

RESEARCH ARTICLE

The Legal Protection of Prisoners with Disabilities in Class IIA Prison of Pekalongan

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Citation:

Ashraff, M., & Subroto, M. (2022). The Legal Protection of Prisoners with Disabilities in Class IIA Prison of Pekalongan. *Law Research Review Quarterly*, 8(2), 217-232.

<https://doi.org/10.15294/lrrq.v8i1.51099>

Submitted : October 21, 2021
Revised : December 3, 2021
Accepted : February 1, 2022
Online since: February 8, 2022

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ISSN 2716-3415

Law Research Review Quarterly published by Faculty of Law, Universitas Negeri Semarang, Indonesia. Published quarterly on February, May, August, and November.

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Abstract

Security Protection of Prisoners Persons with Disabilities have not been regulated in Law Number 12 of 1995 concerning Corrections, but Law Number 8 of 2016 concerning Persons with Disabilities regulates the Guarantee of Protection for Prisoners with Disabilities. The problem in this research is how is the juridical point of view on the guarantee of protection for prisoners with disabilities at the Class IIA prison in Pekalongan, and how is the guarantee of protection for prisoners with disabilities in the future. The purpose of this study was to determine the guarantee of protection for prisoners with disabilities in Class IIA prison in Pekalongan and the guarantee of protection for prisoners with disabilities in the future. The research that uses the type of legal research used is sociological juridical, the research specifications used are analytical descriptive, the data collection method used is primary data and secondary data, and the data analysis used is qualitative. This research can result that the Protection Guarantee for Prisoners with Disabilities has not been regulated in Law Number 12 of 1995 concerning Corrections but in fact the Protection Guarantee has been applied to Class IIA prison in Pekalongan and the Draft Law on Corrections which is the drafting process should regulate the Protection Guarantee against prisoners with disabilities.

Keywords: *Prisoners, Disability, Protection Guarantee*

1. INTRODUCTION

Persons with disabilities according to Indonesian Law No. 8 of 2016 have the definition of humans who experience physical, mental, intellectual, or sensory barriers in interacting in their social environment for a relatively long time, so that it can prevent their full and effective participation with other citizens. based on equal rights. Thus, it is proper for prisoners with disabilities to receive protection guarantees such as the right to optimal and special health services according to their conditions.

Convicts according to Article 1 Number 7 of Law Number 12 of 1995 concerning Corrections are convicts who have lost their independence in LAPAS (correctional institutions). Like humans in general, a prisoner has the same rights even though some of his rights are temporarily confiscated by the State.

Correctional is the final part of the criminal justice system in the criminal justice system which is an integral part of the integrated criminal justice system. Thus, correctional facilities, both in terms of systems, institutions, methods of coaching, and correctional officers, are an inseparable part of a series of law enforcement processes.

Upholding the applicable law is an obligation for every citizen, as a sense of realizing the Indonesian state as a state of law, for its citizens responsibility and awareness is needed. Everyone in Indonesia has a responsibility and awareness that must be manifested in their behavior and actions. In line with these provisions, the guarantee of the welfare of everyone before the law is one of the important principles, therefore everyone has the right to fair legal certainty, recognition, guaranteed protection, and to apply the principle of equality before the law or equal treatment before the law. Moreover, criminal acts are committed by Persons with Disabilities. In the criminal justice system, when the judge has sentenced a defendant with a disability, according to the severity or lightness of the sentence, the

defendant will still occupy the coaching process by the correctional officer at the prison/detention center.

Article 178 of Law Number 8 of 1981 concerning the Criminal Procedure Code has stated that guarantees for prisoners with disabilities are:

1. If the defendant or witness is mute and/or deaf and cannot write, the presiding judge at trial appoints as translator a person who is good at getting along with the defendant or witness.
2. If the defendant or witness is mute and/or deaf but can write, the presiding judge at trial shall submit all questions or warnings to him in writing and the defendant or witness is instructed to write down his answers and then all questions and answers must be read out.

In addition to these regulations, there are regulations for guaranteeing the protection of prisoners with disabilities in Law Number 8 of 2016 for Persons with Disabilities Article 37, namely:

- 1) State detention centers and correctional facilities are required to provide a Disability Service Unit.
- 2) The Disability Service Unit as referred to in paragraph (1) functions to:
 - a. provide adaptation period services for prisoners with disabilities for 6 (six) months;
 - b. providing special needs, including medicines attached to Persons with Disabilities during detention and coaching; and
 - c. providing rehabilitation services for Persons with Mental Disabilities.

