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Who Will Advocate? The Impact of Decision 93/PUU-XX/2022 on Article 433 Civil Code Amendments for Disability Rights and Legal Protection

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Abstract

The Constitutional Court of Indonesia's Decision Number 93/PUU-XX/2022 marks a pivotal moment in disability rights by ruling that the terms "*imbecile*," "*mentally il*l," and "*dark-eyed*," along with the word "must" in Article 433 of the Civil Code, are inconsistent with the 1945 Constitution. The Court replaced these derogatory terms with "*persons with mental and/or intellectual disabilities*" and revised "*must*" to "*can*," signaling a shift toward a more rights-based approach. However, this legal amendment raises critical questions: Does it effectively balance guardianship proceedings with the rights and autonomy of

persons with disabilities? And who will advocate for their protection and inclusion in the legal system? This study analyzes the decision's implications, particularly its impact on the legal mechanisms available to individuals with mental and intellectual disabilities. Using a qualitative approach and a statutory analysis of the Civil Code, Law No. 8 of 2016 on Disability, Law No. 19 of 2011 on the Protection and Rights of Persons with Disabilities, and the Constitutional Court ruling, this research evaluates the extent to which the amendments align with international human rights standards, such as the UN Convention on the Rights of Persons with Disabilities (CRPD). By placing Indonesia's legal reforms in the broader international debate on disability rights, this study highlights the urgency of stronger advocacy and legal safeguards to prevent continued marginalization. The findings contribute to discussions on legal capacity, guardianship, and human dignity, offering insights for policymakers, legal practitioners, and human rights advocates seeking to advance disability rights worldwide.

Keywords

Legal Protection, Human Rights, Disability People, Disability Rights, Advocacy

A. Introduction

The development of the protection of the rights of persons with disabilities in Indonesia mirrors the global change in perspective regarding disabilities from a medical focus to a sociological one approach shift, as noted by Dewa, et al i in 2022.[1] This shift incorporates the social model, which focuses on the interaction with people's environments and considers persons with disabilities, which is different from the imposition of physical conditions. This change is in consonance with global movements advocating for the rights of persons with disabilities

[1] Dewa Gede Sudika Mangku, Ni Putu Rai Yuliartini, and I Wayan Lasmawan, "Legal Protection for People with Disabilities in Indonesia in the Perspective of Justice Theory," *Unnes Law Journal* 8, no. 2 (2022): 245–62, https://doi.org/10.15294/ulj.v8i2.52406; Arifin, Ridwan, et al. "The International Law Principle for People with Disabilities: Analyzing Access to Justice." *Unnes Law Journal* 7, no. 2 (2021): 371-404..

who uphold the removal of barriers instead of sole treatments for impairments.

The Civil Code (*Burgerlijk Wetboek*/BW) enacted during Colonization in Indonesia, specifically Article 433 on guardianship, relates to unduly disability-perpetuating discriminatory societal attitudes and has created persistent problems for socio-legally enabled persons with disabilities.[2] Its outdated language such as "*dungu*" (imbecile), "*sakit otak*" (wal mentally ill)/"*mata gelap*" (blind rage) captures the chronic legal subordination of mental or intellectual disabilities which deny legal agency and inflicts guardianship on eligible decision-makers. Along with the undocumented problems Rabecca (2023) points out constituents of colonial legacies in contemporary legislations and staunch domineering gaps rule contemporary human rights frameworks, clash with the Indonesian constitution's ethos of equality, and dignity of the individual warrant judicial interventions to reclaim align cross-boundary legislations with emerging global human rights standards to address fundamental theoristic inequities.[3]

Guardianship and the rights of people with disabilities due to their circumstances have not been given appropriate attention.[4] Moreover, the understanding of disability at the international level has evolved from a purely medical focus on the individual's condition to one that surveys the individual's relations within and interactions with the environment. The medical view considers some form of a handicap or limitation is determined by the person's physical condition, thus action or intervention has to be taken on the person with disability. On the other hand, the social approach is where the constraints are

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2 Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (2022): 17–19, https://doi.org/10.1080/23311886.2022.2104710.

3 Rebecca Strating, "The Rules-Based Order as Rhetorical Entrapment: Comparing Maritime Dispute Resolution in the Indo-Pacific," *Contemporary Security Policy* 44, no. 3 (2023): 372–409, https://doi.org/10.1080/13523260.2023.2204266.

