



UDC 34

## EQUITABLE LEGAL PROTECTION FOR PEOPLE WITH MENTAL DISORDERS (ODGJ) IN INDONESIA

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### ABSTRACT

The phenomenon of ODGJ being shackled by his own family due to difficulties in getting access to mental health services or because of limited funds is still common in Indonesia. This can be confirmed from data put forward by Human Rights Watch regarding an estimate that there are 57,000 people in Indonesia who suffer from mental disorders or psychosocial disorders who have been shackled at least once in their lives. One of the main regulations to protect ODGJ in Indonesia is the Act Number 18 of 2014 on Mental Health. It contains preventive and repressive legal protection. However, the repressive legal protection is still weak and need to be revised in the spirit of providing a just legal protection for ODGJ. This research is a normative legal research; the data used are primary, secondary, tertiary data which are analyzed using descriptive analysis method. The results of the study are: First, ODGJ as part of vulnerable group's should get a fair legal protection in Indonesia, should be considered as a dignified legal subject whose basic rights must be respected and fulfilled. Second, Government as legal subject that mandated by the Law to provide mental health facilities and maintain ODGJ rights can be subjected to criminal provision in the future.

### KEY WORDS

ODGJ, people with mental disorders, protection, justice, government.

The phenomenon of shackling people with mental disorders (ODGJ) occurs a lot in Indonesia. This can be confirmed from data put forward by Human Rights Watch regarding an estimate that there are 57,000 people in Indonesia who suffer from mental disorders or psychosocial disorders who have been shackled at least once in their lives (Human Right Watch, 2016). The phenomenon of shackling ODGJ in society shows that the legal protection for ODGJ as formulated in Act Number 18 of 2014 on Mental Health cannot be carried out properly.

Confirmation of the occurrence of this phenomenon can also be observed from the Human Rights Watch report entitled "Living in Hell: Violence against Persons with Psychosocial Disabilities" in 2016 which stated that they found 65 cases of arbitrary detention in mental hospitals, social institutions, and institutions operated by non-governmental organizations, traditional or religious healing centers. In some cases, relatives bring them to an institution using trumped-up excuses, or without giving any explanation (Human Right Watch, 2016). In fact, in 2016 the Mental Health Act was enacted.

Data released by the Mental Health Directorate of the Ministry of Health stated that the number of people shackled in 32 provinces (excluding Papua and West Papua) as of July 2018 totaled 12,823 people. This number has indeed decreased from 13,528 in December 2017. Based on data from the 2018 Basic Health Research, "the prevalence of households with members suffering from schizophrenia or psychosis is 7 per 1000 with treatment coverage of 84.9 percent. Meanwhile, the prevalence of mental emotional disorders in adolescents aged more than 15 years was 9.8 percent. This figure has increased compared to 2013, which was 6 percent (Research and Development Agency of the Ministry of Health of the Republic of Indonesia, 2018).

Shackling or confinement at least takes away the human rights of ODGJ to get health services in the form of healing from problematic mental health conditions. The right to obtain health services is part of human rights guaranteed in the 1945 Constitution of the Republic of



Indonesia. The 1945 Constitution of the Republic of Indonesia also emphasizes the protection of rights such as the right not to be tortured, the right to receive an environment good health and the right to health care.

In Article 28 F paragraph (2) of the Constitution of the Republic of Indonesia it is stated that "Every person has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country." Thus, basically the constitution has formulated that everyone has the right to be treated properly, namely not to be tortured or treated in a way that demeans human dignity. The shackling of ODGJ is a form of torture against them. The mental health condition of an ODGJ does not reduce a person's dignity as a human being.

One of the rights that cannot be reduced is the right not to be tortured as stipulated in Article 28 I paragraph (1) of the Constitution of the Republic of Indonesia which states that "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that cannot be reduced under any circumstances." Thus, a person's mental health condition cannot be used as a justification for shackling someone because the act of shackling can be categorized as a form of torture.

In addition, ODGJ should also be given the right to a good and healthy environment. One of them can be realized by providing health services. This is as stipulated in Article 28 H paragraph (1) of the Constitution of the Republic of Indonesia which states that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live and to get a good and healthy environment and has the right to receive health services." The formulation of the Article is even intended for everyone. This confirms that ODGJ are entitled to these rights, therefore they cannot be treated discriminatively.

