

THE CONSTITUTIONAL RIGHTS OF PERSONS WITH DISABILITIES AND THE ROLE OF THE COURTS IN INDONESIA

Hani Adhani

PhD. Candidate Aikol IIUM, Gombak, Malaysia & Substitute Registrar Constitutional Court of the Republic of Indonesia.

Email: adhanihani@gmail.com

Muhidin

PhD. Candidate,

Faculty of Law, Padjajaran University, Bandung, Indonesia & Registrar Constitutional Court of the Republic of Indonesia.

ABSTRACT

Every human being in this world has the potential to become a person with a disability. Sometimes we are not aware that an accident or sick can make us have a potential disability and come unexpectedly. We only realized that we have to give equal rights and specialities to persons with disabilities after a part of our family have a disability. This illustrates that, in general, there is a different treatment of persons with disabilities by most of our society, which has led to discriminatory treatment experienced by persons with disabilities. One of the state facilities that should be friendly to persons with disabilities is the Court. Indonesia, one of the countries that have signed the Convention on the Rights of Persons with Disabilities, has exceptional attention to persons with disabilities. In this study, the author will examine the extent to which the role of the courts in Indonesia provides specifically for persons with disabilities who come to Court or have proceedings in Court so that the courts provide a sense of security and comfort for persons with disabilities. This study uses primary data, namely the Indonesian Constitution and the CRPD, and secondary data, namely the laws governing disability, other laws and regulations and various journals related to persons with disabilities. The study results can be concluded that the role of the courts in Indonesia is still not maximally accommodating the needs of people with disabilities when they come to Court, so that people with disabilities find it challenging to come and attend Court.

Keywords: Constitutional Rights, Disability Rights, Constitution, Discrimination.

INTRODUCTION

Prof. Paraskevi Naskou-Perraki (Naskou-Perraki, n.d.), Professor of International Law and International Organizations from the University of Macedonia, Greece, once delivered a particular material at The Hague University related to equal rights and specifically for persons with disabilities. According to Prof. Perakki, every human being in this world has the potential to become a person with a disability. Still, sometimes we are not aware that this potential will come unexpectedly. We only realized that we have to give equal rights and specialities to persons with disabilities after a part of our family have a disability. Prof Perraki statement illustrates that, in general, there is a different treatment of persons with disabilities by most of our society, which has led to discriminatory treatment experienced by persons with disabilities.

Furthermore, that our families also have the potential to experience disabilities. However, unfortunately, our concern for people with disabilities is still minimized. (Hastono, 2021, pp. 4–5) This was also emphasized by President Joko Widodo when commemorating the International Day of Persons with Disabilities, which is celebrated every December 3. (*Jokowi Minta Masyarakat Lebih Peduli Pada Penyandang Disabilitas | Merdeka.Com*, n.d.) Usually, we will realize that we can experience disabilities and have concern for people with disabilities if any of our relatives or loved ones have disabilities, whether physical disability, mental disability, sensory disability, or intellectual disability caused by various things experienced.

Meanwhile, suppose we saw that today the access to public facilities for a person with disabilities also have the challenge to realize. In that case, only the minimum Government has a full backup for people with disabilities to get easy access to public facilities such as public transportation, pedestrian, hospital, supermarket, traditional market, mall, public office, public building, and the Court. It happens not only in Indonesia but also almost in every country. However, only limited countries care and have attention to fulfil rights for a person with disabilities.

Furthermore, article 13 CRPD mentions that the person's right with disabilities in the physical area and terms of psychic is a legal aid and advocacy when they face a trial in the Court to fulfil the justice. (See article 13 Convention on the Rights of Person with Disabilities and Optional Protocol, n.d.)

LITERATURE REVIEW

As one of the countries colonized for more than 350 years by the Netherlands and Japan, Indonesia tried to get out of the colonial zone. The struggle of the Indonesian Nation was finally successful with the declaration of the independence of the Indonesian Nation on August 17, 1945. The proclamation of Indonesian independence was the key to Indonesia being free from colonialism and becoming an independent nation and free from all forms of discrimination that the colonialists had perpetrated against the Indonesian people.

The day after independence, on August 18, 1945, the Nation's founding fathers stipulated the 1945 Constitution of Indonesia (UUD 1945) as the supreme law. The 1945 Constitution of Indonesia began with the preamble and material articles governing state powers, both executive, legislative, and judicial. In addition, the articles of the Indonesian Constitution also regulate the constitutional rights of citizens.