4 Ioannis Lianos, "Value Extraction and Institutions in Digital Capitalism: Towards a Law and Political Economy Synthesis for Competition Law," *European Law Open* 1, no. 4 (2022): 852–90, https://doi.org/10.1017/elo.2023.2.

always found in the patterns of social interaction or the conditions that prevail in the environment, therefore, the focus of action shifts from the body of the person with disability to the relations in the surrounding area where the person with disability.[5]

The issue of guardianship and the safeguarding of rights of disabled individuals has been largely considered in previous studies. Panglipurjati (2021) in "*Sebuah Telaah Atas Regulasi dan Penetapan Pengampuan Bagi Penyandang Disabilitas Di Indonesia Dalam Paradigma Supported Decision Making*" noted that some regulatory changes do not seem to incorporate fully the Supported Decision-Making paradigm under the CRPD's provisions. Some court analyses regarding guardianships appeared to come to conclusions which are at odds with the spirit of the Supported Decision-making model, which aims to enable disabled people to stand equally before the law as active participants who possess and exercise rights. The study revealed that additional protective legal frameworks focal to the care and disability rights of people with disabilities in need of care need accommodating international standards still seek international protective legal frameworks. This reveals that, in the Indonesian context, human right standards are typically disconnected from the actual systems of implementation stemming from accessible legal capacity focusing on people with intellectual and mental disabilities.[6]

In the 2023 research, "*Model Pengaturan Pengampuan Parsial Untuk Lanjut Usia Sebagai Jaminan Perlindungan Hukum si Indonesia,"* Marditia also showed the lack of regulations considering the Supported Decision Making paradigm. The investigator designed protective legal mechanisms that would aid in the ability refinement of elderly persons while ensuring their legal subjection as bearers of rights, both subjective and objective. One of the pointed recommendations was the

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5 Faissal Malik et al., "Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 538–47, http://dx.doi.org/10.6000/1929-4409.2021.10.62.

6 Puspaningyas Panglipurjati, "Sebuah Telaah Atas Regulasi Dan Penetapan Pengampuan Bagi Penyandang Disabilitas Di Indonesia Dalam Paradigma Supported Decision Making," *Jurnal Paradigma Hukum Pembangunan* 6, no. 02 (2021): 6, https://doi.org/10.25170/paradigma.v6i02.2586.

adjustment of the powers for partial guardianship holders to aid in decision-making (supported decision making). With such an approach, it is made possible that every member of the society could claim and enjoy the fundamental rights and receive the protective guarantees in the exercise of these human rights. The research offers useful recommendations on the possible changes to the guardianship systems to enhance the autonomy of the individuals needing support.[7]

Dawwas et al. (2023) conducted a case study entitled *"Tinjuan Yuridis Penetapan Pengadilan Terhadap Permohonan Mengampuan Orang Pengidap Gangguan Mental (Skizofrenia Paranoid) (Penetapan Perkara Nomor 50/PDT.P/2021/PN.PWR)",* which focused on judicial reasoning in guardianship cases. Their research results indicated that judges made guardianship decisions based on whether the person suffering from paranoid schizophrenia incurred any interruptions to his or her activities of daily living and life, which is consistent with Article 436 of the Civil Code. Schizophrenia is a severe mental disorder that affects one's thinking (delusions), perception (hallucinations), speech, emotions, and behavior; however, this differs from the grounds for guardianship outlined within Article 433 of the Civil Code which states: "Every adult who is in a continuous state of idiocy, brain disease or blindness shall be placed under guardianship, even when he is sometimes able to make use of his thoughts." In making their decision, judges took into account how the ward's paranoid schizophrenia would interfere with the patient's normal activities and determine daily life requirements and therefore, that having a family member as a guardian would be adequate to afford supervision and fulfillment of these needs.[8]

Sheila E. Shea and Carol H. Pressman provided international insights in their research, *"Guardianship: A Civil Rights Perspective."* Their research found that guardianship

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[7] Purti Purbasari Raharningtyas Marditia, "Model Pengaturan Pengampuan Parsial Untuk Lanjut Usia Sebagai Jaminan Perlindungan Hukum Di Indonesia," *Jurnal Paradigma Hukum Pembangunan* 8, no. 1 (2023): 47–66, https://doi.org/10.25170/paradigma.v8i1.4315.

