

Legal Protection for People with Mental Disorders According to the Welfare Concept of the Indonesian State

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ABSTRACT

This study aims to determine the extent of legal protection for people with mental disorders according to the Indonesian state welfare concept. Legal protection is an effort to protect human rights which aims to protect the interests of every citizen in a form of service that must be provided by the government to its citizens to provide a sense of security and peace to every citizen of society. As regulated under the 1945 Constitution of the Republic of Indonesia, the state's responsibility for the protection of human rights is a very important matter. As described in Article 28I Paragraph (4) which reads: "protection, promotion, enforcement and fulfillment of Human Rights is the responsibility of the State, especially the government. Regarding the protection of the rights of people with mental disorders, the government has also passed a special regulation, namely law no. 18 of 2014 concerning Mental Health. To reinforce the government's role in fulfilling the human rights of people with mental disorders, it is included in Article 81 of Law No. 18 of 2014 concerning mental health. In addition, the government is also obliged to be responsible for placing appropriate facilities and infrastructure in fulfilling the right to life for people with mental disorders. This has been regulated in article 77 of Law no. 18 of 2014 concerning Mental Health, reads: "The Government and Regional Governments have the duty and responsibility to provide facilities and infrastructure in the implementation of Mental Health Efforts".

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1. INTRODUCTION

Humans are creatures that were created with reason and thought, distinguishing between good and bad things, and humans are also the noblest and most special creatures when compared to all other creations of power. Most humans live in a social structure consisting of certain groups which in turn can compete with or help other humans in kinship relations or it can be interpreted that humans are social beings. And humans also have groups based on physical characteristics (skin color, gender, nature, race, and religion). because of this special feature, humans are always interesting to study and discuss, as humans must interact with each other because humans are social beings, and humans are creatures that cannot live without other humans.

Legal protection is an effort to protect human rights in order to protect the interests of every citizen in a form of service that must be provided by the government to its citizens to provide a sense of security and peace to every citizen of society. As regulated under the 1945 Constitution of the Republic of Indonesia, the state's responsibility for the protection of human rights is a very important matter. As described in Article 28I Paragraph (4) which reads: "the protection, promotion, enforcement and fulfillment of Human Rights is the responsibility of the State, especially the government[1].

Human rights are rights that are owned by humans from the womb until they are born in the world which cannot be separated from their essence because they are sacred. Human Rights in principle cannot be revoked and contested because they are universal. In formal law human rights are included in article 1 paragraph (1) of Law no. 39 of 1999 concerning Human Rights states that: "human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of respect and protection of human dignity. One of the basic

human rights is the right to mental and spiritual health. As already regulated in Law Number 36 of 2009 concerning Health states: "health is a healthy state, both physically, mentally, spiritually, and socio-economically". While mental disorders are a collection of abnormal conditions, both related to mental. Or what can be called People with Mental Disorders (ODGJ) thus where people with mental disorders are not included in an unhealthy condition, because they cannot live their lives like humans in general. As for People with Mental Disorders who can live like normal people in general with routine treatment. And there are still some people with mental disorders who are treated badly by their surroundings, just as people with mental disorders can still live like other normal people[2].

Regarding the protection of the rights of people with mental disorders, the government has also passed a special regulation, namely law no. 18 of 2014 concerning Mental Health. To reinforce the government's role in fulfilling the human rights of people with mental disorders, it is included in Article 81 of Law No. 18 of 2014 concerning mental health, reads:

- 1.1 The Government and Regional Governments are required to carry out rehabilitation for ODGJ who are neglected, homeless, threatening the safety of themselves or others, or disturbing public order or provisions.
- 1.2 ODGJ neglected, homeless, threatening the safety of himself and others or disturbing public order or security as referred to in paragraph (1) includes ODGJ:
 - a. Not capable;
 - b. Does not have a family, guardian or guardian: and
 - c. His family is unknown.

