILITIES AS VICTIMS

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Received 30 Nov 2025 • Revised 16 Dec 2025 • Accepted 06 Jan 2026

### Abstract

Sexual violence against persons with disabilities is a crime that requires full attention. Persons with disabilities, as victims of crime, must receive justice. This study aims to identify the obstacles experienced by persons with disabilities in the evidentiary process of law enforcement and to provide information about a disability-friendly evidentiary system. This research is normative in nature, with data sources derived from secondary data. The data were collected, classified, and processed according to the discussion to provide answers to the issues raised, then presented descriptively. The results show that obstacles may arise from persons with disabilities themselves, law enforcement officers, and the still-developing understanding of sexual violence. Regarding the evidentiary system, there is a need to update regulations to facilitate the evidentiary process. The evidentiary system based on Law No. 12 of 2022 offers a disability-friendly approach to achieving justice. In implementing the evidentiary process, disability-friendly measures must also be considered, as stipulated in Government Regulation No. 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in Judicial Processes.

**Keywords:** Sexual Violence, Persons with Disabilities, Evidence

## INTRODUCTION

Crime can lead to anyone, crime can also occur anywhere and anytime. Legal protection of crime victims is a major concern. Crime is often defined as an act that violates the rules of law that apply in society. Sutherland provides a definition of crime with the words "Crime is behavior that is prohibited by the state, and in this act there is a state reaction, namely punishment as the ultimate effort". Sexual violence is a crime. The act of sexual violence becomes an act that is not allowed (prohibited) by a law, then there is a penalty if the act is committed. The definition of sexual violence is easily understood as follows "Sexual violence is an act that degrades, attacks a person's body and is related to sexual desire, sexual desire or reproductive function, carried out unilaterally or by force and there is no consent from the opposing party". In this discussion, perhaps we can briefly refer to sexual violence as KS.

Various forms of sexual violence include: Sexual harassment, Forced marriage, Sexual exploitation, Sexual slavery, Sexual intimidation, Sexual punishment, Sexual torture, Rape, Forced pregnancy, Forced contraception, Forced prostitution, Forced abortion and Sexual control. Anyone can be a victim of SL, as well as anyone can be a perpetrator of SL. Men can be victims or perpetrators, conversely women can also be victims or perpetrators. Persons with disabilities are someone with limitations in carrying out daily life, are also the target of acts of SL. A little information related to disabilities, they are included in vulnerable groups which because of their limitations they find it difficult to get access to meet their needs (Anggara, A. S., Ruzuar, A. H., & Ridwan, 2023).

The guarantee of protection for the survival of disabilities is specifically mentioned in Law (No. 8/2016) on Persons with Disabilities. The implementing regulations of the Law will clearly provide direction for the fulfillment of disability's life needs. One of the implementing regulations of the Law on Persons with (Disabilities is Government Regulation No. 39 of 2020) concerning Reasonabl

Accommodation for Disabilities in the Judicial Process.

Information released by KomNas Perempuan shows that cases of violence involving women as victims in 2023 reached 4,374 cases. Cases of sexual violence alone reached 636 cases, including 550 cases committed by ex-boyfriends, 462 by boyfriends, 174 by husbands. A total of 105 cases of violence led to people with disabilities, as well as to various types of people with disabilities (KOMNAS Perempuan, 2024).

Persons with disabilities who are victims of sexual violence when dealing with the law, not a few of them encounter obstacles. Such as the lack of disability perspectives, not all implementing officers understand the ethics of interacting with disabilities, facilities and infrastructure that are not yet accessible, communication barriers because disabilities sometimes do not understand national sign language and only their mother tongue.

In addition to obstacles outside of persons with disabilities, the obstacles also come from within persons with disabilities. The inability of disabilities to interact normally coupled with law enforcement officials who lack a disability perspective will be an obstacle in achieving justice.

Especially in the case of KS, it often occurs in the private sphere and no one knows or sees. Disability conditions that cannot provide clear information, will make it difficult to fulfill evidence or get witnesses. The fulfillment of evidence is an important matter in the process of determining criminal offenses. Presumably in cases of sexual violence involving persons with disabilities as victims, there is a need to reform the evidentiary system, so that in achieving the minimum limit of evidence there is no difficulty and is able to bring justice to persons with disabilities.

