



## Juridic Review of the Rights of Children with Mental and Physical Disabilities to Rehabilitation

Alvian Dwiangga Wijaya, Teddy Prima Anggriawan

Law Faculty, UPN "Veteran" Jawa Timur University, East Java, Email: [alviandwianggawijaya@gmail.com](mailto:alviandwianggawijaya@gmail.com)

### Abstract

*According to the Big Indonesian Dictionary, people mean people who suffer (suffer) something. Meanwhile, disability means a condition (such as illness or injury) that damages or limits a person's mental and physical abilities; or being unable to do things the normal way. Persons with disabilities have the same position, rights and obligations as non-disabled people. Prior to the enactment of Law No.19/2011, Indonesia already had Law No. 4/1997 on Persons with Disabilities (Law No.4 / 1997). The establishment of Law No.4 / 1997 is still considered to have not answered various issues of respect, protection and fulfillment of the rights of persons with disabilities, so Law Number 8 of 2016 concerning Persons with Disabilities was born (Law No.8 / 2016). The purpose of this research is to find out more clearly and in detail how to fulfill the rights of children with mental and physical disabilities in obtaining rehabilitation based on a juridical review. The method used is normative juridical with a non-doctrinal approach that views law as the basis. The results of this study are in accordance with applicable laws in Indonesia, in this case it is appropriate for the government to pay more attention to or improve existing programs specifically for persons with disabilities so that their lives are guaranteed in accordance with existing laws.*

**Keywords:** Equality; Legal Protection; Rehabilitation

### A. Introduction

People with disabilities go into a group that can be said to be vulnerable because these groups often get discriminatory treatment around. Persons with disabilities have the same status, rights and obligations as non-disabled communities and as an Indonesian society should give special treatment to disabled persons. In accordance with article 28 D paragraph (1) of the second amendment of the UUD 1945 entitled "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the court" this statement indicates that this principle applies also to persons with disabilities, without distinction according to the principle of equality with regard to the court in force in Indonesia.<sup>1</sup> According to the Great Dictionary of Indonesian, a person who suffers is meant to suffer something. Disability is a condition (such as illness or injury) that impairs or limits a person's mental and physical abilities; or a condition of inability to do things in a normal way.<sup>2</sup>

According to the National Social Economic Survey of 2018, from the age group of 2 to 6 years, there were 33,320,357 persons with moderate disabilities, as many as 1,150,173 persons, while those with severe disability were 309,784 persons. The age group from 7 to

<sup>1</sup> Purnomosidi Arie, "Inklusi Penyandang Disabilitas Di Indonesia," Jurnal Refleksi Hukum 1, 2017, hlm 1-4

<sup>2</sup> Kementerian Pendidikan dan Kebudayaan Republik Indonesia Badan Pengembangan Bahasa dan Perbukuan, "Hasil Pencarian - KBBI Daring," accessed April 20, 2021, <https://kbbi.kemdikbud.go.id/entri/harmonis>.



18 years was 55,708,205 persons divided by the average disabled, with 1,327,688 persons compared to 433,297 people with serious disability. The 19-59 year age group is 150,704,645 people, including 15,834,339 people with moderate disabilities, while there are 2,627,531 people with severe disabilities. The age group over 60 years is 24,493,684 people, with details of people with moderate disabilities as many as 12,073,572 people while people with severe disabilities are 3,381,134 people.<sup>3</sup> As many people are disabled in Indonesia, there is a need for support for programs and activities that refer to the rights of persons with disabilities, implemented in a comprehensive and sustainable manner, supported by special means and facilities for people with disability who have equal rights with society in general. In this context, human rights are one of the primary responsibilities of the government and also the local government to implement respect, protection, fulfilment, promotion and enforcement of human rights. Such responsibility covers all aspects of society's life and is universal in accordance with the character of human right itself. One of the efforts to respect, protect and fulfil such rights is to persons with disabilities. As we know, the provisions on human rights have existed since the approval of Pancasila as the basis of Indonesian state guidelines, albeit implicitly. Both human relations with the One God, and human relationships with humans.<sup>4</sup> Besides human rights, of course, this context relates to children's rights in general. Under the Convention on the Rights of the Child approved by the United Nations General Assembly on 20 November 1989 and ratified by Indonesia in 1990 Chapter (1) Article (1), which means a child is any person under the age of 18 and also Act No. 35 of 2014 on the protection of the child that every child has the right to live, grow, develop, and participate in a reasonable manner in accordance with the dignity and dignity of humanity, and to be protected from violence and discrimination.<sup>5</sup> The Convention on the Rights of the Child is also born out of a consciousness that children according to their status are vulnerable, dependent, vulnerable and have special needs. Children therefore need special care and protection, both physical and mental.

