

Article

ORGANIZING THE RIGHTS OF PERSONS WITH DISABILITIES IN THE SOCIAL AND LEGAL ENVIRONMENT IN INDONESIA

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Abstract: This research aims to respond to the discrimination that occurs for people with disabilities, where many people with disabilities in the legal institutions and social of society in Indonesia still experience discrimination. This research uses normative legal research methods with a conceptual and statutory approach. The results of this research are (1) in the legal environment in Indonesia, the law in its regulatory products must respond to discrimination against people with disabilities and provide their rights in judicial proceedings, and the world of education, work, and (2) the social environment of society, they must be able to form awareness not to discriminate and to provide equal rights for people with disabilities in creating a harmonious social environment.

Keywords: Persons with Disabilities, Law, Social Environment.

1. Introduction

The state's role in providing legal protection and human rights to its citizens is an obligation that must be fulfilled to maintain the state's sustainability and realize the state ideals within the framework of their respective constitutionalism. According to John Locke's theory of state goals, the goal of the country is the aim to maintain and guarantee human rights, whether in the form of the right to life, the right to honor, the body rights, the property rights, and the independence rights' (Busroh, 2016). The state's responsibility to maintain human rights is a heavy burden, considering that not all countries can accommodate the interests of their people in such a way that the law acts as a tool of social engineering. This view is as expressed by Roscoe Pound regarding law itself as "law as a tool of social engineering", Pound views that law is not only used to perpetuate power, but law functions as a tool of social engineering (Djasmani, 2011).

The legal treatment in Indonesia for persons with disabilities is currently still facing various challenges, The law has not been able to properly codify the recognition and equality of persons with disabilities, as in Article 433 of the Civil Code which terms 'dumb', 'sick otar' 'dark eyes' as if to give an illustration for the serious disorder. Meanwhile, persons with disabilities are part of the human being that John Locke calls having a nature. Stupid phrases, brain pain, and dark eyes tend to be demeaning and not in line with health sciences, especially in mental health sector. In addition, in the eyes of the law, people who are unreasonable or incompetent are given legal pardons, but people who are unable to think at any given time that are not subject to amnesty.

According to Hari KC, Disability is too complex to define precisely, because disability is multidimensional and also one of the most discussed topics (KC, 2019). However,

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according to the International Classification of Function, Disability, and Health (ICF), disability is the result of a complex relationship between individual health conditions, personal factors, and external factors (Bianquin and Bulgarelli, 2017). Article 1 point (1) of Law Number 8 of 2016 concerning Persons with Disabilities stated that "Persons with Disabilities are any person who experiences physical, intellectual, mental and or sensory limitations for a long time in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights".

The legal treatment in Indonesia for persons with disabilities is currently still facing various challenges which the law has not been able to properly codify the recognition and equality of persons with disabilities, as in Article 433 of the Civil Code which terms 'dumb', 'sick ota' 'dark eyes' as if to give an illustration for serious abnormalities. Meanwhile, persons with disabilities are part of the human being that John Locke calls having a nature. Stupid phrases, brain pain, and dark eyes tend to be demeaning and not in line with health sciences, especially in the mental health sector. In addition, in the eyes of the law, people who are unreasonable or incompetent are given legal pardons, but people who are unable to think at any given time that are not subject to amnesty.

In addition to the unfair stigma of persons with disabilities in the eyes of the law, in the social environment, persons with disabilities often become victims of ableism (stereotypes, prejudice, and discrimination against persons with disabilities). It is a phenomenon that society views disabilities as a group that "suffers" or "needs pity". This view of ableism is a sad story that looks down on persons with disabilities as people who cannot live normally as they should. This assumption of inequality of views shapes the public's perception that persons with disabilities should have a special place with the same class.

This phenomenon occurs in our education system as if there is a dichotomy that public schools are specifically for "normal" people and special schools (SLB) are for people with disabilities. The practice of ableism has become a common stereotype of society to date, so the law and the social environment seem unable to resolve the negative stigma that causes persons with disabilities still seek the long way to equal rights in the social environment and the eyes of Indonesian law until now.

