

Legal Protection Against Discriminatory Treatment of Persons with Disabilities in Procurement of Recruitment for State Civil Servants

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Abstrak

UUD NRI 1945 Constitution emphasizes that the government must protect the rights of each individual, develop rules and implement them accurately and maintain justice for all levels of society without exception for people with disabilities. The recruitment process of the State Civil Apparatus in Indonesia has not been completely free from allegations of discrimination. The experience of drg Romi, a person with a disability from Solok Regency, is an example of the many cases of discrimination that occur in Indonesia. The UUPD explains the rights of persons with disabilities, by stating the obligations of the government and agencies in this regulation, the fulfillment of the rights of persons with disabilities can be fulfilled. The provisions regulated regarding the fulfillment of the rights of persons with disabilities in the recruitment process of the State Civil Apparatus in the ASN Law are the reference of this research. The author's research method is normative juridical or normative legal research using qualitative analysis methods to achieve the objectives of this writing.

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1. INTRODUCTION

Pancasila and the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia, are the strong pillars of the Indonesian state in upholding human dignity within it. The fourth paragraph of the 1945 Constitution of the Republic of Indonesia emphasizes that the Indonesian government must provide protection for all levels of society without exception in order to achieve common goals, one of which is justice for society without any pressure from any party. Indonesia needs a society that is open to disability issues, state officials who care about and support people with disabilities in upholding justice, and a set of regulations with clear rules to achieve the function of the legal protection statement in the 1945 Constitution of the Republic of Indonesia and achieve the goals of Human Rights (HAM).).

Human rights are basic rights that cannot be taken away from every individual and are inherent throughout life for all individuals who are physically and spiritually healthy, even those with disabilities (Elizabeth Ruth, 2021). One of the important components is contained in Law Number 39 of 1999 concerning Human Rights article 38 letter (a) that "Every citizen, according to their talents, skills and abilities, has the right to decent work". This article emphasizes that every citizen has the right to choose and become the worker they want, even if they have a disability, such as a person with a disability.

According to the Law on Persons with Disabilities Number 8 of 2016, hereinafter referred to as UUPD in article (1), states that "Persons with Disabilities are every person who experiences physical, intellectual, mental and/or sensory limitations for a long period of time who in interacting with the environment can experience obstacles and difficulties

in participating fully and effectively with other citizens based on equal rights.” Before today's technological sophistication, only professional standard medical experts would treat and treat patients with physical disabilities. So the stigma in society towards physical, intellectual and sensory differences is still very negative in its connotation (Maftuhin Arif, 2016).

As times change rapidly, people begin to adapt to existing conditions. Efforts to recruit State Civil Servants, hereinafter referred to as CASN, for people with disabilities are a form of freedom and adjustment to equality of equal opportunities in accordance with the basis of state law, especially freedom to work under the Indonesian government.

CASN recruitment efforts for people with disabilities are a form of freedom and fulfillment of equal rights in accordance with state law, especially freedom in life within Indonesian government agencies. The lack of choices for this position and the requirements stipulates that only people with physical disabilities can nominate themselves as workers, as a result the number of positions for people with disabilities, such as in South Kalimantan, is greatly reduced. This has the potential for discrimination against people with disabilities and is often ignored even by the government (Muchtar, 2020).

Apart from that, the many other real cases of discrimination that occur by people with disabilities in the CASN recruitment procurement process in several regions is also an interesting topic for the author. Cases that are proof that discrimination still exists, such as that experienced by Romi Syofpa Ismael, who works as a dentist in South Solok Regency, according to his confession, the graduation status of his CPNS which had previously been announced as having passed in 2018 was canceled unilaterally even though Romi's own grades were the best. Apart from that, the State Civil Service Agency stated that Dr. Romi resigned at his will during the CPNS selection process. In fact, Dr. Romi never signed or stated verbally that he was resigning. The example of the case above ultimately became an allegation of discrimination against people with disabilities and became proof that justice has not been fully felt by every prospective employee of the State Civil Service (BBC NEWS Indonesia, 2019).

