

Reconstructing the Rights to Justice and Legal Protection for Disabled Youth in the Frame of Human Rights

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Article Info

Article history:

Accepted: 6 December 2024

Published: 18 December 2024

Keywords:

Disability;

Rights;

Justice;

Youth.

Abstract

Adolescents with disabilities often receive discriminatory treatment and are far from a sense of justice. This causes adolescents with disabilities to experience limitations in fulfilling the rights that they should get. Disabled adolescents basically have the same rights as non-disabled adolescents in general. All forms of rights attached to adolescents with disabilities have been fully compiled in the concept of Human Rights. The government's seriousness in fulfilling the rights of adolescents with disabilities has been compiled with the ratification of the Convention on the Rights of Persons with Disabilities into Law Number 19 of 2011. In addition, the government has also promulgated Law Number 8 of 2016 concerning Persons with Disabilities. This research is descriptive qualitative research using an empirical normative approach. This research discusses the importance of fulfilling the rights of justice and legal protection for adolescents with disabilities by putting forward the theory of justice based on human rights. Through a complete understanding of the concept of justice rights and legal protection for adolescents with disabilities, it is hoped that discriminatory actions against adolescents with disabilities will never reappear and can restore the rights of all adolescents with disabilities. Based on the results of the study, a new concept of ideas related to the reconstruction of justice rights and legal protection for youth with disabilities in Indonesia based on positive law and human rights theory is obtained, namely with the ISPAS method approach (Issuance, Surveillance, Participation, Specifications).

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1. INTRODUCTION

Every citizen has the same position in the eyes of the law without exception. This statement is contained in Article 27 of the 1945 Constitution of the Republic of Indonesia (RI, 1945). Indonesia as a republic highly upholds democracy, which means that supreme sovereignty is completely in the hands of the people. This gives rise to legal consequences that the presence of the state is to protect the human rights and interests of the people. Human Rights (HAM) are actually not influenced by physical differences, skin color, race, ethnicity or the beliefs one adheres to. In human rights theory, it is a right that is inherent naturally from the time humans are born and then should be upheld and protected by the state (Government of the Republic of Indonesia, 1999). However, the reality presented appears to be that there are still many human rights violations in Indonesia, especially those that occur against people with disabilities. Currently, there are 12 cases of human rights violations against people with

disabilities recorded in Komnas HAM data until October 2024. This data raises the assumption that at least one human rights violation occurs against people with disabilities in one month.

Disabled teenagers as citizens certainly have human rights which are also protected by the government. The study of human rights towards disabled youth in the juridical aspect means determining the object of study in the form of legal provisions and norms that apply in a country (A. Priamsari, 2019). The government's seriousness in protecting the human rights of disabled youth is implemented in two platforms, namely by the promulgation of Law Number 23 of 2002 concerning Child Protection and Law Number 8 of 2016 concerning Persons with Disabilities. It is hoped that these two legal corridors can interpret disabled youth as empowered people and create a non-discriminatory environment. Looking at the global level, *the Convention on the Rights of Persons with Disabilities* (CRPD) or the Convention on the Rights of Persons with Disabilities was adopted on 31 December 2006 by the UN General Assembly and came into force on 3 May 2008. The Convention was then ratified by the Government of the Republic of Indonesia to become Law Number 19 of 2011 concerning Ratification of the CRPD . The main contents of this convention according to the CRPD Ratification Law consist of (1) Preamble; (2) Objectives; (3) Obligation Country; (4) Rights of Persons with Disabilities; (5) Implementation and National Monitoring as well as (6) State Party Reports and the Role of the Monitoring Committee of the Convention on the Rights of Persons with Disabilities (Reza et al., 2023). One form of effort to fight for the rights of people with disabilities is in the form of: (1) fighting for accessibility, (2) advocacy, (3) fighting for economic access, (4) building a sense of togetherness, and (5) fight for a society that can accept differences (Andayani & Afandi, 2019).

