

One form of Protection for Persons with Mental Disabilities: An Exploration Study of Indonesian Legislations on the Protection of Inheritance Rights of Persons with Mental Disabilities

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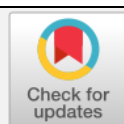
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ABSTRACT

Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD). It enacted Laws that provide for the right to justice and legal protection for persons with mental disabilities, including the right to own and inherit a legacy. Paradoxically, the same laws legalize actions that undermine their rights. This study examines the legal protection accorded to persons with mental/intellectual disabilities over their inheritance rights as per the Indonesian three-pronged inheritance laws comprising Islamic law, adat law and the civil code. This research is descriptive, using a normative approach with a measure of doctrinal research. Indonesian laws still provide for substituted decision-making for persons with mental disabilities, which legalizes denying their right to legal agency. Ambiguities abound in the laws on important aspects, like how one is declared incapable of making legal decisions. Supported decision-making mechanisms for persons with mental disabilities in Indonesian laws would provide the basis for setting up support centers where persons with mental disabilities can access the necessary support to enable them to make legal decisions. This study can be useful in addressing issues that infringe on the legal rights and protections of people with mental disabilities.

Keywords: Inheritance Law; Legal Decision; Persons with Mental Disabilities

1. Introduction

Persons with disabilities in Law Number 8 of 2016 on Persons with Disabilities are any person experiencing physical, intellectual, mental, and/or sensory limitations for a long period which, in interacting with their environment, may experience obstacles and difficulties in participating fully and effectively with others based on equal rights (Republik Indonesia, 2016). The UN Convention on the Rights of Persons with Disabilities (CRPD) reaffirms disabled people's rights to 'equal treatment under the law' (Harding, 2017; Lawson, 2018). This includes "the right to recognition everywhere as persons before the law. Even though they have physical, intellectual and/or mental limitations, persons with disabilities still have the same rights as other normal humans to live a decent life and obtain various other rights, including inheritance rights. This is provided for in Article 9 of the Law on Persons with Disabilities, which states that the right to justice and legal protection for persons with disabilities includes the right to own and inherit movable or immovable property.

Following the ratification of the International Convention on Rights of Persons with Disabilities (CPRD), Indonesia revised its previous laws on Disabilities and enacted Law No. 8 of 2016, which ensured the protection and fulfillment of the rights of persons with disabilities. However, some problems are associated with its implementation (Indonesian Disability Persons' Organization, 2017).

Inheritance is closely related to human life; every person born in this world will surely die (Wahyuni, 2018). In many communities around the world, with the death of a family member who owned property, the family of the deceased left behind grapples with inheritance issues (Titus et al., 1979). This study focuses on the legal protection of the inheritance rights of persons with mental disabilities in Indonesia. This is because people in this condition are regarded as incapable of legal decisions, and their inheritance rights are sometimes forgotten and or ignored, in the case of Indonesia, entrusted to a guardian. Often inheritance rights that should be reserved for persons with disabilities are not given to them but to others who are considered more capable of carrying out legal actions (Bhugra et al., 2016).

Bhugra et al. continue to note that Legal language in many countries uses derogatory and stigmatizing terminology to refer to persons with mental health problems such as insanity, madman, mental derangement or imbecility, lunatic, usual idiocy (sic), madness, mentally incompetent, and idiots, to name a few; In most cases, these terms are not defined in the law and are left open to interpretation (Bhugra et al., 2016).

With the law using such language, the public pays little or no attention to the rights of persons with mental disabilities. They are often alienated from relationships because they cannot respond or adapt well to the surrounding environment. Persons with mental disabilities cannot defend their rights because they are deemed incompetent by the law and may not even understand the discrimination treatment they receive. Using pejorative terms in legislation also plays an important part in increasing stigma against persons with mental health problems. Conversely, the stigma associated with mental health problems is likely to mean that these terms are often interpreted as detrimental to the interests of persons with mental health problems (Bhugra et al., 2016). Discrimination of persons with disabilities still often occurs, especially in the case of inheritance. Moreover, the rights accorded to them are often infringed on with impunity, yet the law provides for their rights and adequate legal protection like normal people.

It is still common for persons with disabilities to get arbitrary, degrading treatment and their rights abused even by members of their own families; such infringement includes their right to inheritance (McSherry, 2008).