The right to obtain protection from discriminatory treatment is stated in the formulation of Article 28 I paragraph (2) of the Constitution of the Republic of Indonesia which stated that "Every person has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment." It means that everyone has an obligation to be non-discriminatory towards other people, including towards ODGJ.

Efforts to fulfill the right to mental health for everyone are regulated in a more comprehensive manner by various formulations of provisions contained in Act Number 18 of 2014 on Mental Health. One of the things that is loaded is criminal provisions. The formulation of criminal acts in the Act on Mental Health is only contained in one article, namely Article 86. This article regulates criminal threats for anyone who commits or orders to do shackling, neglect, violence or any other action that violates the human rights of ODGJ (Ahmad, 2013).

Article 86 of Act Number 18 of 2014 on Mental Health states that "Any person who intentionally commits shackling, neglect, violence and or orders other people to carry out shackling, neglect, and or violence against ODGJ or other actions that violate the rights of ODGJ are punished in accordance with the provisions of the Legislation." Based on the formulation of this article, anyone who deliberately commits or orders others to carry out actions in shackling, neglect, violence, or other actions that violate the human rights of ODGJ is subject to criminal sanctions in accordance with statutory provisions.

The act of shackling carried out against ODGJ can be qualified as a crime. There is a criminal threat for people who commit shackling under the provisions of Article 86 of Act Number 18 of 2014 on Mental Health. However, until now there has not been any action of shackling against ODGJ which has been prosecuted based on these criminal provisions. Moreover, the norm in Article 86, as previously explained, is that the norm is vague (vague of norm). The formulation of the article that regulates criminal acts in the aspect of mental health must be good, so that the problem with the formulation of criminal acts regulated in Article 86 of Act Number 18 of 2014 on Mental Health that has been put forward must be resolved.

Formulating appropriate criminal sanctions is very important considering that sanctions are an essential element of law (Anshori, 2022), which distinguishes it from non-legal social



norms. Sanctions can be a tool to make people comply with the rule of law and maintain that compliance. A rule without the threat of sanctions will have the connotation of an ordinary statement rather than a rule of law (Ali, 2015).

Based on the description above, the provisions in the Act on Mental Health have not provided fair legal protection for ODGJ in Indonesia. Whereas, ODGJ need to be given a fair legal protection. In order to optimize legal protection for ODGJ, a form of just legal protection for ODGJ must be formulated in the future.

## METHODS OF RESEARCH

The research method used in this research is using normative legal studies combined with library data sourced from primary, secondary and tertiary data. The data collected were analyzed systematically, for further analysis carried out using descriptive analysis method, which is secondary data processing related to the problem in this study which will be compiled, explained, and interpreted to answer so that conclusions can be drawn regarding the formulation of ideal norms for the future legal protection for ODGJ.

## RESULTS AND DISCUSSION

Health is an element of general welfare that must be realized as per the ideals of the Indonesian nation as contained in the Preamble to the 1945 Constitution. Health is not limited to physical health. However, mental health is also an inseparable part of complete health for a human being. The 1945 Constitution of the Republic of Indonesia in Article 28H (1) states that; *"Every person has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy living environment and has the right to receive health services."* The text of this article is the basis for a guarantee from the State that every person has the right to live in physical and spiritual prosperity in a good and healthy environment with facilitation from the Government in the form of health services in order to fulfill these rights. So, the focus of health is actually not only on being physically and spiritually healthy and is often a person's inner or mental health.

Legal protection for people with mental disorders (ODGJ) has been accommodated in Act Number 36 of 2009 on Health. However, in its development, the government and law makers realized that the provisions in Act Number 36 of 2009 on Health were not enough to overcome various problems in the field of Mental Health. Mental health services for everyone and guarantees of rights for people suffering from mental disorders cannot yet be realized optimally. In fact, the rights of people with mental disorders are often neglected, both socially and legally. Socially there is still a stigma in society so that families hide the existence of family members who suffer from mental disorders. This is one illustration of the weak legal protection for ODGJ in Indonesia.

