

The Application of Restorative Justice to Criminal Acts Committed by Persons with Disabilities in The Perspective of Educational Criminalization (Case Study in Semarang)

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Abstract

Persons with disabilities facing the law need special legal protections to ensure equal and non-discriminatory justice. However, in law enforcement practice in Indonesia, the implementation of proper accommodation and legal assistance is still not optimal. This research aims to analyze legal protection for persons with disabilities and the application of *restorative justice* in the perspective of educational criminalization. The research method used is normative research with a legislative and conceptual approach. The results of the study show that even though legal regulations are available, they still face obstacles in their implementation, so that the application of *restorative justice* based on educational



criminalization is seen as more humane and just because it focuses on recovery and rehabilitation.

Keywords: Persons with disabilities, legal protection, *restorative justice*, educational punishment.

Introduction

Persons with disabilities are people who have physical, intellectual, mental, and sensory limitations that have an impact on their daily activities when faced with various environmental and social barriers. In the context of inclusive development, the existence of persons with disabilities requires special attention because many of them still experience discrimination, limited access to education, employment, health services, and participation in life community¹. In fact, based on the mandate of Law No. 8 of 2016 concerning Persons with Disabilities, people with disabilities have the same rights as other citizens to obtain protection, opportunities, and facilities that support their independence². In certain circumstances, people with disabilities can commit unexpected acts, and based on the provisions of the law, such acts can be categorized as criminal acts. Legal protection for persons with disabilities must receive more attention, both from law enforcement officials and health experts, while still adjusting the assistance and services needed by these persons with disabilities. This is important because people with disabilities can play the role of perpetrators, victims, and witnesses, so they need assistance and treatment that suits their needs.

A person with a disability is often considered a vulnerable group, so it is not uncommon for them to be used by certain parties to commit a

¹ Khofifah Mulyani, Muhammad Sahrul Sahrul, and Alfian Ramdoni, "Various Discrimination of Single Physical Disabilities in the World of Work," *KHIDMAT SOSIAL: Journal of Social Work and Social Services* 3, no. 1 (2022): 11–20.

² Lailatul Amalia and Icha Cahyaning Fitri, "Juridical Study of State Responsibility in the Application of Article 31 Letter D of Regional Regulation No. 8 of 2015 concerning the Implementation of Social Welfare in Jember Regency," *Journal Customary Law* 1, no. 1 (2023): 15.

criminal act. The criminal acts committed can be diverse such as theft, persecution, and even sexual harassment. However, it is undeniable that a person who does not have limitations or mental disorders or intellectual disabilities can still deliberately and consciously commit a criminal act. This is because they are considered to have the ability to think logically and healthily in making decisions, both to commit acts that are contrary to the law and acts that do not violate the applicable legal provisions. In resolving criminal cases involving persons with disabilities, they should get their rights to be treated properly by law enforcement officials. However, in its implementation, the inability of law enforcement officials to handle cases involving a person with a disability becomes an obstacle, especially in fulfilling the rights of a person with a disability. In addition, the fact in the field was found that many people with disabilities still face serious obstacles, such as the absence of sign language interpreters for the deaf, the absence of documents in braille for the visually impaired, and the lack of psychological companions for people with mental or intellectual disabilities³. These obstacles result in people with disabilities not being able to defend themselves optimally, and are even vulnerable to criminalization or misinterpretation of the information they provide.

This condition shows that there is a serious gap between the applicable law and real practice. The applicable law emphasizes the importance of educational, rehabilitative, and inclusive punishment in accordance with the principles of restorative justice and human rights⁴. However, in practice, it shows a reality that is repressive, discriminatory, and far from the principle of inclusivity. This gap must be addressed immediately through a more humane reorientation of criminal policy. The recommendations include increasing the capacity of law enforcement

³ Agung Sudaryanto, Basri Basri, and Johny Krisnan, "Problems of Investigation of Legal Subjects of Persons with Disabilities as Victims of Criminal Acts," *Borobudur Law and Society Journal* 2, no. 4 (2023): 168–75.

⁴ Salsabila Ayu Pramita, "The Application of Restorative Justice in Modern Penology: Alternative Criminalization in the Era of Legal Reform," *Journal of Legal and Public Policy Studies* | E-ISSN: 3031-8882 2, no. 2 (2025): 899–912.

officials to have a disability perspective, providing adequate support facilities at all stages of the judiciary, and reforming correctional institutions to be truly disability-friendly.