The Indonesian laws on inheritance are derived from three legal systems, the adat (customary) legal system, the Islamic legal system, and the western legal system (Barlinti, 2013). Whereas the adat law provides for exercising customary law, the customary law practiced in the varied indigenous communities of Indonesia is largely unwritten, making it difficult to point out how the inheritance rights of people with mental disabilities are handled when this kind of customary law is exercised. In some indigenous communities, the inheritance system is collective (Barlinti, 2013), so control of inherited legacy does not lie with a single individual. It is unknown how this system considers the wishes of persons with mental disabilities in a group of heirs who inherited legacy.

The Indonesian Civil Code, derived from the Dutch colonial era law and the Compilation of Islamic Law, derived from the Quran and the Sunah of the Prophet Muhammad (PBUH), are the other legal systems exercised regarding inheritance (Aladdin & Khisni, 2019). The law in all three systems does not clearly state the rights of persons with mental disabilities in the distribution of inheritance.

Law Number 8 of 2016 on Persons with Disabilities provides for their equal rights with normal humans and to live a decent life that entitles them to various other rights, including inheritance rights. Article 9 of the same Law provides them with the right to obtain justice and legal protection, including the right to own and inherit movable or immovable property. The Compilation of Islamic Laws also clearly provides for how inheritance legacy should be distributed without discrimination on the mental condition or age of the heir. It is worth noting that these inheritance laws that protect and give rights to persons with mental disabilities provide for appointing a guardian for the same persons, which ironically takes away the same rights of the people they are meant to protect by stripping them of their right to make legal decisions.

2. Legal Capacity

Exercising our rights and duties seems automatic to most of us, but it may not be that simple for persons with mental disabilities. In formal situations like entering into contracts or making legal decisions, the legal capacity of persons with mental disabilities is often questioned or even completely not accepted. Harding (2017) refers to legal capacity as the formal ability to hold and exercise rights and duties.

In many instances, legal capacity is taken to mean legal agency and the two terms are used interchangeably. Arstein-Kerslake & Flynn (2017) define legal agency as 'an action or inaction that the individual intended and which has legal consequences; or creates, modifies, or extinguishes a legal relationship.' According to the CRPD in Harding (2017), legal capacity is "...a universal attribute inherent in all persons under their humanity and must be upheld for persons with disabilities on an equal basis with others."

It is worth mentioning that actions usually come from intentions, and intention, as an important attribute of humanity, needs to be present in exercising legal legacy (Taylor, 2005). As human beings, we will always have intentions for many things in every moment of our lives; what is for sure is that intention required to exercise legal agency can be formed by all humans (Arstein-Kerslake & Flynn, 2017).

The CRPD is very clear on legal capacity because it provides that 'States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life—shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity' (Harding & Taşcioğlu, 2018).

It remains to be known if the law in Indonesia provides for any measures that provide persons with mental disabilities access to support that can enable them to exercise their legal capacity.

3. Research Methodology

This study reviewed Indonesian legislation on inheritance and persons with mental disabilities, focusing on legislation on the three legal systems that regulate inheritance; the adat law, the civil code and the Compilation of Islamic law, using the descriptive method. Data comprised of legislations as primary data and secondary data sources studied included reports, books, official websites and academic articles, which were sourced from libraries and legal archives of various institutions. The sourced data was analyzed using the deductive analysis approach.

4. Results and Discussion

4.1. Legal Protection of the Inheritance Rights of Persons with Mental Disabilities

Whereas article 9 of Law No. 8 of 2016 on Persons with Disabilities provides for justice and legal protection for persons with disabilities, including owning property, the Civil Code and the Compilation of Islamic Law as positive regulations in Indonesia do not explicitly state how inheritance rights for persons with disabilities should be upheld. The Civil Code not only clearly states the rights of persons with disabilities as heirs, but it does not also state their limitations to obtaining the right to inheritance.

Based on article 9(b) of Law Number 8 of 2016, persons with disabilities have the right to be recognized as legal subjects, which means that persons with disabilities have authority under the law (Windajani, 2008). However, not all legal subjects are competent in carrying out legal actions; among them are those declared incompetent in such activities as one put under the authority of another person (Mubarak, 2015). Examples of people under people's authority are people with intellectual disabilities and or mental disabilities because both have mental weaknesses (Al-Jaziri, 2006).