If we look at the history of legislative regulations, the formation of the Act on Mental Health is also closely related to the fulfillment of the human right to health. Indonesia has also ratified the Convention on the Rights of Persons with Disabilities in 2011 through Act Number 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities. In general, the Act on Mental Health contains general provisions; Mental Health Efforts; Mental Health service system; resources in Mental Health Efforts; rights and obligations; Mental Health examination; duties, responsibilities and authority; community participation; criminal provisions and closing provisions. The principles for implementing mental health efforts are as follows: Principle of justice, principle of humanity, principle of benefit, principle of transparency, principle of accountability, principle of comprehensiveness, principle of protection, and principle of non-discrimination.

Furthermore, Chapter IX of Act Number 18 of 2014 concerning Mental Health contains criminal provisions. Article 86 states that *"Everyone who deliberately commits shackling, neglect, violence and/or orders other people to carry out shackling, neglect and/or violence against ODGJ or other actions that violate the human rights of ODGJ, shall be punished in accordance with the provisions of the laws and regulations."*



If we refer to the theory of causality, basically the Government can be held responsible for displaced ODGJ. The theory of causality answers the question of who can be held responsible for the consequences of a criminal act. Therefore, the theory of causality is also called cause-and-effect theory (Haris, 1982). What is meant by causes are only conditions which in certain situations and conditions have a tendency to give rise to certain consequences, usually giving rise to these consequences objectively increasing the possibility of those consequences appearing. According to Von Kreis, the causes that are a series of factors that influence or are related to the emergence or realization of an offense or criminal act, only one cause can be accepted as causing an effect, namely a cause that can be known by the perpetrator. Meanwhile, Jan Remelink believes that it is necessary to include the element of error in the formulation of criminal acts, because what can be counted as cause is not only objective facts but what actually happened in the consciousness of the perpetrator (Atmadja, 2018).

This theory answers the problem of shackles carried out by family members against ODGJ on the grounds that they do not have access to mental health services and limited funds, so it refers to the provisions of Act Number 18 of 2014 on Mental Health where the duties, responsibilities and authority to carry out rehabilitation efforts are stated. Regarding neglected, vagrant ODGJ, threatening the safety of themselves and/or others lies with the government, then in situations and conditions of neglect or neglect of the government in dealing with abandoned ODGJ has a tendency to give rise to certain consequences, namely the practice of shackling by families or local residents. And starting from the government's negligence or neglect in accommodating displaced ODGJ which endangers public order, this gives rise to objective consequences and increases the possibility of shackling practices emerging in society.

In line with Von Kreis' opinion, the reasons for the government's failure to carry out its obligations in providing a just mental health services for ODGJ are a series of factors that influence or are related to the emergence or realization of an offense or criminal act of deprivation of someone's liberty. Although of course it must be studied and discussed more deeply, as in Jan Remelink's opinion, whether it is necessary to include the element of error in the formulation of the offense later, because it will be the basis for the judge's evidence and consideration to assess what can be counted as a cause, not only objective facts but what actually happens in the consciousness of the perpetrator, in this case is the government.

On the other hand, the criminal provisions in the Mental Health Law are also not in line with the legal principle of *lex specialis derogate lex generalies*, which means that laws and regulations at the same hierarchical level may specifically regulate criminal provisions in a separate law. In Article 63 Paragraph 2 of the Criminal Code Book (KUHP) it is stated that "*If an act falls within a general criminal regulation, it is also regulated in a special criminal regulation, then only that specific one is applied.*" Based on the results of the analysis above, it is felt that Act Number 18 of 2014 on Mental Health requires several improvements and revisions. This was also conveyed by Juneman Abraham in 2010. He gave the opinion that (Abraham, 2022):

*"Mental Health, in fact, is part of the requirements for human safety and security which must be managed and studied continuously regarding the issues and dynamics of the social context. So the construct of mental health itself will always require review, criticism, enrichment and revision because it is not a mere "status" or "circumstance", but rather a reflection of a social relationship. Therefore, it is natural that mental health cannot be managed as a clinical symptom at the "patient" level alone, without systematic intervention on a community scale, especially by the Government. So it is very unfortunate that currently ODGJ do not get adequate health facilities, only "Community based mental health service / provision" where residents have to go all out to take care of themselves with whatever they have to overcome, prevent and maintain mental health on a scale of community, without sufficient intervention from public officials."*

The phenomenon of ODGJ being shackled by his own family due to difficulties in getting access to mental health services or because of limited funds is still common in