Basically, when in court or while serving a criminal period (especially against prisoners), Persons with Disabilities themselves must receive protection guarantees. Thus, guarantee of protection against Disability is not only at the pre-adjudication, adjudication, but also should touch the level of post-adjudication.

According to Article 5 it is stated that the correctional system is implemented based on the following principles:

- 1) Shelter,
- 2) Equality of treatment and service,
- 3) Education,
- 4) Guidance,
- 5) Respect for human dignity,
- 6) Losing freedom is the only suffering, and
- 7) Guaranteed right to keep in touch with family and certain people.

2. METHOD

This research uses a type of research that combines empirical legal research and normative legal research. Normative legal research conceptualizes law as what is written in the legislation (law in book) or legal conception as a rule or norm as a benchmark for community behavior towards things that are considered appropriate.

Data collection techniques are adjusted to the type of data needed, namely library research, which is collecting data through literature, books that have a relationship with the problem being studied, and field studies (Field Research) which is research by visiting the location examined in the Class IIA prison in Pekalongan, through interviews with related parties, for example, Correctional Officers and prisoners with disabilities.

This study uses qualitative data analysis, namely data management techniques with words in order to describe/discuss research results with conceptual and theoretical analysis approaches, as well as process data and present it in a systematic, orderly and structured form and have meaning.

3. RESULT AND DISCUSSION

The shift from a medical perspective to a human rights approach has been around since the 1990s. These terms and when sorted, do not have a close relationship with

the social model, as it is being developed. However, the movement towards a human rights approach has an epistemological relationship. There are two aspects of the understanding of Persons with Disabilities legally and non-judicially. The description of the juridical and non-judicial aspects related to persons with disabilities is explained as follows:

The Convention on The Rights of Persons with Disabilities defines persons with disabilities as those who have long-term mental, physical, intellectual impairments whose interactions can hinder them in socializing optimally and effectively. Frans Harsanah Sastradiningrat stated that "A person is declared disabled if he experiences visual impairment after undergoing maximum correction while prioritizing a special approach in his education.

Therefore, the World Health Organization (WHO) has made the International Classification of Functioning, Disability and Health (ICF). ICF prioritizes the existence of environmental factors that have an impact on the occurrence of disability. In the ICF, problems concerning function humans are classified into three interrelated categories, namely:

- a. Physical limitations: changes in body structure or problems with body functions, such as blindness or paralysis.
- b. Activity limitations: obstacles in carrying out activities, such as eating or walking.
- c. Restrictions on participation: problems with relatedness in life, for example discrimination in employment.

Article 1 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities defines Persons with Disabilities, namely: "Every person who is suffering from physical, intellectual, mental and/or sensory limitations for a long time who in communicating with the environment experiences obstacles and difficulties to participate maximally and effectively with other communities based on equal rights."

The classification of Persons with Disabilities according to Article 4 of Law Number 8 of 2016 is divided into 4, namely:

Paragraph (1):

- a. Persons with Physical Disabilities,
- b. Persons with Intellectual Disabilities,
- c. People with Mental Disabilities, and/or
- d. Sensory Disabilities.

Paragraph (2):

"The variety of Persons with Disabilities as referred to in paragraph (1) can be experienced singly, or multiply in the long term determined by medical personnel in accordance with the provisions of the legislation"

Persons with Disabilities are divided into 7 Classifications, namely:

- a. Deafness

Deafness is a condition of individuals who have disturbances in the sense of hearing. In deaf children, when they are born, they cannot cry.

- b. Blindness

Blindness is a condition of a person who has a disturbance in the sense of sight. Blind people are divided into two groups, namely total blindness and visual impairment.

- c. Quadriplegic

Disability is a condition of someone who has physical abnormalities, especially limbs such as feet, hands, or body shape.

- d. Mentally Disabled

Retardation is a condition of a child or someone who has a below average intellectual or mental development slowdown.

- e. Unsociable

Unsociable is someone who has problems in controlling emotions and social control.

f. Autism

Autism is a condition a person has from birth or a toddler, which makes him unable to socially relate or communicate normally. Neurologically or related to the nervous system, autism can be defined as children who have brain development barriers, especially in language, social, and fantasy development.

g. Down Syndrome

Down syndrome is one part of mental retardation. Down syndrome is a chromosomal abnormality. This chromosomal abnormality occurs because during the process of dividing a pair of chromosomes fail to separate from each other. The characteristics of Down syndrome can be seen from the patient's physical appearance, such as a relatively short height, a smaller head, a flat nose that bears resemblance to the Mongolian race. Hence, Down syndrome is sometimes referred to as Mongoloid.

