

Legal Protection for Persons with Disabilities in Indonesia in the Perspective of Human Rights

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Abstract. The paradigm of human rights should be applied to perceive individuals with disabilities as a diverse part of society. Persons with disabilities, characterized by physical, mental, intellectual, or sensory limitations, possess the right to be acknowledged as legal subjects. By default, any legal subject is presumed capable of taking action unless otherwise stipulated by the law. Individuals declared legally incompetent often fall into the category of those under legal protection. This study aims to explore the legal protection of persons with disabilities as outlined in Law Number 8 of 2016 and the Civil Code, with a foundation in Human Rights and the Convention on the Rights of Persons with Disabilities (CRPD). The research employed normative juridical methods, utilizing secondary data comprising primary legal materials such as Law No. 8 of 2016, the Civil Code, and CRPD. Secondary legal materials encompassed relevant books, articles, and journals, while tertiary legal materials included dictionaries and internet-derived information. The findings revealed several inconsistencies and disharmonies in the regulations pertaining to the protection of persons with disabilities within Law Number 8 of 2016 on Human Rights

Keywords: Human Rights, Persons with Disabilities, Legal Protection.

1. Introduction

Each country strives to realize Human Rights (HAM) through a series of institutions owned by containing human rights in the mandate of the constitution. Efforts to fulfill this human right have been regulated so comprehensively in the 1945 Constitution. There are a number of articles that strictly regulate various human rights, including the human rights of persons with disabilities, including, Article 28H paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution. Judging from the mandate of our constitution, the main framework is respect for human rights, so the derivative rules of the 1945 Constitution should be able to translate well so that every product of legislation prioritizes human rights welfare into the main spirit, including regulations related to persons with disabilities [1]. The fulfillment and protection of persons with disabilities is in line with the principle of the fifth precept of Pancasila, "Social justice for all Indonesians." The principle of equality before the law in force in Indonesia is one of the most important principles in the legal system, as stated in Article 28 D paragraph of the 1945 Constitution Second Amendment.

Additionally, the 1945 Constitution provides robust assurances for the rights of individuals with disabilities, particularly in Article 28 H, paragraph (2). It emphasizes the entitlement of every individual to access facilities and receive specialized treatment, ensuring that equal opportunities and benefits are provided to foster fairness and justice. This aligns with

Indonesia's commitment to the Convention on the Rights of Persons with Disabilities, formalized through the enactment of Law No. 19 of 2011. Indonesia's endorsement marked its standing as the 107th nation to embrace the convention. The constitution reaffirms the rights of individuals with disabilities, including the right to mental and physical well-being on par with others, encompassing provisions for protection and social services to support independence and address emergencies. To further fortify these rights, the government introduced Law No. 18 of 2016 specifically addressing the concerns of Persons with Disabilities. This legislation not only serves as a legal framework but also ensures protection against injustice, violence, and discrimination for individuals with disabilities.

Despite the existence of legal protections, discrimination against individuals with disabilities persists. Efforts to achieve justice for this community necessitate the establishment of facilities and infrastructure providing equal opportunities. Several regulations, particularly in the care of individuals with disabilities, still exhibit discriminatory practices, failing to adequately integrate them into society. Unfortunately, individuals with disabilities continue to be undervalued, viewed as a vulnerable group dependent on charity due to their limitations. Their fundamental human rights, including the right to life, education, health services, and accessibility to public facilities, are frequently overlooked. Therefore, the State's role, executed through regulatory frameworks, becomes crucial in breaking the cycle of discrimination against individuals with disabilities in Indonesia. The State, acting through its institutions, is obligated to enforce existing provisions based on the principle of legality and adhere to general principles, ensuring both moral and legal accountability [2].

In the development of human rights protection, the act of forgiveness is no longer a form of protection. This is because protection means that everyone is not violated or deprived of their rights. Meanwhile, the provisions of forgiveness in the Civil Code actually emphasize the transfer of rights. Article 452 of the Civil Code under the scope of Article 433 states that, "A person placed under custody is in the same position as an immature child". The article asserts that there is a transfer and there is a presumption that a person who was an adult becomes immature, and a person who has rights becomes without rights. So that forgiveness is considered no longer forgiveness for the protection of law and justice. As a result, if forgiveness is applied and a person with a disability under custody is deemed to have no capacity to take civil action, it can result in those who were previously able to become incapacitated because the capacity to take civil legal action for someone under custody moves to their guardian. In addition, forgiveness is the same as one's mastery by another person and it is a form of discriminatory action [3].