With regard to the rights of children in Indonesia, there are also laws applicable to persons with disabilities. Prior to the entry into force of the Act No. 19/2011, Indonesia had the Law No. 4 of 1997 on Persons with Disabilities (Act No.4/1997). This can be seen from the

---

<sup>3</sup> "Hasil Pencarian: Tempo.Co.Id," accessed April 29, 2021,

<https://difabel.tempo.co/read/1266832/berapabanyak-penyandang-disabilitas-di-indonesia-simakdata-ini>.

<sup>4</sup> Hilmi Ardani Nasution; Marwandianto, "Memilih Dan Dipilih, Hak Politik Penyandang Disabilitas Dalam Kontestasi Pemilihan Umum: Studi Daerah Istimewah Yogyakarta," *Jurnal HAM* 10, no. 3, 2019, hlm 166.

<sup>5</sup> Rini Fitriani, "Pernanan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak", *Jurnal Hukum*, Vol 11, no 2, 2016, hlm 251.



various views and stigma of Act No. 4/1997 which is still based on compassion, has not comprehensively promoted the implementation of accessibility and equal rights and opportunities for persons with disabilities, is not in a position to implement the protection, filing, enforcement, and fulfilment of the rights of persons of disability in all spheres of life, as well as prohibitions and imposition of maximum administrative and criminal sanctions. In view of this and to guarantee commitment to the principles in the CRPD, the Law No. 8 of 2016 on Persons with Disabilities (Law No.8/2016) was born. The Law no. 8/2016 is the answer to the condition of Indonesian disabled persons who are still living in vulnerable, backward, and/or poor conditions due to the continued restrictions, obstacles, difficulties, and the reduction or removal of the rights of persons with disabilities.<sup>6</sup> So from the above presentation the author is interested to raise the topic of language in this study is to know more clearly and in detail how the fulfilment of the rights of children with mental and physical disabilities in obtaining rehabilitation based on the jurisprudence review.

## **B. Research Method**

This type of research uses normative jurisprudential methods with a non-doctrinal approach that considers law as its basis. Then from it not only study from the normative aspects but based on the law as in reality. The method of approach used is the normative jurisprudential approach or the legislative approach. (in this discussion using the disability law approach as a basis, as well as other related regulations such as Peraturan Pemerintah Nomor 52 Tahun 2019 Tentang Penyelenggaraan Kesejahteraan Sosial bagi Penyandang disabilitas. Peraturan Pemerintah Nomor 70 Tahun 2019 Tentang Perencanaan, Penyelenggaraan, Dan Evaluasi terhadap Penghormatan, Pelindungan, Dan Pemenuhan Hak Penyandang Disabilitas; dan Peraturan Pemerintah Nomor 13 Tahun 2020 Tentang Akomodasi Yang Layak Untuk Peserta Didik penyandang Disabilitas). As a specification, this study uses descriptive analytical jurisprudential research, with data sources of primary, secondary and tertiary legal materials, as well as those supported by primary data, and analyzed normatively juridically.

## **C. Results and Discussion**

### **1. The Concept**

The State of the Union of the Republic of Indonesia in guaranteeing the well-being of every citizen of its country, one of which is the protection of the rights of the child,

---

<sup>6</sup> RR. Putri A. Priamsari, "Hukum Yang Berkeadilan Bagi Penyandang Disabilitas," *Masalah-Masalah Hukum* 48, no. 2, 2019, hlm.219.



which is one of the human rights. The Government of Indonesia in its endeavour to guarantee and realize the protection and well-being of children was through the creation of the Law No. 23 of 2002 on the Protection of Children. And in order to adapt to some provisions then made some changes to certain articles then enacted the Act No. 35 of 2014 on the Amendment of the law No. The Convention on the Rights of the Child specifically regulates everything concerning the rights of the child.<sup>7</sup> The Convention on the Rights of the Child was adopted<sup>8</sup> on 2 September 1990 through the United Nations Resolution of 20 November 1989 and is in accordance with the provisions of the Convention, paragraph 49 (1). In this Convention the child is the holder of fundamental rights and freedoms as a party to special protection. Indonesia in 1990 has ratified the Convention on the Rights of the Child on the basis of Presidential Decree No. 36 of 1990 dated 25 August 1990. In accordance with the provisions of article 49, paragraph (2), the Convention on the Rights of the Child has been declared in force in Indonesia since 5 October 1990. As a consequence, the Indonesian Government "should" have an obligation to do as much as possible to meet the rights of children in Indonesia.<sup>9</sup> Article 1 paragraph 1 of the Act No. 8/2016 states that a disabled person is any person who has physical, intellectual, mental, and/or sensory limitations for a long period of time who, in interaction with the environment, may experience obstacles and difficulties in participating fully and effectively with other citizens on the basis of equal rights. On the foundation of equality of these rights, the efforts are regulated for the implementation and fulfilment of the rights of a person with disabilities consisting of the right to life free of stigma, privacy, justice and legal protection, education, employment, entrepreneurship, and cooperation, health, politics, religion, sport, culture and tourism, social well-being.<sup>10</sup> Accessibility, public service, disaster protection, habilitation and rehabilitation of concessions, deposition, living independently and engaged in society, communicating expressively and acquiring information, moving places and citizenship and free from acts of discrimination, transfer, torture and exploitation.<sup>11</sup>

