

Problems of Inclusive Legal Services for Persons with Disabilities

Nur Paikah

Institut Agama Islam Negeri Bone, Indonesia

Abstract

This research aims to describe the condition of vulnerable groups of persons with disabilities who are in conflict with the law in obtaining the right of access to justice in law as an effort to fulfill equal rights to the law without discrimination. This research can contribute to stakeholders in order to formulate policies and legal service programs that are equitable for persons with disabilities who are in conflict with the law in order to increase access to justice for vulnerable groups of persons with disabilities. This research is a normative and sociological empirical legal research. This research examines primary, secondary, and tertiary legal materials. Processing of legal materials using legislation, concepts, philosophy, and comparative legal approaches. The results of the study found that the implementation of the fulfillment of the right of access to legal services for persons with disabilities has not been fully optimal, especially the right of access to legal assistance specifically for the deaf and speech impaired with several indicators, namely legal services have not been evenly accessible, assistance and interpreters are not yet available according to the needs of persons with disabilities.

Keywords: problematics, legal services, disability, Indonesia

1. Introduction

Everyone has the same position in law, known as the principle of equality before the law as affirmed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This means that everyone has the right to sue and be tried by obtaining fair treatment and protection from an objective and impartial court. Buying and selling decisions is a violation of human rights and a code of ethics (Ortoleva, 2010). Fulfillment of basic human rights to gain access to fair legal services is very important without distinguishing because of position, title, race, skin color and gender, even vulnerable groups must not distinguish their human rights, including the rights of persons with disabilities.

In order to protect human rights, especially the rights of persons with disabilities to obtain equal treatment and protection before the law as guaranteed in international instruments and national law, including the International Convention on Persons with Disabilities which has been ratified in the Law and Law Number 8 of 2016 concerning Persons with Disabilities. These provisions explicitly provide legal guarantees for the rights of persons with disabilities to access justice, especially without discrimination. The state as an obligatory stakeholder is responsible for providing legal services for vulnerable groups through legal aid institutions free of charge (free of charge) as a manifestation of the mandate of Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone is entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. Legal services that are specifically intended for special groups such as persons with disabilities who are in conflict with the law are in line with the principle of equality in human rights law, especially affirmative action which allows the state to treat more to certain groups that are not represented in order to achieve equality with the condition that affirmative action can only be carried out and used in a certain measure until equality is achieved then the action can no longer be carried out. This is an obligation of the state in international law that a state may not deliberately ignore

rights and freedoms, on the contrary, the state has a positive obligation to actively protect and ensure the fulfillment of rights and freedoms. For the right of access to justice for vulnerable groups with disabilities, the state is obliged to make rules and take positive steps, including guarantees in Law Number 16 of 2011 concerning Legal Aid, which essentially guarantees the constitutional rights of every person to obtain recognition, guarantees, fair legal protection and equal treatment before the law as a means of protecting human rights and the state is responsible for providing legal aid for the poor as a manifestation of access to justice (Larson, 2014).

Thus, the legal goal to be achieved is the realization of access to justice for the poor as well as improvements to an impartial justice system. For this reason, the optimization of equitable legal services for vulnerable groups is strongly supported by the political will of the state as an obligatory stakeholder in ensuring the functioning of legal services for the poor and vulnerable groups who are in conflict with the law to obtain legal assistance from legal counsel or legal advisors in court free of charge through legal aid posts at the Religious Courts, District Courts and PTUN.

However, the optimization of legal services for vulnerable groups, in this case persons with disabilities, is still a concern. This is based on confirmation of data in the field showing that the provision of legal aid from the government through Posbakum (Legal Aid Pas) within the scope of the district, religious and administrative courts provided for justice seekers from vulnerable and disadvantaged groups financed by the state in the form of legal consulting services and legal advice and assistance in preparing lawsuit letters (Aldersey et al., 2023). However, the legal service process is more in the litigation dimension and only at the initial assistance stage due to the lack of human resources of officers and funding, so that there were 192 services provided for the poor and the general public during the period of POSBAKUM establishment from 2015-2022, with the highest presentation of services to the poor while the group of people with disabilities is still very small due to the lack of socialization of the right of people with disabilities to get free legal services through POSBAKUM courts, especially in the District Court for criminal cases even though the population of people with disabilities is quite large based on confirmation of data from PPDI Bone Regency shows that by 2023 the number of people with disabilities is 4439 people with details of multiple disabilities as many as 377 people, physical disabilities 1.656, speech impaired 624, visually impaired 1,026, mentally impaired 859 people.