2. Theoretical Framework

Article 1 of Law no. 8 of 2016 concerning Persons with Disabilities revealed that "Persons with Disabilities are any person who experiences physical, intellectual, mental and or sensory limitations for a long period who in interacting with the environment, may experience obstacles and difficulties in participating fully and effectively with other citizens. Based on equal rights". Recognition of the existence of persons with disabilities by the government is a form of proof that persons with disabilities have legal standing and represent the same human rights as Indonesian citizens. In line with the principles of the rule of law put forward by Julius Stahl, there are 1) protection of human rights, 2) division of power, 3) government based on law and 4) state administrative justice.

The concept of the birth of progressive law in Indonesia was initiated by Satjipto Rahardjo, stating that progressive law enforcement is carrying out the law not just in the black-and-white words of regulation but according to the spirit and deeper meaning of statutes or laws (Mukhidin 2014). The concept of law is not only viewed in terms of the regulations in the book but also in terms of justice and its role in society in accommodating its natural rights.

3. Methods

This study uses a normative legal research approach with a conceptual approach and a statutory approach. Primary and secondary sources use Legal materials such as statutory regulations, scientific articles, books, and media. An analysis of the roles and

rights of persons with disabilities in the positive social and legal environment in Indonesia is carried out after the collected legal materials. In conducting this study, the author used a theoretical approach from Satjipto Raharjo regarding progressive legal theory used in dissecting various positive legal regulation in Indonesia that are not towards the people, especially people with disabilities, and supported by social system theory by Emile Durkheim regarding social theory which is applied phenomenally.

4. Results

Building a Progressive Legal System Through Persons with Disabilities

The problem that often occurs in Indonesia is law enforcement, which often disappoints and is considered to be downward, causing public trust in legal justice to decline (Hamzani et al., 2020). The Indonesian Survey Institute (LSI) released regarding public trust in three institutions, namely the Attorney General's Office, KPK, and the Police, which was only 60% in early 2023. In October 2022, public trust in the Supreme Court was still around 52%. The level of increase in public trust in law enforcement in Indonesia is still low, indicating that changes in the commitment of law enforcement to building a good legal system is still low.

Many problems occur in law enforcement in Indonesia, starting from the enforcement process to legal products that do not provide space for justice seekers especially for people with disabilities in Indonesia. The mandate of the 1945 Constitution of the Republic of Indonesia (UUD NRI) has confirmed at least in dictums of Article 28H section (2), Article 28I section (1), section (2), section (4), section (5) and Article 28J concerning the right to human rights. The law contains the right to obtain facilities and special treatment for persons with disabilities, personal rights before the law and respect for every human right, a step guaranteed by the constitution.

Guaranteeing the rights of persons with disabilities is a form of providing equal status in society (Mandala, 2022). However, looking at the various existing legal products, the guarantee of equal status, especially in the eyes of the law, is still not well accommodated. It can be seen in Article 433 of the Civil Code which still has a discriminatory nature and puts people with disabilities in their place. The phrase 'stupid' in article 433 of , for example, the Civil Code raises a problem when in the meaning of the Big Indonesian Language Dictionary (KBBI) is 'very dull in mind, not smart or stupid' (Sugiyono, 2008). This problem has naturally provided an opportunity to discriminate against people with disabilities because people with disabilities do not always have problems with their intelligence. The various types of disabilities that occur, such as blindness, deafness, and muteness are certain parts that become problems in life (Irwanto, 2010).

People with disabilities also often experience difficulties in the judicial process. As is the case when disabled people who cannot see become victims and deemed not to have adequate testimony because their physical condition is contrary to Article 1 point 26 of the Criminal Code (Widjaja, Wijayanti, and Yulistyaputri, 2020). Because one of the elements of a witness is that he sees for himself and experiences it for himself. Problems like this will naturally fail people with disabilities to obtain justice in court (access to justice). Meanwhile, the status of persons with disabilities has different characteristics, so that persons with disabilities who become victims must really pay attention in the criminal justice process (Waddington, 2022).

Sarjono Soekanto seeing the legal problems have occurred experienced a paradigm shift. Sarjono Soekanto's view of legal problems appears to be that legal problems that should be simple have now become complicated (Turiman, 2010). For example, people with disabilities are lumped together as 'imbeciles' in the view of the Civil Code, but people with disabilities have different classifications, so the law must be able to break down these differences well to provide good justice services. Progressive law that has the

role of understanding legal justice will open up opportunities for persons with disabilities to access justice before the law.