Moreover, the realization of the rights of individuals with disabilities in the CRPD is articulated through 18 concepts of rights fulfillment, elaborated in 25 articles, whereas the realization of the rights of persons with disabilities in the Civil Code is encapsulated in 9 concepts of rights fulfillment, delineated through 10 articles. This comparison highlights that the Civil Code encompasses only half, or 50%, of the rights fulfillment for persons with disabilities when compared to the total rights fulfillment outlined in the CRPD. Given this analysis, it becomes imperative to conduct a more in-depth examination of legal protections for individuals with disabilities, considering the perspectives of human rights, conventions addressing disability rights, and the positive law framework in Indonesia.

2. Method

This study employs a normative juridical or normative legal research approach, which involves the examination and analysis of law as a set of normative legal rules within the legal

field. Secondary data, including information from books, prior studies, internet sources, and other data, is utilized for the research. The primary focus of this investigation revolves around providing an overview of legal protections for individuals with disabilities in Indonesia, assessing the realization of their rights within the context of Human Rights in Indonesia, and proposing solutions to the issues under scrutiny.

In the formulation and composition of this research, the employed research methodology involves descriptive analysis. Descriptive research analysis aims to uncover the laws and regulations associated with the legal theories that constitute the research focus. It also examines how the law is implemented within society concerning the subject of the research. The analysis of gathered materials is conducted through qualitative methods, employing a qualitative approach that concentrates on the fundamental principles underlying the expression of various aspects of human life.

The qualitative analysis of legal materials for drawing conclusions not only aims to determine the extent of the state's responsibility for legal protection of persons with disabilities in the perspective of Positive Law and Human Rights, but also aims to understand the constraints that arise in the formulation of its rules. In this research, the stage used is the research stage in general which consists of the conceptual approach stage, legal approach, historical approach, and comparison stage, as well as data analysis.

The literature study method carried out is to take data from the literature used to find concepts, theories, opinions, and discoveries that are closely related to the subject matter of this research. Search for legal literature and other information is done by searching offline (books) and online (internet). After all legal materials are collected, then proceed with the management, editing, and analysis of legal materials. Management of legal materials by summarizing and reviewing these materials. Management of legal materials is carried out by editing data.

3. Results and Discussion

3.1 Issues of Legal Protection of Persons with Disabilities and State Responsibility

The inherent constitutional rights of equal treatment before the law and universally recognized human rights are universally accorded to all citizens, inclusive of those with disabilities. Despite these legal safeguards, individuals with disabilities often face discrimination, encountering various restrictions and infringements on their rights. In response to this inequality, the state enacted Law Number 8 of 2016, with a specific focus on the rights of individuals with disabilities. The primary aim of this legislation is to establish parity in rights for individuals with disabilities, positioning them as active citizens, thereby signifying a substantial departure from their previous classification as mere objects under Law Number 4 of 1997.

Consequently, both central and regional governments are obligated to implement the stipulations outlined in these laws, which include the development of facilities and infrastructure conducive to the needs of persons with disabilities. However, the actual implementation of these provisions has been inadequate, as not all local governments have instituted specific regulations addressing the concerns of individuals with disabilities. Consequently, instances of discrimination against individuals with disabilities persist. Numerous conventions function as instruments for human rights, including CEDAW, Children's Rights, and Migrant Workers conventions. The Convention on the Rights of Persons

with Disabilities (CRPD) stands out in its distinctiveness as it is woven into the fabric of these diverse conventions. Indonesia formalized its commitment to the CRPD through the ratification via Law No. 19 of 2011, thereby designating it as both an international and national human rights instrument dedicated to upholding, realizing, and safeguarding the rights of individuals with disabilities

The CRPD stands out from other international conventions by having a comprehensive purpose, meaning, and scope of protection for individuals with disabilities. Beyond advocating and safeguarding their rights, the CRPD emphasizes the full enjoyment of human rights and fundamental freedoms for individuals with disabilities without discrimination based on disability. Additionally, the convention aims to enhance respect for the inherent dignity of every individual, irrespective of disability. Essentially, the CRPD reaffirms that individuals with disabilities possess inherent human rights and dignity, which they should fully enjoy without facing discrimination based on their disability.

