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## Fulfillment Of The Right Of Justice When Persons With Disabilities Commit Criminal Acts

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### ABSTRACT

This study aims to find out the fulfillment of the right to justice when people with disabilities commit criminal acts. The research method used is empirical research by conducting sample withdrawal using purposive sampling and data analysis using qualitative research approaches. The results showed that the fulfillment of the rights of persons with disabilities in the batucada police jurisdiction is less than optimal even though the police have carried out their role as law enforcement by carrying out the process of investigation and investigation on a person with disabilities as a criminal perpetrator. However, it has not been fully maximized in fulfilling the rights of justice of persons with disabilities themselves because it can be seen based on the data and information obtained that when persons with disabilities face the law, in this case, is a criminal offender, the police only focus on the use of regulations that are generally without being supported by special regulations, in this case, is law No. 8 of 2016 concerning Persons with Disabilities which explains About the rights of a disabled person. Police, especially investigators, can better understand law number 8 of 2016 on persons with disabilities so that in the process of examination in the police the right to justice of a person with a disability can be more fulfilled as a whole.

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## 1. Introduction

### A. Background

Human society and law are three things that are closely related to each other, inhuman social life interactions or reciprocal relationships between themselves and others and vice versa. This is in line with what Aristotle put forward in one of the Delhi philosophies that suggest that humans are (*zoon political*) interpreted by Western journalists as social *beings* or social creatures.<sup>1</sup> From this, it is clear that Human beings can live in an organized society to achieve the common goal of needing social norms or rules that govern it.<sup>2</sup>

Indonesia as a legal state provides the right to fair recognition, guarantee, protection, and legal certainty and equal treatment before the law "*Equality Before the law*", this becomes an important principle in the guarantee of equality of degrees for everyone before the law, one of who is a person with disabilities who is often the most vulnerable group in social life or when faced with the law. The interrelationship of law, man, and society according to Marcus Tullius Cicero, suggests that where there is a society there is a law as a necessity to regulate the relationship between humans to be peaceful and comfortable.<sup>3</sup> The law requires balance, importance, order, justice, tranquility, happiness, peace, and harmony for every human being.<sup>4</sup> Article 1 Paragraph (5) of Law No.8/2016 specifies the protection of persons with disabilities in an effort made consciously to protect, protect and strengthen the rights of persons with disabilities.<sup>5</sup> State involvement is also one of the characters of the phenomenon of conflict.<sup>6</sup> Efforts that can be done on this are to bring the legal decision closer to the sense of justice lived by the community so that the implementation of the law further creates order in the community itself.<sup>7</sup> More important is that it is currently one of the most efficient steps in trying to.<sup>8</sup> Quoting as said by Fence M. Want in his Journal that the nature of justice is a matter of judgment from one person to others, which is generally seen from those who receive treatment

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<sup>1</sup> Donald Albert Rumokoy, Frans Maramis, *Pengantar ilmu hukum* (Jakarta: RajaGrafindo Persada, 2014), 41.

<sup>2</sup> Zeani Asyhadie, Arif Rahman, MULifah, *Pengantar hukum Indonesia* (Jakarta: Rajawali Pers, 2015), 2.

<sup>3</sup> Donald Albert Rumokoy, *Op. cit.*, 42

<sup>4</sup> Wawan Muhwan Hariri, 2012, *Pengantar Ilmu Hukum (PIH)*, Bandung: CV. Pustaka Setia, Hlm 49-50.

<sup>5</sup> Madja El Muhtaj. *Diimensi-dimensi HAM mengurai Hak Ekonomi, social dan budaya*. (Jakarta: Raja Grafindo Persada, 2008), 273

<sup>6</sup> Yudha Chandra Arwana. "Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia." *JALREV* 1 (2) 2019, 216

<sup>7</sup> Ibrahim Ahmad. (2010). "Prinsip Keadilan Dalam Penyelesaian Sengketa Tanah Untuk Kepentingan Pembangunan." *Jurnal Legalilas* 3 (2), 21

<sup>8</sup> Mohamad Rivaldi Moha. (July, 2020). Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *JALREV* 2 (2), 115

only.<sup>9</sup> The government through the law has given the starting point of justice, which is done for the sake of justice based on the Supreme Divinity. <sup>10</sup> to protect the fundamental rights or dignity and dignity of human beings, especially for seekers of justice.<sup>11</sup>

Indonesia has ratified *the Convention On The Rights Of Persons with Disabilities* (CRPD) is a convention on the rights of persons with disabilities as an international and national human rights instrument as an effort to respect, fulfill and protect the rights of persons with disabilities in Indonesia, contained in Law No. 8 of 2016 on persons with disabilities which describe 22 rights to be fulfilled and protected, one of which is justice and protection. The law is regulated from article 28 to article 39.