This study will show the obstacles in the fulfillment of evidence involving persons with disabilities as victims of sexual violence and show how the current evidentiary system applies. As well as seeing how the evidentiary system should be appropriate for persons with disabilities who are victims of sexual violence.

## RESEARCH METHOD

Normative research is the type of research that will be used, also known as doctrinal research, which is research conducted by examining library materials (secondary data) (Muhaimin, 2020). Secondary data used includes: a. Primary legal materials (Law No. 12 of 2022, Law No. 8 of 2016, Law No. 8 of 1981, PP No. 39 of 2020), b. Secondary legal materials (Law books related to disability, legal research results related to disability, sexual violence, evidentiary systems etc.), c. Tertiary legal materials (materials that will be used as explanatory instructions for primary or secondary legal materials, in the form of legal encyclopedias. The collection technique will use a literature study of legal materials that are the object of research. Legal materials will be classified according to the need to

provide answers to problems, then analyzed using qualitative analysis methods and presented descriptively in writing.

## RESULTS AND DISCUSSION

### Factors inhibiting the fulfillment of evidence in cases of sexual violence involving persons with disabilities

#### a. Persons with Disabilities

Based on the guarantee of legal protection for persons with disabilities, a definition is given that disability is "Every person who experiences physical, intellectual, mental, and / or sensory limitations for a long period of time, so that in the community environment experiences full obstacles and difficulties in interacting and participating". The guarantee of protection for persons with disabilities is specifically regulated in (Law No. 8 of 2016), regarding the variety of disabilities we can find out including: Persons with physical disabilities, Persons with intellectual disabilities, Persons with mental disabilities, Persons with sensory disabilities. Disability can be experienced as single, multiple or multiple. Disability is also experienced over a long period of time with the shortest being 6 months.

For a more detailed explanation of the different types of disabilities, we can also refer to the regulation on persons with disabilities above. A little bit of the author presents with simple language. Physical disabilities are disabilities that occur due to the disruption of a person's movement function, such as paraplegia, cerebral palsy, stroke, leprosy, amputation, paralysis, and small people. Intellectual disability is a disability that occurs due to a disruption in the function of the mind that is below average, such as slow learning, mental disability, down syndrome. Mental disabilities are disabilities resulting from disruptions in thinking, behavior, and emotions, such as psychosocial (schizophrenia, bipolar, depression, anxiety, etc.), and social interaction (autism and hyperactivity). Sensory disabilities are caused by the disruption of one of the five senses, such as visual, hearing, and speech.

The various forms of people with disabilities certainly require diverse attention in fulfilling their rights. Especially when people with disabilities are in conflict with the law. Whether disability as a perpetrator or as a victim of legal events that occur. Equality before the law as also stated in the CRPD (Committee on the Right of Persons with Disabilities) that disability rights must also be protected by law. Recognition of the equality of persons with disabilities makes any law not allowed to reject the existence and fulfillment of disability rights (Yustikaningrum, R. Y., & Noer, 2023).

#### b. Obstacles to Fulfillment of Evidence in Sexual Violence Cases Involving Persons with Disabilities

Sexual violence is an act that degrades a person's dignity, an act that also has an impact on a person's physical or psychological state. Disabilities are easily victimized because disabilities have more vulnerability than non-disabled people. When disabilities experience acts of sexual violence, that's when disabilities face the law. As victims of crime, of course they will fight for justice, so that the rights that have been taken away can be returned and the perpetrators get retribution.

Discussing the issue of law enforcement in acts of sexual violence involving disabilities, it will also intersect with the process of proof in acts of sexual violence. It is not uncommon that in the process of law enforcement where disability as a victim in crime still encounters many obstacles, including in the process of fulfilling evidence. Obstacles to the process of fulfilling evidence do not only come from the absence of concrete evidence that shows a criminal act has occurred. However, the obstacles also come from the person with disabilities, as well as from law enforcement officials. Here the author will present in a simple form information about these obstacles.