A. *Guarantee of Protection for Prisoners with Disabilities in Class IIA prison in Pekalongan*

Article 28D paragraph (1) of the 1945 Constitution stipulates that every living human being has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law.

That every human being has an interest, namely the demands of individuals or groups that are needed in order to be fulfilled interests. Human protected by law are called rights. Each right has four elements, namely legal subjects, legal objects, legal correlations that bind other parties with obligations and protection. In essence, interests contain power that is guaranteed and protected by law in its implementation. So, the guarantee of protection is a right given to a person in the form of fair protection before the law without distinction of race, ethnicity, culture, and others.

Therefore, legal protection is realized or provided as a joint effort on the basis of the relevant principles, namely:

A. Legality Principle

Having an institution specifically to form regulations and laws in a good and democratic manner, according to the expectations of the community. The establishment of a statutory regulation is expected to be a benchmark or material to be applied and implemented.

B. The principle of protection

In order to give a person a higher position as a human right in the application and enforcement of good law, in its application it is hoped that government administrators can guarantee human rights and their obligations otherwise the community and the state must have high legal awareness.

C. The Principle of Legal Certainty

The Rule of law is formed so that it can be applied by the state and society. The events that are formed make the law exist. So legal certainty is justifiable protection against arbitrary actions so that someone will get something given in certain circumstances. The community wants legal certainty, it will create a certain goal.

D. The principle of justice

The community really expects that in the implementation or enforcement of the law justice can be paid attention to. In the application or enforcement of the law, it must be fair, so that the law is similar to justice. The law is binding on everyone, is equal. On the other hand, justice is subjective, separate and equal.

Article 178 of Law Number 8 of 1981 concerning the Criminal Procedure Code explains that the guarantee of protection given to Persons with Disabilities, namely:

- 1) If the defendant or witness is mute and/or deaf and cannot write, then the presiding judge at trial must appoint someone as an interpreter who is good at getting along with the defendant or witness.
- 2) If the defendant or witness is mute and/or deaf but can write, the presiding judge at trial gives all questions or

warnings to the defendant or witness in writing and the defendant or witness is asked to write answers, then all questions and answers must be read out.

Judging from normative research, the guarantee of protection for prisoners with disabilities at the post-adjudication stage in Law Number 12 of 1995 concerning Corrections does not specifically explain for persons with disabilities to obtain protection guarantees, but guarantees of protection for prisoners with disabilities lie in other legislation.

In Article 37 of Law Number 8 of 2016 Persons with Disabilities, it is stated that the guarantee of protection for prisoners with disabilities at the adjudication stage, namely:

- 1) Disability Service Units must be available in state detention centers and correctional institutions
- 2) What is meant by Disability Service Units in paragraph (1) works:
 - a) prepare adjustment period services for prisoners with disabilities within a period of 6 (six) months;
 - b) preparing for special needs, such as medicines used by Persons with Disabilities during detention and coaching; and
 - c) prepare rehabilitation services for Persons with Mental Disabilities.

Based on an interview with the Head of the Class IIA prison in Pekalongan Detention Service Sub-Section, related to: Guarantees of Protection for Prisoners with Disabilities while in detention, such as:

- 1) The detention center has implemented guarantees of protection for prisoners with disabilities for a long time.
- 2) There is no special room for Persons with Disabilities because the number of persons with disabilities is relatively small and they are still placed in the same room with other prisoners.
- 3) Provision of special medicines for persons with disabilities who need them during their treatment at the detention center, apart from medicines, there are also

special toilets and wheelchairs for prisoners with disabilities.

- 4) There is an adaptation period by being placed in a separate block for Prisoners with Disabilities for a period of 12-30 days after completing the adaptation period, Prisoners with Disabilities will be transferred to a detention block.

The results of the interview with the Head of the Class IIA prison in Pekalongan Detention Service Sub-Section showed that the Protection Guarantee for Prisoners with Disabilities refers to Article 37 of Law Number 8 of 2016 concerning Persons with Disabilities, but during the introduction or adjustment period for Prisoners with Disabilities in Article 37 Law Number 8 of 2016 explains that state detention centers and correctional institutions provide services for an adjustment period of 6 months, in an interview with the Head of the Sub-Section of Detention Center Services, the adjustment period for Persons with Disabilities is only 12-30 days. Therefore, the adjustment period is still not comparable to Law Number 8 of 2016, there is no detention room for prisoners with disabilities that have additional facilities such as special bathrooms and wheelchairs for prisoners with disabilities.