Indonesia. This is due to acts of maladministration by the Government in handling mental health, namely negligence or neglect of legal obligations in providing and ensuring that ODGJ receive appropriate care and treatment. This negligence and neglect of the Government's legal obligations then causes ODGJ's human rights as human beings to be violated because their freedom is taken away by being shackled by their own families. Apart from that, due to negligence and neglect of the Government's legal obligations, the families or parties who shackle ODGJ are also threatened with criminal sanctions for depriving other people of their freedom as regulated in the Criminal Code. In fact, if we look further into the law of cause and effect (causality) in criminal law, the family will not carry out shackling if they are not forced to because the ODGJ family does not receive attention and care from the government and it is felt that this could endanger public order and prosperity. From a criminal law perspective, the theory of causality (cause and effect) is attached to explanations so that they can answer the question of who can be held responsible for the consequences of a criminal act (Budhiarta, 2018).

According to Van Bemmelen, one of the elements in the formulation of an offense is the subjective element, namely the human element that commits the act. The subjective element of an act that can be punished is a mistake, where this mistake states that the consequences caused by the perpetrator and which are not intended by law can be held responsible for him (Bemmelen, 1987). So according to this teaching, the law should be able to contain provisions regarding the juridical implications for the Government which does not carry out its obligations in managing ODGJ as regulated in the Legislative Regulations. The *Conditio Sine Quanon* theory (absolute requirement) or Von Burri's Equivalence Theory also states the same thing where a cause of a criminal act or criminal act is a series of events that can be traced back endlessly (*regrussus ad infinitum*) seen as causing the consequences assessed as equivalent (Remmelink, 2003). Therefore, the consequences of the act of shackling must be investigated further first regarding the causes underlying the act. The judge will then assess whether there are any factors underlying a person committing the crime of shackling his or her ODGJ family.

The current situation in Indonesia is that people may be able to live side by side with people with physical disabilities, but not with ODGJ. This is because the mindset towards ODGJ that they suffer from an incurable disease, it could be a curse and can cause them to endanger the safety of others. In fact, Agung Kusumawardhani stated that schizophrenia sufferers can indeed recover, but they cannot recover 100 percent. With advances in medicine, recurrence can be prevented and with drug therapy over a period of five years the symptoms have subsided. Another opinion was expressed by Eka Viora who stated that people with schizophrenia (ODS) who have used violence, whether attacking themselves or others, are required to take medication for life. With patient compliance in taking medication as well as family and environmental support, hope for schizophrenia patients to live a normal life remains. Based on the psychiatric expert's explanation, it can be understood that people with ODGJ are the same as patients who have a history of physical health illnesses in general, with a note of the obligation to take medication regularly and continuously. As a comparison, for example, in the condition of hyperthyroid, patients also has to take daily medication continuously (American College of Obstetricians and Gynecologists, 2002). Hyperthyroid patients are required to take medication that works to control thyroid hormone production every day. If you are negligent in taking this medication, it will have an impact on the function of other body organs such as the heart, bones, etc. If we make an analogy with ODGJ patients, the principle is the same, namely if ODGJ patients are negligent in taking medication it can cause a relapse.

As mentioned at the beginning, Article 86 of Act Number 18 of 2014 on Mental Health is a formulation of criminal provisions with the victim is ODGJ. The formulation of Article 86 is: Every person; Deliberately; Carrying out or ordering other people to carry out shackling, neglect, violence against ODGJ and/or other actions that violate the human rights of ODGJ; Sentenced in accordance with the provisions of relevant laws and regulations. Based on the elements of this article, it can be classified into subjective elements and objective elements. The subjective element includes the subject and the element of error. The subjective element



is the element of each person (Rahardjo, 1982) and intentionally (Moelijatno, 2002) which is the element of error. Meanwhile, the objective element is an act against the law and the threat of criminal action for the act against the law.

Based on the subjective element, the central government and regional governments can fulfill the criteria for the element of each person because of their position as legal subjects. However, the element of deliberate error which is an element of error is not fulfilled. This is because the central government and regional governments have never found cases that identify the government actively carrying out an act or ordering other people to carry out shackling, neglect, violence against ODGJ and/or other actions that violate the human rights of ODGJ.