First, Barriers Originating from Persons with Disabilities. Returning to the various forms of disability, of course, provides obstacles that are also so diverse. People with mental disabilities who have difficulty providing information related to the events they have experienced, both clearly and consistently, will result in the strength of the victim's testimony. Most people with disabilities do not understand that the act of sexual violence experienced is a crime. So that the expressions issued do not describe being subjected to sexual violence (S. Marzuki et al., 2021).

Article 1 paragraph 26 of the Criminal Procedure Code states that "*Saksi adalah orang yang dapat memberikan keterangan guna kepentingan penyidikan, penuntutan dan peradilan, tentang suatu perkara pidana yang ia dengar sendiri, ia lihat sendiri dan ia alami sendiri*". For the testimony of victims with disabilities who are unable to clearly provide information and change in providing testimony, it is considered unable to prove their testimony and is considered not to fulfill the elements as a witness (Faridah, 2019).

Second, obstacles originating from law enforcement officials. There are still many officials who do not understand disability issues, starting from the fulfillment of facilities and infrastructure to assist in obtaining information, and do not understand what must be fulfilled so that persons with disabilities get their rights.

Lack of attention by law enforcement officials when providing assistance to persons with disabilities. Regarding the language understood by deaf people, for example, they only understand their mother tongue because they do not receive formal education (Sudaryanto et al., 2023). This is an obstacle to obtaining an explanation of the chronology of events, in order to find clues to fulfill evidence. The closest person or victim's companion is not involved in the law enforcement process, even though they can bridge the communication process. Persons with disabilities who have never received education will find it difficult if the language used is BISINDO or SIBI only (Media SAPDA, 2023).

Third, the obstacles stem from the concept of sexual violence that is still generally understood. The types of sexual violence today have developed, not only sexual violence that results in real consequences is recognized as a crime. Here we can see several types of sexual violence, including: Non-physical sexual abuse, physical sexual abuse, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based violence.

From the explanation above, it can be understood that sexual violence is not always about intercourse which requires the entry of the male genitals into the female genitals. Cases of sexual violence will have an impact not only on the physical, but also on the victim's psychology.

The existence of evidence in a criminal case is at the most important position, where law enforcement officials will look for strong evidence to determine whether an act can be considered a criminal offense. Then proceed to determine a person who must be responsible for a criminal offense. (Megawati, C., Astini, D., Musriandi, R., D., Blang Bintang Lama, J. K., & Keude Aceh Besar, 2023) If these obstacles are in the process of law enforcement of sexual violence cases against persons with disabilities, of course the fulfillment of evidence to determine the crime of sexual violence will also be hampered.

## **The Evidence System in Sexual Violence Cases Involving Persons with Disabilities**

### **a. Evidence Under the Criminal Procedure Code (KUHP)**

Talking about evidence in criminal cases, will also talk about criminal law. There are terms such as material criminal law and formal criminal law. Material criminal law relates to regulations on punishable acts, punishable subjects and types of punishment that can be imposed. Meanwhile, formal criminal law relates to regulations on how the state carries out its duties and exercises its right to enforce the law.

Law enforcement carried out by the state based on formal criminal law is regulated in Law No. 8 of 1981 concerning Criminal Procedure Code. Standard rules that must be used as a guide by law enforcement officials in order to achieve order, security and peace in society. In imposing or giving a verdict to someone who has been suspected of committing a crime, it must be guided by the results of evidence. Also in saying someone has committed a criminal offense must be based on the fulfillment of a minimum of evidence. Important terms contained in the evidentiary system also need to be understood, as follows:

- 1) Evidence is something (whether an item, situation, or event) that can demonstrate a truth.
- 2) Evidence or evidence is anything that can be a sign of an act, whether a crime, offense and so on.
- 3) Proving has the meaning of showing evidence, doing something as proof of the truth, giving a statement of the truth, convincing and witnessing.
- 4) Proof is the act of proving.

Rules related to the minimum limit of evidence or what can be called "sufficient preliminary evidence" in criminal procedure law are listed in article 1 number 14, article 17 and article 21 paragraph (1) of KUHP. Sufficient preliminary evidence according to the Constitutional Court is considered to be a minimum of two pieces of evidence, in order to protect the human rights of suspects and avoid the arbitrariness of law enforcement officials in determining suspects as perpetrators of criminal acts. The provision of a minimum of two pieces of evidence can also refer to Article 183 of the Criminal Procedure Code (Tri Jata Ayu Pramesti, 2017).

