

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Analysis of Protection Policies Against People with Mental Disorders in Kudus Regency from Human Rights Perspective

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Abstract. *People with mental disorders are often stereotyped as being strongly associated with criminal acts, especially violence, and threatening the safety and well-being of those around them. This perspective can make people with mental disorders or ODGJ shunned and feared, even though ODGJ need protection and care. In handling and preventing ODGJ, the Regional Government has a strategic role and has duties and responsibilities for implementing mental health efforts in its community. In Kudus, there are still ODGJ who are abandoned on the streets. Regional governments, through their authority, can be more progressive in dealing with ODGJ problems through regulatory instruments, so that ODGJ receive appropriate treatment. This research aims to analyze Kudus regional government policies in protecting mental health, with a focus on policies that prioritize human rights principles. This research method uses a normative juridical method, namely by analyzing in depth the existing policies in Kudus district related to ODGJ. The results of this research can be concluded that even though the Kudus Regional Government has policies related to mental health and mental disabilities. However, it does not specifically contain the prevention and/or prevention of mental disabilities with a human rights perspective.*

Keyword: *Disability; Human; Mental; Policies; Regional.*

1. Introduction

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The Constitution has regulated health issues as a right for every citizen, namely in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) which stipulates that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and obtain a good and healthy living environment and have the right to obtain health services." In line with this, Article 1 paragraph 1 of Law No. 36 of 2009 concerning health is "A state of health, both physically, mentally, spiritually and socially which enables every person to live a productive life socially and economically."

In connection with Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, health protection and guarantees must be fulfilled by. Apart from the central government, local governments also have an obligation to guarantee and protect the health of their people. Article 18 of the 1945 Constitution of the Republic of Indonesia and Law Number 23 of 2014 concerning Regional Government, have granted autonomy to regions to regulate and manage concurrent affairs within their authority. One of the things related to health is mental health. In this case, it is handling people with mental disorders (ODGJ). With the authority given to the region, the Kudus regional government is obliged to guarantee the handling of ODGJ. Mental disorders are a problem that cannot be underestimated and must be addressed immediately.

Apart from regional governments, the Social Service has the task of helping regional governments carry out government affairs in the social sector which fall under regional authority, especially those related to ODGJ. People with mental disorders or what are called ODGJ are one of the biggest health problems apart from degenerative diseases, cancer and accidents. Mental disorders are a serious health problem because their numbers continue to increase. Mental disorders also require quite a long time in the healing process. Mental disorders are caused by several factors, including genetic factors, a family history of mental disorders, having experienced a traumatic event, use of illegal drugs and excessive consumption of alcoholic drinks, as well as certain medical conditions, for example, severe brain injury, stroke, and thyroid disorders. In the Mental Health Law, it is divided into two, namely People with Mental Disorders or ODGJ and People with Mental Problems or ODMK. ODGJ according to the Mental Health Law is a person who experiences disorders in thoughts, behavior 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 the person's functions as a human being. Meanwhile, ODMK are people who have physical, mental, social, growth and development, and/or quality of life problems so they are at risk of experiencing mental disorders. This research will discuss the depth and analysis of the regulations of the Kudus district government regarding ODGJ. As well as linking regulations with a human rights perspective.

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2. Research Methods

This research is normative legal research, namely analyzing existing regulatory instruments in Kudus Regency regarding mental health. This research also uses a conceptual approach, which is based on views that have developed in legal science, such as human rights law which is based on human rights law. This type of research, namely perspective research, aims to provide an overview or formulate a problem according to the circumstances/facts.¹

3. Results and Discussion

3.1. Kudus Regency Government Regulation Instrument regarding ODGJ

Protection for ODGJ is a set of rules that regulate efforts to realize the rights of ODGJ as part of Indonesian citizens whose rights must be protected by the State and are regulated in Law no. 18 of 2014 concerning Mental Health. The Mental Health Law is an important instrument in mental health efforts so that ODGJ can fulfill their rights as citizens, including obtaining their rights to health services². In the era of regional autonomy, each region becomes an important part of the implementation of regulations, regions are given the freedom to create regulatory instruments that suit the conditions of their region. One of them is about the mental health of the community, regulatory instruments regarding mental health in each region are needed. This will provide legal certainty and appropriate treatment for ODGJ in the region.

In Kudus Regency there is no Regional Regulation that specifically contains the handling and protection of ODGJ, but there is a regent's regulation, namely Regent's Regulation Number 58 of 2020 concerning Implementation of Advanced Interventions for the Healthy Indonesia Program with a Family Approach in Kudus Regency, especially in Article 5 letter h "reads sufferer Mental disorders receive treatment and are not neglected".³ Apart from that, the Kudus Government also issued Regent.

