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## Protecting Intellectually Disabled Child Victims Of Sexual Violence In Court Proceedings

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### Abstract

*Intellectually disabled individuals have long faced social exclusion, making them vulnerable to violence which was left unreported. Childrens with intellectual disabilities are twice as likely to have a higher risk of exploitation. The situation raises alarms on the need to accommodate their special needs in ensuring equal treatments in court proceedings. This paper examines the challenges faced by the victims in the justice system using normative research methods to analyze legal cases by reviewing and analyzing various aspects of written laws and doctrines to resolve the continuous violation. The results provide that when the cases did make their way to the court proceedings, just 9% of the victims were accompanied by a translator, whilst 18% did not get any assistance, and the 82% rest of the victims did not have any experts as their representation. When the cases were reported and reached the court, they were often treated with discrimination. Tackling that problem the current regulation precisely Law Number 8 of 2016 on Persons with Disabilities need to better ensure the protection of intellectually disabled children meanwhile the court needs to provide assistance such as interpreters and health care workers to assist the victims. The urgency of this research is to promote equality and ensure the intellectually disabled children as victims will receive their well-deserved justice.*

**Keywords:** *Children with Intellectual Disabilities; Discrimination; Court Proceedings.*

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## Introduction

There seems to be an invisible barrier created by society's ignorance regarding medical conditions that are not clearly visible. People with fully-functioning physical ability but compelling limitations in both their intellectual coherence and demeanor are characterized as people with intellectual disability. The construct of intellectual disability limits an individual's ability in functioning within a social context. This restriction caused them to face multiple challenges, such as but not limited to exclusion from the justice system, social exclusion through negative prejudices from society, indifferent treatment unwilling to socially integrate with

the community, and the overall acceptance of their conditions. The constant neglect coming from the social environment around their kind has been accumulated into a harsh reality of continuous inequality throughout the years.<sup>1</sup>

The impact of the inequality directed towards the intellectually disabled people had tremendously affected their most vulnerable part of the community, which is children. Children with intellectual disability are special childrens, they have certain unique features that other children do not have. Unfortunately, they are frequently perceived more negatively than both non-disabled children and children with physical disability.<sup>2</sup> The stigma initially rooted from the lack of awareness and misconceptions about the disability, thus resulting in indifferent treatment as a way of creating a social distance.<sup>3</sup>

As a result, children with intellectual disabilities tend to participate in fewer activities outside their mandatory education than their typically developing peers due to their shortcomings in their communication, social, and cognitive skills.<sup>4</sup> The social exclusion directly impacted their confidence in participating and interacting with their social environment, pushing the children in a vulnerable position of social isolation.<sup>5</sup> Society's negativity and discrimination towards children with intellectual disability further escalated into one of the worst forms of discrimination, which is an abusive environment both from their surroundings and the court proceedings.

Children with intellectual disabilities are twice as likely to experience physical and sexual abuse than children without disabilities.<sup>6</sup> Recent population-based birth cohort studies in both the United States and Australia have displayed how

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<sup>1</sup> OECD, *Changing the Odds for Vulnerable Children: Building Opportunities and Resilience* (OECD Publishing Paris 2019).

<sup>2</sup> E. A. Nowicki, 'A cross-sectional multivariate analysis of children's attitudes towards disabilities' (2005) *Journal of Intellectual Disability Research* 50 5.[36].

<sup>3</sup> Katrina Scior, 'Public awareness attitudes and beliefs regarding intellectual disability: a systematic review' (2011), National Library of Medicine.[2164].

<sup>4</sup> Matthew King, Nora Shields, Christine Imms, Monique Black, Clare Arden, 'Participation of children with intellectual disability compared with typically developing children' (2013) *Volume 34 Issue 5 Research in Developmental Disabilities*. [5].

