

EQUALITY AND NON DISCRIMINATION PRINCIPLES IN PROVIDING RIGHTS WITH DISABILITIES

Endah Rantau Itasari

Fakultas Hukum

Universitas Tanjungpura Kalimantan Barat

e-mail : endah.rantau.itasari@hukum.untan.ac.id

Abstract

With the increasingly escalating discrimination against groups of people with disabilities, humanity will then be made aware of the importance of recognizing that they are the same human beings as others, equal in rights and free in making choices. Therefore there are special rights for groups of people with disabilities. Special rights are not privileges, but they are granted so that persons with disabilities are able to maintain their unique identity, characteristics and traditions. Special rights such as non-discriminatory treatment are equally important to achieve the same treatment. Therefore the principle of equality, and non-discrimination (non-discrimination) becomes very important in human rights.

Keywords: the principle of equality, the principle of non-discrimination, persons with disabilities

Introduction

In principle, the Declaration of the Indonesian Nation is contained in the manuscript of the Preamble to the 1945 Constitution of the State of the Republic of Indonesia which is a normative source for positive Indonesian law, especially the elaboration in the articles of the 1945 Constitution of the Republic of Indonesia (Kaelan; 1999).

Human rights are basic rights that are naturally inherent in the nature and existence of human beings as creatures of God the One and His gift. Human rights must be respected, protected, fulfilled, upheld and promoted for the sake of human dignity and dignity. The implementation of respect, fulfillment, protection, enforcement and promotion of human rights is basically an obligation and responsibility of the state, especially

the government. This is as mandated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of Law Number 39 of 1999 concerning Human Rights (Higher Education National Action Plan on Human Rights).

In order to carry out the mandate of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights above, the President has issued Presidential Regulation Number 75 of 2015 concerning the National Action Plan on Human Rights (RAN HAM) of Indonesia year 2015 - 2019. The general target of the 2015-2019 RAN HAM is to increase respect, protection, fulfillment, enforcement and promotion of human rights for all levels of Indonesian society by the state, especially the government by

considering religious values, morals, customs, culture, security, public order, and the interests of the Indonesian people in 1945. Whereas the specific targets included, among others, increasing the understanding of the human rights of the state apparatus and society and increasing the accessibility of persons with disabilities and other vulnerable groups to participate in the civil, political, economic, social and cultural fields.

Indonesia as one of the member states of the United Nations has the obligation to implement various international human rights instruments that have been accepted by Indonesia, including the Vienna Declaration of 1993 and the Convention on the Rights of Persons with Disabilities which were ratified through Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. This makes Indonesia a part of a global society committed to making every effort to realize the elimination of all forms of discrimination and ensure the participation of persons with disabilities in every aspect of life. The mandate of the Vienna Declaration and the Convention on the Rights of Persons with Disabilities emphasizes that each country establishes and implements a National Action Plan related to human rights.

The vision and mission of the President of the Republic of Indonesia, President Jokowi as outlined in Nawacita contains 9 (nine) priority agendas of change in order to realize a sovereign, independent and personality Indonesia. The vision and mission

also includes the President's policy in overcoming problems in the human rights field. In order to realize the vision and mission as well as the obligations and responsibilities, the government deems it necessary to perfect and continue the implementation of the 2011-2014 National Human Rights Plan (RANHAM) and the National Action Plan for Persons with Disabilities (RAN Penca) 2004-2013, by integrating the values of justice, humanity, and inclusiveness of vulnerable groups into an inclusive National Action Plan, namely the Indonesian National Action Plan for Human Rights (RANHAM).

The Indonesian people uphold human rights can also be seen in Article 2 of the Law on Human Rights which states that the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are inherently inherent to and inseparable from humans, which must be protected, respected, and upheld for the sake of increasing human dignity, prosperity, happiness, and intelligence and justice. Then in Article 3 it is stated (1) Everyone is born free with the same dignity and human dignity and is blessed with reason and conscience to live in a society, nation and state in a spirit of brotherhood, (2) Every person has the right to recognition, guarantee, protection and fair legal treatment and legal certainty and equal treatment before the law, (3) Everyone has the right to the protection of human rights and basic human freedoms, without discrimination.