In its implementation, the 1945 Indonesian constitution, ratified on August 18, 1945, has various weaknesses and shortcomings, leading to efforts to encourage people to make amendments. One of the leading causes of the necessity for amendments to the 1945 Indonesian constitution is the tendency of the Constitution to be carried out as a tool of power by the President to extend the term of office. (Konstitusi & Indonesia, 2010, p. 94) In addition, in terms of upholding human rights, the 1945 Indonesian Constitution is also still experiencing weaknesses where it has not accommodated human rights as stated in the 1948 Universal Declaration of Human Rights (UDHR). (Konstitusi & Indonesia, 2010, p. 309)

The year 1998 was a turning point in making Indonesia a country that upholds the supremacy of the Constitution, human rights and becomes a democratic country by making human rights a part of what is regulated in the Indonesian Constitution. The first to fourth amendments to the Constitution were carried out from 1999 to 2002 by the People's Consultative Assembly. In the end, Indonesia had articles governing human rights written in the Indonesian Constitution. (Konstitusi & Indonesia, 2010, p. 84) One of the Indonesian Constitution articles, which was amended, related to human rights and regulating persons with disabilities in Article 34. (Konstitusi & Indonesia, 2010, p. 280)

According to Nurdianti Akma, social welfare and the rights of people with disabilities in Indonesia must be protected and guaranteed by the state. Therefore, they mention is emphasized in the Indonesian Constitution. On the other hand, in western countries, social welfare development is more based on the concept of the welfare state that even if an individual is disabled, the poor, or unemployed, they become the central point who gets social security. (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, p. 39) A similar opinion was also conveyed by Ali Hardi Kiai Demak, (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, p. 744) Fuad Bawazier (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, p. 725) and Gregorius Seto Harianto (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, p. 723), who stated that mentioning the names of people with disabilities in the Indonesian Constitution was very important so far, even though people with disabilities have not been written in the Constitution.

In addition to members of the People's Consultative Assembly, in the discussion of the amendments, NGOs who are concerned with the rights of people with disabilities, such as Kowani, expressed the opinion that there must be an affirmation of social welfare insurance for people with disabilities in the Indonesian Constitution as a result of the amendment. (Konstitusi & Indonesia, 2010, p. 434) In its implementation, the fulfilment of the rights of people with disabilities cannot run optimally, especially about the rights of people with disabilities to get easy access to public services. According to Firdaus, government policies related to providing easy access for people with disabilities have not been complied with. There are also no sanctions related to the neglect of providing access to public services for people with disabilities. (Ferry Firdaus, 2010)

In addition, according to Frichy Ndaumanu, persons with disabilities are also classified as one of the vulnerable groups who most often receive discriminatory treatment, and their rights are often not fulfilled. (Ndaumanu, 2020) Furthermore, access to public facilities and education is also a part that is vulnerable to discriminatory treatment for persons with disabilities. (Lestari et al., 2017)

On the other hand, Indonesia as a member of the United Nations also declared an international convention on the rights of persons with disabilities on December 13, 2006. (Indonesia Sign CRPD *Treaty Bodies Treaties*, n.d.) Indonesia ratified the Convention on November 30, 2011. Furthermore, it has also enacted a law that explicitly regulates the rights of persons with disabilities, namely in law number 8 of 2016. One of the crucial points regulated in law number 8 of 2016 is the state's obligation to provide easy access to public facilities for persons with disabilities and the obligation for all institutions to establish a disability service unit. One public service facility that is also a concern for people with disabilities in Indonesia is the Court. (Undang-Undang Nomor Tahun 2016 Tentang Penyandang Disabilitas, 2016) In this case, the courts in Indonesia are divided into two, namely the Supreme Court and the Constitutional Court. (See Article 24 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 2002)

RESEARCH METHODOLOGY

This study uses secondary data obtained from literature studies such as the Indonesian Constitution, International Conventions about People with Disabilities, laws related to the rights of Persons with Disabilities, and other regulations related to persons with disabilities. Data collection techniques in this paper are literature studies carried out by studying the law on the rights of persons with disabilities, books, papers, and journals related to the rights of Persons with Disabilities. This paper also compares government policy related to persons with disabilities in Indonesia and Australia, especially about the rights of Persons with Disabilities when they come to the courts.

Existing data and legal materials related to the rights of persons with disabilities are compared and analyzed in full and in detail based on the research objectives. In addition, data analysis was carried out in a qualitative analysis of data describing the rights of persons with disabilities at the Court comparing in Indonesia and Australia.

RIGHTS OF PERSONS WITH DISABILITIES IN THE INDONESIAN CONSTITUTION

The amendments to the Indonesian Constitution (UUD 1945) carried out by the People's Consultative Assembly (MPR) in 1999-2002 became one of the historical milestones to improve the fundamental rights of citizens, especially human rights. Human rights are one of the essential issues in the discussion of amendments to the Indonesian Constitution. There are at least ten new articles added to the Indonesian Constitution that specifically regulate human rights.