In addition, the government is also obliged to be responsible for placing appropriate facilities and infrastructure in fulfilling the right to life for people with mental disorders. This has been regulated in article 77 of Law no. 18 of 2014 concerning

Mental Health, reads: "The Government and Regional Governments have the duty and responsibility to provide facilities and infrastructure in the implementation of Mental Health Efforts".

As we all know, there are still many crazy people roaming the area of West Java, especially in the Sukabumi district, where they themselves should have regulated their rights and obligations to obtain facilities and infrastructure as stipulated in Law Number 18 of 2014 concerning Health. Soul. One example of a case in Sukabumi district is one against a person with mental disorders, namely sexual harassment of a woman who is suspected of being raped by an unknown man, the action was discovered when the woman who was suspected of being a person with mental disorders was 6 months pregnant. And other examples of cases such as suspected people with mental disorders beat motorbike riders and had an argument, and the victim was a man aged 32 years. However, the victim could understand the condition of the person with mental disorders but unfortunately there was no follow up from the local government instead let people with mental disorders roam freely again and the victim did not report it to the police because the victim did not feel harmed either materially or physically. It can be concluded that the government must be more pro-active in overcoming the problem of legal protection, especially for people with mental disorders. That those with mental disorders still receive discriminatory treatment, receive stigma, and are excluded from their environment.

The large number of sufferers of people with mental disorders who do not get medical treatment is due to factors such as economic factors. And the fact is that there are still many people with neglected mental disorders, homeless people who do not get legal protection as stipulated in Law no. 18 of 2014 concerning Mental Health, that people with mental disorders who don't have a family, can't afford it, don't know their families have the right to get infrastructure and rehabilitation facilities from the local government for efforts in their mental health.

The role of the Social Services which always works closely with mental hospitals is a reflection of legal protection for sufferers of people with mental disorders. Of all the rules governing the right to life for people with mental disorders, the authors can conclude that the Government and regional governments are obliged to take full responsibility for the provision of health facilities and infrastructure and treatment and rehabilitation for people with mental disorders so that they can live a decent and responsible life. on the duty of dignity as a human being.

Of all the rules that have regulated the right to life for people with mental disorders, the authors can conclude that the Government and regional governments are obliged to take full responsibility for the provision of health facilities and infrastructure and treatment and rehabilitation for people with mental disorders so that they can lead a decent and responsible life. on the duty of dignity as a human being.

Based on the background of these problems and regarding the problems that occur, maybe even many people are worried about the existence of people with mental disorders who are currently running around a lot, but the role of the government can still be said to be negligent in protecting and dealing with people with mental disorders. So the author is interested in studying this problem with a journal entitled "**LEGAL PROTECTION OF PEOPLE WITH MENTAL DISORDERS ACCORDING TO THE CONCEPT OF THE WELFARE OF THE COUNTRY OF INDONESIA**" in which the author examines how the government's role is in overcoming and dealing with people with mental disorders who are still troubling the community[3].

2. METHODS

This research is a type of normative legal research that is descriptive in nature with a qualitative approach. The type of data used is secondary data. Secondary data obtained

from library materials that are relevant to the problems studied. The data sources used are secondary data sources obtained from primary, secondary and tertiary legal materials. The data collection technique used is the study of documents or library materials.

3. RESULTS AND DISCUSSION

4.1 *Legal Protection for People with Mental Disorders*

Article 1 point 3 of Law Number 18 of 2014 concerning Mental Health stipulates that People with Mental Disorders, hereinafter abbreviated as ODGJ, are people who experience disturbances in thoughts, behaviors and feelings which are manifested in the form of a set of symptoms and/or significant changes in behavior, as well as can cause suffering and obstacles in carrying out the function of people as human beings[3].

