



## Legal Protection For People With Mental Disorders (ODGJ) On the Streets

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**Abstract.** People with mental illness (ODGJ) often experience discrimination, violence, and neglect in public spaces, especially on the streets. This condition creates an urgency for legal protection to ensure that their rights as citizens are fulfilled. This article discusses various legal instruments that regulate protection for ODGJ, both in national laws such as the Health Law and the Human Rights Law, as well as in international regulations adopted by Indonesia. In addition, this study examines the role of the government, law enforcement officials, and the community in providing protection and rehabilitation for ODGJs living on the streets. Through a juridical-normative approach and analysis of the implementation of existing policies, this article finds that although there are various regulations that guarantee the rights of ODGJs, there are still gaps in their implementation in the field. Therefore, synergy is needed between the government and the community to create more effective protection mechanisms, including the provision of more accessible mental health services.

**Keywords:** Legal protection, ODGJ, Human rights, Public policy, Rehabilitation.

### 1. INTRODUCTION

Human rights essentially function as a basic framework that upholds the dignity, freedom, and equality of all people around the world. Human rights are essential for fostering a just and equitable society in which each individual can develop and contribute to their community without fear of oppression or discrimination. Human Rights are fundamental rights that are universally recognised as inherent to every individual simply because they are human. These rights are called ‘universal’ because they apply to everyone, regardless of various distinguishing factors such as skin colour, gender, age, race, cultural background, religion, or personal beliefs. These rights are inherent to human dignity and are important for the well-being of all individuals.

In addition, human rights include the right to freedom and security, which protects individuals from arbitrary arrest and detention. The principle of non-discrimination is also a cornerstone of human rights, guaranteeing that all individuals are treated equally before the law and protecting them from unfair treatment based on characteristics such as race, gender, or belief system. The core components of human rights include various protections and freedoms. Among these is the right to life, which ensures that everyone has the inherent right to live and live without fear of arbitrary deprivation of life. In addition, there are rights that protect individuals from inhumane treatment, including the right not to be subjected to torture or cruel, inhuman, or degrading punishment. This protection includes the prohibition of slavery

and forced labour, which emphasises that no one should be shackled or forced to work against their will. By recognising that human rights apply to everyone, we reinforce the idea that justice should ignore individual circumstances, ensuring that everyone is treated with the same respect and consideration, regardless of their situation. This commitment to equality is essential to fostering a society in which everyone has the opportunity to develop, free from prejudice and discrimination. The government's obligation to adequately meet the needs of its citizens is a fundamental duty, not merely an act of compassion or something worthy of special recognition. This reinforces the expectation that the state must consistently prioritise the welfare of its people. In this context, Indonesia stands as a country committed to the rule of law, where the protection of human rights is paramount. Every individual, regardless of their circumstances, is entitled to receive equal treatment and protection under the law, thus reinforcing the principles of justice and equality that form the basis of a law-abiding society. A particular incident highlights that social problems continue in contemporary society, as can be seen in the alarming number of individuals suffering from mental disorders who live on the streets. This situation is a significant and ongoing challenge faced by societies around the world. This anxiety often manifests itself in the form of social exclusion, where those affected by mental disorders are marginalised and excluded from society. This social isolation exacerbates the difficulties faced by these individuals, as they struggle to access the necessary resources and support systems that can improve their overall quality of life and well-being.

Based on Law Number 39 of 1999 concerning Human Rights, human rights are a set of rights inherent to the nature and existence of human beings as creatures of God Almighty and are a gift that must be respected, upheld and upheld by the state, the law, the government and every person for the honour and protection of human dignity. Even healthy people experience feelings of anxiety. However, healthy people are able to overcome all health problems. Meanwhile, people who are psychologically ill 'keep going around in circles', constantly drifting into the depths of their inner turmoil, and unable to find a way out. But in reality, not everyone is born in a normal state. Those with mental disorders and mental retardation have the right to live with dignity like other people in general. Treatment and socialisation with the surrounding environment are also their right as human beings, but it is the lack of knowledge in society about mental disorders and retardation that takes away their human rights and their rights as Indonesian citizens.

