



THE PROTECTION AND PEOPLE'S RIGHTS DISABILITY AS CONSTITUTIONAL RIGHTS THROUGH THE PUBLIC SERVICE REGULATIONS

Dedi Putra and Darwin Manalu

Center of Public Policy and Human Rights Studies, Faculty of Law Lampung University

ABSTRACT

The respect, protection, and fulfillment of the rights of persons with disabilities is an obligation of the state as stipulated in Article 42 of Law No. 39 of 1999 on human rights. Persons with disabilities has been experiencing a lot of discrimination that has not met the right of persons with disabilities. Disability should have the same opportunity in the effort to develop itself. Fulfillment of the rights of persons with disabilities is still considered as a social problem that the new policy with its rights is social security, social assistance, and increase social welfare. Protection and fulfillment of the rights of persons with disabilities can be done by providing and facilitating access to public services. The right to obtain public services should also be reserved for disabled people. The right to obtain public services for disabled people should be seen as a constitutional right. The regulation of public services should provide protection and fulfillment of the constitutional rights of the disabled in obtaining public services. This paper will discuss the law enforcement ideal in strengthening the rights of persons with disabilities as constitutional rights through fair regulation of public services. This paper uses a method normative approach to legislation.

Keywords: Protection and Fulfillment of The Disability Rights, Constitutional Rights, and The Regulation of Public Services

1. Introduction

Indonesia as a member of the United Nations have ratified the Convention on the Rights of Persons with Disabilities which was then poured in Law No. 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities, ratified on Tuesday, October 18, 2011. The Convention on the Rights of Persons with Disabilities (CRPD) is an international normative framework established to promote, protect and ensure the rights rights of people with disabilities as part of human rights. In particular arrangements on human rights stipulated in Law No. 39 of 1999 on Human Rights (hereinafter referred to as the Human Rights Act). The Human Rights Act also regulates the rights of persons with disabilities, namely in Article 42 of the Human Rights Act states that:

Every citizen who is elderly, physically disabled or mentally handicapped is entitled to receive care, education, training, and special assistance at the expense of the state, to ensure a decent life in accordance with the dignity of humanity, increase a confidence, and ability to participate in community life, nation, and country.¹

¹Undang-Undang Nomor 39 tahun 1999 tentang Hak Asasi Manusia.

*Corresponding author.

E-mail address: dediputra1412011092@gmail.com

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The provisions of Article 42 of Law Human Rights and Law with disabilities long, namely Law No. 4 of 1997 on Persons with Disabilities was formulated with disabilities synonymous with the connotation of "disability" is included. The use of the word "disabled" in both the formulation of norms and in the implementation of the norm is more emphasis on compassion. When it should be persons with disabilities not to be pitied, but must be filled with all of their rights.

The rights of persons with disabilities are also guaranteed in the Constitution as the constitutional rights especially those in Chapter XA on Human Rights. As it must be held constitutional rights action against the fulfillment of these rights. The fulfillment of these rights would not be released from the obligation of government as one of the power holders. The government has the power to create rules / policies as a representation of the government to realize and protect these rights. The government's obligation set out in Article 28 that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. In accordance with the mandate of the constitution when it was put in the constitution of human rights then there are two possibilities: first, the government will be weak when it does not realize that right and secondly, the government will be strong when the realization of these rights. So the best option is that the government must realize the constitutional rights of persons with disabilities through the provision of good accessibility.²

Various problems with a disability are caused by a warped perspective of persons with disabilities are still on charity approach based not on human rights based. The perspective has spawned a product of government policy that negates the existence of persons with disabilities. This has resulted in persons with disabilities to live in the restrictions, obstacles, difficulties, and the reduction or removal of the rights of persons with disabilities. Conditions that make people with disabilities become an integral part of society in general, which then injure the principle of equality (equality). Persons with disabilities must be seen as human beings with the same rights and opportunities towards a prosperous life, self-contained, and without discrimination.³

Based on the exposure that has been described above, there are several issues to be discussed further How to shape the policy of the affirmative government in realizing the principle of equal rights to disabled people to gain accessibility through public service regulations? And How to understand "State Welfare Law" justifies the rights of persons with disabilities as a constitutional right.