Article 452 of the Civil Code states in part that a mentally incapacitated adult person has the same rights as a minor. Since a minor's legal rights are put under the guardianship/trusteeship of an adult of sound mind and good reputation, the same applies to adults with mental and intellectual disabilities. Such persons are considered incapable of taking legal action and must be put under guardianship. The same article also provides for safeguarding minors and penalties for abuse of a minor's guardianship. The provisions of article 50 of Law No.1 of 1974 concerning Marriage state that guardianship/trusteeship applies to minors' legal rights and their property.

Furthermore, the Civil Code provides for a guardian's mandate to take care of the assets of a minor and is required to be responsible for costs and losses incurred due to poor management. For this reason, inheritance rights of persons with mental/intellectual disabilities can be carried out through guardianship/trusteeship. Therefore, the inheritance rights are assigned to the appointed guardian/trustee.

So, for heirs with mental disabilities receiving an inheritance, a guardian must manage their

inheritance, as noted above. This is also following article 184 of the Compilation of Islamic Law, which states that for heirs who are not yet mature or unable to carry out their rights and obligations, a trustee is appointed based on the judge's decision based on the proposal of the family members.

In the Compilation of Islamic Law, however, there is no explanation regarding the definition of heirs who cannot carry out their rights and obligations. Moreover, there is no clear provision for regulating how a guardian/trustee should handle the inheritance of a person with a mental disability. This leaves the inheritance in question under the discretion of the trustee.

However, one abstract phrase refers to people who need others to fulfill their rights and obligations. That is because some people have been declared incapable of carrying out legal actions and cannot act alone in carrying out their rights and obligations, including those who are not yet mature and those who are adults but are under the authority of others. People under guardianship include young children, mentally incapacitated people, people with serious illnesses, and others. For this reason, persons with intellectual and or mental disabilities are taken as heirs who are unable to carry out their rights and obligations. Therefore, a trustee is appointed for them based on a judge's decision based on the proposal of family members.

The unclear explanation in the law of what constitutes a mental disability and how it should be proven leaves a lot to the prerogative of family member's ability to make their case to the court to take a person as mentally incapacitated and, therefore, their legal rights handed over to a trustee. The role of professional opinion in deciding one's mental/intellectual capacity is not provided for, which is a grievous oversight in this process. It is only professional personnel who can pronounce a person as mentally/intellectually unsound as opposed to the consensus of family members. The courts should make professional proof and testimony from a trained certified expert mandatory before such a ruling is made.

4.2. Legal Pluralism

Inheritance law in Indonesia, as already noted above, constitutes three legal systems, the adat (customary) legal system, the Islamic legal system, and the civil code (Barlinti, 2013). Exercising these laws, it is sometimes inevitable to have these legal systems mixed up on the same matter, like having different parties appeal to different legal systems to stake their inheritance claim for the same property (Irianto, 2004).

The adat or customary law is written law, but in Indonesia's many diverse indigenous communities, it is largely unwritten but very much exercised, especially on issues like an inheritance. The disadvantage of unwritten law is it's prone to various things ranging from misinterpretation, misrepresentation, manipulation, and outright fabrication. In such instances, one cannot expect much explanation on catering to the rights of persons with mental disabilities.

In some indigenous communities, the inheritance system is collective (Barlinti, 2013), and control of inherited legacy is jointly managed. Still, Barlinti points out that collective inheritance changes to the individual inheritance since legacy usage is mostly individually based and if the head of the group in legacy management is weak. How this system considers the wishes of persons with mental disabilities in a group of heirs who want to go solo with the inheritance is unknown.

4.3. Legal Remedies for Inheritance Rights of Persons with Mental Disabilities

The property right is recognized as a human right by the Universal Declaration of Human

Rights (UDHR) in the 1948 United Nations General Assembly with a declaration that ‘everyone has the right to own property alone as well as in association with others’ and ‘no one shall be arbitrarily deprived of their property’ (Bhugra et al., 2016). The UN adopted the Convention on the Rights of Persons with Disabilities (CPRD) in 2006, which reaffirms disabled people’s rights to ‘equal treatment under the law’, including the right to recognition everywhere as persons before the law (Lawson, 2006). In a follow-up to the ratification of the International Convention on Rights of Persons with Disabilities (CPRD), Indonesia, after revising its previous laws on Disabilities and enacted Law No. 8 of 2016, which ensured the protection and fulfillment of the rights of persons with disabilities (Indonesian Disability Persons’ Organization, 2017).