Valid evidence is not specifically mentioned, but can refer to the evidence mentioned in Article 184 of the Criminal Procedure Code, including witness testimony, expert testimony, letters, instructions and testimony of the defendant (Megawati, C., Astini, D., Musriandi, R., D., Blang Bintang Lama, J. K., & Keude Aceh Besar, 2023).

First, witness testimony. In Article 27 it is said to be one of the valid evidence in criminal cases. Information given about a criminal event that is experienced, seen and heard by himself, and mentioned the reasons and knowledge.

Second, expert testimony. Information from a person who has special expertise related to matters needed in the interests of the examination, so as to shed light on a criminal case. A statement given in a court session is called an expert statement. This rule can be referred to in article 28.

Third, Letter. Anything containing understandable signs of reading, intending to express the contents of thought. Apart from being mentioned in article 184, it can also be referred to article 187 related to letter evidence.

Fourth, clues. Given an explanation of the evidence of clues is an act, event, situation that because there is a match between them so that it shows a sign of the occurrence of a criminal offense or who is the perpetrator of a criminal offense. Clue evidence can only be obtained from witness testimony, letters, and testimony of the defendant. The strength of the evidence of clues must be carried out by the judge wisely and wisely, by conducting a careful examination first. Article 188 has been stated in detail.

Fifth, the statement of the defendant. Everything said by the defendant for his knowledge and experience in the trial is the defendant's testimony. Everything the defendant says outside the trial can be used to find evidence in the trial as long as the testimony is supported by valid evidence.

#### **b. Evidence Based on Law No. 12 of 2022 on Sexual Violence Crimes**

Legal guarantees for survivors of sexual violence have been passed by the government to tackle the rampant cases of sexual violence, on April 12, 2022 the TPKS Law was passed. The novelty in this law that other laws do not have is the orientation towards victims. The TPKS Law also provides a forum for all forms of sexual violence, which previously never specifically regulated types of sexual violence.

Prior to the arrival of the TPKS Law, the proof of sexual violence cases had been based on the Criminal Procedure Code. As times evolve, the increasing variety of crimes requires more comprehensive legal guarantees (Herisasono et al., 2023).

Several changes have occurred since the enactment of the TPKS Law. One of them is about proof as the most important part in determining the guilt of others. Proof is also defined as an action to test the truth of a statement (Herisasono et al., 2023).

The rules relating to evidence, in the TPKS Law, state that evidence is not only limited to the 5 legal means of evidence as stated in Article 184 of the Criminal Procedure Code. Electronic information or electronic documents as other valid evidence in accordance with Article 24 paragraph 1 letter b of the GCTS Law, and further explained in Article 25 of the GCTS Law.

- 1) Witness Statement Evidence. Included in the evidence are the results of the examination of witnesses or victims in the investigation process through electronic recordings.
- 2) Regarding Letter Evidence. Includes: letters derived from the testimony of clinical psychologists, psychiatrists or mental health specialists, medical records, forensic examination results, bank account examination results.
- 3) Witness Statement Evidence. The testimony of a witness or victim accompanied by one other valid piece of evidence is sufficient to prove that the defendant is guilty. In this case the judge is convinced that there has been a criminal offense in which the defendant is the perpetrator.

The defendant's family can be a witness under oath to provide testimony without the consent of the defendant. The testimony of witnesses or victims from persons with disabilities has the same strength as the testimony of non-disabled witnesses or victims. However, it must be supported by a personal assessment as stipulated in Government Regulation No. 39 of 2020 concerning Reasonable Accommodation for Persons with Disabilities in the Judicial Process.

Regarding witness testimony that is only obtained from the victim, witness testimony that is not carried out under oath, witness testimony obtained from other people, the strength of evidence can be supported by information obtained from the following explanations:

- 1) A person who is able to provide testimony related to the crime of sexual violence, even though the person did not hear, see, or experience the crime himself/herself.
- 2) Witnesses whose testimonies stand alone but are related to one another, thus confirming the existence of a certain incident.
- 3) Experts who make letter evidence or experts who support the proof of criminal acts.