Mental disorders can occur in all circles, both teenagers, adults, and the elderly. Mental disorders do not look at age, gender and physique. Mental disorders also occur in people who live in cities and rural areas. The results show that the most age with mental disorders is adulthood. Adult age is a productive age where in their time they must be able to independently support themselves. This also allows adults to have more complex problems and are at risk of experiencing mental disorders. Mental disorder is a syndrome or pattern of behavior or psychology of a person which is clinically significant and is typically associated with a symptom of suffering (distress) and weakness or limitation (impairment/disability) in one or more important functions of the human being or associated with an increased risk of death, pain, disability or loss of independence. A mental disorder is a

psychological or behavioral pattern that is generally related to stress or an unrecognized mental disorder[4].

As part of the normal development of the disorder is defined as a combination of effective, behavioral, cognitive or perceptual components, associated with a particular function in the brain or nervous system areas that carry out human social functions. The discovery and knowledge of mental health conditions has changed over time and through changing cultures, and there are still differences regarding definition, assessment and clarification, although standardized guiding criteria have been widely used[5].

In the medical and psychological world, mental disorders are defined as a mental illness with psychological or behavioral manifestations associated with real suffering and poor performance and caused by biological, social, psychological, genetic, physical, or chemical disorders, also known as severe mental disorders. Schizophrenia, although there is still much discussion about psychopathy or psychosis which is also one of several mental disorders. As for the rights of people with mental disorders (ODGJ) according to Law Number 18 of 2014 Concerning Mental Health Article 70: ODGJ have the right to:

- 1) Get mental health services facilitated by easily accessible health services;
- 2) Get mental health services in accordance with mental health service standards;
- 3) Receive guarantees for the availability of psycho-pharmacy drugs according to their needs;
- 4) Give approval for medical action performed on him;

- 5) Obtain honest and complete information on mental health data including actions and treatment that have been or will be received from health workers with competence in the field of mental health;
- 6) Get protection from every form of neglect, violence, exploitation, and discrimination;
- 7) Get social needs according to the level of mental disorders; and
- 8) Managing his own property or handed over to him: (can only be canceled by court order)[3].

Article 28 I paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment. Mental health efforts are carried out on the principles of justice, humanity, benefit, transparency, accountability, comprehensiveness, protection and non-discrimination. The humanitarian principle in this case is that the organizers of mental health efforts for ODGJ are carried out humanely and so on. People with mental disorders not only get adequate mental health services but also must get legal protection related to people with mental disorders. The case above has proven that people with mental disorders have not fully received the mental health efforts they should have received in order to realize an optimal degree of mental health.

As for Legal Protection Arrangements for People with Mental Disorders in Health Services in the Structure of Indonesian Legislation Regulations regarding legal protection for

people with mental disorders in health services are contained in various regulations including:

- 1) Article 2 and Article 4 paragraph (1) Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling for People with Mental Disorders. Article 2 is related to the purpose of the Arrangement for Handling Shackling in ODGJ and Article 4 paragraph (1) related to how to deal with shackling. If the regulations regarding legal protection for sufferers of mental disorders are viewed from Article 8 of Law Number 12 of 2011 concerning Formation of Legislation, it can be interpreted that Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling in Persons with Mental Disorders is a regulation that occupies the lowest degree is valid and binding.

This implies that Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling in Persons with Mental Disorders is basically a formal structure born as a consequence of the force of enactment of Article 8 of Law Number 12 of 2011 concerning Formation of Legislation, in which regulations are issued by the Minister Health as an institution that plays a role and is responsible for providing protection to people with mental disorders so that they can obtain guarantees for the regulation of

their rights as sufferers of mental disorders.

Article 2 and Article 4 paragraph (1) Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling in People with Mental Disorders if interpreted by the theory of Hans Kelsen and Hans Nawiasky is a further regulation of Law Number 18 of 2014 concerning Mental Health. This is evidenced by one of the legal bases for the formulation of Minister of Health Regulation Number 54 of 2017 concerning Handling of Shackling for People with Mental Disorders in remembering to include Law Number 18 of 2014 concerning Mental Health. Article 70 paragraph (1) of Law Number 18 of 2014 concerning Mental Health regulates legal protection for people with mental disorders in health services as part of the rights of people with mental disorders.