Mental health itself is still a major health problem in the world, including in Indonesia. The number of people with mental health problems in Indonesia is quite high, from 6% according to Basic Health Research records (Rikesdas, 2013) to 9.8% (Rikesdas, 2018) and

most are scattered in the community compared to those undergoing treatment in hospitals. The number of mental hospitals in Indonesia is also limited. There is only one central mental hospital, 28 provincial mental hospitals, and 16 private mental hospitals. In addition to the lack of mental hospitals and the lack of psychiatrists, the distribution is uneven, while there are still quite a number of people with psychiatric disorders in Indonesia. Bad stigma is not only experienced by ODGJs, but also by their family members and has a negative impact on the recovery of ODGJs because they feel ashamed, annoyed, sad, devastated, and unsettled, then blame each other, which ultimately affects the treatment of ODGJs. In fact, family is one of the most important supports for the recovery of ODGJs. The rules regarding the guarantee of the rights of people with mental disorders are limited. As a result, the realisation of both things is not optimal. To realise mental health services and guarantee the rights of people with mental disorders, a comprehensive regulation is needed through a Law. 9 People with mental disorders have their respective rights and obligations according to their abilities. People with mental disorders have the right to affordable and standard mental health services, to an environment conducive to mental development, to the guarantee of obtaining medication, to protection, and to social needs according to the level of disorder experienced. The management of ODGJ who are homeless, abandoned, or even threaten the safety of themselves and/or others, as well as disrupting public security order is the responsibility of the government. The government is also obliged to provide shelter in non-medical service facilities for ODGJ who are cured or under control but have no family. The efforts to improve the mental health of the people of Indonesia are certainly still not optimal. The very limited number of psychiatrists, the low awareness of the importance of running mental health programmes in community health centres, the lack of integration of mental health efforts in the community, and the minimal budget and facilities for managing mental disorders in hospitals and community health centres make it clear that the road to a mentally healthy human being will be very difficult and full of obstacles.

In reality, there are still many ODGJs found wandering the streets, even though there are already regulations regarding people with mental disorders, but the level of people with mental disorders has not decreased. However, there are discrepancies in the implementation stage regarding the Law that has been regulated, starting from Law Number 39 of 1999 concerning Human Rights with other related laws. The author sees that some people with mental disorders are still wandering the streets, meaning that the government has not fully addressed the issue of people with mental disorders roaming the streets.

Legal protection for people with mental disorders (ODGJ) is an increasingly urgent issue in the context of society and public health. In Indonesia, ODGJ are often a vulnerable

group facing various challenges, especially when they are on the streets. Their presence in public spaces not only indicates a worrying state of mental health, but also reflects a lack of attention and support from the community and the government. In many cases, people with mental illness on the streets experience serious stigma, discrimination, and human rights violations. Therefore, it is important to understand the legal protections available to them and how their implementation can be improved.

## **Legal Protection**

Legal protection consists of two words, namely protection and law. The word protection according to the Big Indonesian Dictionary is defined as a place of shelter, a thing (an action and so on) that protects. Meanwhile, the term law according to Soedikno Mertokusumo is the totality of regulations concerning behaviour that apply in a shared life, the implementation of which can be enforced with sanctions.

Legal protection is to provide protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law. Legal protection is the protection of dignity and the recognition of human rights possessed by subjects of law based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another.

According to CST Kansil, legal protection is a variety of legal remedies provided by law enforcement officials to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.

According to Muktie A. Fadjar, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection that will be and has been provided by law is also related to the existence of rights and obligations, in this case those possessed by humans as subjects of law in their interactions with other humans and their environment. As subjects of law, humans have the right and obligation to perform legal acts.

According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rules of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

According to Muchsin, legal protection is an activity to protect individuals by harmonising the relationship of values or rules that are embodied in attitudes and actions in creating order in human interaction.

Legal protection is all efforts to fulfil rights and provide assistance to give a sense of security to sanctions and/or victims. The legal protection of victims as part of community

protection can be realised in various forms, namely through the provision of restitution, compensation, medical services and legal assistance. Legal protection is provided to subjects of law in the form of preventive or repressive measures, as well as oral or written measures. In other words, legal protection can be seen as a separate description of the function of law itself, which has the concept that the law provides justice, order, certainty, expediency, and peace.

### **Form Of Legal Protection**

Legal protection is something that is protected by legal subjects through applicable laws and regulations and enforced with sanctions.

Legal protection can be divided into two, namely:

#### **Preventive Legal Protection**

Protection provided by the government with the aim of preventing violations before they occur. This is contained in legislation with the intention of preventing an offence and providing a limit on the performance of an obligation.

In this preventive legal protection, the subject of law is given the opportunity to object or give their opinion before a government decision takes its final form. The aim is to prevent disputes. Preventive legal protection is very important for government actions based on freedom of action because with preventive legal protection, the government is encouraged to be more cautious in making decisions based on discretion. In Indonesia, there are no specific regulations regarding preventive legal protection.

#### **Repressive Legal Protection**

It is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties imposed in the event of a dispute or a violation of the law.