The minimum evidence after the enactment of the TPKS Law is determined by a minimum of one valid piece of evidence, supported by the judge's belief in the occurrence of the criminal offense. The TPKS

Law complements and perfects the existing formal criminal procedure law. Expanding the types of evidence that can be used as valid evidence in cases of sexual violence. So it can be concluded that the evidence contained in the TPKS Law is actually the same as the Criminal Procedure Code but there is a slight expansion regarding evidence.

### c. Analysis of the Evidence System for Sexual Violence Cases Involving Persons with Disabilities

The evidentiary system is a rule about the types of evidence that can be used, described and must reach the judge's confidence. Evidence is the most important part of the criminal case process, because it involves human rights, involves the search for material truth about the occurrence of criminal acts.

In order for the legal process to be guaranteed fairly, the Indonesian criminal procedure law evidentiary system adheres to the principle of minimum proof. The principle is used as a guideline in providing an assessment of the evidentiary process, whether the evidence presented and the judge's belief is able to fulfill to declare someone guilty.

Cases of sexual violence involving persons with disabilities as victims are problems that must be given full attention. The greater vulnerability of persons with disabilities is a gap for perpetrators of sexual violence to carry out their actions. Therefore, the handling of sexual violence cases involving persons with disabilities must undergo developments that are oriented towards the position of victims, especially persons with disabilities.

Here are some things that must receive attention in the process of fulfilling evidence of sexual violence cases where people with disabilities with their shortcomings become victims.

#### 1) The Position of Disabilities as Legal Subjects

Disabilities often experience obstacles, which can occur due to environmental conditions that are not accessible and do not support themselves to be independent and develop, such as for example the existence of discriminatory laws. Legislation under the 1945 Constitution should not have discriminatory provisions. We remember that the main framework of our country's constitution is respect for human rights.

The Committee on the Right of the Persons with Disabilities (CRPD) provides recommendations for regulations that are discriminatory to harmonize with existing conventions so that the rights of persons with disabilities can be guaranteed, both for equal recognition before the law and in all areas of life. Government Regulation No. 39 of 2020 is an implementing regulation of Law No. 8 of 2016 that recognizes the position of persons with disabilities in the judicial process as equal to non-disabled persons. This means that people with disabilities also have rights and obligations that are guaranteed by the state through the regulations issued (Devi & Prasetyo, 2022).

Pancasila also provides a basis where everyone is entitled to fair treatment and justice. It is found in the 5th principle which reads "Keadilan sosial bagi seluruh rakyat Indonesia", where people with disabilities are given sufficient facilities and infrastructure to be able to create their quality of life (Humas MKRI, 2023).

In accordance with the opinion of legal experts who provide a definition of the subject of law, in his book Prof. Mahmud Marzuki it is said that today all humans are subjects of law. Humans become legal subjects as long as they are alive, both when they are still in the womb until they die (P. M. Marzuki, 2017). Persons with disabilities are humans who have different privileges from non-disabled humans, have rights and obligations, and are obliged to get justice.

#### 2) Minimum Limits of Evidence

The difficulty of fulfilling evidence in sexual violence cases has become common information that can be heard by all circles. Sexual violence is a crime that often occurs in the private sphere, so it is believed that law enforcement has difficulty due to the lack of evidence and testimony.

Before the presence of Law No. 12 of 2022, law enforcement of sexual violence cases still used the Criminal Code, as well as in the formal law enforcement process still used the Criminal Procedure Code. Based on the formal rules, the enforcement of sexual violence cases in Article 183 of the Criminal Procedure Code says "*Hakim tidak boleh menjatuhkan pidana kepada seorang kecuali apabila dengan sekurang-kurangnya dua alat bukti yang sah, ia memperoleh keyakinan bahwa suatu tindak pidana benar-benar terjadi dan terdakwa yang bersalah melakukannya*".

Whereas in Law No. 12 of 2022 it is determined differently, that one piece of evidence can be the basis for determining a person's guilt, as in Article 25 paragraph (1) it says "*Keterangan saksi dan atau korban cukup untuk membuktikan bahwa terdakwa bersalah jika disertai dengan 1 alat*".