The practice of bullying is one example of a case that often befalls teenagers with disabilities. Quoted from CNN Indonesia, a disabled student experienced bullying which resulted in a fracture in the little finger of his left hand. The unfortunate incident occurred on Wednesday, February 21 2024 at a junior high school in Gunungkidul, Yogyakarta. Even though the case ended peacefully, this incident proves that disabled teenagers need to be protected and guaranteed all forms of rights attached to them as citizens.

Some time ago it went viral about the heroic actions of a disabled teenager with the initials BF in the Tangerang area, Banten. BF swiftly signaled to other vehicles to give way to an ambulance that was stuck in traffic on Wednesday, October 2 2024. However, behind the heroic action carried out by BF, it turned out that he had a sad story in the past. Quoted from Kompas.com, BF chose to drop out of school in 4th grade on the grounds that he often experienced bullying and even physical torture by his friends. This phenomenon is very serious and needs attention from both the wider community and the government. The reality presented is that there are many teenagers with disabilities out there who still lack aspects of fulfilling their rights to justice and legal protection.

Disabled youth with all types of limitations should not be an obstacle to obtaining their rights to justice and legal protection. Because in reality, teenagers are the hope for the future and the aspirations of the nation, regardless of their particular physical condition. In order to fulfill the right to justice and eliminate all forms of discriminatory acts, it is important to make efforts to understand the reconstruction of the right to justice and legal protection for disabled youth.

There have been previous studies regarding the rights of disabled youth, one of which was the right to education. It is considered that the educational rights of disabled youth still experience many gaps, even to the point where the rights of disabled youth are not fulfilled in

the field of education (Mozes, 2020). Another study that has been found is research regarding the rights of disabled people regarding the accessibility of public facilities. People with disabilities still experience various difficulties in accessing public facilities due to the lack of development of disability-friendly public service facilities (Umam & Arifin, 2020). Similar but different, researchers focus more on reconstructing the rights to justice and legal protection as mandated in Law Number 8 of 2016. This regulation does not fully explain the form of interpretation of the rights to justice and legal protection clearly, so it needs to be studied in more depth. It is hoped that this research will be able to briefly explain and describe the fulfillment of the rights to justice and legal protection for disabled youth.

2. RESEARCH METHOD

The research carried out is a type of descriptive qualitative research, namely by collecting and analyzing several types of primary legal materials such as laws, government regulations and other jurisdictional documents. under it (Marzuki, 2016). Then the results of the analysis are described narratively to facilitate readers' understanding of the aims, benefits and messages conveyed by the author. This research focuses on teenagers with disabilities as citizens in obtaining the rights to justice and legal protection that are fully protected by the Indonesian Constitution. Furthermore, this research uses a normative approach, namely by conducting a literature review of legal documents which have first been studied regarding the clarity of the source and the validity of their application. Not just applicable norms, researchers also present forms of legal movement in society, which are often known as socio legal methods (Ulum, 2020). Other complementary secondary data is in the form of secondary legal materials, namely various books, scientific journals and online articles on national news pages.

3. RESEARCH RESULTS AND DISCUSSION

3.1 Current Rights to Justice and Legal Protection for Disabled Teenagers in Indonesia

Currently, the practice of ensuring that disabled youth have equal rights without discrimination is still a gray area. This reflects that the performance carried out by stakeholders in fulfilling the rights to justice and legal protection for disabled youth is considered to be less than adequate. In fact, the meaning of justice in a rule of law is the creation of justice values within the framework of human rights with a guarantee of fair law enforcement for citizens. Where every citizen has equal standing (Equality before the law) and has the right to guaranteed protection and legal certainty (Ainan Nirmaya Bektı & Gede Artha, 2019).

In fact, the process of fulfilling the rights of disabled youth as citizens still experiences various obstacles. Until now, in Indonesia, the fulfillment of rights for disabled teenagers has not been fulfilled, this is because disabled teenagers are still seen as a marginalized group. Even though human rights have made progress in the national and international framework, disabled youth are still in the last position in obtaining the right to justice.

