

THE POSITION OF PEOPLE WITH VISUAL IMPAIRMENT AS LEGAL SUBJECT IN TERM OF AGREEMENT BY INDONESIAN LAW

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ABSTRACT

People as legal subject are naturally gift given by God. People as human are the proponent of rights and obligations. Rights are owned by all human beings, and the different is on the obligations. People with visual impairment are human as individual or person living within the society. However, their position in undertaking legal action, especially in civil law is still in doubt. The lack of understanding regarding legal capacity of a person, and the regulation of legal subject are interest to be studied. Therefore the researcher intends to studied the topic based on the applicable provision existed in Indonesia. This research used juridical normative method. Research finding showed that people with visual impairment born with disability have civil rights since they are an embryo within the womb of their mother. Civil rights owned by the embryo is the rights to get protection, to live, to be taken care of, to get decent life, rights as the heir, etc. Article 2 of Civil Code is the origin of the civil rights of all people. Legal subject, which is naturally obtained, happens since they are an embryo within the womb and born alive. Legal subject is one of legal subject requirements factor within the agreements. People with visual impairment have rights to be recognized as legal subject as stated in the Article 9 letter (a) of Act No. 8 of 2016 concerning People with Disabilities. People with visual impairment as legal subject in the agreement are form in undertaking their civil rights. The equal position before the law and rights to get legal protection is regulated in the Article 27 paragraph (1) and Article 28 D paragraph (1) of The 1945 Constitution of the Republic of Indonesia. The provision is referred to all people without exception. People with visual impairment are equated to amuck in the provision of the Article 433 of Civil Code. It leads the competency of People with visual impairment as legal subject is regarded as incompetence. Amuck and people with visual impairment have different meaning. Amuck is referred to emotional and psychological state, while people with visual impairment are referred to physical weakness (vision). People with visual impairment who suffers from vision disturbance are only having physical weakness; it does not mean they have disorder or disturbance in brain function.

Key words: People with Visual Impairment, Legal Subject, Legal position, Agreements

INTRODUCTION

The numbers of people with disabilities continue to increase every year, and spread in several regions of Indonesia. The increasing of people with disability brings them to be minority who live among society. In 2015, Central Bureau of Statistics conducted Intercensal Population Survey in several regions of Indonesia focused on counting or identification of Indonesian people who have disabilities.

Intercensal Population Survey program is government's first step in surveying the people with diasabilities. The survey used *Washington Grub* as a benchmark in surveying disabilities. Intercensal Population Survey in 2015 identified that 8.56% of Indoseian People are disabilities. Aside from statistical bureau, *World Health Organization (WHO)* also did a counting to people with disabilities in Indonesia. It was estimated there were, more or less, 10% of Indonesian people (24 millions) suffer from disabilities. (Central Bureau of Statistic, 2017)

People with visual impairments, also known as visual impairment or vision impairment or vision loss, are one of disabilities which have higher population in Indonesia. Ishak Salim, Head of the Indonesian Disabled Movement for Equality, in the article entitled MEMBACA DATA DISABILITAS INDONESIA MELALUI SUPAS 2015: 'Penyandang Disabilitas' atau 'Orang Dengan Beragam Kesulitan'? stated that people with visual impairment are divided into 3 (three) levels; people who are totally unable to see amounted to 0.13%, people who have severe viewing difficulties are 0.72 %, and people who have little viewing difficulties are 5.51%. ("MEMBACA DATA DISABILITAS INDONESIA MELALUI SUPAS 2015: 'Penyandang Disabilitas' atau 'Orang Dengan Beragam Kesulitan'?", 2018)

People with visual impairments are people who have vision disruption due to various factors. Limited vision suffered by the people with visual impairments impact to their daily life, hence they need certain help from both family and society to do their routine.

Limitation possessed by people with visual impairments is often mistaken by the society as disability to act and think. Those mindsets affect privately or socially to the life of people with visual impairments, and obstruct them in obtaining their rights as person, Indonesian citizen, and getting legal protection.

People with visual impairments and disability in getting their rights are protected by legal rules existed in Act no. 4 of 1997 concerning Disabilities and *Convention on the Rights of Persons with Disabilities* which is ratified to Act No. 19 of 2011. However, new draft law, which has been realized, is resubmitted by issuing Act No. 8 of 2016 concerning People with Disabilities (hereinafter referred as Act No. 8 of 2016) due to the message of *Convention on the Rights of Persons with Disabilities* was not covered yet in the Act no. 19 of 2011.

By issuing new law protecting the people with visual impairments is not wholly guarantee the freedom of the people with visual impairments. Limitation and ability which is often equaled to incompetence attach in the life of people with visual impairments. Those things obstruct them in carrying legal action to and on their behalf as legal subject.

