

Disability Access to Justice in Indonesia General Court System

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Abstract Accessibility of people with disabilities is the main problem of this research. Focusing on justice and legal protection rights as one of the listed rights of people with disabilities in Law Number 8 of 2016, and its implementation in Indonesia General Court system, this research used documentary data and analyzed in normative juridical research methods that focused on legal materials which are related to the topic. The results of this research indicate that disability access to justice is not fully applied in Indonesia General Court system, caused by the financial placements and the number of people with disabilities' cases. Moreover, the implementing regulation as the guidelines for adjudicating people with disabilities' cases (as the step to fulfill justice rights) has not been formed yet. This brings the judicial process of people with disabilities' cases run as is for non-disability people without considering the recommendation from medics, psychologist, or psychiatrist.

Keywords: Justice Rights, Legal Protection, Disability Access to Justice, General Court System.

1. Introduction

Indonesia is a law based state as it is written in the Constitution of the Republic of Indonesia (Const.) Art. 1 line 3. Implementation of the judiciary system in Indonesia is run by judicial power (Const. Art. 24 lines 1), which the General Court as the court for public law enforcement (Law 48 of 2008 about Judicial Power and Law 49 of 2009 about General Court). The dignity of judicial power in Indonesia is to enforce the law and justice in accordance with Pancasila and Constitution of the Republic of Indonesia. Law and justice, somehow, not enforced by the court alone. They also not identically the same idea even though esteemed in the same system called Indonesia Justice System. Justice has been one of the human rights which have to be fulfilled according to Const. Art. 28D line 1. Moreover, every person has the same rights over accessibility and specific treatment to get the same opportunity and benefit in order to reach equity and justice (Const. Art. 28H line 1). It's visible that 'every person' refers to everyone with no exception, including people with disabilities.

People with disabilities every person that having limitation physically, intellectually, mentally, and/or nerve for permanent time, so

that to interact with society could face obstructions to fully and effectively participate with other citizens according to the equality and the equity of rights (Art. 1 number 1 Law 8 Number 2016 about People with Disabilities). In plain view of our legislative system, disability issue has been noticed since The Government of Indonesia had made legal products over disability issues. In 2007, The Government had signed the Convention on the Rights of Persons with Disabilities and ratified it through Law Number 19 of 2011. Furthermore, The Government showed its concern over disability issue by Law Number 8 of 2016. This law removed the term "people with physical defect" in Law Number 4 of 1997 which in Bahasa Indonesia has a negative impression. In Law Number 8 of 2016, the law introduces the word 'inclusive' which means the principle to run the fulfillment of the rights of people with disabilities. By inclusively fulfill the rights, people with disabilities could interact with society and participate in any sides of living. This law regulates 22 rights of people with disability, and of them is justice and legal protection rights. Justice and legal protection rights in Law Number 8 of 2016 consist of 9 (nine) implementations of the rights of people with disabilities. Somehow, the inclusiveness to fulfill the rights doesn't mean that the country

leaves all the rights or openly let people with disabilities to participate in any events in society without considering their special needs. Instead, by fulfilling the needs of people with disabilities in public events or through public services, could enhance the chances of people with disabilities to participate as a member of the society independently. The inclusiveness is key to the independence of people with disabilities.

