

Legal Protection for Persons with Blind Disabilities in the Indonesia Legal System

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ABSTRAK

Adanya Kehadiran Undang Undang No 8 tahun 2016 akan memberikan harapan yang baru bagi perlindungan hukum penyandang disabilitas yang selama ini seakan akan tidak pernah menjadi perhatian khusus. Adanya Kehadiran UU ini seharusnya menjadi suatu harapan baru namun dalam kehidupan realitasnya masih banyak terjadi kasus kasus diskriminasi yang dialami disabilitas sebagai subyek dari hukum, Sebagai negara hukum, hal ini sudah menjadi suatu keharusan bagi Negara Republik Indonesia untuk dapat melindungi hak para penyandang disabilitas, sebagai wujud perlindungan salah satu hak konstitusional (*constitutional right*) sebagaimana yang telah diatur dalam Pasal 28 ayat (2) UUD Negara Republik Indonesia Tahun 1945. Kontradiksi ini tidak hanya terjadi disebabkan karena kurangnya kesadaran bersikap inklusif terhadap penyandang disabilitas, namun juga dikarenakan terjadinya ketidak harmonisan antar perundang-undangan yang mengatur kedudukan penyandang disabilitas sebagai subyek hukum. Tujuan penulisan jurnal ini adalah untuk melihat apakah hukum yang berlaku di Indonesia sekarang telah mampu mewujudkan keadilan bagi penyandang disabilitas, perwujudan ini meliputi kesiapan pemerintah beserta aparat dan institusi penegak hukum dalam upayanya menghadirkan hukum yang berkeadilan bagi penyandang disabilitas baik dalam kedudukannya sebagai saksi, korban maupun pelaku tindak pidana, dan bagaimanakah konsekwensi dari belum disahkannya peraturan pemerintah sebagai aturan pelaksana Undang-Undang No. 8 Tahun 2016 tentang penyandang disabilitas, harmonisasi peraturan daerah dengan UU No. 08 tahun 2016, spesifikasi definisi saksi sesuai keragaman disabilitas, penetapan kecakapan hukum penyandang disabilitas, dan aksesibilitas di saat pengajuan perkara di pengadilan.

Kata kunci : Hukum; Keadilan; Penyandang Disabilitas, Diskriminasi. Sinkronisasi

ABSTRACT

The presence of Law No. 8 of 2016 will provide new hope for the legal protection of persons with disabilities which so far seem to have never received special attention. The presence of this law should be a new hope but in reality there are still many cases of discrimination experienced by persons with disabilities as subjects of law. As a state of law, this has become a must for the Republic of Indonesia to be able to protect the rights of persons with disabilities, as a form of protection of one of the constitutional rights as regulated in Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This contradiction does not only occur due to a lack of awareness of being inclusive towards persons with disabilities, but also due to disharmony between persons with disabilities. legislation that regulates the position of persons with disabilities as legal subjects. The purpose of writing this journal is to see whether the laws currently in force in Indonesia have been able to bring about justice for persons with disabilities, this realization includes the readiness of the government and law enforcement officials and institutions in their efforts to present a law that is just for persons with disabilities both in their positions as witnesses, victims or victims. perpetrators of criminal acts, and what are the consequences of not ratifying government regulations as implementing regulations for Law no. 8 of 2016 concerning persons with disabilities, harmonization of regional regulations with Law no. 08 of 2016, specification of the definition of witnesses according to the diversity of disabilities, determination of the legal skills of persons with disabilities, and accessibility when filing cases in court.

Keywords: Law; Justice; Persons with Disabilities, Discrimination. Synchronization

A. Research Background

Humans as creatures created by Allah SWT have the same value, dignity and position on earth, both those who are born perfect and in conditions of disability. Imperfection should not be a reason for the loss of dignity of persons with disabilities. But in reality, people with disabilities are often the most vulnerable and marginalized group in social life, such as restrictions on rights, obstacles and difficulties in mobility, reduction or elimination of rights. The community's paradigm towards people with disabilities is often likened to a person's medical (physical) disability, so that people with disabilities are considered as sick people who always need help, even though people with disabilities can still carry out daily activities in their own way in achieving their goals.