2. Materials and Methods

To answer the problems, the writer uses the paradigm of constructivism,⁴ with the type of Socio legal.⁵ It is to take out of the law of the objective world to the subjective as an effort to put the law is no longer in a vacuum, but causality interact with some aspects of intellectual and social Police in selecting and taking appropriate legal action and do not violate human rights. Reflective and interpretive approach are used to analyze referring to the tradition of hermeneutic as peculiar in human studies. Hermeneutic method is used to gain an

² Jessica M. F. Huges "Constructing a United Disability Community: The National Council on Disability's Discourse of Unity in the Deliberative System around Disability Rights," *Journal of Public Deliberation*: Vol. 12: Iss. 1, Article 8, 2016

³ Arthur W. Blaser, "Making Rights a Reality? Disability Rights Activists and Legal Mobilization by Lisa Vanhala", (Cambridge, UK and New York: Cambridge University Press, 2011)

⁴ Egon G. Guba, Yvonna S. Lincoln, *Berbagai Paradigma yang Bersaing dalam Penelitian Kualitatif*, dalam Norman k. Denzin dan Yvonna S. Lincoln, Ed. *Handbook of Qualitative Research* Terj. Daryatno Dkk (Yogyakarta: Pustaka Pelajar, 2011)

⁵ Soetandyo Wignjosoebroto, *Ragam Penelitian Hukum dalam Sulistyowati Irianto dan Shidarta Ed. Metode Penelitian Hukum Konstelasi dan Refleksi* (Jakarta: Yayasan Obor, 2011)

understanding of the findings that is obtained from records constructive dialogue. Doing by way of explaining the processes formulationg the meaning and explaining how the meanings of happenings that are contained in the language and actions of law enforcement officers of the law, as an attempt to enforce the law. Furthermore, describing the results of reading and interpreting by arranging the construction of prevention of human rights violations.

3. Result and Discussion

3.1 Affirmative government policies in realizing the principle of equal rights to disabled people to gain accessibility through public service regulations.

In "The Objectivist Modest View of Human Rights" that human rights as set forth in the constitution of their constitutional rights, the relationship tends to be normative (more specifically can be called right to sue). When this right is manifested in every peritiwa law will help everyone have an equal opportunity to earn a decent living.⁶In Table 1, as has been the author described it appears that at the level of implementation rules relating to the rights of persons with disabilities, there are still many rights of persons with disabilities as constitutional rights are neglected.⁷

In relation to the public service in accordance with Article 4 letter c, g and j Law 25 of 2009 on Public Service that public service delivery are basically equal rights, non-discriminatory and accommodate the facility and special treatment for vulnerable groups.⁸It is clear that in fact, mainstreaming these provisions are not fulfilled properly. The law on Human Rights tend to be just like scribbles the paper without meaning. In fact, if we refer to the perspective of universalism that human rights should be viewed as "human being".⁹The perspective thus gave birth to a product of government policy that is based on "human rights based not charity-based."

Change the paradigm of "charity-based" towards human rights or constitutional rights based based will consequence affirmative forms of government policies towards the protection of the constitutional rights of persons with disabilities. By doing that transition, it will be a little outlines some of the things that can be an instrument for protected the constitutional rights of persons with disabilities.

Table 1. Instrument To Protected Constitutional Rights of Persons with Disabilities

No.	Instrument Protection of Constitutional Rights Disability
1	Policy related to the assertion that the child with disabilities have the same rights as non-disabled children to attend common school / regular (either in the form of regulatory and non-regulatory)
2	The need for strict monitoring of the right to education for persons with disabilities
3	Early orientation program for the accessibility of healthcare to persons with disabilities
4	The need for a shift in perspective that the "defect" is not synonymous with "sick"
5	Need for increased public facilities with a wide range of procurement for the needs of persons with disabilities
6	Divergences on the realization of the obligations of the quota of 1% of institutions in the world of work for persons with disabilities

⁶Allen Buchanan, "Equality and human Rights", dalam Article Politics, Philosophy and Economics (London: Sage Publication Ltd, 2005)

⁷Pauline Conroy, "Disability Rights-Justice Delayed", in Article Studies (Dublin: TASC, 2010)

⁸Pasal 4 UU No. 25 tahun 2009 Tentang tentang Pelayanan Publik.

⁹Yudi Latif, "Negara Paripurna; Historis, Rasionalitas, dan Aktualitas Pancasila", (Jakarta: PT Gramedia Pustaka Utama, 2012)

According to the authors if the instrument as detailed in table 2 are realized, the constitutional rights of persons with disabilities will be met. If the rights of persons with disabilities are met, then it is definitely equal rights for persons with disabilities will be realized.