Next is the objective element, namely unlawful acts. The meaning of against the law can be understood by citing Bammelen's definition which categorizes acts against the law into two meanings. Firstly, it is against the law as contrary to appropriate care in social interactions regarding other people or things. Second, it is contrary to the obligations stipulated by law. In Article 86 of Law Number 14 of 2018 concerning Mental Health, what is meant by the element of an unlawful act is committing or ordering another person to carry out shackling, neglect, violence against ODGJ and/or other actions that violate the human rights of ODGJ. In relation to this objective element, unlawful acts that may be committed by the Government tend to be in the second sense, namely, contrary to the obligations stipulated by law, both Act Number 14 of 2018 on Mental Health, Act Number 19 of 2011 on Ratification of the Convention On The Rights of Persons With Disabilities, Act Number 36 of 2009 on Health, and Act Number 39 of 1999 on Human Rights.

Institutionally, it is impossible for the Government to carry out active actions such as shackling, neglect, violence against ODGJ. However, the formulation of Article 86 of the Mental Health Act also adds the phrase "and/or other actions that violate the human rights of ODGJ". This phrase then opens up a wide space for interpretation regarding the forms of mental health crimes that can occur against ODGJ carried out by the Government. For example, neglecting neglected ODGJ can lead to violations of ODGJ's human rights. So if you refer to the description of the Article's formulation, it opens up a loophole for the Government to be held criminally responsible. The discussion regarding the possibility of the Government being held responsible for ODGJ who do not receive proper health services or are neglected and have their rights neglected is one form of effort to increase a just legal protection for ODGJ. Therefore, it is very possible for the Government to classify it as a legal subject in mental health crimes. This is because legally, the Central Government and Regional Governments are given the task, responsibility and authority by law to carry out mental health efforts that are equitable for the entire community. So, if in its implementation it can be proven that the government has acted passively or because of the government's negligence or other actions of the government which have resulted in the violation of the human rights of ODGJ, then the government can be classified as a legal subject in mental health crimes.

Based on the descriptions above, the juridical basis for just legal protection has been well regulated in Indonesia. However, the problem is whether this legal certainty can guarantee fair legal protection for ODGJ. In reality, in Indonesia we still encounter many cases of human rights violations that occur against ODGJ. For example, the case that recently occurred in Sorong, Southwest Papua. The action of a number of people in Sorong, burned an ODGJ woman alive because she was accused of being a child kidnapper, whereas, they did not even bother to do the investigation first. That is only because they cannot separated from "bad stigma and attitude" of the police who trivialize cases of violence against ODGJ". Satijipto Raharjo stated that legal protection should be able to provide protection for human rights so that legal protection is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice, especially for ODGJ who are part of a vulnerable group. This is in line with what was conveyed by Phillipus M. Hadjon that legal protection for the people is a preventive and repressive government action.



In Indonesia there is still a lot of discrimination against ODGJ. The causal factors are as follows (Danona, 2023):

- There are limited employment opportunities for people with disabilities;
- There is high stigmatization and attitudes of ableism in society. The presence of disabled people means they are always seen as different. There are many forms of discrimination such as differences in skin color, physical condition, mental condition, gender, language, economics and other things;
- Lack of acceptance from parents. According to Aisah Indati, a lecturer at the UGM Faculty of Psychology, she stated that most parents are still selfish because they cannot or do not want to accept the fact that their child has special conditions other than most other normal children. Feelings of inferiority and an attitude of not accepting or even hiding the existence of a child with a disability are forms of psychological and social violence;
- Weak law enforcement. Even though existing Human Rights Regulations and legislation regulate the rights of persons with disabilities, in reality they have not been implemented properly. Disabled people who are victims of discrimination are often considered abnormal and cause a lack of justice.

Therefore, fair legal protection is really needed by ODGJ. According to Gustav Radbruch, the source of justice comes from positive law and legal ideals (*rechtsidee*) (Rhiti, 2011). Based on this, the ideals of Indonesian law originate from Pancasila. Radbruch states that if there is tension between the basic values of law, we must use the basis or principle of priority where the first priority always falls on the value of justice, then the value of usefulness or expediency and finally legal certainty. This shows that Radbruch places the value of justice as more important than the value of expediency and the value of legal certainty and places the value of legal certainty below the value of legal expediency. Therefore, we must view criminal provisions regarding mental health as the State's efforts to realize justice that is in line with the legal ideals of Pancasila for all citizens, including ODGJ.