While related to the constitutional rights of persons with disabilities, two articles discuss specifically, namely Article 28H paragraph (2), which states, "Everyone has the right to receive special facilities and treatment to obtain equal opportunities and benefits to achieve equality and justice" and Article 34 paragraph (2) which states "The state develops a social security system for all the people and empowers the weak and underprivileged following human dignity." (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 2002) The discussion of Article 28H paragraph (2) in the amendment to the Indonesian Constitution is not too deep. It states explicitly that the article is indeed intended for persons with disabilities. One member of the MPR, Nursyahbani, once expressed her opinion that the pattern of application of the article is based on the principles already in international conventions, which in essence is that everyone has the right to receive facilities and special treatment to achieve equality and justice. (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010b, p. 313)

In the discussion of Article 34 paragraph (2) of the Indonesian Constitution conducted by the MPR, there was a debate about the extent to which the state provides guarantees for persons with disabilities. All MPR factions agree that the state must play an active role in providing guarantees to the poor, neglected children and people with disabilities in the form of social security provided by the state. (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, pp. 673–753) Nevertheless, unfortunately, in Article 34, there is no terminology for persons with disabilities so that it gives the impression that the state guarantee is only given to the poor and neglected children as stated in Article 34 paragraph (1), which states, "The poor and neglected children are cared for by the state".

In the article's discussion, one of the MPR members who proposed that persons with disabilities be mentioned was Nurdiati Akma, who came from the Reform Faction. (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2010a, p. 753) In addition, during the discussion of constitutional amendments, especially Article 34, the Indonesian Women's Congress (Kowani) also proposed that the Constitution, as a result of the amendments, specifically mention people with disabilities as people who must also be given protection and social security in addition to the poor and neglected children. (Konstitusi & Indonesia, 2010, p. 434). Besides Article 28H, Article 34 is also quite intense when discussing the requirements to become President and Vice President. Where one of the requirements discussed is the necessity that the President is physically and mentally healthy, although the debate eventually culminated in Article 6 paragraph (1) of the amendments to the Indonesian Constitution, which stated, "The presidential candidate and vice-presidential candidate must be an Indonesian citizen from birth and have never received another citizenship of his own free will, have never betrayed the state, and are capable spiritually and physically of carrying out their duties and obligations as President and Vice President". (Konstitusi & Indonesia, 2010, pp. 178–208)

RIGHTS OF PERSONS WITH DISABILITIES IN INTERNATIONAL CONVENTIONS

The issue of persons with disabilities is one of the most crucial issues often discussed at the United Nations (UN). With more and more people with disabilities worldwide, special rules are needed that regulate the rights of people with disabilities. The UN finally succeeded in ratifying the Convention governing the rights of persons with disabilities on December 13, 2006, and entered into force on May 3, 2008, and has been signed by 147 countries. (See *OHCHR | Questions and Answers*, n.d.)

According to Michelle Bachelet, United Nations High Commissioner for Human Rights, The Convention on the Rights of Persons with Disabilities is not only an instrument for persons with disabilities. Its principles and provisions benefit the entirety of the human family because it strengthens our responses against exclusion and segregation. Like the Sustainable Development Goals, it illustrates that reaching the furthest behind first is the key to leaving no one behind. (*OHCHR | Human Rights of Persons with Disabilities*, n.d.). Related to access to justice for the person of disabilities, the courts should change the way they do things to stop discrimination against adults and children with disabilities. This includes support with communication, understanding what is happening and being able to take part. If possible, these changes should happen before the person goes to Court (The United Nations, n.d.)

As one of the countries that have signed the Convention on the Rights of Persons with Disabilities, Indonesia has also been ratified and promulgated in Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities dated November 30, 2011. (*Treaty Bodies Treaties*, n.d., p. See). One of the essential points in the Convention is that every person with a disability must be free from torture or other cruel, inhuman or degrading treatment, free from exploitation, violence and arbitrary treatment, and has the right to be respected for his mental and physical integrity. Based on similarities with others. This includes the right to obtain protection and social services in the context of independence, as well as in an emergency. (See Convention on the Rights of Person with Disabilities and Optional Protocol, n.d.)