[8] Rizal Dawwas and Agus Budi Santoso, "Tinjuan Yuridis Penetapan Pengadilan Terhadap Permohonan Pengampuan Orang Pengidap Gangguan Mental," *Eksaminasi: Jurnal Hukum* 3, no. 1 (2023): 68–75, https://doi.org/10.37729/eksaminasi.v2i2.3216.

policies have developed internationally, within the United States, and also in New York State. They contended that judicial and legal decision makers need to reconsider and apply the relevant guiding axioms which state that guardianship should only be invoked after all other less intrusive options, like supported-decision making, have been tried and failed. Where guardianship is deemed necessary, a fundamental objective should be the preservation and eventual restoration of rights to self-determination, if and when feasible. The researchers proposed the abolition of plenary guardianship for an indefinite period in acknowledgment of the civil rights of citizens with disabilities to equal societal participation. This study offers valuable insights into legal capacity globally which tend to be more permissive of the exercise of rights.[9]

The novelty in the research pertaining to Decision Number 93/PUU-XX/2022 is its dramatic shift in understanding and approach towards guardianship and especially concerning the protection of rights of people with mental and intellectual disabilities. The Constitutional Court of Republic of Indonesia decided that "*dungu, sakit otak, atau mata gelap*" and the word "*harus* (must)" in Article 433 of The Civil Code are in contradiction with the 1945 Constitution of Republic of Indonesia. The Constitutional Court has argued that the phrase "*dungu, sakit otak, atau mata gelap*" is bound to be understood as mentally and/or intellectually disabled persons and the word "*harus*" is to be understood as "can". This emphasizes recognition of the rights of the so-called ward which was the paramount purpose to restore rights rather than to vest. This modification in meanings and phrases in Article 433 of The Civil Code shows better appreciation of the treatment of persons with disabilities which is necessary to be equitable inclusively.[10]

Disability guardianship with regard to a person enables holistic fulfillment of their rights and ensures access to

[9] Sheila E Shea and Carol Pressman, "Guardianship : A Civil Rights Perspective," *NYSBA Journal*, no. February (2018): 19–25, https://nysba.org/NYSBA/Publications/Bar Journal/Guardianship A Civil Rights Perspective.pdf.

[10] Ahmad Bahrul Hikam and Mohamad Zaenl Arifin, "Legalitas Transaksi Finansial Penyandang Disabilitas Mental Dan Disabilitas Intelektual Dalam Perspektif Islam," *Ad-Deenar: Jurnal Ekonomi Dan Bisnis Islam* 7, no. 2 (2023): 358, https://doi.org/10.30868/ad.v7i02.4987.

healthcare, inclusion, and awareness. Article 433 the Civil Code speaks of "imbecility, insanity or blindness" which is now considered obsolete when juxtaposed with contemporary understandings of mental disabilities. Its description can mostly be applied to the legal status theory of disability as provided in some of the laws on disability in Indonesia. Scientific advancements in mental health have also shifted the global approaches towards treatment, emphasizing optimal health recovery for people with mental disorders deemed unfit due to extreme illness.

Guardianship in Article 433 of the Civil Code focuses on discrimination aimed at marginalizing people within legal routines. It articulates the premise of considering guardianship as the corner stone of all disabilities where there is no distinction of a normal range to be mentally retarded. Guardianship as the very essence of unframed governance looks at the ethos of these individuals as devoid of social means. The legal system defines guardianship in Indonesia in Article 433 of the Civil Code, which describes the condition of guardians and wards as 'imbecility', 'insanity', 'dark eyes', or 'feebleness of mind'. This is problematic because it does not recognize the fact that individuals with mental disabilities can, in fact, make some decisions with the right support.[11]

The passing of Law No. 8 of 2016 on Persons with Disabilities and the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).[12] Indonesia has implemented several policies concerning the legal recognition of the rights of people with disabilities. Unfortunately, as Puspaningtyas (2021) remarked, there are serious gaps like no adherence to the psychiatric expert mandate, ambiguous boundaries of wards and their duration, vague delineation of responsibilities for wards, and lack of evaluative scaffolding. All of these gaps clearly depict colonial paternalistic

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11 Abelita Daud, "Uji Materi Pasal 433 Kitab Undang-Undang Hukum Perdata Dalam Perspektif Hak Penyandang Disabilitas," *Journal of Human And Education (JAHE)* 4, no. 6 (2024): 1141–48, https://doi.org/10.31004/jh.v4i6.2052.

12 Baiq Salma Widiana Sari, "Implementation of Universal Design to Achieve Equality for Persons with Disabilities in Indonesia," *Peradaban Hukum Nusantara (PERANTARA)* 1, no. 2 (2024): 102–21, https://doi.orrg/10.62193/bovxxs79.

approaches that do not account for within and episodic mental illness, recovery, and reasoning decision-making capacities of people taken for granted into the imprecise and arbitrary notion of disabled. Through Article 433 BW the discrimination is too blunt. For instance, the classification of 'ability' under the decision-making scheme where ability to assist subordinates to assistance. Mulia et al (2024) note that discrimination in claiming the grounds of Article 433 is far too simplistic and draws upon a hierarchy of capacity or suppression of ability to make a decision, which is subordinate to support. Guardianship" in itself signifies the act or the legal transaction of taking away, in effect, the legal capacity recognition to grant personhood to those intellectual disabilities and psychosocial disability— disability rights discourse today postulates such a principle of humanity is self-determination and social model of integration.