Some of the rights regulated about persons with disabilities as defendants in the judicial process, one of which is contained in Paragraph (1) of law enforcement before examining persons with disabilities must seek consideration or advice from: a. doctors or other health workers regarding health conditions; b. psychologist or psychiatrist regarding psychiatric conditions; and/or c. social workers regarding psychosocial conditions" In Paragraph (2) in the case of considerations or suggestions as referred to in paragraph (1) it is not possible to be examined, then delays are carried out until a certain time.<sup>12</sup>

Based on Law No. 36 of 2000, the Gorontalo province was formed and administratively separated from North Sulawesi province on February 16, 2001. Gorontalo province is on the northern island of Sulawesi has one city and 5 districts namely Gorontalo city, Gorontalo Regency, Gorontalo Utara regency, boalemo regency, potato regency, and bone belong district with, area of 12,435 km. There is a province of Gorontalo police organization arranged in tiers starting from Gorontalo Police then divided for each district/city level area, namely; Gorontalo City Police for Gorontalo City area, Gorontalo Police for Gorontalo Regency area, Bone Bolango Police for Bone Bolango Regency area, North Gorontalo Police for North Gorontalo Regency area, Boalemo Police for Boalemo Regency and Pohnato Police for Pohnato Regency area which is then further divided into subdistrict sector (police).

The results of initial observations in the Gorontalo province of cases of persons with disabilities who are criminal offenders are in the area, namely, Gorontalo Regency which is handled by Batudaa Police addressed in East Tabongo Village, Tabongo District,

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<sup>9</sup>Fence M. Wantu. (Juni, 2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*. 25 (2), 206

<sup>10</sup> Fenty Pulu Hulawa, Lusiana M, Tujow, Sutrisno. (2020). "Application of The Principle of Justice, Legal Certainty and Expediency in the Judge's Ruling." *Journal of Gorontalo Law Riview*. 3, (2) October, 184

<sup>11</sup> Dian Ekawaty Ismail. (2009). "Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan di Kota Gorontalo." *Jurnal Mimbar Hukum*. 21 (1) Februari, 85

<sup>12</sup> Undang-undang nptomor 8 tahun 2016 tentang penyandang disabilitas.

Gorontalo Regency and Bone Bolango Regency which is handled by Bone Bolango Police addressed in East Tingkohubu Village, Suwawa District of Bone Bolango Regency.

Although in the implementation of law enforcement with a series of procedures that have been arranged, it is not always appropriate between what happens in the field and what is expected, related to people with disabilities who are perpetrators of this criminal act also get the same law enforcement. Despite the arrangements regarding the judicial process for persons with disabilities, people with disabilities are not only limited to mute and/or deaf conditions, these disability conditions vary, in the form of physical, intellectual, mental, and sensory that can be experienced single, double or multi. So with this should be the focal point by the police in terms of cases that are referred to as a criminal act or like.<sup>13</sup> So in modern times is an era where humans are required to develop themselves.<sup>14</sup> Norms that develop in society and are flexible and encourage creativity in providing public services.<sup>15</sup> Especially in this era of situations, anyone can access technology easily although many dangerous actions should not be consumed by the public, especially related to a crime that occurs, it would be good if the impressions that are communicated in various media are used as a lesson but it will be bad if negative actions are only taken as an example involving a child in their respective work environments.<sup>16</sup> So researchers ensure that crime develops in line with the progress and so rapidly science and technology today.<sup>17</sup>

The author has made initial observations in Batudaa Police, Gorontalo Regency, and Bone Bolango Police, where according to The Head of Yunit Reskrim Polsek Batudaa Mr. Rahman Paulutu, on July 18, 2020, there was a case of murder committed by people with disabilities (speech) with initials (YH) against victims with initials (FM) handled by batudaa police, Who in the process of checking the police using the services of translators from the nearest extraordinary school.<sup>18</sup> Then in the bone belongs police there are 3 cases, one of which is a criminal act of immorality (abuse) committed by people with speech disabilities with initials (IP) in 2016 who in the implementation of the police also use the services of translators from extraordinary schools. Based on this, the author focuses on