Fulfillment of justice and legal protection rights also should be running inclusively. The fulfillment of justice and legal protection rights can be seen in law enforcement, whether is running inclusively or just openly let people with disabilities to get their rights without providing it certainly, or the worse: discriminate people with disabilities in their participation as citizens. The duty to fulfill is owned by society, but particularly by the law enforcer. In Indonesia, the law enforcer is a large and integrated cooperation between some legal institutions, including the courts. As mentioned in the first paragraph of this section, the courts have a special dignity to run the judicial procedures or to do the judgment. Judicial power in Indonesia is run by the Supreme Court of the Republic of Indonesia (including its sub-ordinated institutions/department) and the Constitutional Court of the Republic of Indonesia. One of the sub-ordinated institution/department of the Supreme Court of the Republic of Indonesia is the General Court. Actually, the General Court is not an established institution, but a name of integrated courts that have specific authority to adjudicate cases that ruled in Law Number 48 of 2009 and Law Number 29 of 2009. The General Court has the District Court and the Appellate Court as its parts. In this research, fulfillment of justice and legal protection rights by the General Court is the main problem to analyze. Since the common issue of justice often related to civil or criminal cases, so the writer chose to focus on the fulfillment by the General Court because the authority of the General Court is to adjudicate the civil case and criminal case (Art. 25 line 2 Law Number 48 of 2009 about Judicial Power).

Justice for People with disabilities often campaigned by social organizations or social movements. They shouted that judicial procedures have run injustice, judicial procedures and the judgments are not take a side of people with disabilities. Moreover, the stigma

about people with disabilities often raises the discrimination towards them in judicial procedures.

The dignity of judicial power disposed to be the independence of the judges, but people see that the aims of the adjudication are to enforce the law, to give social benefits to the society, and to give justice to the parties. Those bring the writer eagerness to elaborate on the aspects of justice and legal protection rights for people with disabilities, specifically in the General Court system.

2. Methodology

The type of this research is normative juridical research. Normative juridical research is legal research by using documentary data. Legal research needs no hypothesis and samples because the documentary data has its own quality to answer the problem of the research. According to the type of this research, so the writer used the document study, but somehow also used the empirical data to enhance the analysis of the main problem.

The collecting data in this research consist of legal documents such as primary, secondary, and tertiary legal documents. Primary legal documents are laws and the implementing rules, for example, the Constitution of the Republic of Indonesia, Law Number 8 of 2016, and the Supreme Court of the Republic of Indonesia Number 3 of 2017. The secondary legal documents are documents that give the explanations of the primary legal documents, for example, books, journals, and articles about legal researches. The tertiary legal documents are documents that give the explanations of the primary and secondary legal documents, for example, dictionary.

In order to get the accuracy of data in this research, the researcher used the statue approach and conceptual approach. In statue approach, the writer used the legal documents as the formed base of the analysis. In the conceptual approach, the writer is referring to the law principles which founded in law doctrines. Analysis and data construction refers to find and solve the problem in this research. The method of analysis is descriptive-analytics, the researcher describe the subject and object of this research related to the results of this research.

3. Analysis

Protection of people with disability's rights was normatively conducted in Indonesian law system. In the Constitution of the Republic of Indonesia, we can find no word of 'disability', but we may refer it to Art. 27 (1) and 28D (1) that every person have their rights of admission, assurance, protection, the certainty of law, and equality before the law. This part of the constitution is a part of human rights regulation in Indonesia which norms are strongly against discrimination. So that we can see that this disability issue is more than just a social issue, but also the human rights issue. In 1999, Law Number 39 of 1999 straighten up the norms of human rights, every person has equal rights of justice access without being discriminated. In Art. 41 (2) Law Number 39 of 1999 string the specific and facilitating service or way of treating towards people with disability. For twenty years, this norm has been rooted in society and institutions in a majority, that people with disability need charity, need caring and helpful hands so they might able to get some access, especially in public. Shortly, the service of public institutions toward people with disabilities came in form of some assistance to utilize public facilities, or even to do almost everything (ex. Writing, reading, typing, reaching things, walking, and so on). And it grew the stigma that people with disability were not and seemed difficult to be independent.

3.1. Rooted Stigma in Society, Rooted Stigma in Institutions

The growth of the stigma in society is also driven by the law system since it was the formal norm which ran the social life in a country. Furthermore, it's not only the social life that is affected by the stigma but also the fulfillment of rights in every side of people with disability's life as the civil, including justice rights. It took almost twenty years for Indonesia to upgrade its legal protection towards disability rights. As we know that years of prevailing Law Number 4 of 1997 had hardened the accessibility of people with disability to justice, whether was the terminology that brings negative stigma over people with disabilities or was the legal basis

which not gave enough norms to perform inclusivity of law process. The long journey of enforcing disability rights that related to the numbers of year that Law Number 4 of 1997 prevailed rooted the stigma of the terminology of people with disability as we mentioned before.