Based on these data, it shows that persons with disabilities as part of citizens are assets of the nation entitled to guarantee protection and legal assistance in a fair manner and free from cruel, inhumane treatment, free from exploitation and arbitrary violence through state intervention in Law Number 8 of 2016 concerning Persons with Disabilities which mandates the obligation of the government and local governments to organize fair legal services to persons with disabilities as well as impose sanctions on governments that neglect their obligations. In addition, it is confirmed in SEMA Number 10 of 2010 concerning Guidelines for Providing Legal Aid which obliges the government to prepare legal aid either in court or outside the court through the Legal Aid Post (POSBAKUM) program.

The reality shows that POSBAKUM from the government still lacks services both in quantity and quality. Based on data from POSBAKUM, it shows that the constraints on the availability of human resources for legal assistance that are not directly proportional to the number of people with disabilities and the lack of expert translators who are in accordance with disability are the main obstacles to the difficulty of people with disabilities getting access to legal assistance from the government. For this reason, PPDI as a non-governmental organization becomes a forum for struggle and assistance for persons with disabilities who are dealing with the law in collaboration with several NGOs, in this case the NGO Advokasi and Kesejahteraan Rakyat (LAKRA) facilitates the provision or protection of law to persons with disabilities including the formation of an inclusive legal services advocacy forum to provide inclusive legal services (inclusive paralegal) and since its formation in 2020 it has succeeded in assisting 4 cases involving persons with disabilities, However, many more have not been resolved due to the lack of neutrality of law enforcement officials and the limited translator facilities owned by the courts and police, especially in the investigation process, such as cases of sexual harassment experienced by persons with speech impairments in Ulaweng Subdistrict and the Blind in West Tanete Riattang Subdistrict and mistreatment of children with paralyzing disabilities in West Tanete Riattang

Subdistrict. The cases are still in process and some cases have not been resolved due to the unavailability of linguist assistants and translators, causing the police to have difficulty obtaining data and information that is easy and clearly understood, especially in examining witnesses and victims of sexual abuse against the deaf and blind.

This is contrary to the mandate of Law Number 8 of 2016 concerning Persons with Disabilities and has specifically been regulated at the district / city level through regional regulations including Regional Regulation Number 5 of 2017 concerning Protection and Fulfillment of the Rights of Persons with Disabilities in Bone Regency in Article 58 which emphasizes that the government facilitates legal services and assistance for persons with disabilities, the government provides the facilities and infrastructure needed for persons with disabilities who are dealing with the law and technical provisions regarding the provision of legal assistance services for persons with disabilities are regulated by regent regulations (Arstein-Kerslake & Black, 2020). Thus, the obligation to prepare accessibility to legal services is the right of persons with disabilities and is the responsibility of the state to fulfill it, although in reality this obligation has not been optimally fulfilled by the state due to technical provisions in the Governor's Regulation, This is based on data confirmation from the Chairperson of the Indonesian Persons with Disabilities Association (PPDI) and also the Bone Regency Child Protection and Assistance Forum (FP2AI) which shows that the right to legal assistance for persons with disabilities in Bone Regency has not been effectively realized due to the lack of availability of assistants and translators so that some cases cannot be processed under the pretext of insufficient evidence due to difficulties in confirming with victims who have difficulty communicating with officers. In addition, confirmation of data at the DPRD Law Commission shows that the technical legal basis through Regent Regulations has not yet been issued, which is the basis for the strengthening of cases of sexual harassment, violence, rape, maltreatment and murder that are still often experienced by persons with disabilities, which results in cases being closed on the grounds that victims cannot communicate properly and correctly, making it difficult for investigators to dig up some valid information and evidence (Swift et al., 2013).

Based on these data, it shows that the problem of legal services for persons with disabilities to gain equal access to the law is still an urgent issue in a legal state that upholds human rights. So that the critical point is that the state is committed to providing the same legal services for all people, including a special policy of providing free legal aid for vulnerable and disadvantaged groups through state funding to provide equitable legal services in legal aid programs and legal assistance through legal consultations by legal advisors, lawyers and translators and linguists for persons with disabilities both in court (litigation) and outside the court (non-litigation) as proof of the state's seriousness towards international treaties that have been ratified through Law Number 8 of 2016 concerning Persons with Disabilities as access for disabilities to get equal access without discrimination. However, implementation in good practice is still minimal so that the state still seems to ignore its legal responsibilities.