According to a series of backgrounds that the author has compiled above, a problem formulation is created:

- a. How to fulfill rights disabled person disability in the recruitment process for State Civil Apparatus according to Law Number 8 of 2016?
- b. What is the legal protection for prospective employees with disabilities against discriminatory treatment in the recruitment process for the State Civil Service?

2. RESEARCH METHOD

The author uses normative juridical or normative legal methods. Normative law in research is a form of observation in the field of law that examines several aspects, namely in terms of norms, basis, principles, theories and other literature materials in the field of law to be able to solve a problem that occurs in law and legislation as a reference material for strength. binding law (Kornelius Benuf, 2020). The nature of this research is descriptive with a statutory approach method and Case approach. The legislative approach aims to prioritize legal sources in the form of statutory regulations as the basis for study. This strategy is carried out through observations of legal regulations and phenomena. Case approach method is one of the components in the field of law, especially used to explain real situations that arise in social society (Peter Mahmud, 2005).

Data collection method by collecting facts from the characteristics of a phenomenon obtained through observation. In essence, the data collected are facts that characterize a

particular situation or problem. Uber Silalahi states that data are facts about certain aspects of a phenomenon collected through observation (Ulber Silalahi, 2012). The collection method uses literature study (*library research*) and the author's method of data elaboration uses a qualitative approach, namely the research systematically forms descriptive analysis data by stating the targets of the research object in writing, verbally or in real conditions (Bachtiar, 2018).

3. RESEARCH RESULTS AND DISCUSSION

3.1. Fulfillment of the Rights of Persons with Disabilities in the UUPD

Persons with disabilities are any individuals with long-term physical, mental or intellectual disabilities that can become obstacles to full participation in activities when interacting with other communities (Kornelius Benuf et al, 2020). UUPD Article 4 determines the categories of types of disabilities, namely:

- a) People with physical disabilities. individuals with physical limitations, for example those who have experienced amputations from medical procedures, *paraplegia*, stroke, *cerebral palsy*, cripples, and people of small stature.
- b) People with intellectual disabilities. Individuals whose thought processes are disturbed by an IQ level below the standard of normal people, *down syndrome*, learning delays, and mental disabilities.
- c) People with mental disabilities. Individuals who have mental disorders ranging from emotions to influencing behavior. This is divided into 2 types, namely psychosocial disorders such as *schizophrenia*, disturbance *bipolar*, *depression* and excessive anxiety. Another type is developmental disorders, such as *autism* and *hyperactive*. This can impact their ability to interact with others.
- d) People with sensory disabilities. Individuals who experience difficulties with their five senses which include hearing impairment (deaf disability), speech (speech disability), and vision (speech disability) (Sugiono et al, 2014).

One of the conditions experienced by Dr. Romi is a condition where he has a disability in his legs, namely paraplegia. Paraplegia is a condition with damaged limbs paralyzed and affecting the limbs, usually. This can occur because there is damage to the brain or spinal cord which then affects the muscles in the legs or pelvis. As a result, a person will lose motor and sensory functions (M Arun and Antonio Orlacchio, 2022). In fact, Dr. Romi's condition, as previously explained, did not discourage him from fighting for his rights.

A person with a disability must also have the status, rights, responsibilities and duties as a citizen like other non-disabled people. The 1945 Constitution of the Republic of Indonesia emphasizes that in moving towards equality and justice, every citizen must receive attention and facilities in order to obtain the same opportunities and benefits.

The most important stage in the successful process of a public policy is the implementation of the policy. When a policy is made but not implemented, the policy will not be successful or realized. The case of Dr. Romi is an example that this public policy has not been realized properly.

Fulfillment of rights in the world of work for persons with disabilities is contained in the UUPD in Article 11 letters (a) to (h) which states that:

- a. Employment, entrepreneurship and cooperative rights for Persons with Disabilities include the right to obtain work organized by the Government, Regional Government or private sector without discrimination.

