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JURNAL HUKUM INDONESIA

Legal Protection of Persons with Mental Disorders in Health Services in Accordance with Laws and Regulations in Indonesia

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ABSTRACT

This study aims to examine the role of the Pekalongan City Social Service in synchronizing legal protection arrangements for people with mental disorders (ODGJ, *Orang dengan Gangguan Jiwa*) and to identify forms of legal protection in health services within the framework of Indonesian laws and regulations. The research employs a normative legal research approach, focusing on laws, legal methods, legal principles, and regulations, as well as expert opinions. The problem approach used in this study includes a legislative approach and a conceptual approach. The legislative approach involves reviewing all relevant laws and regulations related to the issue at hand, while the conceptual approach examines theoretical frameworks and principles underlying legal protection for ODGJ. The research methods include the statute approach (analysis of laws and regulations) and an analytical approach, with a focus on inventorying laws and regulations, legal synchronization, and legal discovery *in concreto*. Based on the findings, it is concluded that the Pekalongan City Social Service has played a significant role in implementing the synchronization of legal regulations related to the protection of ODGJ. Forms of legal protection include ensuring access to standardized mental health services, rehabilitation, empowerment, elimination of shackling practices, availability of psychopharmacological drugs, the right to accurate medical information, protection from violence and discrimination, and the fulfillment of social and legal rights. These protections aim to improve the quality of life for ODGJ, guarantee their rights as citizens, and ensure equal treatment in all aspects of life.

Keywords: legal protection, people with mental disorders service

INTRODUCTION

Humans are creatures created by God Almighty, and all humans possess the same dignity before Him. The existence of human beings is inherently tied to human rights, which must be protected, respected, and upheld for all individuals without exception, including people with mental disorders. People with mental disorders are often marginalized in society, facing discrimination and being denied their rightful entitlements (Basri, 2024; Chintya, 2021; Marbun & Santoso, 2021; Musyarofah, 2024). In the context of health services in Pekalongan City, legal protection for people with mental disorders is crucial to ensure they receive dignified and appropriate care in accordance with applicable laws.

In line with the constitutional mandate outlined in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states: "The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government." This article emphasizes that every individual has the right to protection, law enforcement, and the fulfillment of human rights without discrimination, enabling

them to live safely and peacefully. The government is tasked with safeguarding human rights to prevent violations and ensuring that human rights are respected and enforced by prosecuting and penalizing violators in accordance with the law (Misyanto, 2021; Ningsih & Shinta, 2023; Prasetya, 2021; Wahono, 2018).

Furthermore, the government is obligated to fulfill the rights of every citizen without discrimination in all aspects of life. Article 1, number 3 of Law Number 18 of 2014 concerning Mental Health defines People with Mental Disorders (ODGJ, *Orang dengan Gangguan Jiwa*) as individuals who experience disturbances in thoughts, behaviors, and emotions, manifesting as a set of symptoms and/or significant behavioral changes. These conditions can cause suffering and hinder individuals from functioning as human beings (Arrivanissa, 2023; Fitriani, 2016; Sirait, 2017; Hamidi, 2016).

Mental disorders remain a serious issue in Indonesia. The number of individuals with mental disorders reaches 12 million, meaning that 1 to 2 out of every 1,000 Indonesians are affected (Kayame & Mallongi, 2018). The root causes of mental health challenges stem from three main factors: (1) a lack of public understanding of mental disorders, (2) societal stigma surrounding mental health, and (3) the uneven distribution of mental health services (Purnama et al., 2016). Discrimination against individuals with mental disorders persists, even among those receiving community-based mental health care.

In Pekalongan City, there are still cases of people with mental disorders who have not received proper rehabilitation. For instance, an unidentified individual with a mental disorder recently caused public distress by brandishing a sharp weapon in a local market, alarming residents and highlighting the recurring challenges posed by untreated mental health conditions. This raises questions about the government's role in rehabilitating ODGJ, especially since existing laws and regulations clearly mandate the right to rehabilitation for individuals with mental disorders.