4.4. The Guardianship Paradox

In the wake of all these developments, it seemed finally clear that persons with mental disabilities now have the law catering to their plight. But ambiguities in the laws of individual countries still harbor provisions that deny rights to this group of people. Bhugra et al. (2016) point out that the CRPD clarifies that “unsoundness of mind” and other discriminatory labels are not legitimate reasons for the denial of legal capacity (legal standing and legal agency)’ and that actual deficits in mental capacity must not be used as justification for denying legal capacity. It is, therefore, incumbent upon countries that ratified CRPD to comply with these declarations. In the case of Indonesia, compliance with CRPD declarations remains to be seen in its legal system.

Paradoxically, the same laws enacted to protect persons with mental disabilities deprive them of their rights by declaring their decisions legally void, attributing guardians to them to take over their legal capacity, and even including derogatory language like ‘...the person is treated in the same way as a child.’

Indonesian law still holds the requirement of guardians for persons with mental disabilities to exercise substitute legal decisions for persons with mental disabilities means that compliance to the CRPD on Indonesia’s part is still wanting. Edwards (2014) points out that the domestic laws that violate CRPD rights remain in force in Indonesia. A court under the interdiction law, for example, is mandated to declare a person legally incapable based on mental or intellectual impairment, and someone else (guardian) is attributed who takes over all their legal capacity to act on their behalf (Edwards, 2014).

Since Indonesia ratified the CRPD and enacted laws to protect the interests of persons with disabilities, including persons with mental health problems, from being exploited and deprived of their rights, it is important to review what the laws are protecting and whose rights and interests these laws are protecting (Bhugra et al., 2016).

Notwithstanding the paradox of guardians for persons with mental disabilities, the law details placing them under guardianship and their assets held in trust. The form of legal protection provided for inheritance is in the Civil Code stipulated in Articles 331 up to 344, Articles 362, 367 to 388, and Article 391. At the same time, the Compilation of Islamic Law is regulated in Articles 107 to 112. Furthermore, guardians are assigned the trusteeship of the inheritance of persons with mental and intellectual disabilities to be used for the latter’s interests.

However, if the inheritance held in trust by the guardian is misused, mismanaged or neglected, and if the guardian’s moral integrity is proven to be improper, dismissal of the trusteeship and guardianship can be demanded by concerned relatives and ruled by the District Court or the Religious Court. Dismissal of guardian results in the absence of a trusteeship, at

which point an application can be made to appoint a new guardian. Revocation of guardianship authority by the Religious Court can be done at the request of relatives of persons with disabilities under the trusteeship.

With such revocation of guardianship by the court, the law does not provide for where custodianship lies. At the same time, a new guardian is being identified and appointed or even when a substitute guardian cannot be found. The vacuum in guardianship created due to the dismissal of the incompetent guardian presents various uncertainties for the rights of the person under guardianship (persons with mental disabilities).

5. Conclusion

Policymakers in Indonesia must seriously consider reviewing the laws to comply with the CRPD declaration. Whereas the inheritance rights of persons with mental and intellectual disabilities are protected under Indonesian laws, some sections in the law need clarification to avoid ambiguity, which can be taken advantage of to exploit the inheritance rights of the mentally disabled.

Some laws rightly legalize the infringement on the rights of persons with mental disabilities. The provision in the law that provides for guardianship for persons with mental and intellectual disabilities and trusteeship of their inheritance rights is derived from inferring what the law provides for minors. The degrading nature of the language used in the legal system about persons with mental disabilities is regrettable and needs to be addressed.

The unclear explanation of what constitutes a mental disability and how it should be proven does not mandate the opinion of certified expert professional opinion the unclear process that involves a relative petitioning court to declare someone mentally or intellectually incapable of taking legal decisions and declaring their legal decisions void and stripping them of their legal agency needs to be addressed as well. Finally, there is a need to establish a mechanism that can provide assisted decision-making for persons with mental disabilities in taking legal decisions relating to their inheritance and the right to make day-to-day decisions in their lives.

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7. Declaration of Conflicting Interests

The authors have declared no potential conflicts of interest concerning this article's research, authorship, and/or publication.

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