The main goal of *restorative justice* is to meet the needs of all parties involved, namely the community, perpetrators, and victims. This approach emphasizes restoration to the original state, not discussion, by resolving criminal cases involving the perpetrator, victim, family, and other related parties to jointly find the most appropriate solution ⁵. The application of *restorative justice* in cases involving persons with disabilities is expected to bring a more humane and fair legal settlement. If this mechanism is implemented optimally, the burden on the state in handling cases can be reduced. For example, cases that can still be resolved in a non-litigation manner do not need to be brought to the judicial process, so that law enforcement officials such as the police, prosecutors, and judges can focus more on handling and prosecuting serious or serious crimes.

Thus, the criminalization of persons with disabilities should be directed to achieve substantive justice, not just formal justice. This means that the law is not only present in the form of rules, but also in implementation that protects the dignity of persons with disabilities. If criminalization is still carried out in a repressive manner without paying attention to educational, rehabilitative, and inclusive aspects, then the goals of correctional services as stipulated in Law Number 22 of 2022 concerning Corrections will be difficult to achieve. Humane criminalization will not only help people with disabilities improve themselves, but also strengthen the legitimacy of the law in creating a criminal justice system that is truly fair, socially just, and in line with existing human rights values.

⁵ Lasmin Alfies Sihombing, "Restorative Justice, Crime, Punishment, and Criminal Justice: A Historical Analysis, Opportunities and Challenges," *UNES Law Review* 6, no. 3 (2024): 8902–11.

Methods

In writing this research, the researcher uses a normative research method that refers to laws and regulations as the main reference in compiling and analyzing legal arguments based on the main issues studied. Legal materials are collected through literature study techniques that are associated with real conditions in the field. The approach of laws and regulations is applied to review legal rules related to persons with disabilities, as well as consider provisions regarding theoretical frameworks for the fulfilment of rights and legal protection for persons with disabilities.

Results and Discussion

1. Legal Protection Provided to Persons with Disabilities in Conflict with the Law

The handling of criminal acts involving persons with disabilities as perpetrators requires special attention in the criminal law system in Indonesia. Persons with disabilities, especially those who have certain limitations both physically, intellectually, and mentally, are often in conditions that are vulnerable to pressure and negative influences. And the injustice of the surrounding social environment. These vulnerabilities can be triggered by a lack of legal understanding, limited access to education and information, and a lack of adequate social support. As a result, people with disabilities have the potential to be more easily involved in or involved in acts that are contrary to the provisions of criminal law, either intentionally or without fully understanding the legal consequences of their actions⁶.

Every citizen in principle has a constitutional guarantee for the fulfilment and protection of human rights as stipulated in the 1945

⁶ Arie Dwi Ningsih Arie, "Persons with Disabilities, Between Rights and Obligations," *Journal of Tarbiyah Generation: Journal of Islamic Education* 1, no. 2 (2022): 92–100.

Constitution of the Republic of Indonesia. The guarantee emphasizes that the state is obliged to provide equal legal protection to all citizens without discrimination, including for persons with disabilities⁷. The legal protection is solely realized through the formation of normative laws and regulations, but must also be implemented in real terms in the practice of implementing the judicial system.

In the judicial process involving persons with disabilities, both perpetrators, witnesses, and victims, it must include several forms, including adequate legal assistance, the provision of interpreters or sign language interpreters, the use of communication aids, and the provision of time and methods of adjusted examination. In addition, persons with disabilities have the right to easily understandable legal information, access to disability-friendly judicial facilities, and treatment that respects personal dignity⁸.

However, in fact, there are still many cases involving people with disabilities that cannot be resolved in accordance with the standard operating procedures (SOPs) that should be, for example the case that befell Wendi, a person with a mental disability in Semarang, shows tragically how the legal protection system for people with disabilities has not run optimally in the practice of law enforcement in Indonesia. In the incident, Wendi, who has an intellectual disability, was accused of theft and physically ill-treated by police officers, including being beaten before being sentenced to six months in prison even though her disability background clearly affected her ability to understand and defend her legal rights in the judicial process.

According to the records of the Legal Aid Institute (LBH), Wendi was not even given adequate legal assistance and the application for a health

⁷ Shendy Rahmat Farhan and Asep Suherman, "Legal Protection of Persons with Disabilities in the Perspective of Human Rights in Indonesia," *Journal of Legal and Policy Innovation* 5, no. 4 (2024).