With the enactment of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities on November 10, 2011 shows the commitment and sincerity of the Government of Indonesia to respect, protect and fulfill the rights of persons with disabilities that ultimately is expected to improve the welfare of people with disabilities. Thus, persons with disabilities have the right to be free from torture or cruel treatment:

1. 1. Participate in the country that signed the Convention on the Rights of People with Disabilities in 2004 and ratified it into Law Number 19 Year 2009 concerning the Ratification of the Convention on the Rights of Persons with Disabilities;
2. 2. Promoting community participation to advance the rights of people with disabilities through removing barriers, both physical and social, to public resources such as education and health facilities. Physical barriers that began to be removed can be observed by starting the number of public buildings that have sloping fields and lifts with braille letters. However, it must continue to be improved because access to public transportation is still not in favor of people with disabilities;
3. 3. Involvement of organizations of people

with disabilities in the formulation of public policies. This is in line with the principle of "nothing us, without us" as part of the mainstreaming of person-centered approached to understand the needs, problems, hopes, visions, ideals, and potential from the perspective of people with disabilities themselves;

4. The elimination of segregation (separation) by inclusion, which includes or invites people with disabilities as part of the community itself that must be taken into account and their needs are considered.

The scope of the regulation in this law includes the fulfillment of equal opportunities for persons with disabilities in all aspects of state and community administration, respect, protection and fulfillment of the rights of persons with disabilities, including the provision of accessibility and proper accommodation. Arrangements for the implementation and fulfillment of the rights of persons with disabilities aim to realize the standard of living of people with disabilities that are more quality, fair, physically and physically prosperous, and dignified. In addition, the implementation and fulfillment of rights are also intended to protect persons with disabilities from neglect and exploitation, harassment and all discriminatory acts, as well as human rights violations. In this article, the principles of equality and non-

discrimination in promoting the rights of persons with disabilities will be discussed.

Discussion

Theory of Equality Before The Law

The Republic of Indonesia is a country based on law. The 1945 Constitution stipulates that the Republic of Indonesia is a state of law (*rechstaat*) evidenced by the Provisions in the preamble, body, and explanation of the 1945 Constitution (Walukow; 2013). In the Amendment to the 1945 Constitution, the theory of equality before the law is included in Article 27 paragraph (1) which states that: All citizens are at the same position in law and government and are obliged to uphold the law and government without exception. This is an acknowledgment and guarantee of the equal rights of all citizens in law and government.

The theory and concept of equality before the law as adopted by Article 27 paragraph (1) of the Amendment to the 1945 Constitution provides the basis for the protection of citizens to be treated equally before the law and government. This is meant, that all people are treated equally before the law. Equality before the law or equality before the law is one of the most important principles in modern law. This principle is one of the principles of the Rule of Law doctrine that also spreads to developing countries such as Indonesia. If it can be mentioned the principle of equality before the law is one manifestation of the rule of law (*rechtstaat*) so that there must be equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*) (Mulyadi, 2007). Thus,

the inherent element implies equal protection before the law (equal justice under the law) and obtains the same justice before the law.

The rule of law states that communication and social interaction consisting of various elements of the community interact and transact to achieve common goals and ideals. That the order of life and communication between individuals in a community refers to the rules of the game that are agreed upon and used as a reference and reference for the parties in conducting legal relations and actions. Based on this concept, there is no arbitrariness carried out either by law enforcers or by justice seekers, so as to give birth to civil society (civil society) in which between individuals as citizens or citizens have the same position and equality before the law (equality before the law).

The principle of equality before the law is a guarantee to achieve justice (law), without the absence of parties who can escape when involved in the law enforcement process. The guarantee of legal protection is implicit in the principle of equality before the law, that is, the guarantee does not only get the same treatment but it will also bring logical consequences that the law will not give privileges to other legal subjects. Because if this happens it will violate the principle of equality before the law and will encourage discrimination before the law.