Discrimination against individuals with disabilities highlights shortcomings in law enforcement effectiveness, attributed to three factors: legal substance, legal structure, and legal culture. Soerjono Soekanto further categorized these into five factors: the rule of law, law enforcement, facilities and infrastructure, the societal context of legal application, and legal culture. Additionally, the mental attitude of law enforcement officials and the socialization of the rule of law contribute to the challenges in effective enforcement [5]. Consequently, understanding the interplay of these factors is crucial in comprehending how discriminatory practices against persons with disabilities persist. This analysis focuses on the rule of law concerning individuals with disabilities as the foundation for law enforcement. It's essential to recognize that Law No. 8/2016 in Indonesia is not isolated but is interconnected with other legislations, emphasizing the need to examine their relationships for a comprehensive understanding.

Within the realm of legal protection and justice, the stipulations delineating the legal rights of individuals with disabilities intersect with a spectrum of laws covering labor, marriage, juvenile justice, witness and victim protection, prisons, criminal procedural law, civil law, and mental health. Consequently, it becomes imperative to scrutinize the connections inherent in these legal provisions, evaluating whether a state of harmony or disharmony prevails. Mapping the synchronization between laws and regulations concerning the legal protection of persons with disabilities becomes valuable for ensuring effective law enforcement. This process aims to prevent overlapping, ambiguity, and conflicting legal rules that may lead to disharmony. The occurrence of discrimination, exploitation, and the curtailment or even deprivation of rights for persons with disabilities often results from the lack of synchronization among laws and regulations [6]. This situation contributes to the ambiguous stance of law enforcers when dealing with individuals with disabilities facing legal challenges.

In general, people with disabilities are still a big problem in developing countries, including Indonesia. They are part of marginalized communities that are excluded in the process of national development. They do not get a decent place and position in the social life of society. The community of people with disabilities in developing countries is merely the outsider in the whole development process. The community of people with disabilities is one of the "users" or users in all aspects of life both in cities and in rural areas. However, there is significant migration in Indonesia, that people with disabilities who live in villages generally tend to migrate to cities to get "access", be it access to education, employment, or medical and social rehabilitation services. This reality is very concerning and requires intervention and affirmative actions from various parties and circles. This means that there is a need to increase

critical awareness and social action of the community from various professional circles and the Government.

For the fulfillment of the rights of persons with disabilities, it is not only the duty of the Government, all levels of society must also support and consider that the fulfillment of rights for persons with disabilities is a human right. The problem is, there is currently a paradigm that develops in society that people with disabilities are people who not only have limitations both physically and mentally, but also people with disabilities are considered unable to do anything, need special help, so it is not uncommon to give birth to pity. This paradigm is certainly not right, all people with disabilities need is access that makes it easier for them to get the same opportunities as people who do not have disabilities, not pity.

Thus, it is the role of the Government and us as a society that can create the implementation of human rights, especially for people with disabilities. Actually, there are concrete things that we can encourage together so that the implementation of this convention can be quickly achieved, namely by integrating what laws and regulations can be synchronized with this convention, then submitting them for judicial review [7]. So it is hoped that in the future, when all positive laws in Indonesia have been synchronized with this convention, the paradigm and values that develop in society in viewing people with disabilities will change. In addition, the government must be serious in making its policies, then move with the community in terms of complying with and implementing the contents of the legislation so as to create human rights that this nation and all its ranks aspire to.

3.2 Ambiguity and Synchronization of Laws and Regulations on Legal Protection of Persons with Disabilities in Indonesia

Ambiguity arises from uncertainties in the interpretation of taxation, stemming from the varying application of legal rules in problem-solving due to conflicting regulations. This ambiguity is further compounded by legal disharmony, leading to divergent interpretations by law enforcers, ineffective law enforcement, legal uncertainty, dysfunction, and societal disorder. Legal dysfunction manifests as the law's failure to guide behavior, act as a social controller, resolve disputes, and facilitate social change. Addressing legal disharmony involves several strategies, such as amending conflicting rules, seeking judicial review, ensuring adherence to principled law formation, and harmonizing the drafting of laws and regulations. An effective solution involves synchronizing existing, interconnected laws and regulations.

The foundation for upholding the rights of individuals with disabilities is grounded in the 1945 Constitution, specifically articulated in Articles 28D (1), 28H (2), and 28I (2). While these constitutional articles address general aspects applicable to all citizens, they also provide specific guidelines crucial for ensuring legal equality and protection against discrimination for individuals with disabilities. These constitutional principles are not only binding but also serve as the philosophical and juridical basis for subsequent legal frameworks.