It's like fresh air for the long journey of advocating disability issues in Indonesia since the government signed the Convention on the Rights of Persons with Disabilities in 2008 and ratified it by the Law Number 9 of 2011. As the implementation of the ratification, Indonesia legalizes Law Number 8 of 2016 about Persons with Disabilities. This law gives us 22 kinds of disability rights, and one of them is justice and legal protection right, according to Art. 5 Law Number 8 of 2016. Justice right in Law Number 8 of 2016 envelops 9 rights of people with disability have, which are: (a) equality before the law; (b) admitted as a law subject; (c) possess and inherit the heritages; (d) managing financial matters or referring their own representatives to others in financial matters; (e) having access to banking and non-banking services; (f) having accessibility in court services; (g) protection against pressure, violence, oppression, discrimination, and/ or expropriation; (h) choosing and referring others to their own representatives in civil law process at the court or non-litigation actions; and (i) protection of intellectual property rights. Moreover, in art. 28-39 elaborated the justice right, especially in the law process. Yet besides the listed rights about justice for people with disability, thoroughly we can see that the norms are barely transferred from the late laws about law process in Indonesia, such as Law Number 8 of 1981 (KUHAP), Law Number 48 of 2009, and some regulations that has been prevailed by Supreme Court of the Republic of Indonesia as one of the law enforcement pillars (and in charge of fulfilling the justice right at law enforcement level). As the Supreme Court is in charge of justice right fulfillment, so do the district court and the appellate court as the law enforcement pillars, especially the law of judicial process.

3.2. Accessibility of People with Disabilities to Legal Services in The General Court System

Physical accessibility is the obligation of the court to assure that facilities in the court building and trial room¹, such as ramps, guiding block, sliding door, handling stairs, brailles brochure, etc. Those facilities may assure the effectiveness of people with disabilities access to justice at the service level. According to annual government institution's performance report of Supreme Court of the Republic of Indonesia in 2017, 263 of 587 district courts in Indonesia been upgraded their accessibility for people with disabilities in the percentage of 44,80 %². The percentage rates the realization of facility standard to enhance the great service of the institutions, perceptibly by building standardization, layout or spatial design of court service, and innovations in order to upgrade its service quality. Financially, the percentage of financial absorption of upgrading facilities in the Supreme Court as an institution during 2017 was 98,44%. It's showed that it has a strong commitment to making the public service exemplary³. Apparently, due to the stigma about people with disability, either the budgeting or the practical upgrading of the Supreme Court of the Republic of Indonesia agglomerate disability needs with other issues which not always related to disabilities. Also, uniting disability needs with other issues such as court system for children and mediation facilities blurred the perception on upgrading facilities that noticed before: what facility and how effective it could be to fulfill one of the basic rights for people with disability in the justice system: accessibility.

As for the Supreme Court of the Republic of Indonesia, so do the district court and the appellate court as sub-ordinates institutions discerning disability issue in their services for justiciable (specifically for people with disabilities). Mostly, district courts have been upgrading itself for legal service by concerning common public facilities, including for disabilities. For example wheelchairs, ramps, toilet for disabilities, parking area for

disabilities, media information (brochure and video).

3.3. Justice Rights of People with Disabilities

Talking about justice rights is nearly different from legal protection. Legal protection reached by the prevailing laws in a country and the institution rules. In other hands, justice rights reached by law enforcement from the beginning to the end of the law process, whether is criminal law, civil law, international law, administrative law or any sides of the law, and accessibility to access law service. In the law enforcement aspect, people with disabilities have rights over the fair process of the court as ordered in Art. 14 International Covenant on Civil and Political Rights (ICCPR). Procedural guarantee needed so that the court system may run well and fair. Some specific requirements must be noticed for people with disabilities in the following law process. The requirements are not just physical accessibility, but also procedural accessibility⁴.