In addition to interviewing the Head of the Detention Service Sub-Section for Detainees, the researcher also interviewed Prisoners with Physical Disabilities who were in the Class IIA prison in Pekalongan Detention Center Class IIA, namely Mr. X, regarding the Guarantee of Protection at the Detention Center, namely:

- 1) Provision of medicines for Prisoners with Disabilities.
- 2) Provision of an adjustment period for Prisoners with Disabilities for a period of 2 weeks.
- 3) Detainees are placed in one room with others because there are few prisoners with disabilities
- 4) There is no assistance needed by Mr. X to officers or friends in the detention center, but officers and friends

are always ready if asked for help physical examination by Mr. X.

Based on the results of the interview with prisoners with disabilities, the guarantee of protection for prisoners with disabilities while in the Class IIA prison in Pekalongan detention center is still in accordance with Article 37 of Law Number 8 of 2016 concerning Persons with Disabilities, but for the introduction or adjustment period it is not appropriate with Article 37 of Law Number 8 of 2016 concerning Persons with Disabilities which is only given for 2 (two) weeks, not only that, for the needs required by Mr. as well as fellow prisoners to offer assistance to Mr X, and there is no special room for prisoners with disabilities because the number of people with disabilities is relatively small.

B. Guarantee of Protection for Prisoners with Disabilities in the Future

One part of the criminal justice system is prisons, which are law enforcement efforts based on Law Number 12 of 1995 concerning Corrections as stated in Article 8 paragraph (1) which reads that Correctional Officers who referred to in Article 7 paragraph (1) is a Functional Law Enforcement Officer whose duties are carried out in the field of coaching, securing, and mentoring inmates or inmates.

With these provisions, the government provides an effort or a good coaching process in order to make changes related to the current condition of prisoners with all the coaching processes and treat prisoners more humanely, through the provision of existing rights so that it functions to change the nature of prisoners (the function of correction) so that inmates can re-live life properly and be productive (return to a normal and productive life) in society after a period of criminal.

Contrast to what the objectives of the penal system, then in the process of formation of inmates in this regard inmates with disabilities are not allowed use violence such

as torture or ill-treatment but prioritize protection during the development process in detention centers or correctional institutions. Guidance that should be given to prisoners with disabilities by relying on laws and regulations in accordance with the guarantee of protection for prisoners with disabilities during the coaching process in detention centers and correctional institutions. In order to avoid violence such as persecution or torture in Detention Centers and correctional institutions, Article 5 of Law Number 12 of 1995 Concerning Corrections, fostering prisoners must be in accordance with the guidelines that have been made, namely:

- 1) Protection;
- 2) Non-Discrimination;
- 3) Education;
- 4) Guidance;
- 5) Respect for human dignity;
- 6) Suffering only loses freedom; and
- 7) The right to keep in touch with family and certain people.

Corrections must always uphold the rights and guarantees of protection of prisoners with disabilities who are serving a criminal period, therefore the process of coaching at a Detention Center or Correctional Institution does not only foster, protect, educate and guide prisoners with disabilities but must achieve a goal of sentencing.

Based on Article 5 paragraph (2) relating to the Convention on the Rights of Persons with Disabilities related to equal legal protection said: "States must prohibit discrimination based on disability and ensure equal and effective legal protection for persons with disabilities against discrimination based on a particular reason."

Furthermore, in Article 12 paragraph (4) regarding the Convention on the Rights of Persons with Disabilities concerning "States Parties must ensure that all actions related to the implementation of legal capacity by providing guarantees of adequate and effective protection to prevent

violations in accordance with international human rights law. Such guarantees must ensure that actions relating to the exercise of legal capacity respect the rights, wishes and choices of individuals, are free from conflicts of interest and inappropriate influence, are reasonable and appropriate to the individual's circumstances, are only valid for the shortest possible period, and are subject to periodic review by a competent, independent and impartial authority or judicial body of an individual or group. Guarantees must be proportionate so that such actions can harm the rights and interests of individuals."

Regarding the discipline of guaranteeing protection for prisoners with disabilities in Law NO. 12 of 1995 concerning Corrections does not explain this, but in Law NO. 8 of 2016 concerning Persons with Disabilities Article 37 explains how to guarantee protection for prisoners with disabilities while in prisons and detention centers.