These constitutional provisions find expression in various laws and regulations. For example, in Law Number 39 of 1999 on Human Rights, Article 5(3) delineates the rights of vulnerable community groups, including the elderly, children, the impoverished, pregnant women, and persons with disabilities, to receive enhanced treatment and protection. Article 41 (2) specifically outlines the entitlements of persons with disabilities, the elderly, pregnant women, and children to facilities and special treatment.

Law No. 8/2016 signifies a significant change in safeguarding the rights of individuals with disabilities, as emphasized in Article 1, paragraph (5). The main goal of this legislation is to actively protect, uphold, and strengthen the rights of persons with disabilities, outlined in

Article 5, paragraph (1). These rights encompass 22 diverse categories, addressing crucial aspects such as the right to life, freedom from discrimination, privacy, access to justice, legal protection, education, employment, entrepreneurship, health, political participation, religious practices, sports engagement, cultural and tourism pursuits, social welfare, accessibility, public services, disaster protection, habilitation and rehabilitation, concessions, data privacy, independent living and community involvement, expression, communication, information access, relocation, nationality change, and freedom from discrimination, neglect, torture, and exploitation.

Significantly, Article 5, paragraph (3), explicitly delineates the rights of children with disabilities, ensuring protection against discrimination, neglect, abuse, exploitation, and sexual violence. These rights extend to receiving family or surrogate care to foster optimal development, protection in decision-making processes, humane treatment aligned with their dignity and rights, fulfillment of specific needs, equal treatment for social integration, individual development, and access to social assistance.

As per Article 9 of the legislation, persons with disabilities are entitled to justice and legal protection, encompassing various rights. These rights include equal treatment under the law, recognition as legal entities, ownership and inheritance of property, control over financial matters, appointment of representatives for financial affairs, access to banking services, accessibility in judicial services, protection against pressure, violence, persecution, discrimination, expropriation of property rights, selection and appointment of representatives in civil matters, and safeguarding intellectual property rights. Essentially, this law reinforces the equal standing of individuals with disabilities in legal matters, treating them as independent citizens rather than objects of pity due to their limitations. Consequently, the presence of this law necessitates the government, at both central and regional levels, law enforcement agencies, and the community to cultivate an inclusive culture that ensures the guaranteed right to justice and legal protection for persons with disabilities.

The legal safeguards delineated in Law No. 8/2016 for individuals with disabilities are intricately linked to other existing laws and regulations, underscoring the significance of aligning legal frameworks governing similar provisions. For instance, the rights accorded to children with disabilities as outlined in Article 5, paragraph (3) of Law No. 8/2016 are connected to the definition of children in PPPA Ministerial Regulation Number 4 of 2017, which addresses Special Protection for Children with Disabilities. According to Article 1 of this regulation, a child is defined as an individual below 18 years old, encompassing those still in the womb. This definition is in line with the specifications in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which categorizes a child as an individual aged between 12 and 18 years.

Divergent provisions can also be found in the Civil Code; for example, Article 330 states that children are those who have not yet reached 21 years of age. The laws governing the age of maturity determine this status based on calendar age, with variations in the range between 18 and 21 years. In general, the benchmark age of children in laws and regulations is anchored in calendar age. This provision may be discriminatory if uniformly applied to individuals with disabilities, particularly those with mental disabilities. For instance, consider a legal subject with a disability whose calendar age is 25 years but has a psychological age of 10 years. The question arises: which provisions do law enforcement use to establish their legal status? Thus, additional regulations are necessary to ensure legal certainty for people with disabilities. To date, the government has not formulated regulations to accommodate age adjustments for persons with disabilities.

4. Conclusion

The explicit formulation of legal rights protection for individuals with disabilities is outlined in Law No. 8/2016. However, there exists a disharmony in the rule of law due to its lack of synchronization with other laws and regulations governing related legal matters. This incongruity among legal frameworks introduces ambiguity, particularly in the enforcement of the law. To address this issue and provide clarity and legal certainty, it is imperative to harmonize horizontally with relevant legal provisions. The government should promptly develop a government regulation to serve as an implementing framework for Law No. 8/2016, ensuring clarity and legal certainty, especially for law enforcement authorities and individuals with disabilities.

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