Procedural accessibility is related to procedural law⁵. In district court level as the first level of case completion, the courts have the absolute competency on civil law and criminal law. Procedural law of civil and criminal law are totally different by the principles, the sessions of court, the parties, the proofs, and the verdicts. Basically, these two sides of law have nearly the same view about *curatele* (ward). One of its sort in the judicial process is the disability. However, not all types of disability may be reputed 'unable' in all sessions of court. It's certainly considered by the judge(s) whether someone is able to follow the sessions of court (to be asked and to, to answer the questions, to understand the law process) or not.

People with disabilities face criminal cases more frequently than civil cases – due to the case statistic report of the Supreme Court of the Republic of Indonesia in 2017 and The National Commission Of Women discoveries.

¹ Supriyadi Widodo Eddyono and Ajeng Gandini Kamilah, 2015, *Criminal Justice Aspects For People With Disabilities*, Institute for Criminal Justice Reform, p. 24.

² Supreme Court of the Republic of Indonesia, 2017, *Government Institution's Performance Report*, page 66.

³ *Loc. Cit.*, p. 73.

⁴ Forewords by Suparman Marzuki, *Law Process Needs To Assure Accessibility For People With Disabilities*, in Hari Kurniawan, *Judiciary's Accessibility For People With Disabilities*, Yogyakarta: Pusham Ull, 2015, p. xv.

⁵ *Loc. Cit.*, Supriyadi Widodo Eddyono, p. 25.

Cases that involved people with disabilities more frequently are criminal cases, particularly sexual abuses and violence against women (including the criminal case of children as the subject). But, instead of being the defendants, people with disabilities often involved as the witnesses (or also as victims). Women with disabilities are weak party oftentimes. By 89 (eighty-nine) criminal cases that involved women with disabilities, 64% (sixty-four percents) of it are sexual abuses cases, and women with disabilities are the victims⁶. However, the process of law for people with disabilities in courts still the same process for non- disabilities, whereas women with disabilities as victims are intellectual disabilities and inharmonious disabilities. Practically, there would be obstructions to find the truth about their cases and it's related to psychological and medical matters of the women with disabilities. Obstructions in procedural accessibility are symmetrical problems. It is not right to cut the law process at any particular level since the law process that followed by the justiciable is a complex system (investigating, prosecution, and judiciary). To see the fulfillment of justice rights in judiciary level, we need to comprehend the law aspects and its ideas about justice rights, particularly for people with disabilities. Since the absolute competency of General Court level is criminal and civil cases, so necessarily the relevant laws of civil cases or criminal cases should be analyzed.

In the civil law system, the regulations are HIR, RBg, Rv., and Law Number 8 of 2016. People with disabilities are also able to claim their private interests by persons. Art. 118-120 HIR mentioned that if the plaintiff is not able to write his claim paper (because of physical or psychological matters), the plaintiff may verbally tell his claim and the court's staff should write it down as a claim paper of the plaintiff. If the plaintiff is also unable to sign, then his fingerprint can be used as the signature. The judicial procedure of civil law towards people with disabilities as a party or a witness, act as is mentioned in Art. 130-131 HIR, the role of a translator should be provided in the court. Since the civil case principle is 'paid cases' (because it's settled for litigants' private interests) so that

the cost of providing the translator is charged to the plaintiff.

