

Measuring Legal Protection For Victims of Discrimination Against Persons With Disabilities

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Abstract

*Persons with disabilities in Indonesia still face discrimination in various aspects of life despite the existence of regulations aimed at protecting their rights. Law No. 8/2016 on Persons with Disabilities is present as a legal instrument that specifically regulates the protection of this vulnerable group, but in practice it often overlaps with the provisions in the Criminal Code (KUHP) which are general in nature. The fundamental differences in approaches, definitions of criminal offenses, and legal sanctions between the two regulations lead to norm conflicts that have an impact on legal uncertainty and ineffectiveness of protection for persons with disabilities. This research uses a normative method with a regulatory and conceptual approach to analyze the conflict between Law No. 8/2016 and the Criminal Code in the context of legal protection for victims of discrimination against persons with disabilities. The results show that law enforcement officials more often use the Criminal Code in handling discrimination cases, so that the provisions in Law No. 8 of 2016 are not optimally applied. Therefore, legal harmonization is needed by applying the principle of *lex specialis derogat legi generali* so that Law No. 8 of 2016 can be the main reference in the protection of persons with disabilities. In addition, increasing the understanding of law enforcement officials and socialization to the community are also important steps to ensure more effective legal protection.*

Keywords: *Legal protection, persons with disabilities, discrimination, norm conflict, legal harmonization.*

A. INTRODUCTION

Persons with disabilities in Indonesia face systemic discrimination despite being protected by specific regulations aimed at guaranteeing their rights. Data from the Ministry of Social Affairs of the Republic of Indonesia (2023) shows that 71% of 22.9 million persons with disabilities experience discrimination in various forms, ranging from restrictions on access to public facilities, healthcare services, education, and job opportunities. This situation indicates that persons with disabilities not only face physical barriers but also social and structural barriers that limit their participation in community life. Even more concerning, as many as 63% of discrimination cases go unreported due to a lack of understanding of legal procedures and distrust in the justice system (Unicef, 2021). Fear of social stigma, traumatic experiences, and the lack of legal support exacerbate this condition. This phenomenon reflects a significant gap between formal legal guarantees and the reality of protection on the ground, where the available legal instruments have yet to transform the real-life conditions of persons with disabilities. The existence of regulations alone is insufficient without effective implementation mechanisms and a comprehensive understanding from all stakeholders in the judicial system (Kurniawan & Susilowati, 2021).

Law No. 8 of 2016 imposes strict sanctions against discriminatory actions through Articles 128 and 130, including prison sentences of up to five years and fines of up to Rp 500 million as a deterrent against violations of the rights of persons with disabilities (Putri & Nugraha, 2024). This regulation adopts a progressive approach, recognizing the specific vulnerabilities experienced by persons with disabilities and the need for legal protection that cannot be equated with the general population. This law explicitly states

the right to fair treatment and protection from violence, discrimination, and exploitation. However, in practice, these provisions are often not applied to the fullest extent. Law enforcement often refers to the Penal Code as the primary source of general criminal law, which has long served as the main reference in the justice system. This implies a neglect of the vulnerability dimensions of persons with disabilities in the criminal justice process. The high dependence on the Penal Code also reflects a weak internalization of human rights perspectives, where principles of substantive justice and a needs-based approach have not yet become mainstream in law enforcement practices..

The conflict of norms between Law No. 8 of 2016, which is based on human rights, and the Criminal Code, which is individualistic, creates legal uncertainty that directly impacts the rights of persons with disabilities seeking justice. This uncertainty is not only normative in nature but also affects the processes of investigation, prosecution, and sentencing. Empirical data shows that 78% of cases of discrimination against persons with disabilities are still handled under the Criminal Code due to the low understanding of law enforcement officials regarding the provisions of Law No. 8 of 2016 and the difficulties in proving elements of discrimination, which require contextual analysis and adequate sociological understanding. One concrete example of the manifestation of this implementation gap can be seen in the case of the abuse of Adnan bin Cik Nun in South Sumatra (2024), where the perpetrator was only sentenced to 1 year and 2 months based on Article 351 Paragraph (1) of the Criminal Code, even though the act contained elements of discrimination against the victim's disability condition (Divianews, 2024). The inconsistency in the application of the principle of *lex specialis derogat legi generali* within the judicial system is further exacerbating the situation, especially ahead of the

implementation of the new Penal Code in 2026, which has the potential to create additional normative conflicts if not anticipated with appropriate harmonization policies.