Criminal law is a form of legal protection that can be given repressively to ODGJ. Punishment is the *ultimum remedium* or as a last resort that must be used to improve human behavior (Lamintang, 1983). Van Bemmelen stated that criminal law has its own place compared to other laws because the State is given the power to cause suffering intentionally (Bemmelen, 1984). As a last resort which has the character of *an ultimum remedium*, it is only natural that people want the criminal law in its formulation and application to be accompanied by strict limitations in a rational and proportional manner. Apart from criminal law having to be rational and proportional, legislators must also consider the actions that will be considered criminal acts and what sanctions should be used or imposed on the perpetrators. When legislators determine criminal provisions and criminal sanctions in a law, the policy of determining criminal penalties cannot be separated from the policy of eliminating a person's freedom which is directly related to legalized human rights.

Barb Toews, in her book *The Little Book of Restorative Justice for People in Prison*, says that most people think that justice requires retribution, punishment and imprisonment (Toews, 2006). Integrated criminal justice systems often respond to such things because they believe that guilty people should be punished for their crimes. However, Hoefnagels reminded that "Punishment in criminal law is limited not only by effectiveness and purposefulness but above all by legality" (Punishment in criminal law is limited not only by effectiveness and purpose but especially by legality). So, apart from the issue of effectiveness, the policy for determining punishment must also have goals that are full of deep meaning as a basis for being more oriented towards the philosophy of punishment and the objectives of punishment (Hoefnagels, 1969). Therefore, in formulating criminal provisions with the aim of protecting ODGJ, the orientation and purpose of punishment in the formulation of the criminal article must be studied more deeply.

Policy formulation to reform the formulation of mental health crimes is urgently needed at this time. The policy function of criminal law formulation in general is necessary in order to keep pace with developments in society which is always in the process of growth and development in the era of modernization. So the reformulation of criminal provisions for



mental health crimes is expected to have a significant impact in improving mental health law in Indonesia both in the context of legal substance and in its implementation. As stated by Barda Nawawi Arief, this legal formulation can have a dual function, namely as follows (Arief, 2016):

- Forming New Laws (To Develop New Laws);
- Strengthening Existing Laws (To Strengthen The Existing Laws);
- Clarify the Scope and Function of Existing Laws (To Clarify The Scope And Function Of Existing Laws).

Reforming criminal law in order to optimize legal protection for ODGJ is very necessary. One of them is related to the formulation of the legal subjects of criminal perpetrators, namely the Government and Regional Government. The regulation of criminal provisions with government legal subjects is actually not something new in criminal law in Indonesia. For example, in Act Number 22 of 2009 on Road Transport Traffic and Act Number 32 of 2009 on Environmental Protection and Management, criminal provisions have been regulated with the subject of Government law. The existence of these criminal provisions can become a basis for punishing the Government which is deemed to have committed an act that is contrary to the law. This is in line with what was conveyed by Jan Rummelink who defined criminal acts by starting with the statement that in order to punish someone and fulfill the demands of justice and humanity, there must be an act that is contrary to the law and which can be blamed on the perpetrator. In addition to these conditions is that the person concerned must be someone who can be held accountable (*toerekeningsvatbaar*) (Rummelink, 2003). Referring to Jan Rummelink's opinion regarding mental health crimes, the Government can be threatened with criminal penalties as long as the Government has committed an act that is contrary to the law and can be blamed on him. More specifically, in this case, the Government can also be held criminally responsible in relation to the position they hold in relation to the Government's responsibility towards ODGJ in relation to mental health crimes.

In order to formulate these criminal provisions, several benchmarks are needed. The first indicator is that the criminal formulation must clearly explain the type of violation of the norms regulated in the Mental Health Law. In this case, referring to the Government's duties and responsibilities towards ODGJ as regulated in Act Number 18 of 2014 on Mental Health, we can conclude that the criminal provisions for mental health crimes for the Government are a form of criminal threat for violations of provisions containing command norms. as regulated in Act on Mental Health. The criminal formulation is the offense of omission, namely an offense that consists of not doing something or not doing something even though you should have done it (Moeljatno, 1984). So the basis for the criminal imposition is because the Government did not heed its statutory obligations in managing ODGJ.