2. Method

Research Design

A case study approach will be used to understand the lived experiences of people with disabilities in relation to access and barriers to using legal services. This approach allows researchers to explore the subjective perspectives of individuals and interpret the meaning behind these experiences.

Informant

The target population is people with disabilities who have tried to access legal services or who need legal services. The sample will be selected using purposive sampling techniques to ensure that participants have experiences relevant to the focus of the research. The sample size will be determined based on achieving data saturation, which is when additional data no longer provides significant new information to the research findings.

Data Collection

a. In-depth Interviews

Conduct semi-structured interviews with participants to explore their experiences, perceptions and challenges in accessing legal services. Interviews will be recorded (with participants' consent) and transcribed for further analysis.

b. Participatory Observation

Observing interactions between people with disabilities and legal service providers to gain a contextual understanding of the legal service process.

c. Document Analysis

Collect and analyze relevant documents, such as public policies, legal institution reports, and legal service promotional materials, to understand the frameworks that support or hinder the accessibility of legal services for people with disabilities.

Data Analysis

Data from interviews, observations, and documents will be analyzed using thematic analysis. This process involves the following steps:

a. Initial Coding

Reading interview transcripts and observation notes thoroughly to identify significant units of data.

b. Theme Development

Clustering the codes into broader themes that reflect the key issues identified in the data.

c. Theme Review and Naming

Reviewing the themes to ensure their consistency and relevance to the research objectives, then naming and defining each theme.

d. Report Writing

Integrating the findings in narrative form, describing participants' experiences and perspectives by directly quoting data to support the findings.

3. Result and Discussions

Legal protection in essence is to provide protection to human rights that are harmed by others and this protection is given to all people so that they can enjoy all the rights granted by law through the involvement of the state to provide a sense of security both mind and physical from disturbances and various threats from any party both preventively and repressively (Carnovali, 2017).

One of the state's efforts in providing a sense of security to the community through legal aid, which specifically according to Law Number 16 of 2011 concerning Legal Aid defines as legal services provided by legal providers free of charge to legal recipients. Thus, the core of legal aid is an effort to protect human dignity and recognition of human rights in the field of law. One of the vulnerable groups that must be protected and fulfill their human rights is people with disabilities. A person with a disability is a person who has (suffers) while disability means incapacity. Thus, persons with disabilities are human beings created by God who have similarities and abilities with other humans not because of disability / abnormalities because all humans have advantages so that limitations do not become obstacles to participating fully and effectively in state life on the basis of equality so that all people, including those who experience physical, intellectual, mental, and / or sensory limitations, can participate fully to realize equal opportunities. Thus, the entry point is that people with disabilities are God's creatures who have the right to get respect for their mental and physical integrity based on equality with other people so that there is no obstacle for people with disabilities to be treated differently and without negative stigma in social life. However, the problem that often occurs is that there is still a strong negative stigma attached to them as disabled and weak humans so that they often experience discrimination in all aspects of life (Matanga et al., 2008).

With the spirit of reform and democracy that rests on strengthening the basic joints of human rights, people with disabilities are social beings who have potential, so that they have the opportunity to contribute optimally in all aspects of the life of the nation and state through guarantees in Law Number 8 of 2016 concerning Persons with Disabilities as a state commitment in realizing equality and non-discrimination as well as a condition of open access for persons with disabilities (Lord & Stein, 2008). The Disability Law is specifically regulated further in provincial regulations. Districts and cities as a commitment of the state, in this case the government and local governments, to guarantee equal rights and opportunities and must protect and fulfill them in accordance with their dignity as creatures of God Almighty. The spirit of reform and democracy is based on the strengthening of basic human rights, In order to provide equal opportunities and opportunities for persons with disabilities, the presence of the state in affirmative action to ensure equality through the provision of legal aid to citizens, especially vulnerable groups, is the implementation of a state of law that recognizes and protects and guarantees citizens' rights to the need for access to justice and equality before the law. The guarantee of constitutional rights is the basis for the state to guarantee citizens, especially for vulnerable people or groups with disabilities, to get access to justice and equality before the law. So that the state's responsibility must be implemented through the Legal Aid Post (POSBAKUM) both in court through the provision of legal consultations, legal counsel, making lawsuit letters and non-litigation such as legal counseling, consultation, mediation assistance and legal drafting (Gupta, 2018). The provision of legal aid to vulnerable groups, in this case disabilities, is based on the principle of the interests of justice as stipulated in the International Covenant on Civil and Political Rights which has been adopted by the state as the main way to strengthen access to marginalized communities which is specifically outlined in Law Number 16 of 2011 concerning Legal Aid.