As noted previously, Article 433 of the Civil Code also takes into account the possibility of a person having mental illness as being of recurrent or episodic nature with the inclusion of the words although sometimes capable of using his mind. There exists a whole range of disorders which are not permanent, mental afflictions– some may be periodic as well. Periodic nature, these so-called mentally ill people are not always in the condition referred to as incapable of reason or rational thought. In most cases, a person suffering from a mental disorder can come to terms with it, and in that event, they will be able to make intelligent decisions.

The episodic nature of the condition of persons with mental disabilities is often not taken into consideration by judges when making guardianship decisions. In fact, there is no room for healthy conditions or phases of the person with disabilities where they can make good decisions at certain times. Puspaningtyas in her research on a number of District Court decisions related to guardianship concluded that, firstly, some decisions did not include a certificate from a psychiatric doctor or present expert testimony from a psychiatric specialist. Secondly, it was unclear whether the mental health doctor's letter had been issued based on an examination as stipulated in Permenkes No. 77/2015. Third, some stipulations did not mention the time period (permanent/temporal) and scope (all acts/specific acts). Fourth, there were no stipulations that

included the duties and authority of the guardian and the rights of the party under guardianship. Fifth, there is no stipulation that includes the obligation to conduct continuous evaluation.

As stated in the Constitutional Court's Decision Number 93/PUU-XX/2022, Indonesia legally changed disabling terms such as "*dungu*'', "*sakit otak*'', and "*mata gelap''* into "part of the persons with mental and/or intellectual disabilities''. In addition to changing the Article 433 of the Civil Code's guardianship word "must" (*harus*) to "can" (*dapat*), the court now approaches capacity determination and guardianship from a legal perspective. As stated by Suwandoko, et al (2020), this remarkable progress represents the synchronizing of Indonesian domestic law to Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) which declares that disabled individuals have legally equal rights.[13] This emphasis moves away from the traditional approach of guardianship toward the more progressive approach of legally recognizing capacity, assuming capacity with appropriate evaluative criteria. The change indicates that the law now perceives the legal entitlement to disability as the exercising representation responsibility being enabled and not mere constraint. There is growing acknowledgment internationally that exercising such rights calls protective measures. In fact, through this decision, the court demonstrates the acceptance of varying degrees of disability by enabling the supported decision-making paradigm instead of substituted decision making intrinsic in mainstream guardianship systems.

The impact of Decision Number 93/PUU-XX/2022, goes beyond terminology changes as it recalculates the legal capacity in Indonesia's jurisprudence. The purpose of this study is to understand fully the legal implications of this decision, particularly how such reinterpretation influences judicial practices in guardianship cases. This is unlike other studies more focused on comparative or historical approaches to guardianship. This study seeks to understand the practical consequences of the Constitutional Court's reinterpretation of

[13] Suwandoko Suwandoko and Satrio Ageng Rihardi, "Legal Reform for the Fulfilment of Disabilities Human Rights," *Unnes Law Journal* 6, no. 2 (2020): 231, https://journal.unnes.ac.id/sju/index.php/ulj/article/view/38973.

Article 433. As such, this study fills the gap on landmark constitutional decisions and day to day judicial work and the mechanisms in place for the protection of vulnerable groups. Through examining these aspects, this research adds to the international discourse on legal capacity, protective mechanisms, and the application of decision making disability rights across different legal systems.

As many jurisdictions around the globe balance coping with traditional models of guardianship with human rights standards, Indonesia's legal developments in disability rights is astonishing in the sense that Indonesia is the only country dealing with this issue. Decision Number 93/PUU-XX/2022 is an attempt to preserve balance between the colonial heritage of law and modern day constitutionalism and international human rights. This study offers other legal systems facing the same dilemma comparative analysis with other reforms advanced in other jurisdictions. This study argues the other way around looking at the deep revision of Article 433, to the procedures designed to guarantee supporting persons with disabilities without their decision-making power being substituted by a decision-tracking mechanism. This research aims at explaining how reinterpreting this constitution can help provide answers to those trying to amend the old frameworks of guardianship laws while ensuring independence of persons with disabilities and their rights.