Indonesia is a dignified country that respects, values every citizen, fulfills and provides protection for every citizen without exception. This is stated in Article 5 paragraph (1), Article 11, Article 20, and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In line with these provisions, one of the important principles is the guarantee of equal degrees for everyone. people before the law. Therefore, everyone has the right to recognition of their existence, guarantees, protection of rights, and fair legal certainty, as well as equal treatment before the law "Equality Before the Law". The 1945 Constitution of the Republic of Indonesia Post-Amendment includes Chapter XA which discusses Human Rights. This chapter later became a concrete form of the protection of the constitutional rights of citizens in general, including citizens with disabilities, in which there are 10 articles, namely Article 28A to Article 28J, which includes 26 provisions written in paragraphs and in Article - existing articles. All of these provisions can be divided into two types, namely special human rights protection for citizens and human rights protection for everyone, which means not only Indonesian citizens.

The existence of a classification that is divided into only 2 major groups, gives birth to the meaning that persons with disabilities are directly or indirectly included in it. Of the 26 provisions in Chapter XA, there is one article that regulates special protection for persons with disabilities, namely Article 28H paragraph (2) which states that, "everyone has the right to receive special facilities and treatment to obtain equal opportunities and benefits for achieve equality and justice". The provisions of the article clearly use the term "everyone" without the requirement for

certain conditions or conditions of the legal subject in question.

In addition, there are three decisions of the Constitutional Court related to the definition of "everyone" in the article, namely: Constitutional Court Decision Number 10-17-23/PUU-VII/2009; Constitutional Court Decision Number 143/PUU-VII/2009; and the Constitutional Court Decision No. 16/PUU-VIII/2010.

In the three decisions, the Constitutional Court stated that, "constitutional rights in Article 28H paragraph (2) of the 1945 Constitution are constitutional guarantees for those who experience marginalization, backwardness, exclusion, restrictions, distinctions, gaps in participation in politics and public life that originate from inequality. structural and socio-cultural society continuously (discrimination), both formal and informal, in the public and private spheres or known as affirmative action.

In 2011, Indonesia has ratified the Convention on the Rights of Persons with Disabilities (hereinafter abbreviated as CRPD), namely the convention on the Rights of Persons with Disabilities/Persons with Disabilities, with the issuance of Law of the Republic of Indonesia Number 19 of 2011 concerning Ratification of the CRPD. The CRPD is an international and national human rights instrument in an effort to respect, fulfill and protect the rights of persons with disabilities in Indonesia (Development tool and Human Rights Instrument).

In 2016, the Plenary Meeting of the House of Representatives on Thursday, March 17, 2016, approved the Bill on Persons with Disabilities to become the Law on Persons with Disabilities as a fulfillment of the rights of persons with disabilities, both economic, political, social and cultural rights as well as their equality before the law. The issuance of this Law is expected to be an umbrella for legal protection for everyone, especially for persons with disabilities in order to avoid all forms of injustice, violence and discrimination.

In 2018, to be precise on October 6 2018, Indonesia was trusted to host the Southeast Asian Disability Sports Festival (ASEAN Para Games) which is a sporting event specifically intended for athletes with physical disabilities (disabled). People with disabilities are so honored and valued not only in their personal position but also in their role as legal subjects, demanding the government to be more focused and consistent in supporting the implementation of disability-friendly laws.

Two years have passed since Law no. 8 of 2016 concerning Persons with Disabilities was ratified, however, until now, the Government Regulation/PP as the implementing regulation to

implement the Law on Disabilities has not been ratified. This brings consequences for persons with disabilities in their position, both as victims, witnesses and perpetrators.

The problem that then arises is whether the government, officials and law enforcement institutions have been able to realize a law that is just for people with disabilities and what are the consequences in the event that government regulations have not been ratified as implementing regulations for the Disability Law while the Act has been enacted and the law has not yet been enacted. the event is still running.

The presence of Law no. 8/2016 provides a new paradigm for guaranteeing and protecting the rights of persons with disabilities. If the previous regulation, namely Law Number 4 of 1997 concerning Persons with Disabilities, still places persons with disabilities as objects of law, the new Law places them as subjects. Consequently, the central and regional governments must implement all the provisions contained in these laws and regulations, including the provision of supporting facilities and infrastructure. However, in reality, the response to this provision is not optimal, because not all local governments have local regulations regarding persons with disabilities. As a result, there are still many cases of discrimination that are accepted by persons with disabilities in their position as legal subjects.

Discrimination against persons with disabilities shows the ineffectiveness of law enforcement. According to Friedman, this can be caused by three factors, namely legal substance and legal structure. This paper analyzes the synchronization of laws and regulations relating to the legal rights of persons with disabilities, both vertically and horizontally. sources of disharmony in the protection of the legal rights of persons with disabilities that cause discrimination. The analysis uses a statute approach, focusing on the explanation of the consistency of the legal rights rules in Law No. 8/2016 with other laws. All regulations related to the legal rights of persons with disabilities will be examined and the ratio legis and their ontological basis mapped to determine whether there is a philosophical conflict between laws in regulating the protection of the legal rights of persons with disabilities.

