



## Synchronization of Pancasila Values in Law Number 8 of 2016 concerning Persons with Disabilities

Enzus Tinianus; Suhaimi; Roslaini Ramli; Ilyas Ismail; Abdurrahman

Faculty of Law, Syiah Kuala University, Aceh, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i7.3844>

---

### **Abstract**

For the Indonesian people, Pancasila is the state ideology as a vision or direction of the life of the nation and state. Pancasila is also the source of all applicable laws in Indonesia, where Pancasila is domiciled as the legal ideology of Indonesia. Thus all legal products must be based on the values and principles of Pancasila, and do not conflict with the precepts contained in Pancasila as the nation's ideology. One of the legal products in Indonesia includes Law Number 8 of 2016. So that there is a need for an in-depth study of the material regulated in Law Number 8 of 2016, so that it is clear that the material contained in it is contrary to or not with the values contained in the five precepts of Pancasila.

**Keywords:** *Synchronization; Pancasila; Persons with Disabilities*

### **Introduction**

Pancasila for the Indonesian people is the state ideology. This means that the values contained in “Pancasila are the basis of norms in the administration of the state. More broadly, Pancasila as the state ideology is the vision or direction of the life of the nation and state in Indonesia, namely the realization of a life that upholds Godhead, unity, human values, democracy and the value of justice”.<sup>1</sup> Pancasila as the norm in the administration of the state, is concretely confirmed in Paragraph IV of the Constitution of Indonesia (UUD 1945). The UUD 1945, which was formed in a state structure of the Republic of Indonesia.

Pancasila as the basis state of the Indonesian state, makes Pancasila in the highest position of all sources of law. This position has been reaffirmed in the TAP MPR-RI Number III of 2000 concerning Legal Sources and the Order of Legislation. Furthermore, the position of Pancasila as the highest source of law is emphasized in Law Number 12 of 2011. “Based on Pancasila as the highest source in Indonesia, the direction in making decisions must also be based on the values contained in Pancasila. In this regard,

---

<sup>1</sup> Eleanora, FN. Pancasila Sebagai Dasar Dalam Sistem Hukum Indonesia, *ADIL: Jurnal Hukum*, Volume 3, Issue 1, 2013, pages 141-165.

how Barda Nawawi once gave 3 (three) important examples of the values contained in Pancasila, namely (1) divine values, (2) human values, and (3) democratic/deliberation values”.<sup>2</sup>

In connection with the above description, it can be understood that as the source of all sources of law, the basic values of Pancasila must animate all existing laws in the Republic of Indonesia,<sup>3</sup> including the Law Number 8 of 2016. “The law was enacted as a form of legal protection for persons with disabilities who have human rights as well as other human beings.

In relation to Pancasila as the highest source of law, the Law on Persons with Disabilities, which is one of the legal products in Indonesia, cannot materially conflict with Pancasila. In the sense that the material regulated in the Law Number 8 of 2016 must not conflict with the precepts contained in Pancasila or not in accordance with the values contained in Pancasila as the ideology of nation.

Thus, it is necessary to conduct an in-depth study of the material regulated in the Law Number 8 of 2016, so that it is clear that the material contained in it is contrary to or not with the values contained in the precepts of Pancasila. Thus, the problem can be formulated: "Is the material for the Law Number 8 of 2016 Synchronous with Pancasila values"?

### **Research Method**

The preparation of the Study and Evaluation of Legislative Laws is carried out systematically through the following steps:

1. Literature review to examine a number of literatures related to Pancasila as the state ideology and the Law Number 8 of 2016.
2. An assessment of the consistency, coherence and correspondence of the Law Number 8 of 2016 with the values contained in the Pancasila.
3. Identifying the consistency, coherence and correspondence of the Law Number 8 of 2016 with the values contained in the Pancasila.
4. Academic discussion with the Drafting Team for the Study and Evaluation of Legislative Laws
5. Drafting of the Study and Evaluation of the Legislation, in this case the Law Number 8 of 2016.