This gives different and additional insight into guardianship, especially concerning the meaning of the terms Dumb, Brain Sick, Dark Eyed in Article 433 of the Civil Code which uses as its basis Law No. 8/2016 on Disability. These legal modifications mark an important development in the understanding and practice of guardianship, especially in delineating the boundaries of guardianship concerning the rights of persons who have mental and intellectual disabilities. The changes also correspond with developments regarding the international level on the rights of persons with disabilities as mentioned in the Convention on the Rights of Persons with Disabilities which is ratified by the law of Indonesia.

This background provokes the concerning issues of guardianship which are described in this scope of research problem as: 1) What are the implications of the alteration of "*Dumb, Brain Sick or Dark Eyed*" to "*Is part of Persons with Mental*

Disabilities and/or Intellectual Disabilities" for the guardianship of such persons under Article 433 of the Civil Code?; and 2) What consequences of the alteration the meaning of "Must" to "Can" in Article 433 of the Civil Code have on the marginalization of the protected persons with mental and intellectual disabilities?

This research employs a juridical-normative research approach, also known as doctrinal research.[14] This approach involves analyzing library materials or secondary legal sources as the foundation for research, by examining regulations and literature relevant to the issues being studied.[15] In this context, legal science is understood as the science of norms, examining law as a system of dogmatic legal norms or legal systems to clearly understand law as a normative science. Normative legal research is essentially library research, focusing on secondary data. Secondary data in the legal field (viewed from the perspective of binding strength) can be differentiated into primary legal materials, secondary legal materials, and tertiary legal materials.

The data sources used in this study include legal documents like the Civil Code, Law No 8/2016 on Persons with Disabilities, and Decision of the Constitutional Court of the Republic of Indonesia No. 93/PUU-XX/2022, as well as other legal materials. Other legal materials used include scientific books, researched texts, legal instruments, and other explanatory works of primary legal materials. Using Primary Legal Materials, the analysis of Decision 93/PUU-XX/2022 takes critical shifts in understanding the meaning of the phrases in Article 433 of the Civil Code. The first step requires looking at the text of Article 433 of the Civil Code both before and after the modifications. Besides, the researcher analyzes the legal document change history accompanying changes that have the document changes. This intricate process requires looking into the legal reasons justifying the changes.

Furthermore, the research also examines the reasons underlying the Constitutional Court's decision to change the meaning of key words in Article 433. This includes identifying arguments presented in the case petition proceedings, legal

[14] Irwansyah Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021), 20.

[15] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 133.

interpretations, and legal thinking that form the basis for these changes. Understanding these arguments is important to see how the Constitutional Court constructs its reasoning and connects it with the principles of the Constitution of the Republic of Indonesia.

Moreover, the analysis of secondary legal materials from the case petition proceedings is also done.[16] This analysis focuses on extracting the nuances of the associations and signification of shifts in the term used in Article 433 of the Civil Code. The focus is to understand better how the Constitutional Court reasons and constructs the arguments regarding the legal basis change behind this decision. This approach focuses on providing a thorough analysis of proposals to amend Article 433 of the Civil Code from a multidisciplinary perspective, including the administrative logic behind them and the interrelationship with other spheres of law.

B. Legal Consequences of Redefining Outdated Terminology as Mental and Intellectual Disabilities in Article 433 of Indonesian Civil Code

The redefining of obsolete terminology in Article 433 of the Indonesian Civil Code marks a groundbreaking change in Indonesian disability law.[17] Prior to the Constitutional Court Decision No. 93/PUU-XX/2022, the Civil Code used deeply prejudicial and outdated expressions like "*dungu*" (idiocy), "*sakit otak*" (brain illness), and "*mata gelap*" (blindness) for persons who would be subjected to guardianship. These terms stem from a colonial, legalistic heritage not only fostered deep fractures in society, but also did not acknowledge the range of cognitive and psychosocial disabilities that modern medicine and psychology disciplines recognize today. The Constitutional Court's decision

[16] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Pers, 1986), 174.

[17] Tjhong Sendrawan, "Legal Antinomy in Exercising Civil Rights of People with Disabilities in Notarial Activities: Lessons Learned from Indonesia," in *5th International Conference on Law and Governance in a Global Context* (Depok: Fakultas Hukum Universitas Indonesia, 2023), 47, https://iclave.law.ui.ac.id/wp-content/uploads/2024/01/5th-icLave-Conference-Book-v0711-1.pdf.

to redefine these terms as regarding persons with mental and/or intellectual disabilities has shifted Indonesian law toward more compassionate perspectives on disability, and provides a respectful legal framework.[18]

The law practice is impacted in its daily undertakings because judges, advocates, and other legal practitioners are obligated to reconsider their strategies concerning guardianship cases.[19] Now, every form of mental and intellectual disability will fall under an overarching umbrella and there is need to nuance further and break down certain disabilities with their particular conditions and define how they impact the ability to make decisions. Furthermore, this assists in empowering those with mental and intellectual disabilities to build supportive frameworks without rigid structures by fostering more flexible arrangements through fortifying sophisticated pathways designed for their specific needs and the abilities they possess. It enables practitioners to analyze a case's actual circumstances rather than applying outdated classifications based on simplistic stereotypes.