The concept of equality before the law has been introduced into the constitution, the highest recognition in the country's regulatory system, this principle means the meaning of

equality before the law is for the same case (crime). In reality, there is usually no equal treatment (equal treatment) and it causes the rights of individuals to obtain justice (access to justice) are ignored. Different treatment in criminal acts of corruption for example leads to neglect of individual freedom. This means, legal certainty is ignored.

The principle of equality before the law (equality before the law) must always be upheld for the rule of law and the justice system. Because it is an obligation the rule of law is required to guarantee human rights for its citizens. In this context no person may immediately impose a sentence in order to enforce the law by violating this principle. Do not let anything that happens giving punishment (judgment) outside the existing rules or systems.

The Principle of Equality and Non-Discrimination in Advancing the Rights of Persons with Disabilities

With the increasingly escalating discrimination against groups of people with disabilities, humanity will then be made aware of the importance of recognizing that they are the same human beings as others, equal in rights and free in making choices. Therefore there are special rights for persons with disabilities (Zul Fadhli). Special rights are not privileges, but they are granted so that persons with disabilities are able to maintain their unique identity, characteristics and traditions. Special rights such as non-discriminatory treatment are equally important to achieve the same treatment. Therefore the principle of equality, and non-discrimination

(non-discrimination) becomes very important in human rights (Eko Riyadi).

The regulation of the principle of equality and non-discrimination is contained in several instruments, both international, regional (designated for a particular region, namely Africa, America (North America, South America and the Caribbean), Asia, and Oceania (South Pacific) sub-regional (such as Southeast Asia) and national (limited to the country concerned) In the international context the provisions on equal rights and non-discrimination are contained in the UN Charter Article 1 paragraph (3), where the UN organization and its members have the following objectives:

"Conduct international cooperation to solve international problems in the economic, social, cultural or humanitarian fields, as well as in efforts to promote and encourage respect for human rights and basic freedoms of all humanity without discriminating in race, gender, language or religion."

In Article 55 letter c the UN Charter mandates that the United Nations promote:

"Respect for human rights throughout the universe as well as its manifestation and basic freedoms for all, without distinction of race, gender, language or religion."

In the classic document of the Universal Declaration of Human Rights (UDHR), Article 2 and Article 6 affirm:

Article 2 reads (M. Zen, 2006):

"Everyone has the right to all rights and freedoms contained in this declaration without any exceptions, such as differences in race, color, sex, language, religion, politics or other views, origin or community, ownership, birth or other status . Furthermore, no distinction is allowed on the basis of political, legal or international position of the country or region from which a person is from, whether from an independent state, guardianship territories, colonies or from areas under other sovereignty limits. "

Article 6 reads:

"Everyone is equal before the law and is entitled to the same legal protection without discrimination. All have the right to equal protection against any form of discrimination that conflicts with this declaration and against any incitement that leads to discrimination "

The principle of non-discrimination is also found in the International Covenant on Economic, Social and Cultural Rights. Article 2 paragraph (2) reads:

"States parties to the Covenant promise to guarantee that the rights contained in this Covenant will be applied without any distinction such as race, color, sex, language, religion, political opinions or other opinions, national origin or social, ownership, ancestry or other status. "

Also found also in the International Covenant Civil and Political Rights (ICCPR) Article 2 paragraph 1. It states:

"Each State party to the Covenant promises to respect and

guarantee the rights recognized in this Covenant for all individuals who are within its territory and under its jurisdiction, without distinction of any kind, such as race, color, sex, language, religion, political views or other views, national or social origin, property rights, birth status or other status. "

While Article 26 states:

"All people are equal before the law and are entitled, without any discrimination whatsoever to the same legal protection. In this case the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, sex, language, religion, politics or other opinions, national or social origin, property objects, birth status or other status ".

Whereas in the context of Indonesia's national law, in addition to the ICCPR which has been ratified by Law Number 12 of 2005, the principle of non-discrimination is also contained in several laws and regulations, including the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights (Article 3 paragraph (3)), Law Number 23 of 2002 concerning Child Protection (Article 2 letter a), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (Article 3 letter c), and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination

The 1945 Constitution, which constitutes the Indonesian constitution as explained earlier in Articles 28 D and 28 I, states that:

Article 28 D which reads:

"(1) Every person has the right to recognition, guarantees, protection and certainty of law that is fair and equal treatment before the law".