This research uses the theory of norm conflict and the principle of legal preference as the main approach in analyzing the issue. Specifically, the principle of *lex specialis derogat legi generali* is used to understand the hierarchy between general regulations (Criminal Code) and special regulations (Disability Law) in the context of applying criminal law to violations involving persons with disabilities. This approach is reinforced by a human rights perspective that emphasizes the importance of recognizing vulnerable groups as legal subjects with additional rights to protection. In addition, the theory of legal harmonization is used to formulate implement recommendations to strengthen the effectiveness of legal protection within the framework of national legislation. Previous studies by (Denda Devi Sarah Mandini, 2020) show that the barriers to implementing Law No. 8 of 2016 are largely influenced by the lack of coordination between agencies, weak legal socialization, and limited human resources in understanding disability issues substantively. Research (Destha et al., 2024) emphasizes that law enforcement agencies often face difficulties in handling victims with intellectual disabilities due to the lack of available adaptive and accommodative legal procedures. Meanwhile, the findings (Utami et al., 2025) show that the criminal justice system has not fully accommodated the principles of inclusive justice, both for victims and for perpetrators with disabilities.

Unlike previous studies that focused more on the implementation issues from an administrative and socio-psychological perspective, this research aims to highlight the root problems from a juridical-normative perspective, particularly concerning the overlap of applicable legal norms. The conflict of norms between the Disability Law and the Penal Code is positioned as the main cause of the ineffectiveness of legal protection that has

occurred so far. Therefore, the analysis of the application of the principle of legal preference will not only clarify the normative position of both regulations but also provide a direction for more concrete and systematic solutions. This research aims to fill the gap in the study of Indonesian legal literature regarding the relationship between norms in the context of protecting vulnerable groups. In addition, this research is also aimed at encouraging the renewal of the legal system to be more inclusive and fair towards disability groups, especially in facing the dynamics of national criminal law policy ahead of the implementation of the new Penal Code in 2026.

This research formulates two interrelated and complementary main questions. First, what is the form of the normative conflict between Law No. 8 of 2016 and the Criminal Code, and what is its impact on the effectiveness of legal protection for persons with disabilities. This question will be explored by conducting an in-depth analysis of the structural, philosophical, and technical aspects of both regulations. Second, how can legal harmonization strategies be designed and implemented to address the normative conflict to create a legal system that is more responsive to the needs of persons with disabilities. This question will be answered by formulating solutions based on normative and institutional approaches, as well as considering comparative legal practices from other countries that have effectively implemented disability protection systems. These two formulations of issues are expected to provide theoretical contributions to the development of legal science, as well as practical contributions to policymakers and stakeholders in shaping an inclusive and accountable criminal justice system.

B. RESEARCH METHOD

This research uses a normative legal (Tinambunan, 2018) method with a statutory, conceptual, and case approach. The main focus of the research is to analyze the legal

norms that regulate the protection of persons with disabilities from discriminatory actions, particularly through Law No. 8 of 2016 and the Criminal Code. The legal materials used consist of primary legal materials (laws and court decisions), secondary (literature and scientific journals), and tertiary (legal dictionaries). The data collection technique is conducted through a literature study and is analyzed qualitatively using a deductive and interpretative approach to identify normative conflicts and formulate solutions for legal harmonization (Sonata, 2008).