Legal subject is rights and obligations proponent in legal action. Human, naturally, is a legal subject. People with visual impairments as legal subject are gained outwardly. The position of the people with visual impairments as legal subject in its application both in the community and in law enforcement is still questionable and doubtful.

Based on the description above, the problem in the article is about how is the position of people with visual impairments in certainty as legal subject in the agreement according to applicable law.

RESEARCH METHOD

This research used normative juridical method. Normative juridical is legal research focused to study the application of rules and norms in positive law. (Ibrahim, 2016, p. 295)

RESEARCH FINDING AND DISCUSSION

Legal subject is a thing which can support rights and obligations. It has various terms spread among legal practice. The terms of legal subject come from some legal practices are; *purusha* law (Oentari Sadino), legal crew (St.K. Malikul Adil), and private law (Soerjono Soekamto, Purnadi Purbacaraka), etc. (Ali, 2005, p. 14)

People are a legal subject. People as legal subject consisted of person (*natuurlijk persoon*), and legal entity (*recht person*). Person has position as legal subject which is obtained naturally, because it is a gift from God. Meanwhile, legal entity is entity established by human based on the applicable regulations which has rights and obligations as person.

Human already have rights since they are an embryo within the womb and to be born alive. The rights which are owned by the embryo called civil rights. In other words, the origin of human's civil rights is obtained since they are an embryo. It is in accordance with provisions in the Article 2 of Civil Code which stated "Children who are in the womb of a woman are considered as children who have been born, if also the interests of the children want it". The civil rights will be considered abort if the children was not born alive.

The civil rights owned by the embryo are rights to be alive, rights to be protected, rights to be taken care, rights to get decent life, rights to get inheritance, and rights to be heir. Embryo was mentioned as proponent of rights and obligations (legal subject) if the embryo was born alive. The origin of human as legal subject originated from the human being born into the world.

People with visual impairments are human born in disability. Disability is a person born with special needs. The specificity of people with disability provided in the Article 1 paragraph (1) Act No. 8 of 2016 concerning People with Disability. It explained that people with disability is a person who has long-term physical, intellectual, mental, and / or sensory limitations, hence they have obstructions and difficulties to fully and effectively participate with other citizens based on the equal rights. (Act No. 8, 2016)

Psychal limitation possessed by people with visual impairments does not omit their rights and legal protections. The rights owned by the people with visual impairments are equal to the rights owned by human in general, in which the rights have affixed naturally since human are inside the womb and to be born alive. Legal protection of the embryo is provided in the Article 53 of the Act No. 39 of 1999 concerning Human Rights which stated "Every child since in the womb has the right to live, maintain life, and improve his standard of living".

Human Rights is a foundation of all rights owned by human. Human Rights unconsciously have attached in human life. Human Rights uphold the values of human rights in person (*privat*). The government issued legal rule in writing through Act No. 39 of 1999 concerning Human Rights which has intention to promote human dignity and provide individual recognition and protection for every human being.

Human being is called as zone politicon or known by social being. It means human, in their daily lives, often interact with other humans and they need each other. Prof. Abdulkadir Muhammad said that the relationship among human often lead to legal relationship such as agreements or buying and selling. Legal relationship is legal rights and obligations of citizens as both socially and individually in community life (Muhammad, 2000, p.2). Furthermore, if the rights and obligations of the relationship are not fulfilled, the emergence of rights and obligations in this legal relationship will create sanctions.

In case of someone's legal relationship, it adjusts to other parties interests. A relationship has a clear and strong legal force value which must be made in written letter or written agreement. Written agreement has function as written evidence, as stated in the Article 1866 letter (a) of Civil Code.

Establishment of an agreement should fulfill legal requirements of agreements provided in the Article 1320 of Civil Code. In the Article 1320 of Civil Code, the legal requirements of agreements is divided into two main sections, they are; object and subject factor. In the Article 1320 paragraph (1) and (2) which stated that agreement of will between parties and their abilities is a subjective factor in the agreement which must be fulfilled because it regards to the basis of the rights of the agreements agent. In

addition, in the Article 1320 paragraph (3) and (4) mentioned that certain things and certain reasons which become objective factors in the agreements concerning contents of a thing that was agreed.

Legal consequences if subjective requirements (Article 1 and 2 of Civil Code) are not fulfilled, the agreement which has been made can be requested or submitted a cancellation to the Judge. Meanwhile, if objective requirements (Article 3 and 4 of Civil Code) are not fulfilled, the agreement which has been made is null.

People with visual impairments are also human who have nature of *zone politicon* in their life, both within human in general and other fellow disabilities. They have civil rights attaching on them. As person who has civil rights, they often do legal action i.e. getting inheritance, giving inheritance, or buy and sell. Civil law related to agreement requirements is directly and indirectly referred to all citizens of Indonesia by paying attention to others law such as The 1945 Constitution of the Republic of Indonesia and other legislations.