---

<sup>7</sup> Rini Fitriani, "Pernanan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak", *Jurnal Hukum*, Vol 11, no 2, 2016, hlm 251

<sup>8</sup> *Ibid*, hlm. 256.

<sup>9</sup> Rini Fitriani, "Pernanan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak", *Jurnal Hukum*, Vol 11, no 2, 2016, hlm 252.

<sup>10</sup> RR. Putri A. Priamsari, "Hukum Yang Berkeadilan Bagi Penyandang Disabilitas," *Masalah-Masalah Hukum* 48, no. 2, 2019, hlm.219.

<sup>11</sup> Fajri Nursyamsi et al., 2015, *Kerangka Hukum Disabilitas Di Indonesia: Menuju Indonesia Ramah Disabilitas*, Pusat Studi Hukum Dan kebijakan Indonesia, h.14.



The birth of the Law No.8/2016 was a fresh wind for the disabled who changed the paradigm towards all the people with disabilities who initially entered into the objects of policy that focused only on welfare, health and shelter programmes but based on the basis of equal rights then the efforts of respect, protection and fulfilment of the rights and empowerment of disabled persons were carried out. There are many efforts both physical and non-physical accessibility for persons with disabilities that are mandated in the Act No.8/2016 and it is an obligation for every local government to strive to realize it. These include decent accommodation, health facilities, consensus, habilitation and rehabilitation, special public services and disability service units.<sup>12</sup> Since the introduction of Law No. 8/2016 until now there has been Government Regulation No. 52 of 2019 on the maintenance of social welfare for persons with disabilities. Government Regulation No. 70 of 2019 on Planning, Maintenance, and Evaluation of Respect, Protection, and Implementation of the Rights of Persons with Disabilities; and Government Regulations No. 13 of 2020 on Decent Accommodation for Disabled Students. The consequences of the absence of enforcement rules on the Disabled Persons Act are that the legal certainty for disabled persons cannot be enforced by the actual rules contained in the articles of the Act, and the creation of a legal gap that can trigger people to make inappropriate policies that potentially disable the rights of disabled people as set forth in the Disability Persons Law 2016.<sup>13</sup>

Since the early period of Indonesian independence until 2011, there have been about ten official terms that have been used to refer to or refer to persons with disabilities in daily public interactions in Indonesia as well as legal documents at the national and local levels. During the last decade, Indonesia has seen so-called stable progress in increasing per capita income and great progress in poverty eradication. However, the country faces the challenge of achieving equitable development. Poverty levels are still very high and abundant in Indonesia and inequalities, especially for marginalized and vulnerable communities, including those with disabilities, remain. Persons with disabilities are often socially isolated and face discrimination in access to health and other services, education and employment.

According to the Central Statistical Agency, SAKERNAS 2011, the total population of Indonesia is: 237,641,326 people with the total working-age population is: 171,755,077

---

<sup>12</sup> RR. Putri A. Priamsari, Op. Cit.

<sup>13</sup> Ibid.



people. According to WHO calculations, it is estimated that 10 percent of the Indonesian population (24 million) are disabled.

According to PUSDATIN data from the Ministry of Social Affairs, in 2010, the number of persons with disabilities in Indonesia was: 11,580,117 with of which 3,474,035 (visual disabled persons), 3,010,830 (physical disabled people), 2,547,626 (hearing disabled), 1,389,614 (mental disabled) and 1,158,012 (chronic disability persons). Meanwhile, according to data from the Ministry of Manpower and Transmigration, in 2010 the number of people with disabilities was: 7,126,409 people.<sup>14</sup> The Population Survey Intercensus or Supas BPS in 2015 showed the number of people with disabilities in Indonesia as 21.5 million. This figure continues to increase every year. The data much more describes the numbers of disabled people in Indonesia compared to the survey three years earlier, that is, in 2012. Furthermore, according to Susenas data in 2018, there are 14.2 percent of Indonesian population with disabilities or 30.38 million people. And last year, 2020, according to data from the disability information system in March 2020, there were 197,582 people with disabilities.