C. RESULTS AND DISCUSSION

1. Forms of Conflict of Norms and Their Impact on Legal Protection for Persons with Disabilities

The conflict of norms between Law Number 8 of 2016 on Persons with Disabilities and the Criminal Code (KUHP) is a manifestation of the inconsistency between a human rights-based legal approach and a legal approach that tends to be neutral and formalistic. Law No. 8 of 2016 adopts a human rights-based approach paradigm that emphasizes special treatment for vulnerable groups to ensure substantive equality (Ramadhan et al., 2021). This approach is based on the principle that not all individuals are in the same position and condition in accessing justice, thus there needs to be affirmative action from the state. On the other hand, the Criminal Code tends to favor the principle of formal equality, which treats every individual the same without considering specific vulnerabilities or limitations. As a result of this universal and abstract approach, criminal law becomes unadaptive to the dynamics of social vulnerability, including that experienced by persons with disabilities. This creates a philosophical conflict in law, which ultimately leads to a dualism in the application of criminal law when persons with disabilities become victims of crime. In an ideal legal system, more specific legal norms should override

general norms in certain cases, as stated in the principle of *lex specialis derogat legi generali* (Satjipto, 2000). However, the reality on the ground shows that this principle has not been effectively and consistently applied in judicial practice, especially in the stages of investigation and prosecution. As a result, persons with disabilities often do not receive the optimal legal protection mandated by the special law. (Novianti & Michael, 2023), which ironically was designed to address the gap in protection within conventional criminal law.

The first form of this normative conflict is seen in the differences in definitions and regulations of crimes relevant to persons with disabilities. Law No. 8 of 2016 explicitly classifies acts of discrimination, violence, neglect, and exploitation as distinct criminal offenses with elements that take into account the condition of the victims (Arganata, 2016). This arrangement reflects an understanding that persons with disabilities not only face physical violence but also violence based on social stigma and systemic accessibility barriers. Articles 76 to 88 of this law detail specific types of crimes against persons with disabilities, unlike the Criminal Code which does not differentiate victims based on their physical or mental condition. For example, in the Criminal Code, acts of assault or insult are treated the same regardless of who the victim is and in what context the crime occurs, which demonstrates insensitivity to social realities. This causes the discriminatory aspects experienced by the victims not to be taken into legal consideration, and the perpetrators are not charged with articles that reflect the seriousness his actions. As a result, the legal protection provided by the Criminal Code is inadequate in addressing the needs for justice for victims with disabilities. This error is not only technical in nature but also reflects the failure of the legal

system to acknowledge the structural vulnerabilities of disabled groups that should be a primary consideration at every stage of the legal process.

The second conflict relates to the disparity of criminal threats regulated by both laws. Under Law No. 8 of 2016, perpetrators of discrimination against persons with disabilities can be sentenced to a maximum of five years in prison and fined up to five hundred million rupiah as stated in Article 130. This criminal threat aligns with the principle of maximal protection for vulnerable groups and reflects a progressive protection approach. Meanwhile, under the Criminal Code, acts of assault or insults against victims without considering disability status are only punishable by a maximum prison sentence of two years and eight months or even just a fine. This difference is not just a number, but reflects how seriously the country views violations against the rights of persons with disabilities. This imbalance creates a gap between the form of protection promised in specific laws and the sanctions imposed in practice when general law is applied. If the perpetrators of discrimination that cause severe physical and psychological suffering to persons with disabilities only receive light penalties, then the purpose of criminal law as a means of social protection and deterrent is not achieved. In addition, this inequality creates the perception that crimes against people with disabilities are not taken seriously by the legal system, and that disability status is not a crucial element in the assessment of the severity of the crime. When criminal threats are not proportional to the severity of the act, the state indirectly perpetuates discrimination against these vulnerable groups through unjust law enforcement.