Fulfillment of the right to justice and legal protection is the most important part of the concept of a legal state well-being (Welfare state). This is because when a country was founded, laws governing the behavior of its citizens were also created. According to Satjipto Raharjo, legal protection is defined as an action to provide protection to parties whose human rights have been harmed and violated and this protection is given to the community so they can enjoy their rights given by law (Ari Atu Dewi, 2018). In Indonesia itself, until now there are still many disabled teenagers who do not report any action

discrimination what they experienced. One of the contributing factors is law enforcement officials who are unfair and do not equalize the status of disabled youth. This phenomenon shows that there are still many shortcomings in fulfilling the rights to justice and legal protection for disabled youth in Indonesia.

On the other hand, views are still often expressed regarding law enforcement officials who are sometimes considered less responsive and have difficulty reconstructing the law in handling cases involving disabled teenagers as victims. The reason often used by law enforcement is that the victim cannot provide sufficient testimony, making it difficult for law enforcement officials to follow up on the case. Based on the high level of interest in acts of discrimination experienced by disabled teenagers, a set of legal regulations in Indonesia should be fair, swift and firm towards disabled groups.

With the increasing number of cases of discrimination that occur among disabled teenagers in Indonesia, the rights to justice and legal protection for disabled teenagers in Indonesia are still not fully fulfilled. Therefore, integration of the legal and judicial systems is needed pro disabled, which includes changing relevant laws, strengthening law enforcement capacity, and increasing participation, as well as empowering disabled youth themselves. This is important to ensure that teenagers with disabilities in Indonesia have full access to fight for their rights to justice and legal protection.

3.2 Reconstructing the Rights to Justice and Legal Protection for Disabled Youth in Indonesia Based on Positive Law and Human Rights Theory

In order to realize the right to justice and legal protection for disabled youth. As stipulated in human rights, every Indonesian citizen has the same legal status. This, of course, is an important task for the government to guarantee and protect the rights of disabled teenagers as legal subjects to take equal legal action and obtain legal assistance. As stated in positive law in Indonesia, namely Law Number 19 of 2011 concerning Ratification Convention *on the Rights of Persons Disabilities* (CRPD) and Law Number 8 of 2016 concerning Persons with Disabilities. However, there is still a legal vacuum that exists in these two laws in their implementation so far, which has resulted in the need for reconstruction to fulfill the rights to justice and legal protection for disabled youth. Therefore, the author tries to provide new ideas regarding the reconstruction of the rights to justice and legal protection for disabled youth in Indonesia based on positive law and human rights theory, namely using the ISPAS method approach (*Issuance, Surveillance, Participation, Specifications*). The following is an explanation of the ISPAS method:

a. Issuance (Publication)

The Indonesian government has so far issued several regulations in an effort to fulfill the rights of people with disabilities. Published regulations regulate various aspects such as education, health, employment and accessibility. The issuance of these regulations aims to: (a) create an inclusive and just society with disabilities; (b) eliminate stigma and discrimination against persons with disabilities, and (c) ensure that persons with disabilities have equal opportunities to participate in various aspects of social, economic and cultural life. However, these regulations do not yet have specificity regarding disabled youth in seeking their rights to justice and legal protection. Therefore, it is necessary for the government to immediately issue government, presidential or ministerial regulations to promote the rights of disabled teenagers as empowered youth.