B. Focus of Problem

The problems in the research are formulated as follows:

1. How is the ambiguity of the legal protection of persons with disabilities in Indonesian legislation
2. Can witnesses with disabilities become witnesses in the process of proving a criminal case?

3. Does the testimony given by witnesses with disabilities have the same strength of evidence as those of non-disabled witnesses?

C. Research Methods

The research method used to prepare this legal journal is a normative legal research method or legal research literature. This research is aimed only at written regulations or other legal materials. In addition, this study also uses more secondary legal materials taken from the library.

The approach taken in writing this legal journal is the statutory approach (the statute approach) which is done by looking at the laws and regulations concerned with the formulation of the problem. The legal materials used for this type of normative legal research are primary legal materials and secondary legal materials. The secondary legal materials used are law books and journals, while the primary legal materials used are statutory regulations.

D. Finding & Discussion

1. Ambiguity is a condition of uncertainty caused by an error in interpretation, namely the uncertainty of using the rule of law in solving a problem due to the existence of different rules. Ambiguity is also caused by legal disharmony in several laws and regulations. According to Oka Mahendra, there are six factors that cause disharmony, namely:
 1. the formation of laws and regulations carried out by different institutions at different times,
 2. replacement of authorized officials due to the end of the term of office,
 3. a sectoral approach that is stronger than a systems approach,
 4. weak coordination between agencies or legal disciplines,
 5. limited access for the community to participate
 6. in the process of forming legislation and
 7. There is no definite, standard, and standard method that can be used
 8. bind all authorized institutions.

The disharmony of laws and regulations has a negative impact on law enforcement, namely the emergence of different interpretations by law enforcers, ineffective law enforcement, the emergence of legal uncertainty, the occurrence of legal dysfunction, as well as disorder and a sense of unprotected society. Legal dysfunction results in the inability of the law to function in providing

behavioral guidelines to the community, as a social control, dispute resolution, and as a means of carrying out social change. The disharmony of laws and regulations can be overcome in several ways, such as revoking/amending the rules that have experienced

disharmony, submitting a judicial review, the process of forming laws must comply with the principles, and harmonizing at the time of drafting laws and regulations. However, an effective way to overcome this problem is to make efforts to harmonize existing and interrelated laws and regulations or what is known as synchronization.

The synchronization procedure begins with an inventory, in order to find out and obtain data on related laws and regulations. The regulations that have been inventoried are then analyzed for substance, taking into account the normative, sociological, and empirical aspects. Synchronization efforts are carried out in two ways, namely vertical synchronization and horizontal synchronization. Vertical synchronization is an effort to harmonize by identifying whether there is harmony in the hierarchy of laws and regulations, while horizontal synchronization is to identify equal laws and regulations in the same legal field. The basis for vertical synchronization is Article 7 paragraph (1) of the 1945 Constitution, which stipulates that the types and hierarchies of laws and regulations consist of: the Constitution of the Republic of Indonesia Year

1945 Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations. Every statutory regulation must be in sync with the regulations above it so that harmonization occurs. With vertical synchronization, laws and regulations will be formed that are round and intact, interrelated and dependent so that they function as a deterrent to judicial review. The principle used in vertical synchronization is *lex superior derogate lex inferiori*, where lower regulations may not contradict, deviate, or override laws and regulations that are higher in hierarchy.

1. Horizontal synchronization targets are laws and regulations of the same or equivalent hierarchy. This effort aims to regulate various interrelated aspects and fields of law so that regulatory dualism does not occur. There are two principles used in horizontal synchronization,
2. The first principle is the principle of *lex specialist derogate legi generalis*, that special regulations override general regulations. If there is a conflict or

disharmony between equal laws and regulations, then laws and regulations that have a special character are prioritized over those of a general nature. In applying this principle, it is necessary to pay attention to several principles such as:

- a. general provisions that continue to apply, unless specifically provided for in the special legal rules,
- b. there is an equivalence between the provisions in the *lex specialist* and those in the *lex generalis*, and
- c. *lex specialist* provisions with *lex generalis* provisions are within the same legal scope (eg both are the same in the civil law environment).

The second principle used is *lex posterior derogate legi priori*, that the new statutory regulations override the old statutory regulations. If there is a dualism of conflicting legal rules or disharmony occurs, then the new legal regulations can defeat the old legal regulations.