The third form of conflict arises in the aspect of proof in the judicial process. Law No. 8 of 2016 adopts a victim-centered approach that takes into account the

limitations and vulnerabilities of persons with disabilities, especially those with communication, mental, or intellectual impairments. This approach is very important because the majority of victims with disabilities face additional challenges in interacting with law enforcement, from reporting to testifying in court. This approach emphasizes the need to adjust the proof procedures so that persons with disabilities are not disadvantaged by rigid formal standards. On the contrary, the Criminal Code and the criminal procedural law system still rely on conventional evidence principles that do not provide special treatment for the victim's condition. As a result, in many cases, persons with disabilities find it difficult to prove the criminal events they have experienced due to limitations in presenting the chronology of events systematically, and sometimes their testimonies are considered legally invalid. On the other hand, law enforcement officials do not have clear guidelines in accommodating the needs of disability victims when conducting investigations or examinations in court. This situation creates structural barriers that lead to systematic legal injustices, as the system does not provide adaptive space for the diversity of individual abilities. Therefore, the difference in the approach to evidence between these two regulations should be seen as a form of the most profound normative conflict because it concerns direct access to justice (Novianti & Michael, 2023), which should be the core of every inclusive legal process.

The impact of this norm conflict is strongly felt in the practice of criminal justice in Indonesia. Based on data collected from various district courts between 2017 and 2024, 82% of cases involving persons with disabilities as victims continue to be processed using the provisions of the Criminal Code (Widjantoro et al., 2019). This fact indicates that law enforcement officials still do not understand or lack the

legal courage to implement the provisions in the Disability Law. This phenomenon is not solely due to a lack of information, but also reflects institutional resistance to changes in legal approaches. This may be due to a lack of socialization, the absence of an official circular from the Supreme Court that reinforces the application of the *lex specialis* principle, or because officials feel safer using articles that have been commonly applied. This dependence shows that criminal law in Indonesia is still very procedural and less responsive to the values of social justice. As a result, victims with disabilities do not receive the justice they deserve and the perpetrators are not punished proportionally. One concrete example can be seen from the case of Adnan bin Cik Nun, where the victim suffered serious injuries due to a discriminatory motive attack. However, the perpetrator was only charged under Article 351 paragraph (1) of the Criminal Code and sentenced to 1 year and 2 months in prison. This case reflects the system's failure to position the Disability Law as the legal reference that should be primary, as well as shows the weak commitment of legal institutions in ensuring justice for vulnerable groups. This conflict of norms exacerbates the disparity in legal protection between persons with disabilities and the general public. In the context of substantive equality, which is the main principle of Law No. 8 of 2016, justice is not understood as equal treatment for all people (Kurniawan & Susilowati, 2021), but rather treatment that is appropriate to the conditions and needs of each individual. This principle serves as the basis for fulfilling differential rights that take into account not only treatment but also the outcomes of the legal process. Individuals with disabilities who require adaptations and different treatment are instead given the same legal treatment as other victims who do not have disabilities, leading to a form of hidden

discrimination. In fact, the same treatment in an unequal context ultimately leads to injustice. This shows that the inability of the legal system to distinguish specific needs will result in discriminatory outcomes. The high level of impunity for perpetrators of violence against persons with disabilities, the low number of cases processed under special articles, and court decisions that do not reflect substantive justice are clear evidence of systemic failures due to this conflict of norms. If harmonization is not carried out promptly, this disparity will continue to reinforce the marginalization and social exclusion of persons with disabilities within the national legal system.

2. Legal Harmonization Solutions to Address Norm Conflicts

Addressing the conflict of norms between Law No. 8 of 2016 and the Criminal Code requires a legal harmonization approach that is not only textual but also structural and cultural. Harmonization cannot stop at the normative interpretation of the principle that *lex specialis derogat legi generali*, but must be realized in clear and operational legal instruments. Theoretically, this principle requires that special laws be prioritized in their application when there is a conflict with general laws in the same matter. However, in practice, there is currently no institutional mechanism that ensures this principle is consistently implemented by law enforcement officers. Most law enforcement officials still refer to the Criminal Code because it is considered more familiar and free from the risk of procedural errors, thus ignoring the Disability Law, which is actually relevant in the context of protecting disabled victims. In fact, there is often a lack of sufficient legal references in the standard operating procedures for handling cases, making the existence of Law No. 8 of 2016 merely symbolic without any real implementational power. Therefore, the harmonization solution must start from the reconstruction of

derivative legal instruments that can provide certainty regarding the application of specific laws in the context of persons with disabilities. These instruments need to be formulated by judicial bodies such as the Supreme Court through Circular Letters or PERMA, so that they have valid guiding strength (Novianti & Michael, 2023).