The following is a list of regulations regarding persons with disabilities that are still in force in Indonesia:

Table 1. List of Regulations for Persons with Disabilities in Indonesia

List of Regulations	Publication Year	About	Validity Status
UU no. 8 of 2016	2016	Incumbent Disabilities	Still Happening
PP No. 70 in 2019	2019	Planning, Implementation and Evaluation of respect, Protection, and Fulfillment of Rights Incumbent Disabilities	Still Happening
PP No. 52 of 2019	2019	Implementation of Social Welfare for Persons with Disabilities	Still Happening
PP No. 39 of 2020	2020	Reasonable Accommodations for Persons with Disabilities in the Judicial Process	Still Happening
PP No. 42 of 2020	2020	Accessibility to Settlements, Public Services, And Protection from disasters for people with disabilities Disabilities	Still Happening
PP No. 60 in 2020	2020	Employment Sector Disability Services Unit	Still Happening
PP No. 75 of 2020	2020	Habilitation and Rehabilitation Services for People with Disabilities Disabilities	Still Happening
PP No. 13 of 2020	2020	Appropriate Accommodations for Students with Disabilities	Still Happening
Presidential Decree No. 67 of 2020	2020	Terms and Procedures for Giving Awards in Honor, Protection, and Fulfillment of Rights Incumbent Disabilities	Still Happening
Minister of Social Affairs Regulation No. 7 of 2017	2017	Standards for Habilitation and Social Rehabilitation of Persons with Disabilities	Still Happening
Minister of Social Affairs Regulation No. 2 of 2021	2021	Personnel Card Disabilities	Still Happening

Source: processed by the author

Of the several regulations above, they still do not specifically regulate the rights to justice and legal protection, especially for disabled youth. This results in disabled teenagers not being able to fully access the rights to justice that should be attached to them as the implementation of human rights.

b. *Surveillance*

Government accountability for the implementation of the rights of disabled youth needs to be monitored jointly. The various regulations issued are considered insufficient in regulating transparent and accountable monitoring mechanisms for the fulfillment of the rights to justice for disabled youth. An effective form of accountability is that the government must establish a supervisory institution that is pro-disabled and has resources professional in its field as an effort to uphold, follow up and monitor the fulfillment of the rights of disabled youth. Recently the government has formed the National Commission on Disabilities (KND) under the auspices of the Indonesian Ministry of Social Affairs. The formation of the KND was carried out as a serious effort by the government to implement the mandate of the CPRD.

c. *Participation*

The government's efforts to accommodate the rights to justice and legal protection for disabled youth apparently still contain a legal vacuum. The form of legal vacuum that occurs is in the formulation of regulations and policies regarding the fulfillment of the right to justice and legal protection. The absence of involvement from representatives of disabled youth has resulted in the formulation of regulations and policies not being transparent for disabled youth. If this formulation continues without the involvement of representatives of disabled youth, then the government will be committing acts of discrimination against disabled youth. This is a form of curtailment of the rights to justice for disabled youth, namely the right to voice and heard his aspirations.

d. *Specifications*

The law and other regulations below do not yet specifically regulate the rights to justice and legal protection specifically designed for disabled youth. This creates multiple legal perspectives and even ambiguity regarding the use of relevant laws for disabled youth. In this regard, the government should design policies that specifically regulate the age specifications for disabled people, because each specification has different handling mechanisms and legal consequences.

4. CONCLUSION

The government's efforts to fulfill the rights of disabled youth regarding the rights to justice and protection of the law has not been fully implemented. There are still many legal cases involving disabled teenagers, but they have not been resolved in a fair and balanced manner. Disabled teenagers still often feel disadvantaged by a series of existing policies. Fulfilling the rights to justice and legal protection is an essential thing that must be fulfilled by the government as a stakeholder in implementing the fulfillment of the rights of disabled youth. It is hoped that the ISPAS method can be a solution for the government in determining policies for disabled teenagers. It is hoped that in the future the government can provide specialization for disabled youth so that they are able to develop their potential to the maximum and become the nation's front guard without discrimination.

5. ACKNOWLEDGEMENT

With great gratitude, we express our thanks to God Almighty for His grace so that the authors can complete this scientific writing. Every step we take cannot be separated from the extraordinary efforts and cooperation of the authors. Hopefully this good relationship will continue to exist harmoniously and together We can open greater horizons of knowledge in the future. Thank you for all your very meaningful contributions, we hope that what we write can provide new insights for readers.

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