⁸ M Syafi'ie et al., "Persons with Disabilities Face the Law: Experience from the NTB Police," n.d. Page 3-4

examination that considered her disability was not granted during the examination process. This situation reflects the failure of law enforcement officials in realizing the principle of *reasonable accommodation* as mandated by Indonesian laws and regulations, including Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in the Judicial Process, which requires adjustments to judicial procedures and services based on the needs of persons with disabilities to ensure access to justice that is appropriate equivalent⁹. Wedi's experience shows that without an understanding and application of legal protection mechanisms that are sensitive to disabilities, as well as assessments of the mentality of people with disabilities, they can experience discrimination that can harm their human rights in the legal process.

The *restorative justice* approach has the principle of restoration by positioning people with disabilities who face the law as legal subjects who have the capacity and rights that must be respected, protected, and restored. In this view, persons with disabilities are not solely seen as perpetrators of criminal acts that deserve to be sanctioned, but as individuals who still have the right to fair, humane, and non-discriminatory treatment. Referring to Supreme Court Regulation Number 4 of 2020 concerning Guidelines for the Implementation of Restorative Justice, the application of restorative justice in cases involving persons with disabilities is based on three main aspects, namely:

- a. Comprehensive reconciliation efforts between actors with disabilities, victims, and the affected social environment
- b. Reparation as a form of active accountability of the perpetrator that is adjusted to the ability and condition of the disability they have

⁹ I Made Ode Subawa and Kadek Apriliani, "LEGAL PROTECTION OF WORKERS WITH DISABILITIES IN THE PERSPECTIVE OF LABOR LAW AND HUMAN RIGHTS," *Student Law Journal* 5, no. 02 (2025): 168–86.

- c. Social reintegration of persons with disabilities to ensure the restoration of social relationships and prevent stigma and repetition of criminal acts¹⁰.

Based on these three aspects, the application of restorative justice in cases involving persons with disabilities is expected to be able to realize a more inclusive and equitable law enforcement process. Not only protecting the rights of persons with disabilities, but also maintaining a balance of interests of victims, perpetrators, and society in a sustainable manner.

2. The application *of restorative justice* can be realized in the perspective of educational criminalization to protect the rights of persons with disabilities

Indonesia as a country of law upholds the principle of *equality before the law* as one of the fundamental principles in state administration. The application of this principle is a consequence of the obligation of the state of law to be able to provide protection and justice equally to all citizens in need. The principle of equality before the law is essentially realized through the provision of fair treatment to people regardless of background, so that equality for every individual who faces the law and the guarantee of protection from all forms of discrimination.

In the context of fulfilling the rights of persons with disabilities, the government has stipulated Government Regulation Number 39 of 2020 concerning Appropriate Accommodation for Persons with Disabilities in the Judicial Process. This regulation is a concrete form of implementing the mandate of Article 36 paragraph (2) of Law Number 8 of 2016 concerning Persons with Disabilities, which mandates reasonable adjustments to ensure access to justice for persons with disabilities. The presence of the

¹⁰ Fredrico Markus Rotua Sinaga and Indah Sri Utari, "The Effectiveness of the Implementation of Restorative Justice in the Settlement of Child Crimes in Indonesia: A Study on the Semarang Police," *Law and Environment Bookchapter 2* (2025): 341–67.

regulation shows the state's commitment to integrating the principles of equality and non-discrimination into the criminal justice mechanism¹¹.

Juridically, the application of restorative justice has obtained a strong legal basis through the Indonesian Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. The regulation provides space for the settlement of cases, especially those involving perpetrators with disabilities, to be carried out outside the formal judicial mechanism as long as a peace agreement has been reached between the perpetrator and the victim and does not cause a wide social impact in the community¹².

Appropriate accommodation in the judicial process for persons with disabilities includes the provision of accessible facilities and infrastructure, as well as the adjustment of legal services according to the needs of each individual. The adjustment can be in the form of setting procedures, procedures, or examination mechanisms that take into account the physical, sensory, intellectual, or mental condition of persons with disabilities involved in a criminal case, both as perpetrators, victims, or witnesses¹³. As such, adequate accommodation serves as an important part of ensuring the fulfilment of the right to a fair trial and ensuring that persons with disabilities can participate fully and effectively at every stage of the justice process.