- 2) Article 3 and Article 10 of Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for Law Enforcement Interests. Article 3 is related to the scope of mental health examinations for law enforcement purposes and Article 10 is related to mental health examination activities for legal purposes. Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for

Law Enforcement Interests, its formation was ordered based on Law Number 44 of 2009 concerning Hospitals. If the regulations regarding legal protection for people with mental disorders are reviewed from Article 8 of Law Number 12 of 2011 concerning Formation of Legislation, it can be interpreted that Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for the Purpose of Law Enforcement is a regulation which occupies the lowest degree is valid and binding.

This implies that Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for the Interest of Law Enforcement is basically a formal structure born as a consequence of the force of enactment of Article 8 of Law Number 12 of 2011 concerning Formation of Laws and Regulations, in which regulations are issued by the Minister of Health as an institution that plays a role and is responsible for providing protection to people with mental disorders so that they can obtain guarantees for regulating the rights of people with mental disorders.

Article 3 and Article 10 of the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for Law

Enforcement Interests if interpreted with the theory of Hans Kelsen and Hans Nawiasky are further arrangements of Law Number 44 of 2009 concerning Hospitals[6].

As the regulations above to provide legal protection for people with mental disorders means that the Indonesian state must provide certainty and legal protection, especially if Indonesia, if viewed from the concept of the welfare of the Indonesian state, where the provisions of paragraph IV of the preamble of the 1945 Constitution are mandated, that; one of the functions of the government to achieve state goals, namely; "to protect the entire Indonesian nation and all of Indonesia's bloodshed and to advance public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice" then in paragraph IV of the preamble of the 1945 Constitution it clearly conveys a message to state administrators to always seeks to advance public welfare, which means that state administrators (government) are obliged to continuously strive to achieve the welfare of their citizens. This is a constitutional mandate that cannot be simply ignored. In the same way, the government cannot ignore people with mental disorders[6].

4.2 What is the government's role in dealing with people with mental

disorders who are still roaming the streets

The right to health is one of the basic rights that every human being has. The Law of the Republic of Indonesia Number 36 of 2009 concerning Health states that "health is a healthy state, both physically, mentally, spiritually and socially which enables everyone to live productively socially and economically". Whereas "mental disorders are a collection of abnormal conditions, both physically and mentally related" Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights Article 42 confirms that:

Every citizen who is elderly, physically disabled and/or mentally disabled has the right to receive special care, education, training and assistance at the expense of the State, to guarantee a decent life in accordance with his/her human dignity, increase self-confidence and the ability to participate in the life of society, nation and According to the statement of the article, people with mental disorders are guaranteed the right to receive special care and assistance at the expense of the State to guarantee a decent life in accordance with their human dignity. This is also supported by the Law of the Republic of Indonesia Number 36 of 2009 concerning Health Articles 147 and 149 stating that Article 147 (1) Efforts to cure people with mental health disorders are the responsibility of the Government, regional governments and the community[7].

The healing efforts referred to in paragraph (1) are carried out by authorized health workers and in the right place while respecting the basic rights of sufferers. (3) In order to care for sufferers of mental health disorders, special health service facilities are used that meet the requirements and are in accordance with the provisions of laws and regulations. Paragraph (2) states that "the government, local government and the healing efforts referred to in paragraph (1) carried out by authorized health personnel and in the right place while respecting the human rights of sufferers. (3) To care for

sufferers of mental health disorders, special health service facilities are used that meet the requirements and are in accordance with statutory provisions. paragraph (2) which states that "the government, regional governments and the community are obliged to carry out treatment and care in health service facilities. for sufferers of mental disorders who are neglected, homeless, threatening the safety of themselves and/or others, and/or disturbing public order and/or security. However, sometimes the government is negligent in this effort. Where the government should play an active role in dealing with cases of people with mental disorders[7].

