

# Legal Reconstruction of Government Responsibility in Mental Disorder Rehabilitation Based on the Dignified Justice Value

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## Abstract

One of the phenomena that indicate that there are still social problems today, among others, can be seen in the many people with mental disorders. can cause suffering and obstacles in carrying out people's functions as human beings. This study aims to analyze the regulation of the Government's responsibility in the rehabilitation of people with mental disorders that have not been fair and dignified. This research method uses the legal positivism paradigm and the legal post-positivism paradigm with a sociological juridical approach to solving research problems. The results of the study indicate that there are weaknesses in terms of legal substance, legal structure, and legal culture related to the regulation of the Government's responsibility in the rehabilitation of people with mental disorders. Reconstruction of regulation on the Government's responsibility in the rehabilitation of people with mental disorders based on the value of dignified justice, namely by reconstructing Article 10, Article 18, and Article 25 of Law Number 18 of 2014 Concerning Mental Health.

**Keywords:** Legal Reconstruction, Rehabilitation, Mental Disorders, Justice Value.

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## INTRODUCTION

Legal development is not only limited to the formation of regulations, norms, or rules but requires planned and systematic legal development to accelerate the renewal and establishment of the national legal system in all its aspects (Sri Endah, 2013). The formulation of the provision that Indonesia is a constitutional state is given in addition to the meaning of the state government system. The state government system as another element in a rule of law state has previously been stated in the General Explanation section of the 1945 Constitution regarding the State Government System (Teguh, 2018).

The state must be present to respond to various kinds of problems that arise, one of which is responding to social problems which are carried out through social services in the form of social security, housing, health, education, and personal social services. In this study, the focus is on discussing the government's responsibility in the rehabilitation of people with mental disorders, so that it is appropriate to have health workers who carry out their duties to maintain people's bodies to stay healthy or to nourish sick people or at

least reduce the suffering of sick people (Bambang, 2011).

Mental health, abbreviated as Keswa, is a condition in which an individual can develop physically, mentally, spiritually, and socially so that the individual is aware of his abilities, can cope with stress, can work productively, and can contribute to communities. According to the Law of the Republic of Indonesia, No. 18 of 2014 concerning Mental Health in article 8, one of the promotive and preventive efforts in handling cases of mental disorders is family involvement. Promotive efforts in the family environment are carried out in the form of parenting and communication patterns within the family that support the growth and development of a healthy soul. Meanwhile, preventive efforts according to Article 13 are carried out in the form of developing parenting that supports the growth and development of the soul, communication, information, and education within the family and other activities by community development (Aryawati *et al.*, 2022).

People with mental disorders are a vulnerable group to stigmatization and discrimination, especially in

the context of the legal and criminal systems. In many countries, there is still uncertainty and debate about state responsibility in dealing with criminal acts committed by people with mental disorders. Several countries have adopted a special approach to dealing with criminal acts of people with mental disorders, such as using legal channels and handling cases that are different from cases of criminal acts committed by ordinary people (Andrian and Ratnawati, 2023).

Unfortunately, the situation of persons with mental disorders in Indonesia is still far from satisfactory from a human rights perspective. Even basic mental health services are not available in many parts of the country. Many people with mental illness have no access to treatment. Primary health services do not have mental health as a priority and the skills of primary health clinicians are not sufficient to ensure the detection and appropriate treatment of mental disorders. Some persons with mental illness are confined and restrained in the community in inhumane ways. The quality of mental health services in hospitals is generally poor and human rights protections for patients are weak. Custodial treatments dominate in psychiatric hospitals. Involuntary treatment is common, even though there is no legal basis for involuntary admission (Irmansyah, Prasetyo, and Minas, 2009).

People with mental disorders are people who experience disturbances in thoughts, feelings, and behavior that manifest in the form of a group of symptoms and/or significant behavioral changes and can cause suffering and obstacles in carrying out functions as human beings (Hidayati, et al, 2021).

In 2016, around 35 million people had depression, 60 million people had bipolar disorder, 21 million had schizophrenia, and 47.5 million had dementia. Riskesdas recorded 9.8% of emotional and mental health problems (depression and anxiety). This shows an increase compared to 2013 Riskesdas data of 6%. The high increase in emotional and mental health problems based on age group, the highest percentage was at the age of 65-75 years and over as much as 28.6%, followed by the age group 55-64 years as much as 11%, then the age group 45-54 years and 15-24 years had a higher percentage. the same as 10% (Ministry of Health RI, 2018).