In addition, it has been clearly stated in article 2 of Law Number 8 of 2016 concerning Persons with Disabilities, regarding the rights that must be

¹¹ Rini Fathonah, Fauzi Maghfira Nur Kaliza, and Kusworo Daffa Ladro, "The Complexity of Fulfilling the Rights of Persons with Disabilities in Conflict with the Law at the Tanjung Karang High Court," *Development Innovation-Journal of Research and Development* 10 (2022): 221–36.

¹² Ayu Bulan Runtino and Indah Sri Utari, "The Effectiveness of the Implementation of Restorative Justice for Perpetrators of Child Crimes: A Study at the Semarang District Court," *Law and Environment Bookchapter* 1 (2025): 274–97.

¹³ Hasna Azahrani Maulidina et al., "Analysis of the Prosecutor's Perspective in Access to Justice for Persons with Disabilities in the Judicial Process in Karanganyar Regency," *JOURNAL OF ECONOMICS, SOCIAL & HUMANITIES* 4, no. 04 (2022): 114–28.

obtained by a person with a disability who is facing the law, which is as follows:

- a. Respect for dignity;
- b. individual autonomy;
- c. without Discrimination;
- d. full participation;
- e. human and humanitarian diversity;
- f. Equality of Opportunity;
- g. equality;
- h. Accessibility;
- i. the child's evolving capacity and identity;
- j. inclusive; and
- k. special treatment and more protection.

Article 1 paragraph (5) of Law Number 8 of 2016 concerning Persons with Disabilities emphasizes that the protection of persons with disabilities is a conscious, planned, and sustainable effort to protect, protect, and strengthen the fulfilment of the rights of persons with disabilities. This protection includes ensuring respect for the dignity and position of persons with disabilities as legal subjects who have equal rights and obligations with other citizens.

Furthermore, in Article 5 paragraph (1) of the same Law also stipulates that persons with disabilities have 22 types of rights that must be guaranteed and protected by the state, these rights include the right to life, the right to freedom from stigma, the right to privacy, the right to justice and legal protection, the right to education, the right to work, the right to entrepreneurship, and cooperatives, the right to health, political rights, religious rights, the right to sport, the right to culture and tourism, the right to social welfare, the right to accessibility, the right to public services, the right to protection from disasters, the right to habilitation and rehabilitation, the right to concession, data collection, living independently

and being involved in the community; express, communicate, and obtain information; change of place and nationality; and free from acts of discrimination, neglect, torture, and exploitation¹⁴.

Based on the regulation regarding the rights of persons with disabilities, one of the basic rights guaranteed is the right to justice and legal protection. This right is regulated in article 9 which includes as an important aspect, which includes the right; for equal treatment before the law, recognized as a subject of law, owning and inheriting movable or immovable property; controlling financial matters or appointing persons to represent interests in financial matters; obtaining access to banking and non-banking services; obtaining the provision of accessibility in judicial services; for protection from any pressure, violence, persecution, discrimination, and/or usurpation or expropriation of property; selecting and appointing persons to represent the Authority in civil matters within and outside the Court; and intellectual property rights. The regulation affirms the principle of equal rights of persons with disabilities before the law while strengthening their recognition as independent legal subjects and equal to other citizens. Persons with disabilities are not positioned as individuals who deserve to be pitied, but as individuals who have legal capacity¹⁵. The existence of this law creates an obligation for the central and regional governments, law enforcement officials, and the community to build and strengthen an inclusive culture to ensure the fulfilment of the right to justice.

Through *the restorative justice mechanism*, case resolution is carried out in a participatory manner to reach a fair and proportionate agreement, so that the sanctions imposed are more educational, rehabilitative, and oriented towards social recovery. This approach allows the application of alternative forms of punishment, such as coaching,

¹⁴ Ali Sodiqin, "The Ambiguity of Legal Protection of Persons with Disabilities in Legislation in Indonesia," *Indonesian Legislation Journal* 18, no. 1 (2021): 31–44.

¹⁵ Erika Rebekah Thesalonika Wangkar, "Legal Protection for Autistic Children Due to Violence, Reviewed from Law Number 8 of 2016 concerning Persons with Disabilities," *Lex Privatum* 12, no. 2 (2023).

rehabilitation, fulfilment, or social work that is tailored to the conditions of persons with disabilities¹⁶.

Educational criminalization is a criminal concept that focuses more on efforts to coach, learn, and change criminal behavior through an educational approach, not solely punitive. This punishment aims to increase legal awareness, social responsibility, and moral and intellectual ability of perpetrators so that they do not repeat their actions and are able to reintegrate positively into community life.