#### **Repressive legal protection aims to resolve a dispute.**

The handling of legal protection by the General Court and the Administrative Court in Indonesia falls under this category of legal protection. The principle of legal protection against government action rests on and stems from the concept of recognition and protection of human rights because, according to Western history, the emergence of concepts of recognition and protection of human rights is directed towards restrictions and the laying down of obligations of society and government. The second principle underlying legal protection against government action is the principle of the rule of law. Associated with the recognition and protection of human rights, recognition and protection of human rights is given a prominent

place and can be linked to the objective of the rule of law

Legal protection aims to seek justice. Justice is shaped by right thinking, done fairly and honestly and taking responsibility for actions. A sense of justice and the law must be upheld based on positive law to uphold justice in law in accordance with the reality in a society that wants to achieve a safe and peaceful society. Justice must be built in accordance with the legal ideal (*Rechtidee*) in a state under the rule of law (*Rechtsstaat*), and not a state of power (*Machtsstaat*). The law functions as a protection of human interests, law enforcement must pay attention to 4 elements, namely:

- a. Legal Certainty (*Rechtssicherheit*)
- b. Legal Usefulness (*Zweckmassigkeit*)
- c. Legal Justice (*Gerechtigkeit*)
- d. Legal Certainty (*Doelmatigkeit*)

Law enforcement and justice must use the right line of thinking with evidence and evidence to realise legal justice, and the content of the law must be determined by ethnic beliefs, whether a case is fair or not. Legal issues become real if the legal apparatus implements properly and fulfils and abides by standardised rules so that there is no systematic abuse of rules and laws, meaning the use of codification and unification of law for the realisation of legal certainty and legal justice.

The law serves to protect human interests. And for human interests to be protected, the law must be implemented professionally. The implementation of the law can take place safely, peacefully and orderly. Laws that have been violated must be enforced through law enforcement. Law enforcement requires legal certainty, legal certainty is *judicially enforceable* protection against arbitrary actions. The community expects legal certainty because with legal certainty the community will be orderly, safe and peaceful. The community expects benefits in the implementation of law enforcement. The law is for humans, so the implementation of the law must provide benefits and usefulness for the community and the law implemented should not cause unrest in the community itself. A community that is treated well and correctly will realise a peaceful situation. The law can protect the rights and obligations of every individual in reality, with strong legal protection, the general objectives of the law will be realised, namely order, security, tranquillity, welfare, peace, truth and justice.

The rule of law, both written (statutory) and unwritten, contains general rules that guide individuals in their behaviour in society, both in their relationships with each other and in their relationships with society. These rules become limitations for society in burdening or taking action against individuals. The existence of such rules and the implementation of these rules

create legal certainty. Thus, legal certainty has two meanings, namely, first, the existence of general rules makes individuals aware of what actions are allowed and not allowed. And second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can find out what the State can charge or do to individuals. Legal certainty is not only in the form of articles in the law, but also in the consistency of judges' decisions between one judge's decision and another's for similar cases that have been decided.

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause a conflict of norms. Norm conflicts arising from regulatory uncertainty can take the form of norm contestation, norm reduction or norm distortion.

The role of the government and the courts in ensuring legal certainty is very important. The government must not issue implementing regulations that are not regulated by law or that contradict the law. If this happens, the court must declare such regulations null and void, meaning that they are considered never to have existed so that the consequences of the regulations must be restored as they were before. However, if the government still refuses to revoke the invalidated regulation, it will become a political issue between the government and the legislators. It would be even worse if the people's representative body, as the legislators, did not question the government's reluctance to revoke the regulation that was invalidated by the court. Of course, such a situation does not provide legal certainty and, as a result, the law lacks predictability.

### **Legal Protection For People With Mental Illness (Pmis) On The Streets**

People with mental illness (PMIS) are a vulnerable group that often experiences discrimination and lack of protection in various aspects of life, including in law and social services. In Indonesia, many PMIS live on the streets without adequate access to health services, social protection, and legal justice. This condition causes various problems that require serious attention from the government and the wider community. This article will discuss legal protection for ODGJ on the streets by relating it to state administrative law, which focuses on efforts to fulfil the rights and obligations between the government and citizens. The legal protection for ODGJ covers various aspects, ranging from the right to health care, the right to security and protection from violence, to the right to proper social services. Based on Law Number 17 of 2023 concerning Health, ODGJ has the right to adequate mental health

services, both medical and psychosocial. In addition, the rights of ODGJ are also regulated in various international regulations, such as the Convention on the Rights of Persons with Disabilities (CRPD) which was ratified by Indonesia through Law Number 19 of 2011.