In proof, the testimony of people with disabilities sometimes valued differently from non-disabilities'. Particularly for people with inharmonious and intellectual disabilities are valued as 'incapable', according to the exegesis of Art. 169 HIR. It is nearly the same as in the criminal law system. In criminal cases, the courts should also provide some requiring accessibility for any type of people with disabilities just how it should be provided in civil cases. As mentioned in Art. 178 Law Number 8 of 1981 about Criminal Law Procedure, disability witnesses (including victims) have rights to get language translator for people who can hardly communicate with others (whether are because of blindness, hard-hearing, or silent). Internally, the Supreme Court of the Republic of Indonesia has the Supreme Court of the Republic of Indonesia Rule Number 3 of 2017 about guidelines for adjudicating women's cases against the law. The rule concerned the non-discrimination principle, including consideration of physical and psychological/mental of women in adjudicating the cases. Practically, the norms are not always fulfilled. It is because there is no consequence if the norms don't implemented by the judge or the prosecutor, yet courts can be continued even though there's no interpreter for deaf/hard hearing or silent ones. Moreover, the value of testimony from people with disabilities (especially people with intellectual disabilities and inharmonious disabilities) is not always counted the same as other witnesses'. In Art 185 Law Number 8 of 1981, witness' testimony has a value of proof when it's delivered by the oath and before the court. But as the substance of witness' testimony is based on things he/she saw, heard, and knew, so it brings assumption that the facts may not merely be obtained from people who are hardly process anything in mind about what happened before him/her. Fulfillment of the justice rights can be seen by the value of giving testimony before the court because it is the part of proofs, the determining process for the judges to consider and decide it further.

⁶ Annual Press of the National Commission of Women Year 2019, *Stop The Impunities Of The Offender Of Sexual Abuses And Reaching Out To*

Comprehensive Rehabilitation For The Victim, Jakarta, 6 March 2019.

Justice rights and legal protection for people with disabilities in the judiciary system is mentioned in Art. 30:

“..before investigating people with disabilities, the law enforcer have to ask the consideration/recommendation from:

- a. A doctor or other medics about the health condition;*
- b. Psychologist or psychiatrist about the mental condition; and/or*
- c. Social worker about the psychosocial condition.*

If the results are that towards the person is unable to do an investigation, so there should be a delaying time for the investigation towards him/her.”

For these 3 (three) years of Law Number 8 of 2016's legalization, the norms of Art. 30 Law Number 8 of 2016 is nearly never accomplished. There's no step before the transfer from the prosecutors to the courts that make Art. 30 Law Number 8 of 2016 possible. Instead, the cases are accepted in the courts and the courts as institutions need to watch the estimation time for the completion of the cases due to the Supreme Court of the Republic of Indonesia rules. Furthermore, if people with disabilities are not feeling perceptive of the legal procedure, they often hand all procedure to their lawyer. Legal aid for people with disabilities in the General Court system now is provided by Legal Service Centre in each court. Unfortunately, not all the institution of legal service that provides legal service (*pro bono*) also comprehend the way to accompany people with disabilities through the judicial process. These requirements are instructed in Law Number 8 of 2016, but until this writing made, the implementation rules of justice rights and legal protection implementation for people with disabilities has not prevailed yet. In judiciary system, not like the Supreme Court of the Republic of Indonesia Rule Number 3 of 2017 about guidelines for adjudicating women's cases against the law, the guidelines for adjudicating people with disabilities' cases also not prevailed yet.

4. Conclusion

1. Disability access to justice in Indonesia General Court system is not fully loaded

based on the accessibility to the law service and the inclusivity of the judicial procedures. In access to the law service, the courts may have upgraded the services by building the disability-friendly facilities, making the information more accessible by providing some videos of law services, banners, pamphlets, and scheme pictures of law process in court buildings. Yet, the inclusivity of the judicial process is barely perceptive that the needs of people with disabilities are not properly available in the judicial process, and the judicial process for people with disabilities is held by the court as it is for non-disability people, there's no specific guideline for the judges to adjudicate people with disabilities' cases.

2. The number of cases related to disability issues are so small, that disability access to justice has not become the major issue in the General Court system. It is perceptible that the budgeting for disability access to justice is not always available for each court, and the sets of the trial factor that people need are not always available in some areas of the district court level.

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