This study aims to examine the synchronization of legal protection arrangements for people with mental disorders in health services within the framework of Indonesian laws and regulations. It also seeks to identify the forms of legal protection available for people with mental disorders in health services, ensuring their rights are upheld and their quality of life is improved. The current study addresses the legal protection of people with mental disorders (ODGJ) in health services within the framework of Indonesian laws and regulations, focusing on the synchronization of laws and the role of the Pekalongan City Social Service in implementation. Unlike Malik et al. (2021), who broadly examine legal protection for people with disabilities, this study specifically analyzes mental health laws (e.g., Law No. 18 of 2014) and their vertical synchronization, offering a detailed legal perspective not covered in prior research. Additionally, while Munira et al. (2023) explore practical barriers to accessing mental health services, this study complements their findings by providing a comprehensive legal analysis of regulations and their implementation challenges. The novelty lies in its focus on local governance, legal synchronization, and the integration of legal frameworks with practical insights, bridging gaps in the existing literature on mental health and human rights in Indonesia.

METHOD

The method applied in this study is normative legal research, focusing on laws, legal principles, regulations, and expert opinions (Marzuki, 2005). It employs a legislative approach to review relevant laws and regulations and a conceptual approach to analyze ideas, theories, and legal principles. Data is collected through document analysis of primary and secondary legal sources, including laws, scholarly articles, and case studies.

Qualitative legal analysis is used, incorporating descriptive, comparative, and thematic techniques to interpret legal norms and their implications. The study ensures reliability through triangulation, systematic analysis, and peer review, while maintaining objectivity and ethical integrity. This approach aims to provide a comprehensive understanding of legal protections for people with mental disorders and contribute to more effective legal frameworks.

RESULTS AND DISCUSSION

Mental Disorders in Health Services in Accordance with Indonesian Laws and Regulations

Synchronization of laws and regulations is an alignment and harmonization of various laws and regulations related to existing and currently being drafted laws and regulations that regulate a certain field (Qumairi, 2014). The synchronization of laws and regulations used in this legal research is by means of vertical synchronization. Vertical synchronization is an activity by looking at whether a different degree of laws and regulations in a certain field do not conflict, where the regulations below do not conflict with the regulations that are above it. In addition, vertical synchronization must also pay attention to the chronology of the year and the number of the stipulation of the laws and regulations (Khopiatuzidah, 2016).

Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations states that:

1. The types and hierarchy of Laws and Regulations consist of:
    a. Constitution of the Republic of Indonesia in 1945
    b. Decree of the People's Consultative Assembly
    c. Government Laws / Regulations in Lieu of Laws
    d. Government Regulations
    e. Presidential Regulation
    f. Provincial Regulations; and
    g. Regency/City Regional Regulations.
2. The legal force of the Laws and Regulations is in accordance with the hierarchy as intended in paragraph (1). Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, stipulates that:
    a. Types of Laws and Regulations other than as intended in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, Ministers, bodies, institutions, or commissions at the same level established by law or the Government by order of the Law, the Provincial Regional House of Representatives, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or equivalent.
    b. Laws and Regulations as intended in paragraph (1) are recognized as having their existence and have binding legal force as long as they are ordered by a higher Laws and Regulations or formed based on authority. Article 10 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations stipulates that the content material that must be regulated by the Law contains:
        a) further regulation regarding the provisions of the Constitution of the Republic of Indonesia of 1945
        b) order of a law to be regulated by

c) Ratification of certain international treaties
d) follow-up to the decision of the Constitutional Court; dane) fulfillment of legal needs in society.

The synchronization of legal protection arrangements for people with mental disorders in health services will be analyzed with several theories, including *Stufentheorie* (the hierarchy of legal norms and the chain of validation that forms the legal pyramid) from Hans Kelsen, and *Theorie von Stufenthbaw der Rechtsordnung* (the development of the theory of the hierarchy of legal norms) from Hans Nawiasky, and Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

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) of the Regulation of the Minister of Health Number 54 of 2017 concerning Measures for Attachment to People with Mental Disorders. Article 2 is related to the purpose of the Installation Countermeasures in ODGJ and Article 4 paragraph (1) is related to the method of countering installation.

   If the regulation regarding legal protection for people with mental disorders is reviewed from Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then it can be interpreted that the Regulation of the Minister of Health Number 54 of 2017 concerning Mitigation of Detention for People with Mental Disorders is a regulation that occupies the lowest degree is valid and binding. This means that the Regulation of the Minister of Health Number 54 of 2017 concerning Measures to Prevent Attachment to People with Mental Disorders was basically formally born as a consequence of the force of the enactment of Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, where regulations are issued by the Minister of Health as an institution that plays a role and is responsible in providing protection to people with mental disorders so that can obtain guarantees of the regulation of rights as a person with mental disorders.