Justice is interpreted in so many ways. Chand H said that justice is something that is not easy. Justice has been translated into many classical languages by various thinkers, so the meaning of justice always changes according to each portion (Briando, 2017). Justice is a measure in determining agreement about truth and error that applies in society within the framework of the state (Sumadi, 2016), in the sense of mutual awareness between each other to accept every decision. With that, realizing justice does not have to be indiscriminate, whoever lives in a country and has the same law, then justice must be upheld properly.

Satjipto Rahardjo came up with his progressive legal ideas as a response to legal situation in Indonesia which was not ideal. Law in Indonesia, in Satjipto Rahardjo's view, has not been able to provide prosperity and happiness to society, so the presence of progressive law is known as "liberation law" (Rahardjo, 2009). legal situation occurred was on the contrary, downturn, intimidation, and setback of the law itself. The condition of legal decline is the government's lack of attention in responding to justice and protection for people with disabilities, where people with disabilities in the constitutional framework have been guaranteed equal rights before the law.

Guaranteeing equal rights is a noble ideal of the Indonesian people to avoid discrimination and strive for the values contained in Pancasila. Demitri Petrova's research in the equal rights review looks at the long-term objectives of equal rights trusts (Petrova, 2008), namely;

1. Reveal and help eliminate human rights violations, such as non-discrimination as formulated in the Declaration of Human Rights and other international conventions.
2. To ensure greater accountability of States and actors in protecting individuals from discriminatory attitudes and promoting equality.
3. Empowering victims of discrimination in fighting human rights violations.
4. to increase society's understanding of equality as a broader consensus value that society needs.
5. Contribute to developing substantive and procedural values inequality of rights
6. Promote effective law enforcement and anti-discrimination policies
7. Facilitate and promote the implementation of comprehensive anti-discrimination laws.

Equality of rights for persons with disabilities is an effort to dismantle legal adversity in Indonesia which still fails to translate good legal language. The state in forming a legal must look at the actual conditions of society, so that it can provide a good forum for people to get justice and be able to. Efforts to fight human rights violations against discrimination against persons with disabilities are efforts to form progressive laws, which in this context are part of law for society, not society for law (Auli, 2018).

Given state ideology, Jimly Asshiddiqie explained that state ideology qualifies as a neutral ideology, namely "the thinking system and values of a group" (Wiguna, 2021). Referring to this view, Pancasila as the nation's ideology is said to be a system of thinking and values that must be used as a reference in nationality and state. This obligation must be practiced in a good legal product arrangement, non-discrimination and distinguishing the status of normal humans from humans with disabilities. This obligation must be shown as an element of progressive law management, carrying out the nation's ideals, and legal ideals (rechtsidee) and upholding true legal justice.

According to Satjipto Rahardjo, the community wants the law to be active in paying attention to the community in the welfare of society (Satjipto Rahardjo, 2008). The presence of this law is a series of community ideals as a tool for regulating interests and protecting community rights. There is no exception for persons with disabilities, the law exists not only to solve problems, but the law pays attention to the legal subject itself so it is not fragmented as a result of different conditions.

Based on this view, the presence of progressive law in resolving discrimination of persons with disabilities can be carried out through legal products and procedural processes in court. These two steps are efforts to resolve the existing legal confusion and to provide guarantees for the rights of people with disabilities in Indonesia. In terms of legal product aspects, state institutions must finish various legal phrases that occur in legal products that trigger discrimination against persons with disabilities. The presence of state institutions is a concrete step for the government in maintaining the ideological mandate of the state and the state constitution in creating true equality of rights.

In the law enforcement process, judicial institutions must look more carefully at victims with disabilities so that they are given particular space in their testimony in the legal process. That is given to several people with disabilities who may be able to provide testimony well. The judge's ability to see a case is the hope of society in obtaining justice because legal justice is achieved when legal products and judicial processes are carried out properly by the ideals of a right law state.

Organizing the Rights of Persons with Disabilities as a Community System

Discrimination against people with disabilities does not only occur in the legal, but in the social system environment, discrimination against people with disabilities often occurs. According to Antonio Giddens, a social system is a society, social organization, or group, wherever and whenever. In a social system, interaction occurs between two or more actors, each of which has a function within the unit of society (Darwis, 2022). However, the fact is that the social system of society excludes the existence of people with disabilities who are considered to have special needs and are unable to carry out social interactions with the environment, thus giving rise to discrimination against the existence of people with disabilities in society itself.