Synchronization, both vertically and horizontally, aims to harmonize the law, so that the rule of law can work and realize social justice. Therefore, philosophical, juridical, and sociological values must be a reference in the implementation of synchronization. The clarity of the objectives and scope of the legislation must be understood in a comprehensive and structured manner, so that the dynamics of the legal substance are not partial. On the other hand, it is necessary to raise awareness of plurality by using the triangular concept of legal pluralism approach from Wemer Menski, which focuses on integrating the application of state law, community norms, and moral ethical values. On this basis, laws and regulations as a means to achieve the material and spiritual welfare of the community must be open to renewal by looking at the development of social norms and prevailing moral ethical values..

In order to realize equal rights without discrimination for persons with discrimination, Indonesia has ratified the Convention as stated above. This means that the government wants to emphasize that the State must take positive steps so that the rights of persons with disabilities can be fulfilled and legally protected.

Here are some examples of the arrangements in the 2016 Disability Law:

- a. Article 5 paragraph (3) states "Children with disabilities have the right to be given

special protection including the right to get more protection from acts of violence and sexual crimes."

- b. Article 9 states that "Persons with Disabilities have the right to obtain the provision of accessibility in judicial services."
- c. Article 30 paragraph (1) Persons with Disabilities, reads "Law enforcers before examining Persons with Disabilities as witnesses, suspects, defendants or victims are required to seek consideration or advice from doctors, psychologists, psychiatrists, or professional experts to determine the health or mental condition of Persons with Disabilities. "
- d. Article 36 reads, "Law enforcement agencies are required to provide adequate accommodation for Persons with Disabilities in the judicial process."
- e. Article 37 regulates, "The obligation of the State Detention Center in providing Disability Service Units".

However, so far the government has not been able to make arrangements to accommodate procedurally and age adjustments for persons with disabilities. The government should consider the availability of facilities for persons with disabilities who play an active role, including as witnesses, to get assistance or translators, to obtain accessible facilities in the form of the availability of media tools, facilities, and infrastructure needed in the trial process, including since the investigation stage and other stages. another start.

In addition, in order to help ensure effective access for persons with disabilities, the State should begin to consider equipping implementing officials working in the field of law enforcement including the police, prison guards and prison guards, with special skills through appropriate training, so that they can be integrated into the legal system. criminal justice proceedings.

In addition, it would be better if the regulation of the criminal justice aspect contained in the Law on Persons with Disabilities could run in line with the provisions of the RKUHAP or at least, if the RKUHAP still cannot accommodate the needs and interests of persons with disabilities, the regulation of the Law on Persons with Disabilities as a lex specialist should be more progressive. in presenting breakthroughs to complement what the RKUHAP cannot reach.

Considering that judicial institutions, whether police, prosecutors or judges as law enforcement officers in carrying out the criminal justice system process, will refer to the RKUHAP, the Disability Law should ideally begin to have two main functions, namely as social control and as social engineering (a tool of social control and social engineering). a tool of social engineering). So that the existence of the CRPD in the perspective of law and human rights in a universal sense, for persons with disabilities, is able to become a means of control that underlies all legal regulations and policies that so far have not accommodated the protection and fulfillment of rights for persons with disabilities.

In addition, the most important thing is that the paradigm of law enforcers who should view persons with disabilities should be treated as people who have rights that are equal to other human beings, are able to claim their rights (human rights based) and do not use the old perspective that sees people with disabilities only as the "object" of charity, which should be dwarfed and pitied in terms of medical treatment and social protection (charity or social based).

In terms of law enforcement, persons with disabilities are also entitled to a fair judicial process, as stated in Article 14 of the International Covenant on Civil and Political Rights. Where this article contains procedural guarantees so that the judiciary runs properly and fairly. Some of the specifics that must be considered in the judicial process for persons with disabilities are the need for the availability of judicial services that are different from people in general. The availability of this service is related to two things, namely physical accessibility and procedural accessibility.

Physical accessibility is related to the judiciary's obligation to ensure that physical facilities such as court buildings, parking lots, waiting rooms, court rooms, toilets, other public service rooms, examination documents, indictments, demands and decisions, have characteristics that are accessible for persons with disabilities.

Meanwhile, procedural accessibility is related to procedural law which in some settings still limits access for persons with disabilities, such as the provision regarding "Witnesses". Where witnesses are interpreted as "limitative" only for people who have experienced, seen and heard of an event themselves, this will be very difficult to fulfill for persons with disabilities with blind and deaf dysfunction..

The social perspective of the community, including law enforcers, still places people with disabilities as a weak group. Calling it disabled is as if putting the blame personally on the person with a disability, even though the lack of physical perfection is not a mistake and certainly not something that is desired.