The urgent first step to be taken is the preparation of national technical guidelines as a reference for the implementation of Law No. 8 of 2016 in handling criminal cases involving persons with disabilities. These guidelines must detail the criteria for identifying victims with disabilities in a legal context, methods for examining witnesses/victims with disabilities, and ways to adapt evidence presentation appropriate to the characteristics of each type of disability. In addition, the guidelines must also regulate the coordination between law enforcement agencies such as the police, prosecutors, courts, and witness protection agencies. The clarity of this procedure can also speed up the handling of cases and reduce the risk of revictimization for victims with disabilities. Without this guideline, authorities will continue to experience confusion in determining which laws apply and how to prove the specific criminal elements against victims with disabilities. This is very important considering that our criminal procedural law has not adopted an adaptive proof mechanism for vulnerable groups. In the long term, these guidelines can also serve as the foundation for the development of training curricula for law enforcement officials and legal academics. The availability of technical guidelines will reduce the gap of legal uncertainty that has been a major obstacle in the implementation of Law No. 8 of 2016.

Furthermore, the harmonization of laws must be accompanied by the strengthening of institutional capacities of all law enforcement agencies. Every

institution involved in the criminal justice system, from police investigators, public prosecutors, judges, to legal advisors, must have a comprehensive understanding of the rights and vulnerabilities of persons with disabilities. This capacity strengthening can be done through continuous training based on legal inclusion modules and victim-based justice. Training materials must include the perspective of human rights law, an interdisciplinary approach, as well as simulations for handling cases involving victims with cognitive, sensory, and psychosocial disabilities. In addition, the materials need to be adapted to the needs of the region, including cultural dynamics and local accessibility, so that their implementation is more contextual and effective (Amanda Putri et al., 2024). Training of this kind will help officers understand how to apply the law sensitively towards disabilities without violating the principles of criminal justice. Furthermore, it is necessary to establish a special unit or division within law enforcement institutions that specifically handles cases involving victims or perpetrators with disabilities. This unit must be filled by personnel who are already certified and have special competencies in disability law issues. Thus, the judicial system will have an institutional structure that supports the consistent implementation of the Disability Law.

The next harmonization strategy is through the synchronization of legal substance, both at the level of laws and sectoral policies. In the short term, the government along with legislative bodies needs to evaluate the articles in the Criminal Code that may conflict with the spirit of Law No. 8 of 2016, especially the articles regarding abuse, defamation, and neglect towards victims with special vulnerabilities. This evaluation aims to encourage a progressive interpretation that

does not disregard the social context of the victims, and places the status of disability as an important element in assessing the severity of a crime. This synchronization may also involve harmonization between regulations under the law, such as government regulations, ministerial regulations, and police regulations. In the long term, the implementation of the new Criminal Code in 2026 should serve as a golden opportunity to explicitly integrate provisions on crimes against persons with disabilities. For example, it can be included that the disability status of the victim is an aggravating factor in the crime or a reason for imposing special sanctions. This will strengthen the principle of substantive equality and ensure that persons with disabilities are treated not only as ordinary victims but also as legal subjects with additional protection rights.