Article 42 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights stipulates that every citizen who is elderly, physically disabled, and/or mentally disabled has the right to receive special care, education, training, and assistance at the expense of the State, to ensure a decent life by human dignity, increase self-confidence and the ability to participate in the life of society, nation, and state. People with mental disorders are categorized as mentally disabled so people with mental disorders are guaranteed the right to receive special care and

assistance at the expense of the State to ensure a decent life by their human dignity.

Article 149 of Law Number 36 of 2009 concerning Health stipulates that "*The Government, Regional Governments and the community are obliged to carry out treatment and care in health care facilities for sufferers of Mental disorder who is neglected, homeless, threatens the safety of himself and/or others, and/or disturbs public order and/or security.*"

Based on the above article, treatment, and care must be given to people with mental disorders who are neglected, vagrant, threatening their own safety and/or others, and/or disturbing public order and/or security. The article also clarifies that one of those conducting treatment and care is the local government.

Article 81 paragraph (1) of the Law of the Republic of Indonesia Number 18 of 2014 concerning Mental Health stipulates that "*The Government and Regional Governments are required to carry out rehabilitation efforts for People with Mental Disorders who are neglected, homeless, threatening the safety of themselves and/or others, and/or disturbing public order and/or security.*" Based on these regulations it can be concluded that the local government is responsible for fulfilling the rights of people with mental disorders, the right in question is the right to receive treatment and care, and rehabilitation.

If the state is negligent in carrying out its obligations as regulated by law, then it is appropriate to enforce the law. In essence, law has an interest in guaranteeing the social life of society, because law and society have an interrelationship (Ibnu, 2018). Law enforcement activities towards upholding the law aim to create justice, and protect human dignity, order, peace, and legal certainty by applicable provisions (Meta et.al, 2016) Laws are formed by humans to control every interaction between humans themselves (Teguh, 2013). Based on the explanation above, a study was conducted with the title "*Reconstruction of Regulations on Government Responsibility in the Rehabilitation of People with Mental Disorders Based on the Values of Dignified Justice*".

Based on the background above, the formulation of the problem in this study is:

1. What are the weaknesses in the regulation of the Government's responsibility in the rehabilitation of people with mental disorders at this time?
2. How is the reconstruction of the government's responsibility regulations in the rehabilitation of people with mental disorders based on the value of dignified justice?

## METHOD OF RESEARCH

This study uses a legal research approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivism paradigm, the social reality observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of the:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Legislation relating to the practice of medicine and health.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Regarding secondary data, the search for general truths will be carried out using deductive logic, especially during the initial analysis (the use of theories), but it is also possible to carry out an analysis using inductive logic for cases of election dispute resolution after the election and vote counting. has been documented in the form of study results, records, and research results. And in this study, the researchers used deductive and inductive analysis so that the data obtained could be processed optimally (Hardiyanti *et al.*, 2022).

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Current Weaknesses in Government Regulations Responsibilities in the Rehabilitation of People with Mental Disorders

#### a. Weaknesses from the Aspect of Legal Substance

The Government has made A law to deal with mental health problems Law Number 18 of 2014 concerning Mental Health. The law stipulates that People with Mental Disorders, hereinafter abbreviated as people who experience disturbances in thoughts, behaviors, and feelings which are manifested in the

form of a set of symptoms and/or significant changes in behavior and can cause suffering and obstacles in carrying out human functions. as a human.

Article 17 The curative effort as referred to in Article 4 paragraph (1) letter c is an activity of providing health services to people with mental disorders which includes the process of diagnosis and appropriate management so that people with mental disorders can function normally again within their families, institutions and public. Article 18 Mental Health curative efforts are aimed at a. Healing or recovery; b. Reduction of suffering; c. Disability control; and D. Control of disease symptoms. Article 19 (1) The process of establishing a diagnosis of a person suspected of being a person with mental disorders is carried out to determine: a. Psychiatric condition; and b. Management follow-up. (2) Enforcement of the diagnosis referred to in paragraph (1) is carried out based on diagnostic criteria by a. General practitioners; b. Psychologist; or c. Psychiatrist specialist.

On this basis, the criminal provisions contained in Law No. 18 of 2014 concerning mental health which do not explicitly regulate criminal sanctions can be transferred to sanctions in the rules whose elements fulfill these actions.