<sup>5</sup> *ibid.*

<sup>6</sup> Crosse, Elyse, Ratnofsky, A Report on the Maltreatment of Children with Disabilities (Washington DC 1993).[20].

children with intellectual disability experienced higher rates of child maltreatment as measured by substantiated cases in linked child protection services (CPS) data.<sup>7</sup> The Indonesian Central Bureau of Statistics calculated the number of children with intellectual disabilities to reach over 700 thousand by 2015.<sup>8</sup> In 2021, the Online Information System for the Protection of Women and Children (SIMFONI PPA) enumerated the number of violence cases against children with disabilities to 987 cases, with 264 of the victims being boys and the other 764 being girls.<sup>9</sup>

The vulnerable nature of children with intellectual disability put them at a higher risk in experiencing sexual abuse.<sup>10</sup> Back in 2000, a research that was conducted regarding students in the United States showed that children with intellectual disability faces 4 times greater risk for sexual abuse, with the percentage reaching 25% out of the total group of abused children with disabilities.<sup>11</sup> However, when researching a specific group of children who had been sexually abused, the findings showed only 4% of them are children with intellectual disabilities.<sup>12</sup> This raises an important subject on the amount of unidentified cases due to the difficulties in uncovering the sexual abuse itself.<sup>13</sup>

The tough process of identifying the victims resulted in the lack of accurate and updated data, especially in Indonesia. Sexual abuse especially towards children with intellectual disability are rarely reported, and those that are reported are rarely prosecuted. Recently in 2020, the case of a children with intellectual disability who

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<sup>7</sup> Maclean MJ, Sims S, Bower C, Leonard H, Stanley FJ, O'Donnell M, 'Maltreatment Risk Among Children With Disabilities' (2017) PEDIATRICS Volume 139 Number 4.[4].

<sup>8</sup> Emilia Kristiyanti, 'Model Penyelenggaraan Pendidikan Inklusif bagi Penyandang Disabilitas Intelektual: Studi Kasus di DKI Jakarta' (2019) Indonesian Journal of Religion and Society Volume 01.[67].

<sup>9</sup> Yulia Tanti Nova, 'Payung Hukum yang Tegas Bagi Anak Disabilitas Korban Pelecehan Seksual' (Seruyan News, 2023) <<https://www.seruyannews.com/payung-hukum-yang-tegas-bagi-anak-disabilitas-korban-pelecehan-seksual/>>, accessed on 17-06-2024.

<sup>10</sup> Inge B. Wissink, Eveline van Vugt, Xavier Moonen, Geert-Jan J.M. Stams, Jan Hendriks, 'Sexual abuse involving children with an intellectual disability (ID): A narrative review' (2015) Research in Developmental Disabilities Volume 36.[24].

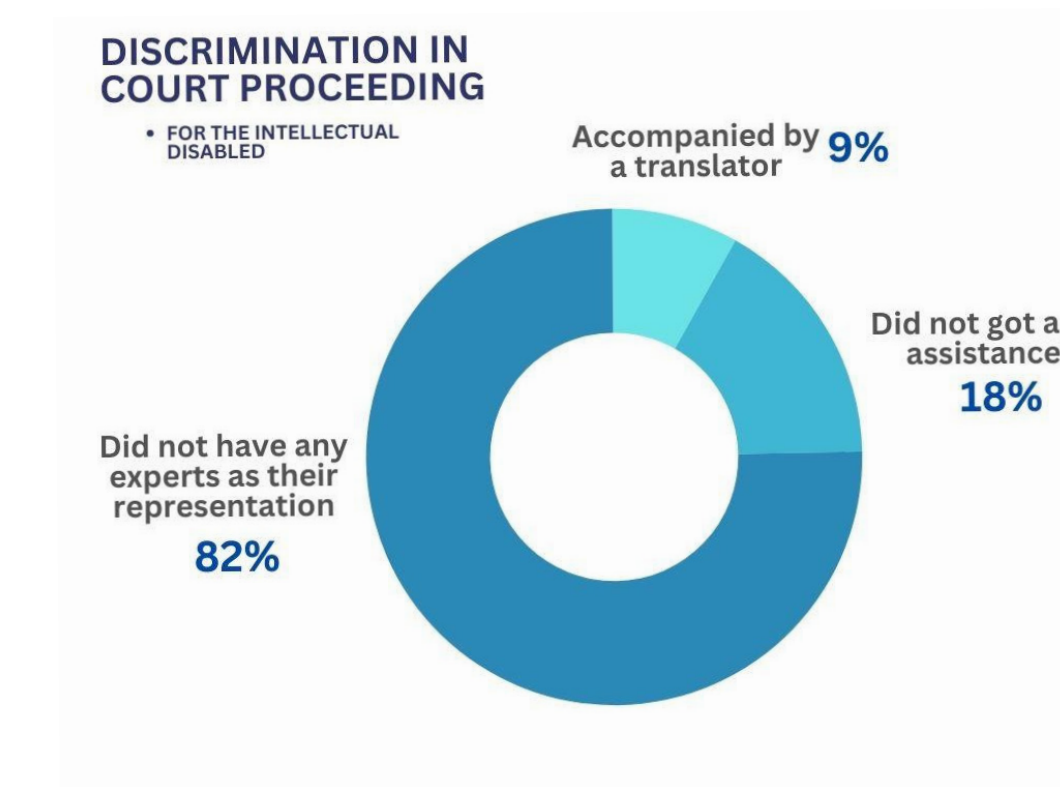
<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