The solution for legal harmonization must also address the aspects of monitoring and evaluation that have not been systematically regulated so far. The government needs to establish an integrated monitoring mechanism involving independent institutions such as the National Human Rights Commission, the National Disability Commission, and the Witness and Victim Protection Agency in supervising the implementation of Law No. 8 of 2016. This monitoring is not only in the form of formal annual reports but also a national database system that records in detail criminal cases involving persons with disabilities, from the investigation stage to the final verdict. This database can also serve as a benchmark for the performance of officials in handling disability-based cases. With integrated data, violations in the application of articles can be promptly detected and corrected. Furthermore, this system can also be used as an advocacy tool and academic reference in formulating a more adaptive criminal law policy. Evaluation must be

carried out periodically, at least once a year, and must be transparent so that civil society can actively participate in providing feedback on the implementation of regulations. Strong monitoring will strengthen the accountability system and ensure that the spirit of protection for persons with disabilities is truly implemented at all levels of legal institutions.

The last very important aspect is the political commitment from all legal policymakers and state institutions. Legal harmonization will not proceed if it is not supported by a real commitment from lawmakers, the executive government, and judicial authorities. This commitment must be embodied in the form of a roadmap for the implementation of legal harmonization that includes measurable indicators, phases, and a schedule for implementation. For example, the roadmap could set short-term targets such as the issuance of SEMA within 6 months, training for officials within 12 months, and integration of disability articles into the new Criminal Code within 2 years. In this process, there needs to be active involvement from organizations of persons with disabilities so that the policies formulated are participatory and responsive to the real needs on the ground (Haq et al., 2024). Each of these targets must be complemented with a budget and a mechanism for periodic evaluation. Political commitment must also be reflected in the allocation of state resources to strengthen the legal protection system for persons with disabilities, both through technical, financial, and institutional support. Without a strong and consistent political commitment, all efforts at harmonization will only become normative discourse that has no real impact. Therefore, cross-sector support and synergy between the government, civil society, and academics are essential to promote transformational and inclusive legal changes (Novianti & Michael, 2023).

Table. 1
Comparison Table of Criminal Provisions

Criminal Act	Law No. 8 of 2016	Criminal Code
1. Discrimination	Article 130: Imprisonment for a maximum of 5 years and a fine of no more than Rp500,000,000.00	Not specifically regulated
2. Insult	Not specifically regulated	Article 310: Imprisonment for a maximum of 9 months or a fine of no more than Rp. 4,500,000
3. Persecution	Not specifically regulated	Article 351: A prison sentence of up to 2 years and 8 months.

Source: Law No.8 of 2016 and the Criminal Code

D. CONCLUSION

Based on the discussion results, it can be concluded that the normative conflict between Law No. 8 of 2016 and the Criminal Code reflects a fundamental difference in legal paradigms, namely between a human rights approach and an individualistic approach. Law No. 8 of 2016 is specifically designed to protect persons with disabilities by recognizing their vulnerabilities, while the Criminal Code is general and does not take into account the specific needs of victims. This conflict of norms is manifested in the differences in the definitions of criminal acts, imbalanced criminal threats, and

differences in approaches to evidence which result in legal uncertainty. In practice, law enforcement officials more often use the Criminal Code, making the protection provided by Law No. 8 of 2016 suboptimal. As a result, persons with disabilities do not receive equal and fair legal protection as they should, and become victims of a system that has not yet been fully inclusive and adaptive to the needs of vulnerable groups.

Based on that conclusion, comprehensive legal harmonization efforts are needed. The government, together with the Supreme Court, must promptly formulate technical guidelines that mandate the use of Law No. 8 of 2016 in handling cases involving persons with disabilities, as well as issue supporting regulations such as Circular Letters or PERMA. In addition, the new Criminal Code to be implemented in 2026 must align with the spirit of protecting the rights of vulnerable groups by adding explicit clauses regarding disability-based discrimination crimes. Law enforcement officials also need special training on disability issues and substantive justice to ensure that the judicial process can be inclusive. Civil society, academia, and disability organizations must also be involved in the socialization and evaluation of the implementation of laws to create a legal system that is fair, accountable, and guarantees real protection for persons with disabilities.

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