#### b. Weaknesses From Legal Structure Aspects

Arrangements regarding legal protection for people with mental disorders in health services are contained in various regulations including:

- 1) Article 2 and Article 4 paragraph (1) Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling for People with Mental Disorders related to how to deal with Shackling.
- 2) Article 70 paragraph (1) of Law Number 18 of 2014 concerning Mental Health regulates legal protection for people with mental disorders in health services as part of the rights of people with mental disorders. 2. Article 70 paragraph (1) of Law Number 18 of 2014 concerning Mental Health contains provisions for the rights of people with mental disorders.
- 3) Article 3 and Article 10 of Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination for Law Enforcement Interests. Article 3 relates to the scope of mental health examinations for law enforcement purposes and Article 10 relates to mental health examination activities for legal purposes.
- 4) Article 32 of Law Number 44 of 2009 concerning Hospitals contains provisions on patient rights.
- 5) Article 144 paragraph (1) and 148 paragraph (1) and (2) of Law Number 36 of 2009 concerning Health.

Explanation of the description of all the normative facts above, when interpreted using the

theory of the Laws and Regulations of Hans Kelsen and Hans Nawiasky, then Regulation of the Minister of Health Number 54 of 2017 concerning Handling of Shackling in Persons with Mental Disorders, Regulation of the Minister of Health Number 77 of 2015 concerning Guidelines for Mental Health Examination For Law Enforcement Interests, Law Number 18 of 2014 concerning Mental Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2009 concerning Health, the 1945 Constitution of the Republic of Indonesia are by the theory of legal levels, that is, regulations that are located above serve as guidelines for regulations that are below and regulations that are located below do not conflict with regulations that are located above it.

### c. Weaknesses from Legal Culture Aspects

Referring to the data provided by the Bali Provincial Health Office, researchers focused on mental disorders in this study on schizophrenia and neurotic disorders. Most Indonesian people view mental disorders in a negative light. This fact was obtained from the results of research conducted by several researchers in Indonesia who studied the public's view of mental disorders.

One of the studies that reveal the negative views of Indonesian society towards mental disorders is research conducted by Ide. The idea reveals that individuals with mental disorders, or what is known as People with Mental Disorders, seem to be considered as a group of people with lower dignity, which can be used as material for ridicule. Furthermore, research conducted by Adilamarta further strengthens scientific studies regarding the negative stigma given by society to people with mental disorders.

Adilamarta revealed that some people in the Surau Gadang sub-district, the working area of the Nanggalo Health Center have a negative attitude towards individuals who suffer from mental disorders and more than half of the people in the Surau Gadang sub-district do not want to accept individuals with mental disorders. Society's rejection of people with mental disorders affects the family acceptance of people with mental disorders. The news written by Anna even revealed that society's negative stigma towards People with Mental Disorders influences family rejection of family members who have been medically cured of mental disorders.

This refusal resulted in a relapse in individuals who had been declared cured of mental disorders. Apart from Anna, Herdaetha also wrote that the negative stigma that society gives to people with mental disorders causes people with mental disorders to feel reluctant to socialize with the outside environment and tends to lose dignity in their lives of people with mental disorders.

Various efforts made by the government to increase public knowledge and awareness regarding mental disorders have not yielded significant results. Several regions in Indonesia still associate mental disorders with the beliefs prevailing in their respective regions. Yogyakarta as an area that is thick with Javanese customs, has several beliefs related to mental disorders.

According to the results of research conducted by Subandi in Yogyakarta, it was found that Javanese people generally believe that mental disorders are caused by someone committing an act that violates religious teachings. The Javanese people believe that mental disorder is a disease that can be cured because it is given by God so it has an impact in the form of hope for the community which increases people's efforts to struggle in the healing process.

## 2. Reconstruction of Government Responsibilities in the Rehabilitation of People with Mental Disorders Based on the Values of Dignified Justice

Data on mental health facilities other than the asylum and RSU with mental services are almost entirely unavailable because until now psychiatric beds (TT) can be said to be only available in asylum and a small number of RSU. Other service facilities such as halfway houses, community care homes, day care treatment, and so on do not yet exist in Indonesia. The available data is the total number of psychiatric beds in Indonesia of 10,012 TT with a ratio of 3.32-4 per 100,000 population. The ratio of psychiatrists per 100,000 population was 0.01 in 2011 and has become 0.3 in 2014 (Sri Idaiani, 2018). This very high increase still needs further study. The possibility of errors in information or data sources cannot be ruled out.

The above data shows that there are still many social phenomena, namely people with mental disorders in Indonesia, and should receive legal protection by the values of dignified justice. Justice will be felt when the relevant systems in the basic structures of society are well-ordered, and political, economic, and social institutions are satisfactory in the concept of stability and balance. We can also find a sense of community justice in the implementation of law enforcement through judge decisions.