A wide gap has existed between Indonesia's civil law heritage and it's international human rights commitements. This gap is arguably created by using controversial terms like "handicapped," "the disabled," or "the afflicted" as opposed to using modern disability language.[20] Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD) through law no. 19 of 2011, and with this order, The Constitutional Court has begun to move towards alignment of these terms with the convention. This step marks an effort to

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[18] Simon Butt and Prayekti Muharjanti, "What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia in Indonesia," *International Journal of Constitutional Law* 20, no. 1 (2022): 428–53, https://doi.org/10.1093/icon/moac014.

[19] Anis Widyawati et al., "Application of The Juridic-Scientific Religious Approach Model in Execution of Penal Law Enforcement," *Pandecta Research Law Journal* 17, no. 1 (2022): 146–57, https://doi.org/10.15294/pandecta.v17i1.35812.

[20] Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, "Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 333–78, https://doi.org/10.15294/jils.v7i2.60096.

resolve the disparity between domestic law and international standards on human rights.[21]

The modern concepts enable enactment of further refined legal frameworks that implement the principles set in the CRPD– autonomy, dignity, and inclusion. This also serves as a call to action towards other legal reforms in contract law, inheritance law, and property law which directly relate to the capabilities of persons With Disabilities. This change does not signal just an improvement of language, but it marks a shift in ideology capturing how Indonesian law thinks around and makes provisions for disability into a society in which these rights are acknowledged. It signifies movement away from medical and welfare paradigms and social care to accepting legal protection and recognition of individuals with mental and intellectual disabilities.

This neglects multi-factorial understanding of concepts which assists in the development of self-governance policies that protects the dignity and independence of individuals with disabilities, as well as provides adequate care and support. The phrasing changes included in the scope of Article 433 will affect the evaluation approaches in guardianship case evaluations. From the previous framework, the outdated words allowed excessive narrowing of phrasing which could result in the inappropriate limitation of a legal capacity because of certain condition based stereotypes. The new phrasing requires a more advanced level of cognitive hierarchy of decision-making skill the individual is able to demonstrate, which increases the chances of person-centered and evidence-based enhanced assessments. Such a change may require mental health and legal practitioners interfacing with guardianship cases to formulate new policies and protocols. It inspires a shift from status-based (who rely solely on a diagnosis to determine legal capacity) to functional approaches that evaluate particular decision-making skills within certain contexts. With these new adaptations, legal professionals can work alongside mental health specialists in ways that were previously impossible due to the need for current medical and psychological information brought forward by the

[21] Merve Deniz and P A K Güre, "United Nations Mechanisms for the Protection and Promotion of Human Rights," *Sosyal Çalışma Dergisi* 5, no. 1 (2021): 18–26, https://doi.org/10.1007/978-94-017-5932-84.

courts. This shift could bring about a more accurate determination of the level of guardianship that is required or, alternatively, highlight the degree of support that is less restrictive in nature and more appropriate for the needs and autonomy of individuals who have intellectual or mental disabilities.[22]

The modification of definition in Article 433 subsequently restructures the entire educational framework for legal practitioners in Indonesia. The law schools, professional legal education institutes, and the judicial academies will all have to change their learning programs and materials concerning the new definition and its logical justification. A legal practitioner will not only need to be taught new terms, but also the contemporary frameworks on mental and intellectual disabilities that informs such a description. This transformation in pedagogy goes beyond change in terminology to a complete change in paradigm towards disability to align with the logic of the Court's ruling.

The change provides an opportunity for legal scholars and advocates for persons with disabilities to address the gap in education by developing relevant inclusive materials, incorporating the actual experiences of persons with intellectual and psychosocial disabilities. It is this change that will, arguably, impact an entire generation of lawyers, changing their perceptions and the way they reason about disability issues and disability-inclusive legal frameworks for individuals with disabilities in Indonesia.[23] This advancement helps create an adaptable legal environment supporting all citizens of Indonesia by raising the awareness and understanding of mental and intellectual disabilities among legal practitioners.

The redefining of the outdated terms in Article 433 has consequences for the right of self-determination of persons with mental and intellectual disabilities in Indonesia. The modernization of these colonial era concepts into modern

[22] Derita Prapti Rahayu et al., "Law Enforcement in the Context of Legal Culture in Society," *Law Reform* 16, no. 2 (2020): 276–89, https://ejournal.undip.ac.id/index.php/lawreform/article/view/33780.