### **Results and Discussion**

#### **Overview of the Law Number 8 of 2016**

Persons with disabilities are one of the minority groups in society, two-thirds of which are in developing countries. “Person with disabilities were neglected during the first three decades of the UN’s existence. The drafter of the International Bill of Human Rights do not include persons with disabilities as a group that is vulnerable to Human Rights violations”.<sup>4</sup>

With the declaration of the Declaration of Mentally Retarded Persons in 1971 and followed by the Declaration on the Rights of Persons with Disabilities in 1975, making persons with disabilities no longer an object but a subject of the Declaration of Human Rights. In the declaration, persons with disabilities are categorized as people with medical problems, whose treatment is very dependent on social security and social welfare provided by the state.

---

<sup>2</sup> Ramadhan, F., Suhaimi, Rizanizarli. Restructuring judges’ independence in the criminal justice system in the perspective of Pancasila. *International Journal of Law*, Volume 8, Issue 2, 2022, pages 18-22.

<sup>3</sup> <https://gurupkn.com/asas-hukum-tata-negara>, accessed on December 06, 2021.

<sup>4</sup> Degener, T. *International Disability Law-A New Legal Subject on the Rise*. delivered to Experts Meeting at Hongkong, 13-17 December 1999, (California: Berkeley Journal International, 2000), pages 187.

“Throughout the 1970s and 1980s, the United Nations General Assembly produced a number of resolutions that had an impact on the implementation of the 1982 World Program of Action for Persons with Disabilities. These instruments led to the United Nations Decade of Persons with Disabilities period 1982-1993. The two initial objectives of the action program were prevention and rehabilitation”.<sup>5</sup> Only after that, the next goal is equality of opportunity, which then makes a paradigm shift.

“With the enactment of this law, for the first time, persons with disabilities in Indonesia have a legal basis in the struggle for equal rights”.<sup>6</sup> The Law Number 8 of 2016 is the first step for persons with disabilities to start a new struggle to live a better life, because the law already provides strong legal protection for persons with disabilities. “Based on this law, all have responded. There are still obstacles, in the field of education for example, the teachers are not ready because the curriculum must also be adapted to the abilities of students with disabilities”.<sup>7</sup>

The Law Number 8 of 2016 is “a complex law because it regulates 24 sectors related to disability. This should be viewed positively because it positions disability as a multi-sectoral issue”.<sup>8</sup>

Types of persons with disabilities:

1. Mental Disabilities. These mental disorders consist of:<sup>9</sup>
  - a. “Mental High, also called intellectually gifted people. This person has above average intellectual abilities and has high responsibility and creativity;
  - b. Low Mentality, usually the person has a rather low mental ability or IQ below average. This group is a slow learner who has a low IQ or special needs;
  - c. Specific Learning Difficulties. In this case, learning difficulties are related to the learning achievements obtained”.
2. Physical Disabilities. This disorder includes several types, namely:
  - a. “Body Abnormalities (Tuna Daksa), namely people who have movement disorders due to neuromuscular and bone structure disorders, and are congenital, sick (such as paralysis and polio) or due to accidents;
  - b. Visual Impairment (Blindness). Blind people are individuals who have visual impairments, namely individuals who have limitations in vision, in this case can be classified into two groups, namely: total blindness and low vision;
  - c. Hearing Impairment (Deaf), namely individuals who have a hearing impairment. Usually also have a speech impediment, due to a hearing impairment, so they are also called speech impaired;
  - d. Speech Disorder (Deaf) is someone who has difficulty expressing thoughts through verbal language, making it difficult or even unintelligible to others. This speech disorder can be understood by others. This speech disorder can be functional, which may be due to deafness, and organic, which is caused by imperfections in the speech organs or disturbances in motor organs related to speech”.
3. “Multiple disabilities, namely individuals who have more than one disability. In this case in addition to physical disabilities also have mental disabilities”.

<sup>5</sup> Estu, FN., et. al. *Kerangka Hukum Dissabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*. Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), Jakarta, 2015, pages 15.

<sup>6</sup> <https://www.voaindonesia.com/a/penyandang-disabilitas-respon-positif-undang-undang-baru/3367035.html>, accessed on December 06, 2021.