However, this legal protection is often not properly implemented in the field. Many people with mental illness who live on the streets do not get these rights due to various obstacles, such as the lack of mental health facilities, social stigma, and limited government budgets. Therefore, a more comprehensive and integrated approach is needed to protect the rights of people with mental illness.

State administrative law plays an important role in regulating the relationship between the government and citizens, including in efforts to protect the rights of ODGJ. In this case, state administrative law must be able to provide an effective framework for regulating the provision of inclusive and ODGJ-friendly public services.

In essence, the word government comes from the word ‘command’ which is given the prefix ‘pe’ so that it changes to government, and then when given the suffix ‘an’ behind it it changes to government. As stated by Syafiee in Andri Haryono's book *Introduction to Government Science*, it is stated that the root word ‘command’ in government has at least four elements contained in it, namely as follows:

1. There are two parties involved;
2. The first party that governs is referred to as the ruler or the government;
3. The second party that is governed is the people; and
4. There is a relationship between the two parties

**Fulfillment of Government Rights and Obligations** The government has an obligation to ensure that all citizens, including ODGJ, receive equal and fair services. This includes the provision of adequate mental health facilities, rehabilitation programs, and other social services. In the context of state administrative law, the government must have a clear policy and adequate budget to support the protection of ODGJ. In addition, good coordination is needed between various government agencies, such as the Ministry of Health, the Ministry of Social Affairs, and local governments, to ensure that the rights of ODGJ are well protected.

**Empowerment of State Administrative Institutions** State administrative institutions, such as mental hospitals, social care homes, and other social protection institutions, must have their capacity strengthened to provide services to ODGJ. This includes improving the capacity of medical and social workers, as well as providing adequate facilities and equipment. State administrative law must also ensure that these institutions carry out their duties transparently and accountably, and are free from discriminatory practices against ODGJ.



The implementation of legal protection for ODGJ on the streets faces various challenges, both in terms of regulations, resources, and social stigma. One of the biggest challenges is the lack of public understanding and awareness of the importance of protection for ODGJ. Many people still consider ODGJ a threat or a burden, so they tend to ignore or even ostracize ODGJ.

In addition, limited budgets and facilities are also a major obstacle in providing adequate services for ODGJ. Many areas in Indonesia do not have adequate mental health facilities, so ODGJ in these areas do not receive the necessary care.

To overcome this challenge, a more holistic and integrated approach is needed, involving various parties, including the government, the community, and the private sector. The government needs to increase the budget and facilities for mental health services, as well as increase the capacity of medical and social workers. In addition, there needs to be an education programme and campaign to raise public awareness of the importance of protection for ODGJ.

Legal protection for ODGJ on the streets is a shared responsibility between the government and the community. State administrative law has an important role in regulating the relationship between the government and citizens, as well as ensuring that the rights of ODGJ are properly protected. However, the implementation of this legal protection faces various challenges that require a more holistic and integrated approach. With the right efforts, it is hoped that legal protection for ODGJ on the streets can be realised, so that they can live with more dignity.

## **REFERENSI**

- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.
- Hadjon, P. M. (1993). *Pengantar hukum administrasi negara*. Gajah Mada University Press.
- Ishaq. (2009). *Dasar-dasar ilmu hukum*. Sinar Grafika.
- Kansil, C. S. T. (1989). *Pengantar ilmu hukum dan tata hukum Indonesia*. Balai Pustaka.
- Kartono, K. (1997). *Patologi sosial 3: Gangguan-gangguan kejiwaan*. PT RajaGrafindo Persada.
- Marzuki, P. M. (2008). *Pengantar ilmu hukum*. Kencana.
- Mertokusumo, S. (2005). *Mengenal hukum*. Liberty.
- Muhammad, A. (2018). *Hak asasi manusia: Filosofi, teori & instrumen dasar*. CV. Social Politic Genius (SIGn).

- Mustafa, B. (1982). Pokok-pokok hukum administrasi negara. Alumni.
- Nurul, Q. (2018). Negara hukum atau negara kekuasaan. CV. Social Politic Genius (SIGn).
- Raharjo, S. (2006). Ilmu hukum. Citra Aditya Bakti.
- Setiono. (2004). Rule of law (supremasi hukum). Universitas Sebelas Maret.
- Tesis Hukum. (2023, April 2). Pengertian perlindungan hukum menurut para ahli. Retrieved from <http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/>
- World Health Organization Division of Mental Health. (1996). Bref: Introduction, administration, scoring and generic version of the assessment.