There are still many law enforcement officers who have a paradigm that the term disabled person has an ideological meaning which means inability, invalid, in the sense of being abnormal or not being a fully human and full of shortcomings.

When examined more deeply, it turns out that the RKUHAP does not yet have clear provisions and procedures governing the handling of legal cases that afflict persons with disabilities. In the RKUHAP, there are only two articles that regulate the rights of persons with disabilities, namely Article 91 paragraph (2) and Article 168 paragraph (1) and (2) of the RKUHAP..

Article 91 paragraph (2) reads: "In the event that the suspect or defendant is blind, mute, or deaf, assistance is provided in accordance with the provisions as referred to in Article 168."

Article 168 paragraph (1) reads: "If the defendant or witness is mute, deaf, or unable to write, the presiding judge at trial appoints a person who is good at getting along with the defendant or witness as an interpreter."

Article 168 paragraph (2) reads: "If the defendant or witness is mute or deaf but can write, the presiding judge at trial shall submit all questions or a written warning to the defendant or witness to be ordered to write down the answers and then all questions and answers must be read out."

Meanwhile, procedural accessibility is related to procedural law which in some settings still limits access for persons with disabilities, such as the provision regarding "Witnesses". Where witnesses are interpreted as "limitative" only to people who have experienced, seen and heard of an event themselves, this will be very difficult to fulfill for people with disabilities with blind and deaf dysfunction.

The social perspective of the community, including law enforcers, still places people with disabilities as a weak group. Calling it disabled is as if putting the blame personally on people with disabilities, even though the physical imperfection is not a mistake and certainly not something that is desired. There are still many law

enforcement officials who have a paradigm that the term disabled person has an ideological meaning which means disability in the sense of not being normal or not being fully human and full of shortcomings.

E. Conclusion

The protection of the legal rights of persons with disabilities has been explicitly formulated in Law no. 8/2016. However, the law is disharmony because it is out of sync with other laws and regulations that regulate related legal materials. This disharmony between laws and regulations creates ambiguity, especially in terms of law enforcement. Therefore, it is necessary to carry out horizontal synchronization of legal provisions regarding: methods of determining the age of persons with disabilities, harmonization of regional regulations with Law no. 8/2016, specification of the definition of witnesses according to the diversity of disabilities, the obligation of assistance for persons with disabilities related to their legal skills, and the accessibility of persons with disabilities in courts and correctional institutions. The government needs to immediately draw up a government regulation as the implementing rule of Law no. 8/2016, so that there is clarity and legal certainty, especially for law enforcers and persons with disabilities.

- a. Based on the attitude and perspective of the community, including law enforcement officials who still consider people with disabilities to be a weak group, it is also emphasized that they have not been accommodated.
- b. the needs of persons with disabilities who play an active role in law enforcement including in their position as witnesses, but are not supported by disability-friendly and accessible facilities in the form of the availability of media tools, facilities, and infrastructure needed in the trial process, including since the stage investigations and other early stages, show that the Government, Law Enforcement Officials and Institutions are not yet ready to implement a just law for people with disabilities.
- c. That the 2016 Law on Persons with Disabilities has been legally enacted since its promulgation 2 years ago, although it has not been followed by its implementing regulations, namely Government Regulations (PP). The absence of implementing regulations for the Disability Law has the effect of not guaranteeing legal certainty for persons with disabilities, the inability to enforce the real rules contained in article-by-article of the Disability Law, and the birth of legal loopholes that can trigger individuals to make inappropriate policies that have the potential to

non-fulfillment of the rights of persons with disabilities. This has a great potential to cause human rights violations for persons with disabilities and parties supporting disabilities.

F. Recommendation

From the discussion and conclusions, the writer's suggestions are as follows:

- a. In order to realize a law that is just for people with disabilities, the government should immediately prepare facilities that are disability-friendly and accessible in the form of the availability of media tools, facilities, and infrastructure needed from the investigation stage to the trial process, which are regulated in clear and binding regulations. As well as organizing trainings to equip implementing employees who work in the field of law enforcement, including police, prison guards and prison guards, with special skills and skills, in order to accommodate the needs of persons with disabilities so that they can be integrated with the criminal justice procedural law system.
- b. In order to realize legal certainty for persons with disabilities, the Government must immediately ratify the implementing regulations (Government Regulations/PP) for the 2016 Law on Persons with Disabilities, thereby minimizing the risk of human rights violations for persons with disabilities and being able to appreciate the parties supporting disability with good intentions..

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