People with visual impairments born or live in Indonesia are Citizens of Indonesia. It can be legally seen on the birth certificate or identity card as clearly regulated in the provisions of legislation concerning population administration. The gaze and treatment of compassion are often felt by them in their daily life which makes the people with visual impairments are unable to have a chance to develop. That old paradigm is inseparable from the influence of the old rules provide in Act No. 4 of 1997 concerning Disabilities. Before, people with disabilities called as "*penyandang cacat*" (It is important to be noted that the term "*cacat*", in Indonesia, is term that has negative meaning, hence it replaced into "*penyandang disability*" which has positive meaning", though in English both of them have same translation, it is "disability"). Furthermore, in the Article 1 of Act No. 4 of 1997 stated that "Disabilities is every person having physical and/or abnormalities, which is an obstacle or can disturb and obstruct themselves in doing their activities properly".

Article 1 of Act No. 4 of 1997 contains negative meaning which makes the rights of people with disabilities distracted to the incompetence and compassion. The Act No. 4 of 1997 is the origin of people with visual impairments and other disabilities' competences are doubtful, and the effect of the law is still felt. Fortunately, Indonesian law concerning disabilities gradually start to evolve.

The first freedom of rights felt by people with visual impairments is the ratification and the issuance of Act No. 19 of 2011 concerning *Convention on the Right of Persons with Disability* (CPRD) which are ratified and issued by Indonesian Government. For the first time, the words "*penyandang disabilitas*" are used in the Act No. 19 of 2011, it replaces the words "*penyandang cacat*" which were used in the previous Act, it is Act No. 4 of 1997. CPRD is form of Indonesian Government participation and support for people with disabilities in Indonesia. It has intention to protect, honor, promote, and fulfill their rights both publicly and privately.

The Act No. 19 of 2011 concerning Ratification of *Convention on the Right of Persons with Disability* (CPRD) and the Act No. 4 of 1997 concerning People with Disabilities do not yet explicitly seem containing strong factor to protect, honor, promote, and fulfill the rights of the people with disabilities. In addition, the government, through several processes, contrives new legislations which fulfill the rights and dignity of people with disabilities. Therefore, the Act No. 8 of 2016 concerning People with Disabilities was issued.

The Act No. 8 of 2016 has 153 Articles which clearly and thoroughly regulates the rights of people with disabilities. The Act aims to realize the equal rights and opportunity for people with disabilities to have prosperous life, independent and without discrimination. Hence, it needs legislations which can guarantee its implementation.

The regulations concerning people with disabilities actually have been applied. However, there are many people still believing in old paradigm and regulations which do not fully support yet to people with disability, in consequence the application rule concerning disabilities is not evenly distributed yet. The Act No. 8 of 2016 clearly regulated the rights of people with disabilities and upheld the dignity of those people as a human being who have the right to be respected personally.

The recognition to people with visual impairment as individual and acknowledgement to their abilities as human are matters which are still difficult to be admitted by the people with impairment. It is caused by the limitation owned by them. Skepticism from some people or the applicaton of certain policy arrangements on the competency of people with impairment makes them unable to be free to use their basic rights.

Basic rights of human being provided in in the Article 4 paragraph (1) of Act No. 39 of 1999. The Article 4 is the ultimate article concerning position and protection of the rights of every human being, the article stated:

"rights to be alive, rights not to be tortured, rights of personal freedom, mind, conscience, rights to have religion, rights not to be enslaved, personal recognition rights and equality before the law, and rights not to be prosecuted on the basis of retroactive law. It is the rights of human being which cannot be dismissed under any circumstances and by anyone." (Act No. 39, 1999)

There are skepticisms concerning the competence of the people with visual impairment as personal in undertaking acts of civil law such as an agreement. The position of people with visual impairment is often equated with those who are incompetent in undertaking legal actions. It can obstruct the people with visual impairment in forcing their civil rights to undertake legal action and to be recognized as person (*natuurlijk persoon*).

All humans have equal civil rights and authorization to have rights. However, it is not all human have rights to something. Civil rights owned by all people are obtained since they are within the womb of their mother, while the authority in civil rights will continue until the human dies. It is provided in the Article 2 of Civil Code. The civil rights are human personal identity which cannot be dismissed. It is confirmed in the provisions of Article 3 of Civil Code. The provisions stated, "There is no sentences resulting civil death, or loosing all of citizenship rights."

The authority of each person in doing activities is different. There are some factors influencing people authority in doing activities, i.e. health, age, and behavior. Those factors are categorized as factors which can determine human competence in undertaking legal actions.