was raped made its way to the Indonesian media.<sup>14</sup> It was identified as a case of sexual abuse as the child continuously complains about the pain she felt on her stomach. Unfortunately, the case ultimately remained unsolved without any legal repercussions towards the abuser.

The case thoroughly depicted the legal discrimination towards children victims with intellectual disability. Contrary to the cases, only a small number are able to successfully be taken to court.<sup>15</sup> When the cases did make their way to the court proceedings, just 9% of the victims were accompanied by a translator, whilst 18% did not get any assistance, and the 82% rest of the victims did not have any experts as their representation.<sup>16</sup>



<sup>14</sup> Ayu Nurfaizah, 'Anak Perempuan Penyandang Disabilitas Rentan Jadi Korban Kekerasan Seksual' (Kompas ID, 2023) <[https://www.kompas.id/baca/metro/2023/05/09/dibawa-kabur-dan-diperkosa-anak-perempuan-penyandang-disabilitas-masih-rauma?status=sukses\\_login&status\\_login=login&loc=hard\\_paywall](https://www.kompas.id/baca/metro/2023/05/09/dibawa-kabur-dan-diperkosa-anak-perempuan-penyandang-disabilitas-masih-rauma?status=sukses_login&status_login=login&loc=hard_paywall)> accessed on 20-06-2024.

<sup>15</sup> G. H. Gudjonsson, G. H. Murphy, I. C. H. Clare, 'Assessing the capacity of people with intellectual disabilities to be witnesses in court' (2000) *Psychological Medicine* Volume 30 Issue 2. [310].

<sup>16</sup> Tiara Apriyani, Lintang Ratri Rahmaji, 'Strategi Komunikasi Penanganan Perempuan Difabel Korban Kekerasan Seksual di SAPDA Yogyakarta' (2022) *INKLUSI: Journal of Disability Studies* Volume 8 Number 02.[4].

Legal discrimination towards children with intellectual disability who are victims of sexual abuse in Indonesia can be clearly seen in the lack of cases that made its way to the court proceedings. Contrary to the prosecution process, the special legal and social needs of the intellectually disabled individuals has actually long been recognized and accommodated by both the international community and national society. In 2007, the United Nations enacted the United Nation Convention on the Rights of Persons with Disabilities to ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Four years later in 2011, the enactment of the United Nations Convention on the Rights of the Child further solidified the rights of the children with intellectual disability and set out the civil, political, economic, social and cultural rights of every child, regardless of their background or abilities.

That same year, Indonesia ratified the 2007 Convention regarding the Rights of Persons with Disabilities through Law Number 19 of 2011 regarding The Ratification of the Convention on the Rights of Persons with Disabilities. The ratification solidifies Indonesia's commitment in accommodating the special needs of the intellectually disabled person, especially children, through its national regulation whilst guaranteeing equal opportunities, obligations, and rights in all aspects.<sup>17</sup>

The adherence to international law meant that the government agreed to fulfill its obligation as one of the participating countries in the international community to set the basis for the enforcement and fulfillments of human rights of persons with disabilities in Indonesia. Five years later, Law Number 8 of 2016 on Persons with Disabilities was solidified as the national legal basis to serve justice for the persons with disabilities, solidifying their status as legal subject of law who equally deserves justice and protection.<sup>18</sup>

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<sup>17</sup> Ira Retnaningsih, Rahmat Hidayat, 'Representasi Sosial tentang Disabilitas Intelektual pada Kelompok Teman Sebaya' (2012) *Jurnal Psikologi* Volume 39 Nomor 1.[17].

<sup>18</sup> Eka Maulan Ni'mah and Emmilia Rusdiana, 'Perlindungan Hukum Perempuan Penyandang Disabilitas Intelektual Korban Perbudakan Seksual Oleh Legal Resoucre Center Untuk Keadilan Jender Dan Hak Asasi Manusia (LRC-KJHAM)' (2022) *Volume 10 Nomor 4* (2023).