However, in reality, the effectiveness of Posbakum formed by the government which specifically provides access to justice for persons with disabilities who are dealing with the law for free is still minimal and the assistance process is not optimal due to limited human resources for lawyers and translators so that in practice the assistance process is only at the initial stage of the trial (Shanthi, 2018). In addition, in terms of quantity, legal aid services are dominated by LBH formed by non-governmental organizations compared to governmental organizations due to funding factors including limited human resources for officers who understand the special needs of persons with disabilities with all their diversity. This is confirmed by the results of observations at Posbakum PA and Watampone District Court, which show that budget constraints and limited human resources are obstacles to the suboptimal legal services provided in addition to constraints on persons with disabilities who do not understand their rights and are reluctant to report cases experienced (Cooke, 2003; Singh & Maseko, 2006). This is in line with data corroboration at the Bone Regency DPRD regarding the supervisory function of the implementation of the Disability Regional Regulation, which shows that the supervisory role is not yet optimal, so there is no benchmark for evaluation results on the achievements of regional regulations on the protection and fulfillment of disability rights in Bone Regency. In addition, the socialization of the Law on Persons with Disabilities and the Regional Regulation on the Protection and Fulfillment of the Rights of Persons with Disabilities has never been carried out since it was passed until it came into force until now, causing many people with disabilities to not understand their rights, indicating that the regulation is more of a display and political image, This is evidenced by the government's attitude that has not seriously protected the rights of persons with disabilities in technical regulations as mandated in Article 58 of the Regional Regulation that technical provisions must be regulated in regent regulations as an explanation of the implementation of general regulations through regent regulations (perbup) as technical rules that determine specific things that will be carried out based on the mandate of the Law on Persons with Disabilities and the Regional Regulation on the Protection and Fulfillment of the Rights of Persons with Disabilities including the fulfillment of the right to legal assistance for persons with

disabilities who are in conflict with the law. In fact, non-state actors are the most effective in assisting and fighting for the fulfillment of the human rights of persons with disabilities who are in conflict with the law, in this case PPDI and PF2AI Bone Regency.

Based on data confirmation from *Tribun Timur Bone* on February 5, 2021, it shows that there are many cases of sexual harassment, persecution and murder of persons with disabilities and the legal settlement process is only assisted by PPDI and FP2AI. Although in the process of assistance and settlement in the police, there are several obstacles, including the lack of translator apparatus in accordance with various disabilities such as deaf and speech language translators, including the lack of accessibility that suits the needs of disabilities such as facilities and infrastructure. As a result, persons with disabilities and the PPDI team often experience difficulties due to the absence of interpreters, which leads to cases that are processed being challenged in court (Bardach, 1977; Haryanto et al., 2021; Irmawan & Mashdurohatur, 2018).

In an effort to provide legal justice for persons with disabilities who are in conflict with the law, the presence of the state, in this case the government and local governments as the leading sector for the fulfillment of human rights through the implementation of state responsibility through a special service program for persons with disabilities who are in conflict with the law in the form of a disability legal aid program (*Posbakumdis*) free of charge both in courts such as the District Court, PA or PTUN as well as outside the court in the form of cooperation with academics through the establishment of legal aid study centers, legal clinics or cooperation with non-governmental LBH through collaborations with joint budgeting or charged to the state as the implementation of a state of law that recognizes and protects and guarantees human rights to access to justice and equality before the law (Yunitasari, 2020a, 2020b). The existence of *posbakum* for persons with disabilities is a form of state responsibility through the government in fighting for the rights of vulnerable groups to obtain equality as a manifestation of the principle of human rights, namely equal treatment as stated in the constitution Article 27 paragraph (1) and national legislation Law Number 39 of 1999 concerning Human Rights, Law Number 18 of 2003 concerning Advocates, Law Number 16 of 2011 concerning Legal Aid, Law Number 8 of 2016 concerning Persons with Disabilities and Regional Regulation Number 15 of 2017 concerning Protection, Fulfillment of the Rights of Persons with Disabilities in Bone Regency. One of the solutions is the establishment of an Inclusive Legal Aid Post for persons with disabilities that can be easily accessed for both litigation and non-litigation processes by involving NGOs and academics to work together to realize equality in law without discrimination.