<sup>7</sup> *Ibid.*

<sup>8</sup> <https://tirto.id/penyandang-disabilitas-masih-dilihat-sebagai-beban-bHGs>, accessed on December 06, 2021.

<sup>9</sup> Reefani, NK. *Panduan Anak Berkebutuhan Khusus*, Imperium, Yogyakarta, 2013, pages 17.

Thus it is clear that we must be able to pay special attention to persons with disabilities in order to fulfill their rights in everyday life.

### **Consistency, Coherence and Correspondence of the Law on Persons with Disabilities with Pancasila Values**

Consistency according to the Indonesian Dictionary is defined as a determination and stability (in action) or obedience to principle.<sup>10</sup> Thus, the consistency referred to here is a stipulation or compliance with the articles in the Law Number 8 of 2016 with the values contained in Pancasila.

Furthermore, the meaning of the word coherence in the Big Indonesian Dictionary is “the arrangement of descriptions or views so that the parts are related to one another. Another meaning of the word coherence is deep harmony”.<sup>11</sup> In relation to the Law on Persons with Disabilities, it will analyze the alignment between the parts (in this case the articles of the Law Number of 2016 and the values contained in Pancasila).

Then the word correspondence in the Big Indonesian Dictionary is commonly used in the field of literature, namely “regarding the relationship between one sound and another in poetry, as well as the relationship between form and content”.<sup>12</sup> Thus, the correspondence referred to here is the relationship between one article and another in the Law on Persons with Disabilities, and also its relationship to the values of Pancasila.

Thus, it is clear that through the analysis of the Law Number 8 of 2016, the consistency, coherence and correspondence of the Law Number 8 of 2016 will be known with the values of Pancasila. In this case, it will be known whether the articles of the Law Number 8 of 2016 are correct, adhere to the principles, are in harmony, the relationship between one article and another, the relationship between the form and content is in line or not with the values of Pancasila.

Previously, it was emphasized that the Law Number 8 of 2016 is one of the legal products in Indonesia to provide legal protection for persons with disabilities and they as humans also have human rights. As a legal product, materially the Law Number 8 of 2016 must not conflict with Pancasila. In the sense that the material regulated in the Law Number 8 of 2016 must not conflict with the precepts contained in Pancasila or not in accordance with the values contained in Pancasila as the nation's ideology which is the source of law in Indonesia.

After an assessment or analysis of the consistency, coherence and correspondence of the Law on Persons with Disabilities has been carried out with the values of Pancasila, in principle it can be said that the Law Number 8 of 2016 in general is in accordance with and in harmony with the values of Pancasila, although there are several things in the law. The law needs to be strengthened or perfected.

There are several things that still need improvement from the Law Number 8 of 2016, including:

#### **1. Strengthening Coordination Institutions**

The Law Number 8 of 2016 positions the Ministry of Social Affairs as the organizer or ministry responsible for coordinating issues with persons with disabilities. This is clearly stated in Article 129 paragraph (2) of the Law Number 8 of 2016, which states that:

- (1) “The government shall establish a coordination mechanism at the national level in order to protect, respect, and fulfill the rights of Persons with Disabilities;
- (2) Coordination at the national level is carried out by the Minister with relevant ministries government agencies;

<sup>10</sup> <https://kbbi.web.id/konsistensi>, accessed on December 08, 2021.

<sup>11</sup> <https://lektur.id/arti-koherensi/>, accessed on December 06, 2021.

<sup>12</sup> <https://kbbi.web.id/korespondensi>, accessed on December 06, 2021.

- (3) The coordination as referred to in paragraph (2) aims to organize and synchronize policies, programs and budgets for the implementation of Protect, Respect and Fulfillment of the Rights of Persons with Disabilities;
- (4) In the coordination as referred to in paragraph (3), the Minister carries out the following tasks<sup>13</sup>:
  - a. “synchronizing programs and policies in the context of protecting, respecting and fulfilling the rights of Persons with Disabilities;
  - b. ensure that the implementation of protection, respectation and fulfillment of the rights of Persons with Disabilities runs effectively;
  - c. realize the budget for protecting, respecting and fulfilling the rights of Persons with Disabilities; and
  - d. synchronize the use of the budget for the implementation of Protection, Respectation and Fulfillment of the rights of Persons with Disabilities to run efficiently”.