Despite the coherent international and national legal basis in ensuring the protection of people with disabilities, there is a certain group of people that was overlooked by the current regulation, namely children with intellectual disabilities. The nation's pledge to protect the intellectually disabled community fell short as although the national regulation through Law Number 8 of 2016 recognized intellectual disability as a form of disability, the regulations fell short in terms of accommodating the intellectually disabled children, especially those who fell victims of sexual violence. Alongside the difficulties in proceeding the cases to court due to the lack of recognition of their special needs, the victims also face multiple discrimination and inequality in the court proceedings, mainly in the process of presenting themselves in front of the court.

The struggles and complexity of the children with intellectual disability who became victims of sexual abuse should not go unnoticed. Children with intellectual disability have always been in a vulnerable space in the social environment and heavily unrepresented. The national justice system has yet made a systemic change in inclusively embracing the children with intellectual disability, putting them at risk of becoming a victim of injustice and ill-treatment. Children should be able to freely experience their well-deserved rights.

This research addresses the discriminatory nature of the court proceedings whilst acknowledging the rights of children with intellectual disabilities that would allow them to fulfill their basic rights to seek justice and equality. A reformation on the court proceedings is a necessary step in mandating the court to become more accessible, adaptable, and attentive to cater to the needs of children with intellectual disability in order to create balance between society and legal protection.

By enhancing the quality of legal representation and encouraging the establishment of more accessible information on rights and remedies through several acts such as integrating the victims into the judicial process and involving the community to create a safe space in reducing violence, will ultimately contribute in reducing discrimination and inequalities through creating strong institutions meant to serve justice and peace.

## Literature Review

Law Number 8 of 2016 categorized intellectual disabilities as conditions where thinking function is disrupted due to a level of cognitive abilities that is below the norm, including slow learning, mental disabilities and down syndrome.

According to the American Psychiatric Association (2013), intellectual disability is a disorder with onset during development which is followed by a lack of intellectual, adaptive functioning in conceptual, social and practical skills. Deficiencies in intellectual functions such as reasoning or thinking, problem solving, planning, abstract thinking, opinion, academic ability, and learning from experience, are strengthened by clinical assessments and by standardized individual intelligence tests. Lack of adaptive function, one or more activities in daily skills, such as communication, social skills, living independently in various environments such as home, school, work and community.<sup>19</sup>

Children with intellectual disabilities were oftentimes forced to deal with several discrimination and one of them is social exclusion. The term social exclusion initially originated almost a quarter of a century ago, used as a concept to describe a remarkably wide range of social and economic problems.<sup>20</sup> René Lenoir, a *Secrétaire d'Etat a l'Action Sociale* of the French Government at that time described social exclusion as the population that is mentally and physically handicapped, suicidal, aged invalids, abused children, substance abusers, delinquents, multi-problem households, marginal, asocial persons, and other social 'misfits'.<sup>21</sup>

Throughout the years, the term continued to evolve along with society, now being used to describe a process of social marginalization towards discriminated groups, such as but not limited to the intellectually disabled individual especially children.<sup>22</sup> The process prevents them from interacting and fulfilling their social,

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<sup>19</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorder Edition (DSM-V)* (2013) Washington : American Psychiatric Publishing.

<sup>20</sup> Amartya Sen, *Social Exclusion: Concept, Application, And Scrutiny* (Philippines 2000).[25].

<sup>21</sup> *ibid.*

<sup>22</sup> Fadhil Nurdin, 'Eksklusi Sosial dan Pembangunan', Makalah pada Kegiatan Kongres II Asosiasi Program Studi Sosiologi Indonesia dan Konferensi Nasional Sosiologi Indonesia IV Manado (2015).[5].



economical, and political role in the society, resulting in their marginalization and separation.<sup>23</sup>

Consequently, the level of social inclusion being positively related to the mental age of the child with disability.<sup>24</sup> Children with intellectual disabilities are more likely than typically developed children to be maltreated or victimized by crime and only few cases involving intellectually disabled children are successfully taken to court.<sup>25</sup>

The research by Sullivan & Knutson (1998) also further elaborated that out of all the types of disability, children with behavior disorders and children with intellectual disabilities were both at increased risk for all three forms of abuse such as neglect, physical abuse and sexual abuse compared to those children with other types of disabilities.<sup>26</sup>

Children may not report abuse because they don't understand what abuse is or what acts are abusive. Communication problems that are inherent in many disabilities also make it difficult for children to understand and or verbalize episodes of abuse.<sup>27</sup> That pushes the reason why bringing up their issues is such a vital thing to do since their vulnerability needs to be protected rather than being ignored.