[23] Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 01 (2025): 147, http://dx.doi.org/10.33756/jlr.v7i1.27595.

concepts of disability enables greater legal recognition of the agency and autonomy of persons with disabilities.[24] These changes in terminology will enable more legal interpretations which presume capacity rather than incapacity, which will help reduce the over paternalistic use of full guardianship. It fosters assumptions that guardianship should be individualized instead of diagnosed.

C. Implications of Amending 'Must' to 'Can' in Article 433 BW on Mental and Intellectual Disability Rights Protection

The change from "must" (*harus*) to "can" (*dapat*), as noted in the Constitutional Court's decision on Article 433 of the Civil Code (*Burgerlijk Wetboek*), indicates a shift on the Indonesian legal system's perspective concerning the sociological reality of incompatibility of mental and intellectual disabilities with legal capacity. This change marks a move from guardianship as a requirement to one requiring a more nuanced evaluation on whether guardianship is actually needed. Before this change, the provision was still compulsory in the sense that:
"*every adult who is in an eternal state of idiocy or a brain illness, or who is blind shall be placed under guardianship. Even when sometimes capable of using their thought, the decision, need, and wish to use one's thought is not available*."

Compulsory in this context means that the language used practically denied agency in law, devoid diacritical mental attributes inclusively termed as disabilities. The substitution of "must" for "can" gives room for discretion, fundamental judicial power that necessitates an active, case-by-case evaluation of a person's skills, requirements, and circumstances before deciding to apply guardianship.[25] This corresponds with the supported decision making model under the Convention on the Rights of

[24] Irene Poetranto, Justin Lau, and Josh Gold, "Look South: Challenges and Opportunities for the 'Rules of the Road' for Cyberspace in ASEAN and the AU," *Journal of Cyber Policy* 6, no. 3 (2021): 318–39, https://doi.org/10.1080/23738871.2021.2011937.

[25] Zamroni Abdussamad et al., "Knitting Legislative Meaning: A Review of Disability Education Policy in the Law on the National Education System and Disabilities," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 356, https://doi.org/10.31941/pj.v22i3.3830.

Persons with Disabilities (CRPD) that Indonesia ratified in law number 19 of 2011 which stipulates, makes it clear that imposing restrictions of legal capacity should not be made automatically, but should be proportional and constructed on solid reasoning.

The change in wording from guardianship "Must" to "Can" indicates a shift from automatic to manual guardianship, which has far-reaching consequences regarding the consideration of legal personhood disabilities' persons. The decision created a model of complete legal substituted decision-making that reduced 'legal capacity' purely on 'disability' status; this denial reinforced the negative stereotypes concerning the decision-making ability of persons with mental and intellectual disabilities. This denial of legal capacity, in totality, goes against Article 12 of the CRPD.[26] The amendment effectively recognizes that disability alone cannot warrant the curtailing of legal capacity and shifts towards the stratified denial framework where ability to make decisions exists within a continuum. With this recognition of the right to legal personhood, Indonesia has been able to begin the process of dismantling the oppressive legal frameworks that discriminated against persons with disabilities. The arbitrary nature of guardianship under the amendments grants the authority to judges to explore options other than legal restraints and where active legal involvement is crafted based on the precise needs, abilities, and level of legal and procedural agency of the concerned persons, thereby preserving autonomy to the highest possible limit.[27]

This connects directly with Shea and Pressman's work regarding guardianship as a civil rights concern. It absolutely fits with their conclusion that guardianship must be preceded by efforts involving less restrictive options. This is precisely aligned with the discretionary model which has now been adopted in Article 433. The Constitutional Court's ruling implements their suggestion that one fundamental aim of guardianship ought to be the 'preservation and restoration of rights, when possible.' The

[26] Camillia Kong, "The Phenomenology and Ethics of P-Centricity in Mental Capacity Law," *Law and Philosophy* 42, no. 2 (2023): 146, https://doi.org/10.1007/s10982-022-09458-6.

[27] Rodiyah, Ridwan Arifin, and Steven, "Local Autonomy and Federalism: How Indonesia Deal With Democracy in The Global Governance?," *Pandecta Research Law Journal* 15, no. 2 (2020): 346, http://journal.unnes.ac.id/nju/index.php/pandecta.

amendment marks in this regard an important advance towards the 'plenary guardianship of unlimited duration' these researchers considered profoundly discrepant with societal participation.