The view of justice in national law is rooted in the basis of the state. Pancasila as the basis of the state or state philosophy has been maintained until now and is still considered important for the Indonesian state. Axiologically, the Indonesian nation is a supporter of Pancasila values (a subscriber of Pancasila values). The nation of Indonesia has God, which is humane, which is united, which has citizenship, and which is socially just.

The theory of dignified justice is of value, like the value that Notonagoro meant, because at least this theory has quality, and can be utilized by a large nation

and its people, stretching from Sabang to Merauke and from Talaud to Rote Island. Meant by quality, also among other things that for a good cause; become a unifying tool, understand, live, and maintain the form of the system of a great nation.

Notonagoro divides values into three groups, namely material values that are useful for the human body, vital (useful for humans to carry out activities), and spiritual (useful for the human spirit). Spiritual values can be divided into truth-reality values originating from the element of human reason (reason), aesthetic values originating from human elements of taste (aesthetics), and kindness values originating from human beliefs accompanied by appreciation through reason and conscience.

So far, the theory of dignified justice has been used, both by the inventors themselves and by other parties who use the theory of dignified justice. In this book, several evidences of the use of dignified justice theory are deliberately shown, for example in the formation of statutory regulations, judges' decisions, and legal doctrines that have been developed in Indonesia's positive law system so far. For the "tool" to be used not only by the inventor himself but also to be useful to other people, the creator of the "tool" tries to do this by "promoting" (publication) that the "tool" he created is the best. rather than "tools" created or found by other parties.

In connection with the theory of dignified justice which only studies its object, namely law with a systems approach, it is necessary to add that a system is a unit consisting of elements or elements that interact with each other. The theory of dignified justice views that in a system there is no desire for conflict or conflict between the elements in the system. The theory of dignified justice as a system also adheres to the view that when a conflict is inevitable within the system, then the conflict or discrepancy, conflict, or overlap between the elements in the system can immediately be resolved by the system itself.

In connection with what has just been stated above, in Indonesia's positive legal system one can find the characteristics of a legal pluralism. Indonesia's positive law system does not deny the existence or existence of the five major legal systems such as the Customary Law system, Civil Law or Roman Law, Islamic Law and Common Law, and Socialist Law.

The theory of dignified justice has a dignified nature considering that this theory views Indonesia's positive legal system as a legal system that is tolerant of the existence of the five major legal systems and traditions that humanity has built. Given the tolerant nature of the five major legal system traditions referred to, Ilham Basri even argues that the Indonesian legal

system as a system of rules that apply in Indonesia is complex and broad.

The reason for the researchers to reconstruct Articles 8 of Law Number 36 of 2009 and Articles 10, 18, and 25 of Law Number 18 of 2014 is that the government is not optimal in providing promotive, preventive, curative, and rehabilitative efforts.

The sound of Reconstruction is as follows:

#### **Article 10**

Preventive efforts as referred to in Article 4 paragraph (1) letter b are activities to prevent the spread of psychiatric problems and mental disorders and suppress the increase in psychiatric problems and mental disorders.

#### **Article 18**

Mental Health curative efforts are aimed at:

- a. Healing or recovery;
- b. Alleviation of suffering;
- c. Disability control; And
- d. Control of disease symptoms.
- e. Acceptance of society in a fair and civilized manner.

#### **Article 25**

Mental Health rehabilitative efforts are activities and/or series of Mental Health service activities aimed at:

- a. Prevent or control disability;
- b. Restore social function;
- c. Restore occupational function; And
- d. Prepare and empower people with mental disorders to be independent in society;
- e. Involve the participation of local governments, communities concerned with mental health, community organizations, non-governmental organizations, and community leaders

## **CONCLUSION**

Based on the discussion of the problems above, it can be concluded that:

1. Weaknesses in the regulation of the Government's responsibility in the rehabilitation of People with Mental Disorders based on the value of dignified justice that there are weaknesses in terms of legal substance, legal structure, and legal culture. In terms of substance, laws, and regulations must pay attention to promotive, preventive, curative, and rehabilitative aspects. The right to legal protection for people with mental disorders is very important because the guarantee of legal protection for people with mental disorders will make people with mental disorders get the right to obtain health services that are adequate for humanity and without discrimination. In terms of the legal structure, law enforcement officials should be actively involved, in synergy with related agencies and the local government. In terms of legal culture, there is a need for outreach by related parties in collaboration with

local governments as a government effort on promotive, preventive, curative, and rehabilitative aspects in giving responsibility to people with mental disorders.

2. Reconstruction of regulation of the Government's responsibility in the rehabilitation of People with Mental Disorders based on the value of dignified justice, by reconstructing Articles 10, 18, and 25 of Law Number 18 of 2014 Concerning Mental Health

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