With the effect of exclusion from the justice system, social exclusion through negative prejudices from society, and indifferent treatment thus made society often unwilling to socially integrate with the mentally disabled individuals, and affect society's overall acceptance of their conditions. The constant neglect from the social environment around them has accumulated into a harsh reality of continuous inequality throughout the years.

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<sup>23</sup> Nabilah Shalihah, 'Eksklusi sosial penyandang disabilitas dalam dunia kerja: studi kasus empat pekerja penyandang disabilitas di Jakarta' (Perpustakaan Universitas Negeri Jakarta 2017) <[http://lib.unj.ac.id/tugasakhir/index.php?p=show\\_detail&id=56716](http://lib.unj.ac.id/tugasakhir/index.php?p=show_detail&id=56716)> accessed on 16-06-2024.

<sup>24</sup> Marilia Carvalho, Adrienne Perry, James Bebko, Patricia Minnes, 'Social Inclusion of Ontario Children with Developmental Disabilities in Community Settings' (2014) *Journal on Developmental Disabilities* Volume 20 Number 3.[3].

<sup>25</sup> G. H. Gudjonsson, G. H. Murphy, I. C. H. Clare, 'Assessing the capacity of people with intellectual disabilities to be witnesses in court' (2000), *Psychological Medicine* Volume 30 Issue 2. [309].

<sup>26</sup> Sullivan, P. & Knutson, J., 'The association between child maltreatment and disabilities in a hospital-based epidemiological study. *Child Abuse & Neglect*' (1998) 22 (4).[271-288].

<sup>27</sup> Knutson, J. & Sullivan, P., 'Communicative disorders as a risk factor in abuse' (1993) *Topics in Language Disorders* 13 (4).[1-14].



According to the findings from a previous research study by Sullivan titled “Violence against children with disabilities: Prevention, public policy, and research implications”, it stated that rather than the disability itself being the source of abuse, disability can frequently increase vulnerability to abuse indirectly as a result of how society responds to it. Because of the child’s condition, for instance, adults may choose not to file any official reports of abuse, which makes it simpler for the abuser to take advantage of people with disabilities (Sullivan, 2003).<sup>28</sup> This further explains the urgency of this paper to examine how crucial it is to protect intellectually disabled children in front of the court by providing step by step ways in guarding the children’s rights.

### **Research Methods**

Legal research is a scientific process of analyzing legal issues by doing a comprehensive examination of legal facts as an effort to try and solve the core issue.<sup>29</sup> The process of doing the research and writing down the findings onto the essay was carried out carefully and systematically through multiple verifications to ensure the validity of the information and data.

The legal information presented in this essay was collected by using the literature studies method. The method was carried out through summarizing, reading, studying, and reviewing information from law books and internet media as both primary and secondary legal materials related to the discrimination against the intellectually disabled children in the court proceedings.<sup>30</sup> After conducting the research, the method was continued by analyzing and interpreting the materials systematically to provide written arguments and solutions in this essay.

Alongside studying the legal literatures to obtain comprehensive legal subject

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<sup>28</sup> Sullivan, P.M., Violence against children with disabilities: Prevention, public policy, and research implications (2014) Conference Commissioned Paper for the National Conference on Preventing and Intervening in Violence Against Children and Adults with Disabilities (May 6-7, 2002) SUNY Upstate Medical University, New York.

<sup>29</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta 2014).[18].

<sup>30</sup> *ibid.*

matter, descriptive data analysis techniques were also used to collect accurate and factual data for the essay. The technique was used through the inverted pyramid method, meaning that the data was written and structured starting from the most relevant data followed by the supporting data about the problem which was then analyzed by explaining and describing the said data.

The substance written on this essay was researched through the normative research method by approaching the problem using statutory and conceptual approach. Reviewing and evaluating different facets of written laws and doctrines pertaining to the issue is the process of normative legal research. The fundamental issue was then addressed by using the advancement of legal sciences, whether it was by enhancing the regulations or assessing their present applications.

The approach recognized the importance of analyzing the relevant regulations and doctrine related to the problem to resolve the discriminatory acts from the court proceedings towards the intellectually disabled childrens. By conducting the normative research method, this essay aims to find a solution in reducing inequalities by advocating better treatment and inclusion from both the society and the law enforcements.