   Article 2 and Article 4 paragraph (1) of the Regulation of the Minister of Health Number 54 of 2017 concerning Treatment of Addiction in People with Mental Disorders if interpreted with the theory of Hans Kelsen and Hans Nawiasky are further regulations of Law Number 18 of 2014 concerning Mental Health. This is evidenced from one of the legal bases for the establishment of the Regulation of the Minister of Health Number 54 of 2017 concerning Mitigation of Attachment in Persons with Mental Disorders in considering the inclusion of Law Number 18 of 2014 concerning Mental Health.Article 70paragraph (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 70 paragraph (1) of Law Number 18 of 2014 concerning Mental Health contains provisions on the rights of Persons with Mental Disorders.

   If the above regulation is interpreted with Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Article 70 paragraph (1) of Law Number 18 of 2014 concerning Mental Health has legal force, because the Law is included in the type of hierarchy of laws and regulations. This means that the legal force of the enactment of the Law was basically formally born as a consequence of Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

If Law Number 18 of 2014 concerning Mental Health is interpreted with Article 10 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Law Number 18 of 2014 concerning Mental Health is valid and binding, because the content material of Law Number 18 of 2014 concerning Mental Health qualifies as a Law. This is evidenced by the legal basis for the establishment of Law Number 18 of 2014 concerning Mental Health, namely Article 20, Article 21, Article 28 H paragraph (1), and Article 34 paragraph (3) of the Constitution of the Republic of Indonesia in 1945.

3. Article 3 and Article 10 of the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement. Article 3 is related to the scope of mental health examination for the purpose of law enforcement 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 the Purpose of Law Enforcement was ordered based on Law Number 44 of 2009 concerning Hospitals.

   If the regulation regarding legal protection for people with mental disorders is reviewed from Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then it can be interpreted that the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement is a regulation that occupies the lowest degree is valid and binding. This means that the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement was basically formally born as a consequence of the enactment of Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, where 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 in order to be able to obtain a guarantee of the regulation of rights as a person with a mental disorder.

   As for Article 3 and Article 10 of the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for the Purpose of Law Enforcement, if interpreted with the theory of Hans Kelsen and Hans Nawiasky, it is a further regulation of Law Number 44 of 2009 concerning Hospitals. This is evidenced by one of the legal bases for the establishment of the Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Benefit of Law Enforcement in remembering the inclusion of Law Number 44 of 2009 concerning Hospitals.

4. Article 32 of Law Number 44 of 2009 concerning Hospitals. Contains provisions on patient rights.

   If the above regulation is interpreted with Article 7 of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations as replaced by Article 7 paragraph (1) and paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Article 32 of Law Number 44 of 2009 concerning Hospitals has legal force, because the Law is included in the type of hierarchy of laws and regulations. This means that the legal force of the enactment of the Law was basically formally born as a consequence of Article 7 of Law Number 10 of 2004 concerning the Formation of Laws and Regulations as replaced by Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

If Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals is interpreted with Article 8 of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations as replaced by Article 10 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Law Number 44 of 2009 concerning Hospitals is valid and binding, because the content of Law Number 44 of 2009 concerning Hospitals is qualified as a Law. This is evidenced by the legal basis for the establishment of Law No. 44 of 2009 concerning Hospitals, namely Article 5 paragraph (1), Article 20, Article 28 H paragraph (1), and Article 34 paragraph (3) of the Constitution of the Republic of Indonesia in 1945.

5. Article 144 paragraph (1) and 148 paragraph (1) (2) of Law Number 36 of 2009 concerning Health states that:
   Article 144 paragraph
   a. Mental health efforts are aimed at ensuring that everyone can enjoy a healthy psychiatric life, free from fear, stress, and other distractions that can interfere with mental health. Article 148 paragraph (1) and paragraph (2)
   b. People with mental disorders have the same rights as citizens;
   c. The right as intended in paragraph (1) covers equal treatment in every aspect of life, unless the laws and regulations state otherwise.

   If the above regulation is interpreted with Article 7 of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations as replaced by Article 7 paragraph (1) and paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Article 144 paragraph (1) and Article 148 paragraph (1) and paragraph (2) of Law Number 36 of 2009 concerning Health have legal force, because the Law belongs to the type of hierarchy of laws and regulations. This means that the legal force of the enactment of the law was basically formally born as a consequence of Article 7 of Law Number 10 of 2004 concerning the Formation of Laws and Regulations as replaced by Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations.