Article 28 I paragraph (2) which states:

"Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against discriminatory treatment"

Law Number 39 of 1999 which is a barometer of respect, protection and fulfillment of human rights in Indonesia Article 3 paragraph (3) mandates that every person has the right to protect human rights and human freedom, without discrimination.

Conclusion

With the increasingly escalating discrimination against groups of people with disabilities, humanity will then be made aware of the importance of recognizing that they are the same human beings as others, equal in rights and free in making choices. Therefore there are special rights for groups of people with disabilities. Special rights are not privileges, but they are granted so that persons with disabilities are able to maintain their unique identity, characteristics and traditions. Special rights such as non-discriminatory treatment are equally important to achieve the same treatment. Therefore the principle of equality, and non-discrimination (non-discrimination) becomes very important in human rights.

Bibliography

- Adnan Buyung Nasution dan A. Patra M. Zen, 2006, *Instrumen Internasional Pokok Hak Asasi Manusia*, Yayasan Obor Indonesia, Jakarta,
- Enny Soeprapto, Rudi M. Rizki, Eko Riyadi, *Hak Asasi Manusia Kelompok Rentan Dan Mekanisme Perlindungannya*, dalam Eko Riyadi dan Syarif Nurhidayat, ed., 2012, *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*, Pusham UII, Yogyakarta.
- Franciscus Adi Prasetyo, "Disabilitas Dan Isu Kesehatan : Antara Evolusi Konsep, Hak Asasi, Kompleksitas Masalah, dan Tantangan", dalam Buletin Jendela Data dan Informasi Kesehatan, Situasi Penyandang Disabilitas, Semester II 2014, Kementerian Kesehatan Republik Indonesia, Jakarta.
- Julita Melissa Walukow, "Perwujudan Prinsip Equality Before The Law Bagi Narapidana Di Dalam Lembaga Pemasyarakatan Di Indonesia", dalam *Lex et Societatis*, Vol.I/No.1/Jan-Mrt/2013.
- Kaelan, "Pancasila Sebagai Dasar Penjabaran Hak-Hak Asasi Manusia", *Jurnal Filsafat* Nomor 2 Tahun 1999, Fakultas Filsafat Universitas Gadjah Mada, Yogyakarta.
- Lilik Mulyadi, 2007, *Hukum Acara Pidana*, Citra Aditya Bakti, Jakarta.
- Panduan Rencana Aksi Nasional Hak Asasi Manusia Pendidikan Tinggi 2016 - 2019, Biro Hukum dan

Organisasi Sekretariat
Jenderal, Kementerian Riset,
Teknologi, dan Pendidikan
Tinggi, 2016, Lampiran 2.

Peraturan Presiden Nomor 75 Tahun
2015 tentang Rencana Aksi
Nasional Hak Asasi Manusia
(RAN HAM) Indonesia
tahun 2015 - 2019 (Lembaran Negara Republik
Indonesia Tahun 2015
Nomor 144)

Undang-Undang Dasar 1945

Undang-Undang Nomor 19
Tahun 2011 tentang
Pengesahan *Convention On
The Right Of Persons With
Disabilities* (Konvensi
Mengenai Hak-Hak
Penyandang Disabilitas)
(Lembaran Negara
Republik Indonesia Tahun
2011 Nomor 107, Tambahan
Lembaran Negara Republik
Indonesia Nomor 5251).

Undang-undang Nomor 23 Tahun
2004 tentang Penghapusan
Kekerasan Dalam Rumah
Tangga

Undang-undang Nomor 23 Tahun
2002 tentang Perlindungan
Anak

Undang-undang Nomor 39 Tahun
1999 tentang Hak Asasi
Manusia

Yogi Zul Fadhli, *Kedudukan Kelompok
Minoritas dalam Perspektif
HAM dan Perlindungan
Hukumnya Di Indonesia*,
Jurnal Konstitusi, Volume
11, Nomor 2, Juni 2014.