The Minister referred to in Article 129 paragraph (2) of the Law Number 8 of 2016 according to the provisions of Article 1 Number 20 of the Law Number 8 of 2016 is the Minister who carries out government affairs in the social sector, that is the Minister of Social Affairs.

The placement of the Ministry of Social Affairs as the implementing agency or ministry responsible for coordinating the problems of persons with disabilities is actually not appropriate, because the Ministry of Social Affairs only handles and is responsible for social affairs. Ideally, the issue of fulfilling the rights (which are Human Rights) of Persons with Disabilities should be handled in a multi-sectoral manner and based on basic human rights and not on the basis of pity or generosity of others.

### **Increasing the Role of the National Commission for Disabilities in Changing Perspectives on Persons with Disabilities**

With the Law Number 8 of 2016 is expected to be able to change the perspective (view) of the community, including state administrators, towards persons with disabilities. If previously the community viewed or assessed persons with disabilities as weak, powerless because of their disabilities, so that they needed to be pitied (to receive mercy),<sup>13</sup> then the presence of the Law on Persons with Disabilities should be able to change the perspective of the community and state administrators that the powerlessness of persons with disabilities is not caused by their disability. However, due to environmental factors that prevent persons with disabilities from being able to carry out their various activities properly.

The hope to change the perspective of the community and state administrators will be difficult to materialize because in the Law Number 8 of 2016, the National Commission for Disabilities is not given a mandate to carry out socialization or counseling in order to change the perspective of the community and state administrators towards persons with disabilities. In this case, the public and state administrators must know that the powerlessness of persons with disabilities is not due to their disabilities, but more caused by factors that exist around the environment in their daily lives.

For more details, see the provisions of Article 132 paragraph (1) of the Law Number 8 of 2016 which states that: The National Commission for Disabilities has the task of monitoring, evaluating, and advocating for the rights of Persons with Disabilities.

Thus, it is clear that the National Commission for Disabilities is not mandated to conduct counseling or socialization to change the perspective of the community and state administrators towards persons with disabilities, even now the National Commission for Disabilities has not been formed. Meanwhile, the Law on Persons with Disabilities does not mention or require when the National Commission for Disabilities should be formed. If we refer to the deadline for the formation of its derivative regulations, the period for the formation of the National Commission for Disabilities was

<sup>13</sup> Ndaumanu, F. Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah, *Jurnal HAM*. Volume 11, No.1. April 2020, pages 131-150.

originally only two years. In other words, the National Commission for Disabilities should be realized no later than 2018, while now it is almost entering 2020. So it can be said that the sections or articles in the Law Number 8 of 2016 are not effective, because parts of the provisions not aligned and not in accordance with the principles of the Law Number 8 of 2016.

“Equality of opportunity, respect, protection, fulfillment, empowerment, accessibility and proper accommodation for persons with disabilities will never be realized, if the perspectives of the community and state administrators do not change”.<sup>14</sup> Therefore, the role of the National Commission for Disabilities plays a very important role in changing the perspective of the community or state administrators themselves. However, the articles in the Law on Persons with Disabilities do not regulate this problem, so that the perspective of the community and state administrators does not change. So, on the one hand, the Law Number 8 of 2016 wants equal opportunities, respect, protection, fulfillment, empowerment, accessibility and adequate accommodation for persons with disabilities, while on the other hand the Law Number 8 of 2016 does not sufficiently support the achievement of this desire. This is what is said to be the absence of consistency, coherence and correspondence in the preparation of the Law Number 8 of 2016. Therefore, the role of the National Commission for Disabilities needs to be increased (if later the National Commission for Disabilities is formed), so that it can change perspectives, attitudes and behavior towards Persons with Disabilities.