In addition, the Convention also stipulates how the state is obliged to realize the rights for persons with disabilities as contained in the Convention through adjustments to the legislation, law and administration of each country, including changing laws and regulations, habits and practices. Discriminatory practices against persons with disabilities, both women and children, guarantee the participation of persons with disabilities in all aspects of life, such as education, health, employment, politics, sports, arts and culture, and technology, information and communication. (See Convention on the Rights of Person with Disabilities and Optional Protocol, n.d.) As a signatory country to the Convention, Indonesia has responded by ratifying Law Number 19/2011 and Law Number 8/2016 concerning Persons with Disabilities, which rigidly regulates the rights for persons with disabilities and the state's obligation to respect, protect, and fulfil human rights and fundamental human rights freedoms of persons with disabilities (See Explanation Undang-Undang Nomor Tahun 2016 Tentang Penyandang Disabilitas, 2016) However, unfortunately, even though the law has been promulgated since April 2016, the law's implementation has not been fully felt by the public. One of them is about services for persons with disabilities when they contact the Court.

ACCESSIBILITY AND ACCOMMODATION FOR PERSONS WITH DISABILITIES

According to a report from WHO that 15 per cent of the world's population, or more than 1 billion people, are people with disabilities and an estimated 450 million people live with mental or neurological conditions. Another 69 million people are

estimated to suffer from traumatic brain injury. In addition, one in 160 children is identified as being on the spectrum of Autism. (See *Disability and Health*, n.d.) The data illustrate that persons with disabilities are a part of which we must give a specific portion so that their human rights are well protected not only by their respective families, but furthermore, that they are protected and given a fair share by the state and world organizations. In terms of implementation, the Indonesian Government has made efforts to provide easy access for persons with disabilities, especially for public facilities such as public transportation, hospitals, terminals, sidewalks, markets, tourist attractions, and other public places. For example, in the capital city of Jakarta, public transportation facilities such as Transjakarta are good enough to provide access for people with disabilities. Likewise, with public roads and sidewalks, unique signs are also available for people with disabilities. (Jane Kartika Propiona, 2016)

However, unfortunately, access to the courts has not been described in detail in the law to persons with disabilities. Nevertheless, In-law Number 8 of 2016 concerning Persons with Disabilities, there are at least two articles that regulate services in the judiciary for persons with disabilities, namely in Article 9, which states that the right to justice and legal protection for persons with disabilities includes the right to obtain the provision of accessibility in judicial services and Article 36 regulates the obligation of law enforcement agencies to provide adequate accommodation for persons with disabilities in the judicial process. However, in terms of providing accessibility, the judiciary in Indonesia, both the Supreme Court and the Constitutional Court, is far behind Australia, which has provided a particular call centre for persons with disabilities facilitated by the National Relay Service. (See *National Relay Service | Department of Social Services, Australian Government*, n.d.) In addition, courts in Australia have also provided access to inclusive services for persons with disabilities where only by contacting the Court, all the needs of persons with disabilities will be prepared by court staff, which includes all necessary facilities, such as large print for all manuscripts, interpreters and hearing amplification in the courtroom. (See *Going to Court*, n.d.)

The slogan "contact the court to discuss the best way to meet your needs" makes the courts in Australia one of the most accessible courts in the world for persons with disabilities. However, the most surprising thing is that in one of the states in Australia, namely New South Wales (NSW), it even provides remarkable translators for people with disabilities who will come to Court by preparing various languages from Arabic, Chinese, Dinka, Persian, Korean, Spanish, Thai Tamil and even Vietnamese. (See *Translate Statement Going to Court*, n.d.) For hearing in courtrooms, courts in NSW have also provided infrared technology to help make it easier for people with disabilities. However, all facilities are also supported by various adequate infrastructure, ranging from disability-friendly buildings to providing accommodation for persons with disabilities to make them feel comfortable coming to Court. Besides that, all information about accessibility and accommodation for persons with disabilities can be easily accessed through the Court's website and the Government's website. (See *Hearing Loops Going to Court*, n.d.)

ACCESSIBILITY AND ACCOMMODATION OF COURTS IN INDONESIA

One of the most prominent barriers to access to justice for persons with disabilities is the physical barriers to the courts and other institutions of the justice system (Stephanie Ortoleva, 2011). It also happens in Indonesia as the country that already makes ratification CRPD. Although Law 8 of 2016 concerning Persons with Disabilities has stipulated an obligation to form a Disability Service Unit, which is part of an institution that functions as a provider of services and facilities for Persons with Disabilities, in two Indonesian judicial institutions, namely the Supreme Court and the Constitutional Court, the infrastructure is quite ready to provide access and services for persons with disabilities. However, the existing accessibility and accommodation are still far from expectations. It was noted that several district courts have a perfect regulation about providing facilities for persons with disabilities, such as the Wonosari District Court, the Yogyakarta District Court, and the Mungkid District Court. They already have facilities to support with good quality (*Contoh Pengadilan Ini Yang Ramah Penyandang Disabilitas - Difabel Tempo.Co*, n.d.) The district courts are limited to physical and technical facilities such as toilets, guidance blocks, parking lots, courtroom entrance stairs, chairs, and assistive devices for persons with disabilities and give legal aids when filing a lawsuit and during the trial. (*Pengadilan Negeri Yogyakarta - Sarpras Bagi Penyandang Disabilitas*, n.d.)