## Results and Discussions

Due to its vulnerable nature, children with intellectual disability are exposed to a higher risk on receiving sexual violence. Their limitations in intellectual coherence and the social exclusion from their surrounding environment resulted in them oftentimes not realizing that the behaviour of perpetrators is a form of ‘sexual abuse’.<sup>31</sup> The lack of awareness in both the childrens and the society further pushed most cases to go unnoticed.

In 2020, a girl with intellectual disability in South Lampung, Indonesia complained about the pain that she had on her stomach and was hospitalized not

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<sup>31</sup> Seher Akbas, Ahmet Turla, Koray Karabekiroglu, Omar Boke, ‘*Characteristics of Sexual Abuse in a Sample of Turkish Children With and Without Mental Retardation, Referred for Legal Appraisal of the Psychological Repercussions*’ (2009), Springer Science and Business Media.[209].

long after. It turns out that she had been raped by her adoptive father. She was left traumatized and had to undergo treatment at the mental hospital.<sup>32</sup>

Similarly, in 2023 a girl with intellectual disability was tricked and raped by three men in West Jakarta, Indonesia. RJ, aged 15 years old was taken away by three men AB (27), B (26) and L (20) and found a day after. The Head of the General Criminal Investigation Unit of the West Jakarta Metro Police stated that the three perpetrators kidnapped the victim as a slave for sexual gratification. The victim proceeded to be assisted to the safe house of the Child Protection and Population Control Agency to receive legal consultations and medical services in an effort to help recover her trauma.<sup>33</sup>

Reflecting from the two cases, it was made evident that there was no legal justice given to the two victims. The difficulty faced by children with intellectual disability in accessing justice has resulted in legal justice not being served. Even if the case does proceed into the court, it still does not guarantee legal justice and equality being served. For instance, the case of a girl with intellectual disability who got raped and impregnated Temanggung, Indonesia. The final verdict of the case does not accommodate several of her special rights, symbolizing the legal system's ignorance and reluctance to serve equal justice.<sup>34</sup>

The harsh reality of the discrimination of the children with intellectual disabilities in the court proceedings does not only happen in the final verdicts, but also in the judicial process. The case of a children with intellectual disabilities in Malang with the initial AN who was only 11 years old who became a victim of rape did not proceed to the court with the reason that the victim's statement changed overtime and could not be understood, thus she was deemed incompetent to be

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<sup>32</sup> *ibid.*

<sup>33</sup> Ayu Nurfaizah, 'Anak Perempuan Penyandang Disabilitas Rentan Jadi Korban Kekerasan Seksual' (Kompas ID, 2023) <[https://www.kompas.id/baca/metro/2023/05/09/dibawa-kabur-dan-diperkosa-anak-perempuan-penyandang-disabilitas-masih-rauma?status=sukses\\_login&status\\_login=login&loc=hard\\_paywall](https://www.kompas.id/baca/metro/2023/05/09/dibawa-kabur-dan-diperkosa-anak-perempuan-penyandang-disabilitas-masih-rauma?status=sukses_login&status_login=login&loc=hard_paywall)> accessed on 20-06-2024.

<sup>34</sup> Beny Della Yudistira Aji, *Analisis Putusan Tindak Pidana Pemerkosaan Pada Anak Penyandang Disabilitas Intelektual (Studi Putusan Pengadilan Negeri Temanggung Nomor: 7/Pid. Sus-Anak/2020/PN.Tmg)* (2022) Repositori Mahasiswa Untidar.[30].

brought before the law.<sup>35</sup>

It is almost impossible to achieve an equal judicial process without acknowledging the children's unique characteristics into account when assessing their statements. It is not possible to assess children with intellectual disabilities' credibility with the same criteria as the non-disabled children.<sup>36</sup> Children with intellectual disability were assessed with negative labeling, deeming them as "abnormal" individuals, thus viewing them as not credible and dismissing their statements.<sup>37</sup>

Consequently, there are no specified regulations for perpetrators of sexual abuse against children with disabilities. Additionally, Child Protection Law Number 35 of 2014 only enacts criminal sanctions for criminal acts of sexual violence against children and criminal acts of sexual abuse against children. The gap in the legal regulations meant that there were no further specific laws to accommodate the childrens with intellectual disabilities, which directly contradicts the Law Number 39 of 1999 about Human Rights that specifies persons with disabilities are by nature vulnerable people who have all the right to receive extended special protections.