The second indicator is that in determining the criminal threat, it is necessary to consider how significant the impact or consequences are for the ODGJ, their family and the community. If because of the Government's passive actions it causes a large number of victims or losses in society so that it is classified as a serious crime, then of course the criminal threat must be high and can be accompanied by a minimum criminal threat and an additional fine.

The third indicator is the importance of explicitly mentioning the subject of Government law in the formulation of criminal articles in the Mental Health Act. If in general the legal subject in the formulation of criminal articles is formulated with the phrase everyone and applies to anyone, then in the case of government legal subjects, it needs to be mentioned separately in the formulation of a separate criminal article.

The fourth indicator in the formulation of mental health crimes for the Government is related to the type of crime that will be included in the formulation of criminal articles. In Indonesian criminal law, there are basic crimes and additional crimes. In Article 10 of the Criminal Code Book (KUHP) it is stated that criminal penalties consist of: basic penalties which can be the death penalty, imprisonment, fines and criminal penalties. In addition to the main crime, it is also known that there are additional crimes which include the revocation of certain rights, confiscation of certain items, and the announcement of the judge's decision.





The fifth indicator is the importance of stating clearly whether the criminal qualifications are cumulative, alternative or alternative cumulative. Criminal qualifications are cumulative, meaning that the qualifications for criminal punishment for regulated criminal acts are a combination of more than one type of principal crime. So that the judge can impose a basic sentence combined with other main crimes. Meanwhile, criminal qualifications are alternative if the qualifications for criminal punishment for regulated criminal acts are in the form of a choice of several types of punishment. So, the judge in imposing a principal crime can choose one of the criminal threats.

The sixth indicator that should be taken into consideration in formulating criminal provisions regarding mental health crimes for the Government is related to the type of offense that will be formulated, whether it is an ordinary offense or a complaint offense. This is because the families of ODGJ are the people who can assess and feel directly whether the Government has been negligent in providing a just legal protection and health services to ODGJ. So, the right to report this to the police lies with the ODGJ family.

## **CONCLUSION**

Regulations in Act Number 18 of 2014 on Mental Health do not yet provide fair legal protection for ODGJ as a whole. Preventive legal protection provisions related to the management of ODGJ are not balanced with adequate criminal provisions as a form of repressive legal protection efforts. This cause's weak implementation of laws and regulations related to the protection of the human rights of ODGJ in Indonesia.

ODGJ need to be given fair legal protection because ODGJ are part of Indonesian citizens whose rights and position are guaranteed in the 1945 Constitution of the Republic of Indonesia. In addition, through Act Number 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities, Indonesia has declared respect and provide legal protection for the rights of ODGJ. Thus, ODGJ are part of a vulnerable group which is not only the object of mental health services, but is also a dignified legal subject whose basic rights must be respected and fulfilled.

Forms of fair legal protection for ODGJ in the future must be able to optimize the implementation of existing legal provisions related to preventive legal protection for ODGJ. This can be done by reformulating mental health criminal provisions which are a form of repressive legal protection. Criminal provisions in order to provide fair legal protection for ODGJ must include the formulation of criminal provisions for legal subjects of the government/officials/relevant agencies as those responsible for managing ODGJ, both in the form of ordinary offenses and complaint offenses. Apart from that, the formulation of articles on mental health crimes must also be regulated specifically and not refer to general criminal provisions, namely the Criminal Code. Furthermore, the criminal threat formulated must also be higher considering the position of ODGJ who are part of a vulnerable group that must be protected.

There are several things that can be improved, namely at the policy level, the President together with the People's Representative Council of the Republic of Indonesia (DPR-RI), in an effort to increase mental health insurance for ODGJ, need to immediately formulate legislation that regulates the overall management of ODGJ in detailed. At the academic level, this research still requires further research and concept improvement in accordance with developments in legal problems in society. At a practical level, there is a need for outreach to the community, especially families with family members who are ODGJ, regarding fair legal protection for ODGJ, management of ODGJ, mental health guarantees for ODGJ, as well as the human rights of ODGJ. In the context of maximizing the role of each party, good synergy is needed from the Government and the community so that the fulfillment of the right to mental health for ODGJ can be fulfilled as mandated by the 1945 Constitution of the Republic of Indonesia.



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