In the context of modern criminal law, educational punishment is understood as a form of punishment that is in line with the principles of rehabilitation and resocialization, by prioritizing the protection of human rights and the best interests of perpetrators, especially vulnerable groups such as children and persons with disabilities¹⁷. The use of educational punishment can provide more proportionate sanctions, accompanied by education programs, skill development, and psychosocial assistance as a means of recovery and prevention of criminal acts in the future.

The application of *restorative justice* can be realized from the perspective of educational criminalization as an approach oriented to the protection of the rights of persons with disabilities who are facing the law. The concept of *restorative justice* emphasizes the recovery of conditions disturbed by criminal acts, both for victims, perpetrators, and the community, through a settlement involving various parties in a participatory¹⁸ manner. In the context of people with disabilities as perpetrators of criminal acts, this approach is very relevant because it

¹⁶ REYHAN DHANI PRATAMA, "A REVIEW OF THE LAW ON CHILD CRIMINALIZATION WITH REHABILITATION IN THE FRAMEWORK OF RESTORATIVE JUSTICE" (Sultan Agung Islamic University Semarang, 2024).

¹⁷ Nur Muhammad et al., "Implementation of the Best Interests Principle for Children in the Juvenile Justice System Through Educational Criminalization," *JSHI: Journal of Sharia of Islamic Law* 1, no. 1 (2022): 1–39.

¹⁸ Gemilang Perdana Ginting, Azhali Siregar, and Rahul Ardian Fikri, "The Application of Restorative Justice in the Criminal Justice System," *Locus Journal of Academic Literature Review* 4, no. 5 (2025): 280–86.

considers physical, intellectual, mental, or sensory limitations that can affect the perpetrator's ability to understand the act and the legal consequences that arise. Therefore, educational punishment is seen as a more humane and just punishment.

With the use of *restorative justice* in educational punishment, law enforcement officials can implement a case resolution mechanism that is more adaptive to the conditions of persons with disabilities, without ignoring the interests of victims and the community. Through this approach, it is hoped that effective justice will be created for people with disabilities, so that the purpose of justice is not only created formally, but also provides real benefits for all parties involved.

This is in line with the provisions of Law Number 8 of 2016 concerning Persons with Disabilities, which affirms that persons with disabilities have the same position, rights, and obligations before the law and have the right to be protected from discriminatory treatment¹⁹. The law also mandates the state to ensure accessibility, adequate accommodation, and special treatment in the judicial process to ensure the fulfilment of the right to justice for persons with disabilities. Accessibility is the convenience provided for people with disabilities to realize equal opportunities.

Conclusion

Legal protection for persons with disabilities who face the law is a constitutional obligation of the state that must be realized not only through normative arrangements, but also through real implementation in law enforcement practices. People with disabilities are in a position to be

¹⁹ Jeconiah Rafael Malonda Kaunang, "GUARANTEEING THE RIGHTS OF PERSONS WITH DISABILITIES IN NORTH SULAWESI ACCORDING TO REGIONAL REGULATION NUMBER 8 OF 2021 CONCERNING THE PROTECTION AND EMPOWERMENT OF PERSONS WITH DISABILITIES," *LEX PRIVATUM* 15, no. 5 (2025).

vulnerable to discrimination, pressure, and injustice due to their physical, intellectual, mental, and sensory limitations. Therefore, the fulfillment of the principles of legal assistance, decent accommodation, judicial accessibility, and treatment that respects human dignity are essential foundations in ensuring equal justice. However, the discovery of cases of violations, as well as those experienced by wendi, shows that the implementation of legal protection for persons with disabilities has not been fully optimal and reflects the weak understanding and sensitivity of law enforcement officials to the principle of non-discrimination.

In strengthening the protection of the rights of persons with disabilities in the criminal justice system, the application of *restorative justice* in the perspective of educational criminalization is a relevant and fair approach. *Restorative justice* allows for participatory, humane, and proportionate settlement of cases by focusing on recovery, rehabilitation, and resocialization, not punishment. Educational criminalization that is oriented towards fostering and changing behavior is in line with the principles of human rights protection and the goals of modern criminalization, the integration of *restorative justice* and educational criminalization is expected to be able to realize an inclusive, adaptive, and substantive justice criminal justice system, while ensuring the fulfillment of the principle of justice for persons with disabilities as mandated in Law Number 8 of 2016 concerning Persons with Disabilities.

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