The establishment of the National Commission for Disabilities according to Article 134 of the Law on Persons with Disabilities is regulated by a Presidential Regulation. The National Commission for Disabilities as referred to in Article 131 of the Law Number 8 of 2016 is an independent non-structural institution. The law is not only a matter of welfare or social protection, but also more about human rights. Persons with disabilities are naturally the same as other humans, namely as social beings and cultural beings. As social beings, normal humans cannot live alone without the help of other humans, especially those with disabilities. Meanwhile, as cultural beings, they also have a heart and conscience, so they also have feelings like other human beings.

## **Conclusion**

Some things that still lack consistency, coherence and correspondence to the Law on Persons with Disabilities are coordinating institutions that are not yet competent. So what is expected by the Law Number 8 of 2016 is difficult to achieve optimally. Whereas the Law on Persons with Disabilities is enacted as one of the realizations of just and civilized humanitarian principles and social justice principles for all people. The law is not only a matter of welfare or social protection, but also more about human rights.

The National Commission for Disabilities is not mandated to carry out socialization or counseling in order to change the perspective of the community and state administrators towards persons with disabilities. In this case, the public and state administrators must know that the powerlessness of persons with disabilities is not due their disability, but is influenced by everyday environmental factors.

The National Commission for Disabilities is an independent non-structural institution, however, it has been almost 4 (four) years since the Law Number 8 of 2016 has been enacted, and the National Commission for Disabilities has not yet been formed. So it can be said that there is no consistency, coherence and correspondence in the preparation of the Law Number 8 of 2016.

---

<sup>14</sup> Widodo, B. Upaya Memenuhi Hak Penyandang Disabilitas. <https://ham.go.id/2020/03/06/upaya-memenuhi-hak-penyandang-disabilitas/>, accessed on December 09, 2021.

## References

- Bambang Widodo, Upaya Memenuhi Hak Penyandang Dissabilitas, [https://ham.go.id/2020/03/06/upaya\\_memenuhi\\_hak\\_penyandang\\_dissabilitas/](https://ham.go.id/2020/03/06/upaya_memenuhi_hak_penyandang_dissabilitas/), accessed on December 09, 2021.
- Fajri Nursyamsi, et.al., *Kerangka Hukum Dissabilitas di Indonesia; Menuju Indonesia Ramah Dissabilitas*, Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), Jakarta, 2015.
- Filman Ramadhan, Suhaimi, Rizanizarli, Restructuring judges' independence in the criminal justice system in the perspective of pancasila. *International Journal of Law*, Volume 8, Issue 2, 2022.
- Fransiska Novita Eleanora, Pancasila Sebagai Dasar Dalam Sistem Hukum Indonesia, *ADIL: Jurnal Hukum*, Volume 3, Issue 1, 2013, pages 141-165.
- Frichy Ndaumanu, Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah, *Jurnal HAM*, Volume 11, No.1, April 2020, pages 131-150.
- <https://gurupkn.com/asas-hukum-tata-negara>, accessed on December 06, 2021.
- <https://kbbi.web.id/konsistensi>, accessed on December 08, 2021.
- <https://kbbi.web.id/korespondensi>, accessed on December 06, 2021.
- <https://lektur.id/arti-koherensi/>, accessed on December 06, 2021.
- [https://tirto.id/penyandang\\_disabilitas\\_masih\\_dilihat\\_sebagai\\_beban\\_bHGs](https://tirto.id/penyandang_disabilitas_masih_dilihat_sebagai_beban_bHGs), accessed on December 06, 2021.
- [https://www.voaindonesia.com/a/penyandang\\_disabilitas\\_respon\\_positif\\_undang\\_undang\\_baru/3367035.html](https://www.voaindonesia.com/a/penyandang_disabilitas_respon_positif_undang_undang_baru/3367035.html), accessed on December 06, 2021.
- Nur Kholis Reefani, *Panduan Anak Berkebutuhan Khusus*, Imperium, Yogyakarta, 2013.
- Theresia Degener, *International Disability Law-Anew Legal Subject on the Rise*, delivered to Experts Meeting at Hongkong, 13-17 December 1999, (California: Berkeley Journal International), 2000.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).