   If Law Number 36 of 2009 concerning Health is interpreted with Article 8 of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations as replaced by Article 10 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, then Law Number 36 of 2009 concerning Health is valid and binding, because the content material of Law Number 36 of 2009 concerning Health qualifies as a law. This is evidenced by the legal basis for the establishment of Law Number 36 of 2009 concerning Health, namely Article 20, Article 28 H paragraph (1), and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.
6. Article 28 D paragraph (1), Article 28 H paragraph (1) and Article 34 paragraph (3) of the Constitution of the Republic of Indonesia of 1945. Article 28 D paragraph (1) states that everyone has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law, then Article 28 H paragraph (1) states that everyone has the right to live a prosperous life in birth and mind, to live and get a good and healthy living environment and the right to receive health services and Article 34 paragraph states that the state is responsible for the provision of health service facilities and facilities decent public service. Explanation of the description of all the normative facts above, when interpreted using the theory of laws and regulations Hans Kelsen and Hans Nawiasky, then Regulation of the Minister of Health Number 54 of 2017 concerning Measures for

Attachment to Persons with Mental Disorders, Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement, Law Number 18 of 2014 concerning Mental Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2009 concerning Health, and the Constitution of the Republic of Indonesia of 1945 are in accordance with the theory of the legal level, namely the regulations that are in the position above are guidelines for the regulations that are under them and the regulations that are located below them do not conflict with the regulations that are located above them.

Forms of Legal Protection for Persons with Mental Disorders in Health Services in Accordance with Indonesian Laws and Regulations

Legal protection means that everyone has the right to legal protection. This is stated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to fair legal recognition, guarantee, protection, and certainty as well as equal treatment before the law. The right to legal protection for people with mental disorders is very important, because the guarantee of legal protection for people with mental disorders will make people with mental disorders get their rights in obtaining adequate health services humanely and without discrimination.

Based on the Regulation of the Minister of Health Number 54 of 2017 concerning Measures for Attachment to People with Mental Disorders, Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examinations for the Purpose of Law Enforcement, Law Number 18 of 2014 concerning Mental Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2009 concerning Health, the form of legal protection for people with mental disorders in services Health in the structure of Indonesian laws and regulations are:

1. Guarantee of health service arrangements in health service facilities that are easy to reach and in accordance with mental health service standards.
2. Guarantee that ODGJ arrangements achieve the best quality of life and enjoy a healthy psychiatric life, free from fear.
3. Guarantee of arrangements to exempt ODGJ from installation.
4. Guarantee of the rehabilitation and empowerment of ODGJ.
5. Guarantee of mental health examination arrangements for defendants and victims as well as defendants and plaintiffs with indications of mental disorders for legal purposes.
6. Guarantee of arrangements for the availability of psychopharmaceutical drugs according to their needs.
7. Guarantee of consent arrangement for medical procedures.
8. Guarantee of honest and complete information about their mental health data.
9. Guarantee of protection arrangements from every form of neglect, violence, exploitation, and discrimination.
10. A guarantee of the arrangement to get social needs according to the level of mental disorders.
11. A self-managed company manages its own property.
12. Guarantee of arrangement get the right as a patient in the hospital.
13. Guarantee of equal rights as citizens.
14. Guarantee of equal treatment in every aspect of life

CONCLUSION

The regulation of legal protection for people with mental disorders (ODGJ) in health services within Indonesian laws and regulations demonstrates synchronization, with lower regulations based on higher-level ones and higher-level regulations forming the foundation for lower-level ones. Legal protections include ensuring accessible and standardized mental health services, promoting quality of life, freeing ODGJ from shackling, providing rehabilitation and empowerment, conducting mental health examinations for legal purposes, ensuring the availability of psychopharmaceutical drugs, obtaining informed consent, providing honest health information, protecting against neglect and discrimination, fulfilling social needs, enabling property management, guaranteeing hospital patient rights, and ensuring equal treatment. Future research should explore the implementation gap between legal frameworks and actual practices, focusing on the role of local governments, the effectiveness of legal protections, stakeholder perspectives, regional disparities, the role of digital health technologies, and the intersection of mental health and human rights. These studies can provide actionable insights to strengthen legal protections and ensure the rights and well-being of ODGJ are fully realized.

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