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<sup>13</sup> Novendri M. Nggilu dan Ahmad (2020). Denyut Nadi Amandemen Kelima Undang-Undang Dasar 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 202016(4), 785-808

<sup>14</sup> Bakung, Dolot Alhasni. (2020) Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. *JALREV* 2 (1), 67

<sup>15</sup> Norma L.P. Wemben. (2010). "Kinerja Pelayanan Pada Kantor Badan Pertanahan Nasional Kabupaten Gorontalo." *Jurnal Legalitas* 3 (2), 131

<sup>16</sup> Iriyanto Tiranda. (July, 2019). Konsep Ideal Penanganan Perkara Tindak Pidana Korupsi Pungutan Liar Berdasarkan Asas Peradilan. *JALREV* 1 (2), 132

<sup>17</sup> Lakoro, A., Badu, L. W., Achir N. (2020). Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online, *JURNAL LEGALITAS*, Vol 13, No. 01(2020), 32

<sup>18</sup> Interview With Head Yunit Reskri Batudaa, Mr. Rahman Awulutu.

the role of the police who become one of the law enforcement in the judicial process, especially in the process of investigation and investigation based on Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia Article 14 paragraph 1 point g "conducting investigations and investigations into all criminal acts by criminal event law and laws and regulations". Who has an obligation in the fulfillment of these rights but based on the case that there is the role of the police is less effective in fulfilling these rights, as stated by Andi Hamzah responsibility is a must for a person to carry out what has been obliged to him.<sup>19</sup>

### **B. Problem Formula**

This paper formulates the issue related to how to fulfill the right of justice when people with disabilities commit criminal acts which will then be seen also how the role of law enforcement in this case the police.

### **C. Research Methods**

The type of research used is empirical legal research that examines human behavior from speech actions obtained through interviews and concrete actions obtained through direct observation. While sample withdrawal uses purposive sampling and data analysis using qualitative research approaches

## **2. DISCUSSION**

### **Fulfillment of The Right to Justice When Persons with Disabilities Commit Criminal Acts**

As a vulnerable group, state discrimination provides special protection for persons with disabilities, especially regarding the rights of persons with disabilities to respect protecting, fulfilling, and advancing the rights of persons with disabilities who are ultimately expected to meet the welfare of disabled persons guaranteed through law number 8 of 2016 concerning persons with disabilities. In law, people with disabilities explain that when a person with a disability is faced with the law whether as a witness, victim, or suspect has the right to justice and legal protection. The most important thing is where the law must be enforced to provide social welfare for the people.<sup>20</sup>

Talking about the state of the law is inseparable from how law enforcement is aimed at improving order, justice, and legal certainty in society. This is done by regulating the functions, duties, and authorities of the institutions in charge according to their

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<sup>19</sup> Interview With Investigator Reskrim Bone Bolango, Mrs. Fingki Aditya Mantali.

<sup>20</sup> Ariefulloh. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. JALREV 1 (2), 199

proportions and scope, and based on good cooperation to support the goals to be achieved. In practice, there must be a lack of synchrony between *das sollen* with *das sein*, between mind and reality, between law in *book* and law *in action*. The amount of criticism of the completion of cases in the criminal justice system is a fact. some adverse facts such as the judiciary that often takes a long time, expensive, complicated, and considered less able to meet the sense of justice of the community. This is certainly a strategic step to realize national goals.<sup>21</sup> So that this becomes a constitutional right for every citizen of Indonesia.<sup>22</sup> Because also human rights are part of the implementation of the judiciary within the framework of independent judicial power.<sup>23</sup> The right to life must be protected by the state, especially the state of law.<sup>24</sup> The inherited conditions are internalized into the development program(*endogenous development*).<sup>25</sup> This pressure is slightly more causing a significant reaction to the existence of society, so the government is careful in solving a problem that has to do with society.<sup>26</sup>

As a system, of course, several factors that cause ineffectiveness and inefficient resolution of a case through the mechanism of criminal justice cases can be categorized into 3 main issues, namely the side of law enforcement institutions(*legal structure*), product legislation (legal substance)and customs and culture of community law (legal culture). ). What will be the subject of research from researchers is from the law enforcement side, in this case, is the police. Kopolisian with its existence that has a strategic role as a tool of the state and has the main tasks, namely:

1. Maintaining the security and order of the community;
2. Law enforcement;
3. Provide protection, protection, and service to the community.