Human can be considered having competency in undertaking their legal actions; first, if they are adult. Adult are people who have reached the age regulated in the provisions of applicable legislation. There are various regulations in Indonesian law which regulate about adulthood. For example, the regulation of adulthood mentioned in the Civil Code is 21 years old, while the provision in the Act No. 1 of 1974 concerning Marriage is 18 years old. Second, they are not in custody. According to the Article 433 of Civil Code, person who as in the custody is "Every adult, who is always imbecile, has a brain ache, or has an amuck must be put under control, even if he is sometimes capable of using his mind".

Imbecile, in Indonesia Dictionary, means has blunt brain, not smart, ignorant, or stupid. Brain ill is people who have disorders of the brain organs caused by certain factors, i.e. brain injury due to accident or congenital injury. Brain ill includes amnesia, tumor / brain cancer, and alzheimer, etc. (<https://kbbi.kemdikbud.go.id/>, n.d.)

Meanwhile, amuck in Indonesia dictionary means extremely angry, and it cannot be stopped. In addition, amuck is referred to emotional and psychological state of a person. An adult who has improvident nature, due to their improvident can be put under control. It is explained in the Article 433 of Civil Code.

The term amuck which is implied in the provisions of Article 433 concerning an incompetent person is often equated with visual impairments people. This makes the legal position and rights to do of people with visual impairment are questionable and doubtful. In Wikipedia, people with visual impairment are general term used to describe somebody's condition who experiences disorders or obstacles in the vision. People with visual impairment are divided into two, they are; total blind which means the people who are totally unable to see anything, and low vision meaning the people are still able to see, yet the vision level is above the average minus. Usually, low vision uses special eyeglasses as an aid.

People with visual impairment who have single disability are only having weakness in their vision, in other words it refers to physical weakness. Meanwhile, amuck which is stated in the Article 433 of Civil Code referred to emotional, psychological, and mind states. The competence of a person is one subjective requirement of four legal terms of agreement contained in the provision of the Article 1320. If the subjective requirement is not fulfilled or there are some mistakes in the requirement, the cancellation can be undertaken. It is submitted to the Judge by anyone who is aggrieved.

According to the Article 433, the enforcement of custody to people who are incompetent can affect the rights and authority transfer owned by rights holder. The process can be submitted by the rights holder due to his/her incompetence; hence the rights will be transferred to parents, families, or spouse. Humans who feel that they have weakness, yet they are not included in incompetence category, can submit a request for custody at the local District Court. For example, people who are unable to write and read.

Privacy rights owned by people with visual impairment as human being, as regulated in the provision of the Article 8 letter (a) which stated, "Being recognized as person who can sue and obtain equal treatment and protection in accordance with human dignity in public". In the provision of Article 8 letter (a) stated that people with visual impairment is recognized as a person as proponent of rights and obligations.

As an individual, people with visual impairment have rights as legal subject in the legal action. The rights of people with impairment as legal subject is explained in the provision of the Article 9 letter (b), the provision recognized people with visual impairment as legal subject has equal position to people in general. It has purpose to create equality and legal protection in undertaking agreement legal action to and on behalf of people with visual impairment as person. Civil rights owned by people with visual impairment cannot be dismissed, but they died. Limitation in the Article 9 letter (b) is laid on the qualification of understanding and ability of people with visual impairment in undertaking legal action. In consequence, the agreement made does not have strong legal force and cannot be requested for cancellation.

As Citizen of Indonesia, People with visual impairment deserve to have equal treatment and position before the law. As stated in the provision of the Article 27 and 28D paragraph (1) of The 1945 Constitution of the Republic of Indonesia. In the second provision within the Article, it clearly mentioned the law and regulation to bestow equal treatment towards each person. The matter that differentiates one person to another person is only the authority to act, in which various regulations has regulated the action.

CONCLUSION

Based on the research finding and discussion above, it can be concluded that:

1. People with visual impairment have equal civil rights to other people in general. It can be obtained naturally since they are an embryo within the womb and to be born alive. As stated in the provision of the Article 2 of Civil Code. Civil rights is an identity of each person as proponent of the rights and obligations.
2. People with visual impairment born with disability who live in Indonesia is Indonesian Citizens. Therefore, they has equal rights of position and legal protection to other citizen as stated in the Article 27 paragraph (1) and Article 28 D paragraph (1) of The 1945 Constitution of the Republic of Indonesia.
3. The definition of amuck in the Article 433 of Civil Code is referred to emotional, psychological, and mind state. Meanwhile, the definition of visual impairment is referred to general definition in which a person's condition having disorders or disturbance in his/her vision. In addition, it referred to physical weakness.
4. People with visual impairment have rights to be recognized as legal subject. It is existed in the Article 9 letter (b) of Act No. 8 of 2016 concerning People with Disabilities.
5. Custody can be submitted if a person is unable or has a weak mind as stated in the Article 434 of Civil Code.

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