Persons with disabilities are social beings who deserve the same opportunities in their lives in society, both in communicating, interacting, and receiving equal treatment. Society still provides a boundary, as if people with disabilities are a different society from others. Many people with disabilities also have advantages above the average human and sometimes have advantages that non-disabled people don't have. These advantages are sometimes also used by non-disabled people for the benefit of their lives, while people with disabilities are only used as fields to provide benefits behind injustice and do not have equal rights in society.

In education, it is as if persons with disabilities have to have their place of education, while schools are generally for 'non-disabled people, and extraordinary school (SLB) is only for people with disabilities. Many schools do not have a single student with a disability. The existence of all schools is only for people with normal circumstances. Of course, this social deviation has given rise to strict discrimination in the educational environment for people with disabilities, as if persons with disabilities could only get their degrees at the benches of other persons with disabilities.

In terms of the world of work, many people with disabilities still seek justice. Various existing companies look more at people with a perfect or attractive appearance. It's as if the work environment doesn't accept the status of people outside of it. As experienced by people with disabilities, only certain companies provide particular places for people with disabilities. Employment opportunities for people with disabilities also experience discrimination, so there is very little free space to obtain equal opportunities in the work environment.

The social system of society is in chaos over the question of where the position of people with disabilities is. Such a societal system has naturally formed a culture so that discrimination against people with disabilities will continue to thrive. This condition is a social fact that needs to be observed in Emiel Durkheim's theoretical discourse on social facts. that exists outside the individual and is equipped or loaded with a coercive force that can control the individual. These social facts can influence every action, thought, and feeling of individuals in a society (Arif, 2020).

That happens because individuals carry out their actions regarding discrimination against people with disabilities. After all, discrimination occurs as a social law occurs. According to Durkheim, these problems are "social facts" not engineered or created because they have adapted to existing "social facts". It seems that society inevitably has to accept these consequences as an acceptance that is unfair to people with disabilities themselves. In resolving the moral issues that form social facts regarding acts of discrimination, we again turn to the view of social solidarity theory. That is useful for breaking through the confusion of negative social facts regarding views of discrimination against people with disabilities.

Durkheim divides two views of social solidarity, namely mechanical solidarity and organic solidarity (Damsar, 2011). Mechanical solidarity is a form of solidarity based on a collective consciousness shared by individuals who have the same characteristics or normative patterns. In solidarity, this mechanism depends on individual who has same characters, beliefs, and norms (Putra, 2014). In looking at this problem, the existence of collective solidarity will paralyze good social relations towards people with disabilities, where the dissimilarity of biological factors causes them separating from collective solidarity activities.

Organic solidarity, appears as the opposite of collective solidarity. Durkheim stated organic solidarity emerged because of the division of labor and increasing interdependence (Kurnia, Bahari, and Fatmawati, 2014). In responding of differences between non-disability people and people with disabilities problem, this dependency cannot be measured by a person's different physique because social facts show the many needs felt by non-disability people in general for people with disabilities.

Therefore, in responding to social discrimination against people with disabilities, education, government, and teachers should provide a positive response by giving equal opportunities for people with disabilities to study in school. People with disabilities do not always have to attend extraordinary schools because of the limitations of different physiques. Apart from that, in the world of work, the government and companies should open up more opportunities for people with disabilities in giving equal opportunities to work, because sometimes people with disabilities have different abilities and exceed those of non-disabled people. In the social environment, of course, society is an individual who needs each other, so the role of persons with disabilities must be able to take part in the social environment and resolve problems of discrimination that occur in society as a common need to form social justice between society itself

5. Conclusions

Based on the explanation above, the conclusion that the author makes is that people with disabilities are social creatures who must have the same legal opportunities and the same rights in the social environment. In the legal environment, people with disabilities should have equal opportunities for justice and prosperity before the law, both in the process of forming rules that do not discriminate against people with disabilities and also in the same judicial process before judges, to be able to establish true legal justice.

In the social environment, naturally, education is the first space in forming awareness in eliminating discrimination, especially for people with disabilities who must be given equal opportunities in the world of education, so the term people with disabilities must be in SLB. Apart from that, in the work, there are equal opportunities to work for people with disabilities because of ability, not because of physical size, and in the social environment, of course, there must be a shared awareness in forming acceptance and anti-exclusion for people with disabilities in creating a harmonious social environment.

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