The provisions outlined above are based on the provisions of Article 13 of the Law of the Republic of Indonesia Number 22 of 2002. The police as a tool of the state that has a role in maintaining security and order, enforcing the law and providing protection, protection, and service to the community have a direct responsibility to the community as the first law enforcement agency that can interact directly with the community. Settlement of cases committed by persons with disability as perpetrators of police crimes

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<sup>21</sup>Ahmad Rustan Syamsuddin.(July, 2020) Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang dan Jasa. JALREV 2 (2), 163

<sup>22</sup>Nggilu, N., & Wantu, F. M. (2020). Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan Pemerintah Berkualitas Konstitusi. Jurnal Hukum Samudra Keadilan, 15(1), 128

<sup>23</sup>Nabih Amer. (2020). "Analisis Pembubaran Organisasi Kemasyarakatan Dalam Perspektif Negara Hukum." Jurnal Legalitas. 13 (1), 12

<sup>24</sup>Lisnawaty Badu. (2012). Euthanasia Dan Hak Asasi Manusia. Jurnal Legalitas. 5 (1), 1

<sup>25</sup>Zamroni, S. (2016). Desa Membangun Tanpa Meninggalkan Kelompok Pinggiran. Institute for Research and Empowerment (IRE), 2, 6

<sup>26</sup>Fitriyadi, Ahmad Adi. (2020). Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement. JALREV 2 (2), 127

performs their role as law enforcement by conducting investigations and investigations. As it is known that the investigation is a series of investigations to find and find an event that is suspected to be a criminal act to determine whether or not the investigation can be carried out in the manner stipulated in the law. While the investigation is a series of actions of investigators in terms and according to the way stipulated in the law to search and collect evidence that with that evidence makes light of the criminal acts that occurred and to find the choke.

Based on the results of an interview with Mr. Siswanto Gobel as the Head of The Batudaa Police Reskrim Unit that the police explained in law enforcement on people with disabilities, namely the murder case that was committed by a speechless disabled person as a criminal. In this case, the perpetrator with the initials (YH) who was then 44 years old, violated article 338 of the crime against the life "whoever intentionally seizes the life of another person, threatened with murder with a maximum imprisonment of fifteen years". the same as other criminal offenders but for persons with disabilities as criminals are given translators as translators between investigators / auxiliary investigators and persons with disabilities. This is explained as follows:<sup>27</sup>

1. Securing the perpetrator from the possibility of a raging time;
2. Visiting and photographing crime scenes and securing evidence;
3. Go to the victim's family to make a report;
4. Investigation (to ascertain the incident was a criminal offense)
5. series of investigations to find and find an event that is suspected to be a criminal act to determine whether or not an investigation can be conducted in the manner stipulated in the law.
  - a. Conducting examinations on witnesses regarding the incident;
  - b. The examination on the reported about the incident (at the initial examination reportedly assisted by his family, in this case, is his wife).;
  - c. Malaksanakan title of the case about the incident (to determine the cause rises in the process of fingerprinting or stopping like);
  - d. Then send a notification letter starting the investigation to the State Prosecutor's Office.
6. Up the investigation  
The investigation is a series of acts of investigators in terms and according to the way stipulated in the law to search and collect evidence that with that evidence makes light of the criminal acts that occurred and to find the choke.
  - a. Requests for testimony from witnesses;
  - b. Determination of suspects;
  - c. Request for information from the suspect (who was assisted by the translator as a translator from an extraordinary school)

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<sup>27</sup> Results of Interview with Mr. Siswanto Gobel as Head of Batudaa Police Reskrim Unit

- d. Reconstruction (suspects assisted by translator)
- e. Detention (July 20, 2020)
- f. Confiscation, against evidence is a knife with a length of 30 cm.

If the file is complete and has completed the administrative procedure in the police in this case is batudaa police, directly submitted to the prosecutor's office for further proceedings. The handling of the case against YH is the same process as that carried out by the police at the Bone Bolango Police Reskrim Unit, in this case, is a case of abuse committed by people with speech disabilities with initials (IP). It can be seen that from the two cases above, the police only focuses on the use of general regulations contained in the Criminal Procedure Law Code in the process of investigation and investigation, namely for suspects or defendants who are people with disabilities in article 53, namely:

28

"Paragraph 1, in the examination of the investigation and the court, the suspect or defendant is entitled to at any time get the help of the interpreter as referred to in article 177. Paragraph 2, if the suspect or the defendant is mute and deaf, applies the provisions as referred to in article 178" then Article 178 "paragraph 1, if the defendant or witness is mute and or deaf and unable to write, the presiding judge shall appoint as an interpreter a person who is good at associating with the accused or that witness. Paragraph 2, if the accused or witness is mute and/or deaf but can write, the presiding judge shall convey all questions or reprimands to him in writing and to the accused, or the witness is instructed to write the answer and subsequently, all questions and answers shall be read out."