3.2 The Concept "State Welfare Law" and "Justification" rights of persons with disabilities as a constitutional right.

Theory welfare state law is the combination of the concept of state law and the welfare state.¹⁰ The main focus of state welfare laws is to increase welfare by giving an active role to the state to organize the general welfare (*bestuurzorg*) through public services, at the same time contribute to maintaining order and security of people in order to realize the objectives of the state, namely the prosperity and welfare of the masses (*bonum Publicum*) and not the welfare of certain groups (*coetuum particulare bonum*) or individual (*bonum privatum*).¹¹

In the idea of state welfare laws, the rights of persons with disabilities as the constitutional rights become destinations be counted.¹² In the state's welfare laws following I will describe through theory Z Brian Tamanaha in table form.

Tabel 2: "The Thickest Substantive Version"¹³

No	Forms	Explanation
1	<i>Formal Legality</i>	State laws characterized as having properties of which include: Principles <i>propektivitas</i> and should not be retroactive, apply common-binding on everyone, obviously the public, and relatively stable. In this sense the law <i>pediktibilas</i> highly preferred.
2	<i>Democracy and legality</i>	Vibrant democracy that is offset by a law guaranteeing legal certainty. However, as a procedural mode of legitimation, democracy also contain similar limitations formal legality so that it can also bring bad practices of authoritarian power.
3	<i>Individual Rights</i>	The existence of the guarantee and protection of property rights, private contracts, and autonomous person.
4	<i>Social Welfare</i>	Equations that are fundamental and essential, welfare, and preservation of maintaining about a man in the community.

If we understand carefully that individual rights were later authors interpret their constitutional rights disabilities there is a correlation with the "Social Welfare" or state welfare laws.¹⁴ Welfare is a top priority in the idea of the welfare state law puts the "social interest" as the "central substantial" and should not be reduced to a "marginal residual". In the context of

¹⁰ Triana Sofiani, "Hak Konstitusional Buruh Perempuan dalam Bingkai Negara Hukum Kesejahteraan Di Indonesia", dalam artikel *Muwazah*, Vol. 6 No. 1, hlm. 107.

¹¹ Daniel F. Piar, *A Welfare State of Civil Rights: The Triumph of the Therapeutic in American Constitutional Law*, 16 *Wm. & Mary Bill Rts. J.* 649 (2008), <http://scholarship.law.wm.edu/wmborj/vol16/iss3/2>, p. 651.

¹² William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 *Fordham L. Rev.* 1821 (2001). Available at: <http://ir.lawnet.fordham.edu/flr/vol69/iss5/12>, p.1850.

¹³ Brian Z. Tamanaha, "On The Rule of Law", (Cambridge : University Press, 2004)

¹⁴ *Ibid.*

the embodiment of the constitutional rights of persons with disabilities is gaining justification by the understanding of the welfare state law. By justifying the constitutional rights of persons with disabilities through the regulation of public services better understand the meaning of the welfare state will look and welfare benefits will be realized. Because understanding the welfare state requires broad community interests including the rights of persons with disabilities are met either through regulation of public services as well as law enforcement position "social interest" things to be counted.

4. Conclusion

Pursuant to Article 1 paragraph 1 of Law No. 8 2016 on Disability, people with disabilities are all people who have physical limitations, intellectual, mental, and / or sensory long periods which in interaction with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based equal rights. Furthermore, Article 3 letters a and b that provision states that the implementation and fulfillment of the rights of persons with disabilities aims to realize the respect, promotion, protection and fulfillment of human rights and fundamental freedoms of persons with disabilities full and equal and guarantee the respect, promotion, protection, and fulfillment of rights as inherent dignity of persons with disabilities themselves.

Protection and fulfillment of the rights of persons with disabilities as a constitutional right is still a dilemma. The basis of this problem is due to both the perspective of policy-makers and the public mindset is still based on a "charity-based" rather than "human rights-based" or "constitutional rights based". This gave rise to the perspective that such products are not pro-government policies of the constitutional rights of persons with disabilities and also the existence of disability due to polarization treatment tereliminir normal society. Facing issues like this, then the need to change the paradigm of both the policy makers and the public that the connotation of "disability" is not synonymous with the connotation of "sick". The need for the integrity of the government to achieve equality of persons with disabilities as a minority that must to be protected as a form of constitutional responsibility of the government against the constitutional rights of persons with disabilities.

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