For this reason, the government should be able to take more comprehensive steps related to efforts to deal with mental health, which consist of promotive, preventive, curative and rehabilitative steps. These steps can be realized through assessment efforts based on healthy family indicators, provision of mental health service facilities and education starting at the elementary school level, provision of medicines, and appropriate mental health services for groups with disabilities. All of these efforts must be carried out consistently and continuously strengthened by all elements of society so that cases of discrimination such as shackling can be prevented.

Handling efforts that are carried out in half measures can result in long-term impacts that are not good. He gave an example of cases of recurrence that often occur in patients with mental disorders (ODGJ). According to him, this can actually happen because the treatment of mental disorders with acute conditions in a mental hospital is only covered for 23 days by the social security system. This causes when the patient leaves the hospital, the patient does not receive monitoring from a mental health worker so that he experiences a relapse. "For this reason, a comprehensive and collaborative mental health service system is needed between community service institutions such as Puskesmas, sub-districts,

sub-districts to RT/RW to carry out monitoring for survivors of ODGJ," he said. This comprehensive handling effort by the government is in accordance with the provisions of the 1945 Constitution (UUD) Article 28H paragraph 2 which mandates the state to guarantee the protection of people's rights. receive monitoring from mental health workers so that they experience a relapse. "For this reason, a comprehensive and collaborative mental health service system is needed between community service institutions such as Community Health Centers, Districts, Villages and RT/RW to carry out monitoring for survivors of ODGJ," he explained. This comprehensive handling effort by the government is in accordance with the provisions of the 1945 Constitution (UUD) Article 28H paragraph 2 which mandates the state to guarantee the protection of people's rights[8].

4. CONCLUSION

Mental disorders can occur in all circles, both teenagers, adults, and the elderly. Mental disorders do not look at age, gender and physique. Mental disorders also occur in people who live in cities and rural areas. The results show that the most age with mental disorders is adulthood. Adult age is a productive age where in their time they must be able to independently support themselves. This also allows adults to have more complex problems and are at risk of experiencing mental disorders. However, the right to health is one of the basic rights that every human being has. The Law of the Republic of Indonesia Number 36 of 2009 concerning Health states that "health is a healthy state, both physically, mentally, spiritually and socially which enables everyone to live productively socially and economically". While "mental disorders are a collection of abnormal conditions, both related to physical and mental" Republic of Law Mental disorders can occur in any circle, both teenagers, adults, and the elderly. Mental disorders do not look at age, gender and physique. Mental disorders also occur in people who live in cities and rural areas. The

results show that the most age with mental disorders is adulthood. Adult age is a productive age where in their time they must be able to independently support themselves. This also allows adults to have more complex problems and are at risk of experiencing mental disorders. However, the right to health is one of the basic rights that every human being has. The Law of the Republic of Indonesia Number 36 of 2009 concerning Health states that "health is a healthy state, both physically, mentally, spiritually and socially which enables everyone to live productively socially and economically". Whereas "mental disorders are a collection of abnormal conditions, both physically and mentally related" Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights Article 42 confirms that: Every citizen who is elderly, physically disabled and/or disabled mental disorders have the right to receive special care, education, training and assistance at the expense of the State, to guarantee a decent life in accordance with their human dignity, to increase self-confidence and the ability to participate in the life of society, nation and state. People with mental disorders are included in the category of mental disabilities, in accordance with In the statement of the article, people with mental disorders are guaranteed the right to receive special care and assistance at the expense of the State to guarantee a decent life in accordance with their human dignity.

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For this reason, the government should be able to take more comprehensive steps related to efforts to deal with mental health, which consist of promotive, preventive, curative and rehabilitative steps. These steps can be realized through assessment efforts based on healthy family indicators, provision of mental health service facilities and education starting at the elementary school level, provision of medicines, and appropriate mental health services for groups with disabilities. All these efforts must be carried out consistently and continuously strengthened by all elements of

society so that cases of discrimination such as shackling can be prevented and also to reduce and prevent the number of people with mental disorders.

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