*bukti sah lainnya dan hakim memperoleh keyakinan bahwa benar telah terjadi tindak pidana dan terdakwa yang bersalah melakukannya”.*

Based on the principle of *lex specialis derogat lege generali* where special rules override general rules. This principle can be used as a basis for applying special rules outside the Criminal Code based on several reasons including: 1) Criminalization or decriminalization, 2) Existing rules are considered inadequate to the changes that occur, 3) There are urgent circumstances that need to be handled by a new rule (Mursyid, 2024).

We can see how easy it will be if sexual violence cases use the special rules in the TPKS Law. The minimum provisions of evidence that have been adjusted to the current conditions of sexual violence crimes are expected to facilitate the process of fulfilling evidence.

### 3) Testimony *De auditu*

The variety of disabilities in Indonesia challenges the state to fulfill justice for people with disabilities. Fulfilling their rights also requires a variety of methods. Different types of disabilities affect the fulfillment of their needs.

One type of disability is deaf friends, they need sign language to interact with others and to fulfill their rights. (Yustikaningrum & Noer, 2023) For those who have not received education, many do not understand sign language (SIBI & BISINDO), they only use their mother tongue to interact in everyday life, so only the mother understands what her child means. In cases of sexual violence involving persons with disabilities, many of them experience obstacles in the process of providing witnesses (testimony), both from the person with a disability who is unable to provide consistent testimony or even inadequate facilities and infrastructure to help obtain clear information.

Of course, in the process of fulfilling evidence in the KS case on disability, testimony *de auditu* can be used as a consideration for judges in upholding the law. It is said that in casuistic cases *de auditu* testimony can be constructed by judges as presumptive evidence that is considered objectively and rationally. The basis is Constitutional Court Decision No. 65/PUU\_VIII/2010 on the expanded meaning of witnesses. Thus, a person who has direct knowledge of the occurrence of a criminal offense must be heard as a witness (Oktavira, 2023).

### 4) Concept of Sexual Violence

As time goes by and the times evolve, the types of sexual violence cases have also evolved. Not only about rape, intercourse or sexual violence that is physical in nature, but it is also specifically explained about the types of sexual violence that are non-physical in nature. Specifically explained in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence.

The impact of sexual violence cases is not only in the form of physical impacts that can be seen with the eyes or can be proven by *visum et repertum*, but the impact can also have an impact on the victim's psychology. For people with disabilities in particular, the impact will also multiply, where the position of disability will be increasingly isolated from social society (Azhar et al., 2023).

The perspective of disability, the perspective of victims of sexual violence should be attached to law enforcement officials. If good rules are implemented by good law enforcement officers (with the same perspective) then the results will achieve justice, and vice versa if the law enforcement officers are not good then justice is difficult to create “Prof. Taverne”.

## CONCLUSION

Cases of sexual violence against persons with disabilities are a crime that should be of concern. The inability to carry out normal daily life is a vulnerability factor for people with disabilities. Bearing the identity of a victim of sexual violence is not easy for them, we know that the condition of disability has not been fully recognized in the community, there is still discrimination and other things. The existence of disability as a victim will further discriminate and isolate them from the community. When dealing with the law, disabilities have many obstacles, especially if they are victims of sexual violence. Obstacles can come from disabilities who do not have the ability like normal people. Barriers also come from law enforcement officials who do not have a perspective on disability. And obstacles come from an understanding of the definition of sexual violence which is still guided by the rules of the Criminal Code.

Law enforcement in cases of sexual violence must undergo reform, which is not only oriented towards the perpetrator, but also oriented towards the victim. There are more and more types of sexual violence cases and they are specifically regulated. Especially in the process of fulfilling evidence that is increasingly facilitated, in order to become the basis for determining a crime and who is responsible for the crime that occurred. Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence is a complement to the Criminal Code and Criminal Procedure Code which were previously used as the

basis for the law enforcement process of sexual violence. As well as for disabilities who are victims, it is hoped that the mandate of Law No. 8 of 2016 concerning Persons with Disabilities can be implemented properly in all matters, especially when disabilities are dealing with the law.

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