- b. Receive the same wages as workers who are not Persons with Disabilities in the same type of work and responsibilities.
- c. Obtaining Reasonable Accommodations on the job.
- d. Not dismissed for disability reasons.
- e. Getting the program back to work.
- f. Fair, proportional and dignified work placement.
- g. Obtaining the opportunity to develop a career path and all the normative rights inherent in it, and
- h. Advancing your business, having your own job, being self-employed, developing cooperatives, and starting your own business.

Drg Romi is a person with disabilities who has rights at work to fulfill justice and prosperity in substance. The statement contained in the article above is also the basis for Dr. Romi's demands for the group which should be obliged to defend the revocation of its graduation status, especially in letters (a) and (g). Article 26 of the UUPD states that people with disabilities must have the right to be free from discrimination, neglect, abuse or forced use.

Article 3 letter (a) of the UUPD states that "Realizing full and equal respect, promotion, protection and fulfillment of human rights and basic freedoms of Persons with Disabilities" is the basic form of regulatory defense that needs to be implemented.

When related to the case of doctor Romi, the rights of people with disabilities mean that they have the right to non-discrimination, personal freedom, equal justice, education, legal protection, equal employment opportunities, peace in social life, the ability to express opinions, the ability to discuss and get information, equal treatment in life and get a good attitude from any party, especially the government (H Riana Yuni et al, 2016).

Sustainability and a decent standard of living for people with disabilities by obtaining the right to be free from discrimination in the scope of work. Such as fulfilling other basic needs, for example in the field of education, health, public services, politics and others, including getting a job. Employment is crucial for people with disabilities because there are still quite a lot of them who don't have jobs and are ultimately shunned by some in society. This is what gives rise to a lot of negative stigmas from society towards people with disabilities that is greater than the feeling of caring (Susiana, 2019).

The role of the government is very reliable in the sense of being a forum for seeking to enforce the protection of the rights contained in the Articles of the UUPD for persons with disabilities, including:

- a) Article 45 explains that the government's role must be to ensure selection, determination, on-the-job training, continuity during employment and in developing a person's career disabled person people with disabilities must receive justice without discriminatory attitudes.
- b) Article 46 explains that giving equal opportunities for people with disabilities in job training with institutions that facilitate and are inclusive of people with disabilities.
- c) Article 54 explains that socializing the provision of facilities, ensuring the benefits of social security programs in the work environment and providing encouragement to private entrepreneurs to employ special needs workers.

3.2. Legal Protection for Persons with Disabilities Against Discriminatory Treatment in the Recruitment of Candidates for State Civil Apparatus (CASN)

Legal protection is a human value, in Indonesia human rights are one form of it. According to Koentjoro Poerbopranoto, human rights cannot be revoked or are fundamental, meaning that anyone has the right to have them (Moch. Sudi, 2016).

Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment". In fact, many job vacancies still choose to include requirements for her applicant by having to be physically healthy, in this condition a small discriminatory attitude is formed (H Jazim, 2016).

Getting a job is as important as it is for someone without a disability. The stigma that causes obstacles for people with disabilities in the world of work is still often normalized, especially if the victim of discrimination is a woman. Women are considered weaker and become targets for employers, even authorities or government officials. Indonesia still has many cases of discrimination against people with disabilities, including in government agencies, one of which is CASN recruitment.

The discrimination case that occurred against Doctor Romi in Solok Regency is a clear example of this attitude discriminatory for people with disabilities that still often occurs even in government agencies. Starting in 2016, Doctor Romi's condition was first stated by medical doctors to have weakened legs after giving birth to her second child. This condition requires Doctor Romi to use a wheelchair for his daily activities, including working as a dentist at the Talunan health center, South Solok Regency. Drg Romi stated that his disability condition does not interfere with him in serving his patients every day because of the medical equipment in the health center. This is proven by the fact that in 2017 he was still offered a contract extension (BBC NEWS Indonesia: 2019). The following year, in 2018 Drg Romi participated in the selection of Candidates for Civil Servants (CPNS) and was declared successful in moving on to the next stage with the best score. Injustice occurred three months later after he was declared to have passed. The Regent of Solok Regency issued a Certificate of cancellation of Doctor Romi's graduation and stated that he was physically unfit. Of course, this was opposed by Dr. Romi and assisted by his attorney's fight for rights and legal protection as his claim.