The vulnerability of childrens with intellectual disabilities was not their only hindrance to get the justice they deserved, as there are also other factors that need to be assessed. The absence of adequate specific legal grounds and the law enforcement's unwillingness to provide the necessary assistance further hinders the court in accommodating the victims' needs, as currently there are no regulations that are specifically made to cater to the special abilities of the intellectually disabled children. Even though the court can provide recommendations that must be carried out by the victims, there are still no laws to reference. Legal certainty

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<sup>35</sup> Erfaniah Zuhriah, Himma Aliyah, 'Pemenuhan Hak-Hak Korban Tindak Kejahatan Perkosaan Dalam Mewujudkan Keadilan Restoratif (Studi Kasus Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak (P2TP2A) Kabupaten Malang)' (2017) Jurnal Kesetaraan dan Keadilan Gender Volume 12 Nomor 2.[2].

<sup>36</sup> Ann-Christin Cederborg, 'The challenge of assessing credibility when children with intellectual disabilities are alleged victims of abuse' (2010) Scandinavian Journal of Disability Research.[10].

<sup>37</sup> Mansour Fakh, *Analisis Diskriminasi terhadap Kaum Difabel* (Yogyakarta 2015).[8].

will be more guaranteed if laws and regulations can clearly require victims to report and assist them in providing testimonies in court. The current existing laws needs to be adjusted to accommodate and children with intellectual disabilities who have experienced sexual abuse and needs a lot of assistance in order to eliminate continuous occurrence of violence.

When the case entered the court proceedings, children with intellectual disability also faced other discriminatory acts:<sup>38</sup>

Denial of protections	High victimization rates	Lack of redress
The victims with intellectual disability are often facing injustice in being entitled to legal protection on the basis of their disability due to unfair stereotypes about their credibility.	Their cases are seldom looked into or prosecuted because of prejudice and the belief that they can not be a credible witness and that they are not deserve to be heard.	Outdated views of their competence to testify, or their need for advocacy, support, and professionals.

Children with intellectual disability have always been rarely represented by an expert in the court proceedings.<sup>39</sup> Even though the childrens have limitations that cause them a lot of struggle in giving out testimonies, it does not imply that they lack the ability to be heard. Hence why they should be given assistance in order to maintain their legal standing in the court.

The Law Number 8 of 2016 concerning Persons with Disabilities Article 30 regulates how examination of persons with disabilities by law enforcers as must ask for consideration and advice to either doctors or other health workers regarding health conditions, psychologists or psychiatrists regarding psychiatric conditions, and/or social workers regarding psychosocial conditions with the intention to avoid children with intellectual disability from entering court without proper assistance. Thus, minimizing legal uncertainty to prevent weak law enforcements and discriminative court proceedings that might contribute to the rising cases of

<sup>38</sup> American Association on Intellectual and Developmental Disability, 'Joint Position Statement of AAIDD and The Arc, 2015' <<https://www.aaid.org/news-policy/policy/position-statements/criminal-justice#:~:text=Individuals%20with%20IDD%20are%20frequently,attempts%20to%20hide%20their%20disability>> accessed 21-06-2024.

<sup>39</sup> Ann-Christin Cederborg, Michael E. Lamb, 'How does the legal system respond when children with learning difficulties are victimized?' (2006), Child Abuse and Neglect Volume 30 Issue 5.[6].

violence especially sexual violence against the children with intellectual disability.

The flawed court proceedings clearly show the lack of legal protection for children with disabilities, directly contradicting Article 28D(1) of the 1945 Constitution which specifically regulates every citizen's right to be treated equally before the law. As a response to the clear inequality towards one of the most vulnerable groups in the society, it is important for the youth community to speak up and contribute directly against the injustice. The acts of advocating through media and youth societies meant direct contribution in taking up the role of promoting the reduced inequalities and breaking down the barriers of social exclusion. Aside from that, the community should also directly contribute in creating a strong justice institution by volunteering as the representation of the children with intellectual disability in the form of a social worker.

The existing social norm also needs to be reconstructed for the right of the victims to be guarded from the stigma of persons with disabilities that also specifically includes their right to be free from harassment, humiliation, and negative labeling related to their disability condition. They have the right to be heard and to be treated equally as a human being, especially in front of the law when they are submitting their case to the court.