This is better than the facilities owned by the Supreme Court and the Constitutional Court, which have not thoughtfully prepared facilities for persons with disabilities. Likewise, the Constitutional Court also has various friendly facilities for persons with disabilities ranging from parking lots, lifts, and toilets. Nevertheless, unfortunately, in terms of trial facilities, the Supreme Court and the Constitutional Court have not fully prepared facilities for persons with disabilities, as in District Court. Even though, we must ensure that the technologies we design and implement take into account the abilities of all individuals. Otherwise, we will construct the online equivalent of the long, stately steps to the courthouse, for example, which make the courtroom inaccessible to anyone with a mobility disability (Larson, 2014). Furthermore, Judges and the courts should support people with disabilities to get these rights. They should use the law to protect human rights and speak up if they think unfair laws should change (The United Nations, n.d.).

Meanwhile, let us look at the facilities provided by the Australian Government for persons with disabilities when they come to Court. It can be seen that the facilities provided are complete, starting from physical facilities such as buildings and infrastructure as well as other facilities related to efforts to assist persons with disabilities when they litigate to the Court. The Australian Government and the courts in Australia have synergized to create easy access for people with disabilities, starting with providing a call centre facility that can be accessed for 24 hours and various facilities during court sessions. (*National Relay Service | Department of Social Services, Australian Government*, n.d.) In addition, the following are facilities that support comfort for persons with disabilities during meetings, as has been done by the Australian Government: (See *Going to Court*, n.d.)

1. A call centre that is friendly to persons with disabilities;
2. Web sites that include assistance for persons with disabilities;
3. Special assistant for persons with disabilities when they come to Court;
4. Inclusive services that include large print, braille, print, interpreter and hearing amplification;

5. Support advocates who can use sign language;
6. Provide tool kits for persons with disabilities who come to Court or set up a disability corner with exceptional staff;
7. Provide advocacy services in collaboration with the ministry of law and advocate organizations to assist and support persons with disabilities in dealing with the courts.

By comparing the facilities owned by the Australian Government and the courts in Australia for persons with disabilities, the facilities owned by the Indonesian Government and the courts still need some improvement. The following table describes the facilities provided by courts in Indonesia for persons with disabilities as follows:

Table 1: The Facilities Provided by Courts for Persons with Disabilities

NO	COURT FACILITIES	SUPREME COURT		CONSTITUTIONAL COURT	
		YES	NO	YES	NO
1.	Infrastructure / Building	✓	-	✓	-
2.	Call Center	-	✓	-	✓
3.	Website Assistance	-	✓	-	✓
4.	Person In Charge	-	✓	-	✓
5.	Inclusive Tools Trial	-	✓	-	✓
6.	Support Advocate	-	✓	-	✓
7.	Tool Kits in Lobby	✓	-	✓	-
8.	Interpreter	-	✓	-	✓
9.	Government support	-	✓	-	✓
10.	Policy support Leaders	-	✓	-	✓

CONCLUSION

The efforts to make the Indonesian judiciary friendly to persons with disabilities should be of particular concern and attention to the chief justice of the Supreme Court and the Constitutional Court. Furthermore, establishing the Disability Service Unit in the Courts also becomes compulsory for the Supreme Court and the Constitutional Court to respect, promote, protect, and fulfil rights for persons with disabilities.

In addition, it must always be socialized to the community to provide fair portions and rights for persons with disabilities so that they have equal opportunities in all aspects of life, including providing equal rights and specificity for persons with disabilities when dealing with the Court so that the Court can provide comfort for persons with disabilities.

Furthermore, the Government and all stakeholders related to the Court should make regulations under the law that regulate technical matters of accessibility and accommodation for persons with disabilities when dealing with public areas and the courts. The regulation was made jointly with the Supreme Court, the Constitutional Court, Government and legal organization to accommodate all the needs of persons with disabilities when they appear in Court, whether at the district courts, high courts, the Supreme Court, and the Constitutional Court.

Hopefully, the Indonesia Government, the Supreme Court and the Constitutional Court will provide access and services to persons with disabilities to equal rights.

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