Dr. Romi's case certainly has the potential for discrimination from authorized officials because the reasons for revoking the qualification are baseless. In fact, in a special test with a simulation demonstration at the General Hospital, it was declared successful. The prosecution of Dr. Romi continued until the service of letters of demand to the state palace, the Minister of Health, the Minister of Home Affairs and other officials. As a result, Dr. Romi received positive support from the staff president at that time, Moeldoko. The Minister of Home Affairs at that time, Tjahjo, too promised that Drg Romi will enter as a Civil Servant in 2019. After being asked for further accountability, the Regent of Solok Regency finally apologized to Drg Romi and at the same time restored Drg Romi's rights and status as a CPNS. The restoration of this right was realized and until 2024, Drg Romi was placed at the Solok Regency Regional General Hospital with the status of a Civil Servant (Liputan 6, 2019).

The opportunity for people with disabilities offered by the government in CASN recruitment is a great opportunity because of course, even in special formations or general formations, people with disabilities can fit into these requirements. It is very

unfortunate that in its implementation there are still many cases of discrimination in the process.

Cases of discrimination against people with disabilities in Indonesia whose resolutions are brought to court are still relatively rare. Resolving problems or cases in cases of discrimination in CASN recruitment can be resolved through mediation efforts or non-litigation channels by discussing them carefully with the parties involved or sue to the State Administrative Court (PTUN) (Z Abidin Pakpahan, 2013). In accordance with Article 144C in paragraph (1) of Law Number 51 of 2009 concerning the PTUN which states that "Every person involved in a case has the right to obtain legal assistance" however, Drg Romi did not take the opportunity to file a lawsuit with the PTUN even though his initial aim was because of his efforts. In urging the government to be accountable for its rights, it had already received clarity before it filed the lawsuit.

Dr. Romi's experience is an illustration of the government's unsuccessful ability to provide protection for people with disabilities, especially in the CASN recruitment process. Equal employment opportunities for every citizen are reaffirmed in Law Number 20 of 2023 concerning ASN Article 37 which reads "Every Indonesian citizen has the same opportunity to become an ASN employee after fulfilling the requirements". The requirements for CASN formation in 2019 have been regulated in such a way as to facilitate the rights of people with disabilities, but again it all depends on implementation in the field. This statement in Article 37 of the ASN Law emphasizes that discriminatory behavior against people with disabilities is a violation that can be linked to the Human Rights Law Number 39 of 1999. Discrimination is a human rights violation because in the situation, the more powerful party feels they can corner someone under their control. This is exemplified in the case of Dr. Romi.

There are several legal protections that can be a way out for the government to enforce and implement existing regulations regarding CASN recruitment, such as:

1. Establish a mandatory quota for persons with disabilities for each region in CASN recruitment. Implementing quotas in the long term could be a solution so that each region has consistency in the number of applicants with disabilities. The existence of a special formation in CASN recruitment also provides an alternative route for people with disabilities because in this formation, CASN who have the criteria in the formation are not mixed with non-disabled CASN.
2. Issue special laws for people with disabilities without discrimination in the work environment, both among fellow workers and regulations for employers.
3. Establish strict sanctions against employers and fellow workers who try to obstruct or interfere with the right of people with disabilities to work (A Diksa Wiraputra, 2021). Behaving fairly and not being discriminatory is an easy thing if inside an environment accustomed to such good things.

4. CONCLUSION

The implementation of the rights of persons with disabilities cannot yet be implemented. The regulations governing the UUPD and the ASN Law cannot yet provide a strong basis for persons with disabilities who are victims of discrimination, especially in CASN recruitment. Because of this, not many people with disabilities who have experienced the same thing as Dr. Romi have taken their cases to court.

The government as a representative of the state should create anti-discrimination laws and use them as an effort to protect against the law for people with disabilities who are victims of oppression or who are experiencing discrimination. The government must reconsider if its policies cause a group of people to feel discriminated against, especially if

the regulations state a person's physical limitations because a person's intelligence and ability to be treated fairly by law cannot be differentiated because of physical limitations.

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