Various kinds of descriptions above were the duty of the police even though it has been included in the applicable laws and regulations, but there are still people who do not carry out the statutory order. Therefore, looking at the cases above law enforcement itself has not maximally protected those as disabled who commit criminal acts. In general, people who commit criminal acts are justified in the process by applicable legal procedures, but as suspects or still, within the scope of perpetrators they have the right and obligation to be protected by law enforcement or related human beings. This is because they have the same human rights as everyone else. Moreover, if the person who committed the crime is a person who has special limitations in this case people with disabilities then legally must be protected rights. As we all know that in law has a principle of presumption of innocence, where before there is a fixed judge's decision, the perpetrator cannot and cannot be said to be guilty. The existence of human rights will have no meaning if it is not followed up with the law that regulates the relationship of rights, meaning that the law formalizes human rights into a set of rules to maintain and

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<sup>28</sup> The results of the interview with the head of the women's and children's service unit of Bone Bolango Police, Mr. Trias and Investigator Ibu fingski aditya mantali.



protect so as not to become clashes in the life of society and state.<sup>29</sup>

Article 27 Paragraph (2) of the Constitution of the Republic of Indonesia of 1945 affirms that every Indonesian citizen is entitled to a decent job and livelihood. Protection and guarantee of rights are not only given to citizens who have physical perfection, the protection of rights for vulnerable groups such as persons with disabilities needs to be addressed. Understanding persons with disabilities, based on Article 1 Paragraph (1) of Law No.8/2016 of persons with Disabilities, is "any person who experiences physical, intellectual, mental and/or sensory limitations over a long period who is interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights" of persons with disabilities must be protected. Indonesia is one of the countries that put forward the constitution in every aspect of national and state life.<sup>30</sup> The results of policies issued by the Government are solely derived from the wishes of the community.<sup>31</sup>

However, law enforcement has obstacles in terms of fulfilling the rights of persons with disabilities when they become criminals. It is:

a. Availability of human resources (investigator)

Based on the results of the researcher's interview that one of the factors that become an obstacle in fulfilling the rights of persons with disabilities is the lack of availability of existing investigators and has special competence regarding investigations and investigations in handling a case because to become an investigator a police officer must go through complicated procedures and take at least 2 years.

b. Lack of understanding of investigators

Based on the researcher's analysis, the lack of understanding of investigators about regulations regarding persons with disabilities that contain rights that must be met and protected.

c. Lack of understanding of people with disabilities

Based on the researchers' analysis, one of the inhibiting factors in the fulfillment of the rights of persons with disabilities is from persons with disabilities themselves who lack or even do not know and understand the rights granted by the state to protect them as a vulnerable group of discrimination

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<sup>29</sup>Tijow, Lusiana. Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas* 3 (2), 80

<sup>30</sup>Fakhris Lutfianto Hapsoro. (July, 2020). *Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution*. *JALREV* 2 (2), 145

<sup>31</sup> Putri Handayani Nurdin.(July, 2019). *Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik*. *JALREV* 1 (2), 146

### 3. Conclusion

The fulfillment of the rights of persons with disabilities in the batucada police jurisdiction is less than optimal. Based on the author's analysis although the batucada police department has carried out its role as law enforcement by carrying out the process of investigation and investigation on a person with disabilities as a criminal perpetrator it has not been fully maximal in fulfilling the rights of justice of persons with disabilities themselves because it can be seen based on the data and information that the author gets that when people with disabilities face the law in this case. is criminal offender policy only focuses on the use of regulations that are generally without being supported by special regulations, in this case, is law number 8 of 2016 on persons with disabilities that explain about the rights of a disabled person.

### 4. Suggestion

Police, especially investigators, can better understand law number 8 of 2016 on persons with disabilities so that in the process of examination in the police the right to justice of a person with a disability can be more fulfilled as a whole.

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