Based on the rules in force stating that the rights of children of persons with disabilities or not, it is clear that there is no distinction of rights between disability and non-disability as mentioned in the expression of the concept. In accordance with the laws in force in Indonesia, in this case it is appropriate for the government to pay more attention or enhance the existing programmes specifically for persons with disabilities so that their lives are guaranteed according to existing laws. In accordance with the Act No. 8 2016 which states that disabled persons are persons who have physical, intellectual, mental, or sensory limitations which make it difficult to participate fully as usual. In addition to the Act No. 8 of 2016, this can also be attributed to the Government Regulation No. 52 of 2019 on the maintenance of social welfare for persons with disabilities, in this regulation it is explained about the conditions of the material, spiritual, and social needs of citizens to be able to live a decent life and to develop themselves, so that they can carry out their social functions. Government Regulation No. 70 of 2019 on Planning, Maintenance, and Evaluation of Respect, Protection, and Implementation of the Rights of Persons with Disabilities; and Government Regulations No. 13 of 2020 on Decent Accommodation for Disabled Students.

---

<sup>14</sup> [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilojakarta/documents/publication/wcms\\_233426.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilojakarta/documents/publication/wcms_233426.pdf), accessed June 16, 2021.



Based on what the government has given and done for people with disabilities, I think it's good enough to coordinate that. Besides, we, as a good Indonesian society, should not be discriminating and it is appropriate that we take special care when meeting those with disabilities to see the circumstances that are less convincing because there are still a few people who think they are strange to them. In addition, on the basis of the human rights of persons with disabilities also participate in the law as it should be very clear that both disability and non-disability are equal before the law. The distinction here is that there is a context in terms of special accommodation in the sense of what is necessary but does not change the same position before the law.

### **C. Conclusion**

Indonesia in 1990 has ratified the Convention on the Rights of the Child on the basis of Presidential Decree No. 36 of 1990 dated 25 August 1990. In accordance with the provisions of article 49, paragraph (2), the Convention on the Rights of the Child has been declared in force in Indonesia since 5 October 1990. The birth of the Law No.8/2016 was a fresh wind for the disabled who changed the paradigm towards all the people with disabilities who initially entered into the objects of policy that focused only on welfare, health and shelter programmes but based on the basis of equal rights then the efforts of respect, protection and fulfilment of the rights and empowerment of disabled persons were carried out. The consequences of the absence of enforcement rules on the Disabled Persons Act are that the legal certainty for disabled persons cannot be enforced by the actual rules contained in the articles of the Act, and the creation of a legal gap that can trigger people to make inappropriate policies that potentially disable the rights of disabled people as set forth in the Disability Persons Law 2016.

In accordance with the laws in force in Indonesia, in this case it is appropriate for the government to pay more attention or enhance the existing programmes specifically for persons with disabilities so that their lives are guaranteed according to existing laws.



## BIBLIOGRAPHY

- Nursyamsi, Fajri. et al., 2015, Kerangka Hukum Disabilitas Di Indonesia: Menuju Indonesia Ramah Disabilitas, Pusat Studi Hukum Dan kebijakan Indonesia, P. 14.
- Nasution, Hilmi Ardani. dan Marwandianto, “Memilih Dan Dipilih, Hak Politik Penyandang Disabilitas Dalam Kontestasi Pemilihan Umum: Studi Daerah Istimewah Yogyakarta,” *Jurnal HAM* 10, no. 3, 2019. Pp. 166.
- Ilo.org, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_233426.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_233426.pdf). diakses June 16, 2021.
- Kementerian Pendidikan dan Kebudayaan Republik Indonesia Badan Pengembangan Bahasa dan Perbukuan. “Hasil Pencarian-KBBI Daring,” April 20, 2021 <https://kbbi.kemdikbud.go.id/entri/harmonis>.
- Arie, Purnomosidi. “Inklusi Penyandang Disabilitas Di Indonesia”. *Jurnal Refleksi Hukum* 1, 2017. Pp. 1-4.
- Fitriani, Rini. “Pernanan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak”. *Jurnal Hukum* Vol 11, no 2, 2016, Pp. 251.
- Priamsari, RR. Putri A. “Hukum Yang Berkeadilan Bagi Penyandang Disabilitas,” *Masalah-Masalah Hukum* 48, no. 2, 2019. Pp. 219.
- Tempo.Co.Id, “Berapa Banyak Penyandang Disabilitas di Indonesia”. Available on website: <https://difabel.tempo.co/read/1266832/berapabanyak-penyandang-disabilitas-di-indonesia-simakdata-ini>. diakses April 29, 2021.