The inability of the current legal system to accommodate special childrens with intellectual disabilities combined with the stigmatization and unwillingness from both the society and legal enforcers has further pushed the community into social exclusion. As a result, the continuous cases of violations were rarely ever resolved as they were denied their rights to access the justice they deserve due to the legal vacuum. Consequently, there needs to be an addition in the regulations that acknowledges the intellectually disabled children's vulnerability which will ensure their equality before the law through the reformation of the legal justice system. Providing an assistance for the intellectually disabled childrens in should be mandatory by law to ensure the fulfillment of their rights to be defended and protected in the court proceedings.

## **Conclusion**

This research aims to draw attention to the necessary changes in the legal environment to further fulfill the protection rights of intellectual disabled children, especially those who fell victims of sexual abuse due to the failure of the law in providing the particular legal safeguards. Children with intellectual disabilities are prone to becoming victims of various kinds of violence, especially sexual violence due to their vulnerability. Their lack of understanding of the potential criminal acts, risks, limited access to justice, lack of assistance in the judicial system, and the unavailability of medical professionals who can understand them meant that there needs to be extra measures taken to make sure their rights are fulfilled and protected.

The constant ignorance of the people around, the stigma that looks down on people with intellectual disabilities, coupled with the absence of specific laws regulating the steps that victims must take, this eventually makes case after case continue to happen and there has been no significant change until now. People should be more proactive in protecting victims and encouraging complaints to the local child protection or law enforcement agency whenever violations occur.

The current national regulation of Law Number 8 of 2016 about Persons with Disabilities has yet to specify childrens with intellectual disabilities as one of the subjects that was protected by the law. Substance-wise, there needs to be a more in-depth ordinance inclusivity in the substance of the law itself. Hand-in-hand with substance revision, there also needs to be complementary assistance mandatory by law that specifies the steps needed to be taken to accommodate and assist the victims in the court proceedings to put an end to the social exclusion.

Some steps that could be implemented in an effort to create a better court proceedings process to fulfill the rights of children with intellectual disabilities such as:

- a. Optimizing cooperation between legal enforcements and members of the society, such as social services, education services, disability schools, and organizations of persons with disabilities to provide intellectually disabled children with assistants and/or translators in the litigation process and for the court to have necessary supports and accommodations available to make sure their testimonies are heard and fairly considered as victims;
- b. Special regulations for cases of sexual violence against children with intellectual



disabilities can be implemented in which can be later explained through public notices. Followed by urging the public to pay more attention to children with disabilities in an effort to prevent the violence through early signs of notice. Meanwhile, perpetrators of sexual violence must be given appropriate criminal sanctions that have a deterrent effect;

- c. Step by step procedures can be applied to provide clear procedures if violations occur against children with disabilities, such as 1.) **First**, the victim's family can make a complaint which can be accommodated through the creation of a complaint institution managed by the police and child care association. 2.) **Second**, the lawyer selection process can be assisted in choosing a lawyer who understands and is familiar with the condition of intellectually disabled children. 3.) **Third**, the judge in the court needs to be assisted by a child expert or interpreter as well as the availability of health care workers must also be ensured to assist the well-being of the victim when giving testimony about what they actually felt and experienced from the sexual violence that happened to them.
- d. Legal protection for intellectually disabled children is not only the duty of one party, namely the state, either through institutions established by the state, laws or through its policies. However, this protection is also a duty for all parties involved, including non-governmental organizations or commonly known as NGOs, as non-governmental institutions that are close to the community to participate in protecting all potential crimes that might disturb the rights of children with intellectual disabilities.
- e. The youth community needed to be more proactive in speak out and advocating through the media in the regard of this issue especially seeing that children with intellectual disabilities are also part of the nation's successors that should be fully supported and protected;

Legal enforcements needs to provide disabled individuals with proper support and accommodations to effectively participate in all stages of legal proceedings for which they are competent, in order to safeguard their rights as both citizens and a protected human being by the law, all aspects should be advised to guarantee non discrimination and inclusivity in the community.

The court must be able to provide justice by giving them protection and maintaining their rights as part of the legal subject. As well as providing commensurate punishment for the perpetrators of violence. Furthermore, the implementation of the Disability Law should be better utilized to avoid wrong conduct in assessing their disability as a firm legal umbrella to avoid injustice. Promoting better understanding of the factors influencing the development of disability perception would allow the design of effective interventions to promote social inclusion.

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