Making the change from a discretionary to mandatory guardianship system involves sweeping changes at the judicial level of the guardianship system's administration, along with procedural outlines. Courts have to construct far more sophisticated methods that evaluate an individual's capability for exercising any form of decision-making or control over their life—not using a single medical diagnosis or an overarching diagnosis-based thinking.[28] The range of that decision is so broad that it includes branches like medicine, psychology, social work and even advocacy, within disabled people's rights legislation, as concern autonomy and support within the frameworks of caring. On the other side, these procedural safeguards should also guarantee the ability of persons with disabilities to access the courts, free from the encumbrances of having to meet numerous barriers, such as the reception of information in accessible formats, legal representation, and active participation in steps related to decisions regarding their rights. Therefore, the responsibility of the judicial branch is to construct appropriate mechanisms and processes within an enabling legal environment that exalts the dignity and autonomy of persons with disabilities, while also putting in place necessary protections for those who truly require such help.[29]

These findings highlight a critical absence in the logic of the implementation mechanisms as they exist today. Even though the legal change permits greater consideration of the rights, the case study conducted by Dawwas et al. (2023) showed that the reasoning applied within guardianship court decisions tends to overly focus on intrusively medicalized technological checklists of diagnoses and functional limitations. Their analysis of a case consisting of paranoid schizophrenia demonstrated that judges

[28] Joni Helandri et al., "Implementasi Prinsip Negara Hukum Dalam Meningkatkan Good Governance Di Indonesia," *Hutanasyah: Jurnal Hukum Tata Negara* 3, no. 1 (2024): 39–60, https://doi.org/10.37092/hutansyah.v3i1.888.

[29] Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah," *Jurnal HAM* 11, no. 1 (2020): 131, https://doi.org/10.30641/ham.2020.11.131-150.

who ordered guardianship made decisions largely based on disruption to daily activities instead of the reasoning and integration of diverse decision-making skill evaluation. This evidence points towards the need of extensive training on violence judgment for educators within the judgment frameworks along with reforming steps if the law is to have any influence, which is likely to accompany the legal change.

"*Must*" changing to "*can*" allows for graduated and flexible support systems that appeal to personal autonomy. Under the previous mandatory model, guardianship system was almost always installed as a plenary one—guardians were given comprehensive authority to make all the decisions that needed to be made in the life of an individual. This approach did not consider that decision-making powers may differ from domain to domain and change over time. The discretionary framework permitted by the amendment allows for more nuanced forms of aid to be designed, including arrangements of partial guardianship where authority is restrained to areas where intervention is genuinely required and autonomy is preserved in other domains. Such an approach enables designing frameworks of support that are dynamic as capabilities change, which could include forms of supported and co-decision making, representation agreements, and advance directives.

These findings emphasize the importance of having complete legislative changes, not only limited to the amendments made by the Constitutional Court. Although the amendment has loosened the prerequisites of guardianship, Indonesia still does not possess any relevant legal structure that is able to offer alternatives based on supported decision making. Comparing these results with international best practices indicates types of countries with developed frameworks of disability rights have more advanced legislation dealing with supported decision making through representation agreements, micro-boards, and circles of support. Indonesia's legal system stands to gain from such changes which would enhance the available options regarding the removal of guardianship. Such options could be considered by courts under a new discretionary approach.

D. Conclusion

As a final point, this analysis underscores how the Constitutional Court Decision Number 93/PUU-XX/2022 concerning the Article 433 Civil Code—specifically the profound modification from 'must' to 'can' regarding the appointment of guardians—shifts the decision-making framework for mental and intellectual disabilities in Indonesia from substituted to supported decision-making. amendments signify a momentous change from substituted to supported decision-making models concerning mental and intellectual disabilities in Indonesia. From our study, there are three notable legal implications: first, the replacement of compulsory guardianship with optional ones introduces variability in the legal sufficiency assessment; second, the easing of derogatory terms to rights-based language is a step towards less stigmatization; third, the compliance with CRPD Principles warrants the adoption of additional reform practices.

From these conclusions, we propose that specialized training concerning guardianship evaluations for disabled persons should be provided to legal professionals; uniform protocols for capacity assessment in decision-making should be established by the judiciary; laws should be passed to ensure primary legislation that defines the mechanisms of support through enabling laws for decision-making; and the involvement of disability advocacy groups in these reforms should not be symbolic but instead active and purposeful. Expanding on the national context of Indonesia, additional research should look into how these changes are actualized across different regions, paying special attention to whether the discretionary nature of the change fosters respect and dignity towards people with disabilities.

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"When we talk about accessibility issues, we're highlighting societal flaws, not the limitations of individuals with disabilities."

— Dr. Kalyan C. Kankanala, Understanding Accessibility

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