Based on the discussion of the researcher's first problem described above, that in fact the same guarantee of protection for prisoners with disabilities has been applied to the Class IIA prison in Pekalongan.

From the detention center visited by researchers, there are differences regarding the guarantee of protection for prisoners with disabilities in the applicable regulations, this can be seen from the Pekalongan detention center which has an introduction period of 2 weeks to 1 month, not only about the introduction period in the Class IIA prison in Pekalongan has prepared toilets and wheelchairs for prisoners with disabilities, but regarding prisoners with disabilities during the coaching process at the detention center, the staff or other inmates have not been fully assisted.

It can be seen that the guarantee of protection for prisoners at the Class IIA prison in Pekalongan is not fully guided by Article 37 of Law Number 8 of 2016 concerning Persons with Disabilities, related to the environmental introduction period.

Based on this, it can be seen that the principle of sentencing is still binding in other words, the facilities and infrastructure are not adequate for prisoners with disabilities in the Detention Center and can reduce the effectiveness of law enforcement, especially coaching for prisoners with disabilities in the State Detention Center. optimal or not like the WBP or prisoner coaching system.

Regarding guarantees for the protection of prisoners with disabilities in the future, Law Number 12 of 1995 concerning Corrections should also regulate the guarantee of protection of prisoners with disabilities while in Correctional Institutions (Lapas) or State Detention Centers (Rutan), so that Law No. 12 of 1995 concerning Corrections can be an arrangement that can be used to regulate the entire process of fostering inmates in Correctional Institutions and State Detention Centers, including prisoners with disabilities.

Not only that, the guarantee of protection that actually exists in the detention center still receives less attention, especially the facilities and infrastructure for prisoners who do not have special detention rooms for prisoners with disabilities, after undergoing a period of introducing prisoners with disabilities, they immediately mingle with other prisoners.

4. CONCLUSION

Protection guarantees for prisoners with disabilities are not regulated in Law Number 12 of 1995 concerning Corrections but guarantees for the protection of prisoners with disabilities have been regulated in Article 37 of Law Number 8 of 2016 concerning Persons with Disabilities. In actual conditions, the guarantee of protection for prisoners with disabilities has been carried out at the Class IIA prison in Pekalongan State Detention Center. Regarding guarantees for the protection of prisoners with disabilities in the future, Law Number 12 of 1995 concerning Corrections should regulate the guarantee of protection for prisoners

with disabilities, besides that in the detention center there must also be a special room for the separation of prisoners from one prisoner with prisoners with disabilities. , in the Correctional Bill that is being drafted, there are arrangements regarding prisoners with disabilities

5. DECLARATION OF CONFLICTING INTERESTS

Authors declare that there is no conflicting interest in this research and publication

6. FUNDING

None

7. ACKNOWLEDGEMENT

None

8. REFERENCES

- Ahmad Zein, Human Rights Problems, (Liberty: Yogyakarta, 2012, First Edition. First Printing)
- Ruslan Renggong, Criminal Procedure Code Understanding Human Rights Protection in the Detention Process in Indonesia, (Jakarta: Prenadamedia Group, Ed. Rev, 2014),
- BN Marbun, Indonesian Legal Dictionary Second Edition Revised, Issue I, Jakarta: Pustaka Sinar Harapan, 2009,
- OC Kaligis, Legal Protection of the Human Rights of Suspects, Defendants, and Convicts, (Alumni, Bandung, 2013),
- Syafi'ie Purwanti, Portrait of Disabled Faces n By State Law, Yogyakarta: SIGAB Press, 2013,
- Lita Tyesta, "Prospects of Protection of Persons with Disabilities against Discriminatory Behavior in Semarang City", Volume 44, No. 3 July 2015
- Aqila Smart, Children with Disabilities Not Doomsday: Learning & Therapy Methods for Children with Special Needs, (Yogjakarta: Katahati, Print IV, 2014),
- Hafrida, "Synchronization Between Law Enforcement Agencies in Realizing an Integrated Criminal Justice

System", *Legal Journal of the Cendikia Forum*, Vol. 18 No. October 2, 2008,
Pujiyono, *Reconstruction of the Indonesian Criminal Court* (Semarang: Publisher Pustaka Manager, 2012),
Rakei Yunardhani, "The Effectiveness of Correctional Institutions in Indonesia", Vol. 15, No. 2:143-149
Syaiful Bakhri, *Indonesian Criminal Justice System*, (Yogyakarta: Pustaka Pelajar, 2nd cet., 2015).