¹ Nicken Sarwo Rini, "Analisis Implementasi Prinsip Non-Diskriminasi Dalam Peraturan Daerah Di Bidang Pendidikan Dan Kesehatan," *Jurnal HAM* 9, no. 1 (2018): 19, <https://doi.org/10.30641/ham.2018.9.19-36>.

² Muhammad Wirasto Ismail, "Perlindungan Hukum Orang Dengan Gangguan Jiwa (Odgj) Di Rumah Sakit Khusus Jiwa," *Wal'afiat Hospital Journal* 1, no. 1 (2020), <https://doi.org/10.33096/whj.v1i1.22>.

³ Peraturan Bupati Kudus, "Peraturan Bupati Kabupaten Kudus Nomor 58 Tahun 2020," *Media Konservasi* 2, no. 1 (2016): 11–40, http://dx.doi.org/10.1016/j.ecoenv.2017.03.002%0Ahttp://www.fordamof.org/files/Sistem_Agroforestri_di_Kawasan_Karst_Kabupaten_Gunungkudul_Untuk_Pengelolaan_Telaga_Sebagai_Sumber_Air_Berkelanjutan.pdf%0Ahttps://extension.msstate.edu/sites/default/files/pu.

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Regulation Number 48 of 2020 concerning the Implementation of Minimum Service Standards for the Health Sector in Kudus Regency, namely in Article 3 letter j, that ODGJ Health services must have quality indicators that are in accordance with mental health standards.⁴

In 2023, the Regent of Kudus issued Decree of the Regent of Kudus Number 441. 3/212/2023 concerning the Establishment of a Community Mental Health Implementation Team. In this Decree, the government has a mission to realize a degree of mental health for all individuals, families and communities which is carried out for mental health using various approaches, namely promotive, preventive, curative and rehabilitative which are carried out in a comprehensive, integrated and sustainable manner. In this Decree, the government formed a Health implementation team to formulate policies and mechanisms related to the implementation of Community Mental Health.

3.2. Protection and Guarantee for People with Mental Disorders from a Human Rights Perspective

Human Rights are rights that are universally recognized as rights that are inherent in humans because of their essence as humans. The rights themselves consist of the right to life, the right not to be tortured, enslaved or arbitrarily detained, the right not to be discriminated against before the law.⁵ In human rights theory, human rights are recognized 'universally', which applies to everyone, including sick people and healthy people, who still have the same position before the law (Equality Before the Law). Equality before the law means that every citizen must be treated fairly, including people with mental disorders, whether they are homeless on the streets or in hospitals.

Social problems today can be seen from the large number of people with mental disorders. Moreover, with a world that has many demands, humans become stressed with the various problems they face. Apart from that, there is a lot of bad stigma experienced by ODGJ. This stigma is not only experienced by people with mental disorders (ODGJ), but is also experienced by their family members and has a negative impact on the recovery of people with mental disorders because they feel embarrassed, irritated, sad, devastated and uneasy and then blame each other. ultimately affecting the treatment of ODGJ⁶. In fact, family is a very important support for the recovery of people with mental disorders (ODGJ).

⁴ "Perbup_No_48_Th_2020_ttg_SPM_Bidang_Kesehatan_sign.Pdf," n.d.

⁵ Mei Priwanti Siagian, "Pemenuhan Hak Orang Dengan Gangguan Jiwa (ODGJ) Yang Terlantar Di Jalanan Di Kota Tarakan," 2022, 1–17.

⁶ Herdiyanto, "Stigma Terhadap Orang Dengan Gangguan Jiwa," *Inquiry* 8 (2017): 2.

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If we look at the rights of people with mental disorders, namely in Article 148 paragraph (1) and Article 149 which regulates that: Article 148 paragraph (1) of the Health Law: "People with mental disorders have the same rights as citizens." "People with mental disorders who are neglected, homeless, threaten the safety of themselves and/or others, and/or disturb public order and/or security are obliged to receive treatment and care in health service facilities." To overcome the legal and sociological problems of ODGJ, a Kudus Regency Regional Regulation is needed regarding the Handling of People with Mental Disorders (ODGJ) which can later function as a legal basis for administering the treatment of people with mental disorders with legal certainty in the region. Regional regulations related to ODGJ need to contain human rights elements and values.

4. Conclusion

Regulations for legal protection for people with mental disorders in the structure of Indonesian legislation are generally contained in the law. The constitution also contains health protection for the community. It's just that the issue of mental health has not yet reached regional regulations, especially in Kudus, even though the Kudus Regional Government already has policies related to mental health and mental disabilities. However, it does not specifically contain the prevention and/or prevention of mental disabilities with a human rights perspective. There needs to be special regulations in regional regulations that contain mental health, especially the problems of people with mental disorders (ODGJ), so that the handling and protection of ODGJ can be carried out appropriately. Regional governments can collaborate with communities and experts to create regional regulatory instruments regarding ODGJ that have a human rights perspective. There needs to be prevention efforts or preventive measures for mental health, which can be carried out by regions and the community.

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