4. Conclusion

The right to legal services for persons with disabilities who are in conflict with the law has not been optimally fulfilled because the legal system has not been running properly, especially in the dimension of legal substance in this case the technical provisions of the legal aid service model for persons with disabilities have not been issued in the regent's regulation so that it affects the structural aspects, especially the lack of facilities and infrastructure, both human resources and budgeting so that the legal culture is undermined by the government's massive efforts to carry out the legal obligations it has accepted in international agreements related to the protection of persons with disabilities and the mandate of the nation's founders in the preamble and constitution, namely realizing justice for the entire nation, especially justice for the law without discrimination. In order to optimize the fulfillment of the right of access to law for persons with disabilities, it is necessary to immediately issue regent regulations as technical provisions and derivatives of laws and regulations related to the right to legal services for persons with disabilities as well as a technical legal umbrella to facilitate the establishment of Inclusive Legal Aid Posts for persons with disabilities.

References

- Aldersey, H. M., Xu, X., Balakrishna, V., Sserunkuma, M. C., Sebeh, A., Olmedo, Z., Nuri, R. P., & Ahmed, A. N. (2023). The Role of Community-Based Rehabilitation and Community-Based Inclusive Development in Facilitating Access to Justice for Persons with Disabilities Globally. *The International Journal of Disability and Social Justice*, 3(3), 4–26.
- Arstein-Kerslake, A., & Black, J. (2020). Right to legal capacity in therapeutic jurisprudence: Insights from critical disability theory and the convention on the rights of persons with disabilities. *International Journal of Law and Psychiatry*, 68, 101535.
- Bardach, E. (1977). *The implementation game: What happens after a bill becomes a law*.
- Carnovali, S. (2017). The Right to Inclusive Education of Persons with Disabilities in Italy. Reflections and Perspectives. *Athens Journal of Education*, 4(4), 315–326.
- Cooke, E. (2003). *The new law of land registration*. Bloomsbury Publishing.
- Gupta, S. (2018). Rights of physically disabled persons: An inclusive approach. *Marginalities in India: Themes and Perspectives*, 247–260.
- Haryanto, I. K., Sudarsono, S., Sugiri, B., & Budiono, A. R. (2021). Ratio legis of special minimum limit regulation in narcotics law. *International Journal of Research in Business and Social Science* (2147-4478), 10(7), 423–431.
- Irmawan, D. D., & Mashdurohatun, A. (2018). Disparities Criminal Case Against Judge's Decision In Crime Of Narcotics Abuse Viewed From The Purpose Of Criminal Law. *Jurnal Daulat Hukum*, 1(4), 973–980.
- Larson, D. A. (2014). Access to justice for persons with disabilities: An emerging strategy. *Laws*, 3(2), 220–238.
- Lord, J. E., & Stein, M. A. (2008). The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities. *Wash. L. Rev.*, 83, 449.
- Matanga, Z., Freeze, R., Duchesne, H., & Nyachoti, M. (2008). Disability and Diversity in Canada: Problems and Opportunities in Creating Accessible and Inclusive Learning and Service Delivery Environments. *Journal of the International Association of Special Education*, 9(1).
- Ortoleva, S. (2010). Inaccessible justice: Human rights, persons with disabilities and the legal system. *ILSA J. Int'l & Comp. L.*, 17, 281.
- Shanthi, R. (2018). Inclusive growth and sustainable development of person with disabilities. *TRANS Asian Journal of Marketing & Management Research (TAJMMR)*, 7(1), 195–199.
- Singh, A., & Maseko, T. W. (2006). The protection of prisoners' rights to health care services in South African law: is it adequate? *Journal for Juridical Science*, 31(1), 80–100.
- Swift, P., Johnson, K., Mason, V., Shiyyab, N., & Porter, S. (2013). What happens when people with learning disabilities need advice about the law? *Bristol: University of Bristol*.
- Yunitasari, D. (2020a). Penegakan Hukum Di Wilayah Laut Indonesia Terhadap Kapal Asing Yang Melakukan Illegal Fishing Mengacu Pada Konvensi United Nations Convention On Law Of The Sea 1982. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 8(1), 61–78.
- Yunitasari, D. (2020b). Penegakan Hukum Di Wilayah Laut Indonesia Terhadap Kapal Asing Yang Melakukan Illegal Fishing Mengacu Pada Konvensi United Nations Convention On Law Of The Sea 1982. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 8(1), 61–78.