



## Reconstructing justice-based legal protection for mental health patients in Indonesian Clinics

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### ABSTRACT

People with mental disorders are often stereotyped as being involved in criminal acts, especially violence and threats to the safety and security of those around them. This perspective causes people with mental disorders to be feared and shunned, even though they need care and protection. Regional governments are responsible for providing mental health services for their communities and playing a strategic role in managing and preventing mental health issues. In Kudus, there are still displaced people with mental disorders who have not received proper care. The local government can progressively address mental health issues through regulatory instruments to ensure that people with mental disorders receive the appropriate treatment and support they need. This study aims to examine the mental health policies of the Kudus local government, emphasizing policies prioritizing human rights. The research uses a normative juridical method involving a thorough analysis of policies concerning people with mental disorders in the Kudus district. The results show that although the Kudus Regional Government has established policies related to mental Disability and mental health, these policies do not sufficiently address the prevention of mental disabilities or fully incorporate human rights considerations.

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### 1. Introduction

Health is a right for every citizen, as stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia): "Everyone has the right to live a prosperous life in body and mind, to live, to get a good and healthy living environment, and the right to receive health services." In line with this, Article 1, paragraph 1 of Law No. 36 of 2009 concerning health is "A state of health, both physically, mentally, spiritually, and socially, that allows everyone to live a productive life socially and economically." (Nasution et al., 2024).

Health protection and insurance must be fulfilled by Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The government has a responsibility to ensure that it

protects the health of its people in addition to the central government. Article 18 of the 1945 Constitution of the Republic of Indonesia and Law Number 23 of 2014 concerning Regional Government give autonomy to regions to regulate and manage competition affairs under their authority. Mental health is related to health. In this context, the Kudus local government is responsible for ensuring the control of people with mental disorders (Nasution et al., 2024). It should not be underestimated that mental disorders are a problem that needs to be addressed immediately.

In addition to degenerative diseases, cancer, and accidents, people with mental disorders are one of the most significant health problems. The social service is responsible for assisting local governments in carrying out social government affairs under the region's authority, especially those related to people with mental disorders. Due to the ever-increasing population, mental disorders are a serious health problem. Mental disorders also take a long time to heal. Several factors can cause mental disorders, such as genetic factors, family history of mental disorders, traumatic events, drug use and excessive alcohol consumption, and certain medical conditions, such as thyroid disorders and strokes (Nabila et al., 2020).

Mental disorders are multifactorial conditions influenced by a complex interplay of biological, psychological, and environmental elements. Numerous recent studies have explored these contributing factors, highlighting how genetic predispositions, family history, traumatic life events, substance abuse, and medical conditions significantly increase the risk of developing psychiatric illnesses. A study by (Kirana et al., 2022) identified key risk factors for mental disorders, such as a genetic predisposition (OR = 10.818), childhood trauma (OR = 5.500), stress, and parenting style, all of which significantly correlate with the onset of mental illness. This highlights how early life experiences and biological vulnerability shape mental health outcomes.

(Hariyadi, 2022) found a significant association between hereditary factors and the occurrence of schizophrenia. In his study, 62% of participants had a family history of schizophrenia, reinforcing the strong genetic component of this severe mental illness. Alcohol abuse was investigated by (Achfisti & Wulan, 2023), who explained that excessive alcohol consumption damages brain function through oxidative stress and microglial activation. These biological changes lead to impaired emotional and cognitive functioning, increasing the risk of psychiatric disorders. Traumatic events also play a crucial role. (Kusumawati et al., 2022) reported that unmanaged traumatic experiences could lead to acute psychotic episodes. Early trauma often disrupts cognitive processing and emotional regulation, making individuals more vulnerable to mental illness.

Similarly, (Hasanah & Ambarini, 2018) demonstrated a significant link between past trauma and high-risk mental states in late adolescents. Their findings suggest that unresolved trauma can increase susceptibility to psychosis during critical developmental periods. These studies collectively underscore the importance of early identification and intervention for individuals exposed to biological and environmental risk factors. Prevention strategies should include psychoeducation, trauma-informed care, and support for individuals with a family history of mental disorders.

According to the Mental Health Law, they are called people with mental disorders and people with mental problems. According to the Mental Health Law, a person with mental disorders is a person who experiences thought, behavior, and feeling disorders that manifest in the form of symptoms and/or significant behavioral changes, which can cause suffering and inhibit them from performing their functions as human beings. *Pasung* the physical restraint or confinement of people with mental disorders (ODGJ) is an inhumane practice that still occurs in several regions in Indonesia, including Kudus, despite being officially banned at the national level. The absence of specific and binding local legal instruments makes it difficult to effectively prevent or penalize such practices at the regional level. While national laws such as Law No. 18 of 2014 on Mental Health exist, Kudus has yet to adopt a regional regulation that explicitly protects the

rights of ODGJ. This regulatory gap leads to weak legal protection, limited enforcement against *pasung*, and a lack of legal mechanisms to handle violations, ultimately resulting in human rights violations. This study will investigate and analyze the holy district government regulations on people with mental disorders and relate them to human rights.

## **2. Method**

This normative legal study analyzes the current mental health regulations of the Kudus Regency. In addition, this research uses a conceptual approach based on views that have developed in legal science, such as human rights law based on human rights law. This type of research is perspective research that aims to provide an overview or formulate a problem according to the circumstances/facts (Rini, 2018). Normative legal research utilizes empirical data as a reinforcement, especially through references to previous studies on risk factors for mental disorders, the impact of social stigma, and local government reports on policies and interventions for ODGJ. Study on genetic factors in schizophrenia, and Rahmانيar & Tupan's (2023) study on the impact of stigma on family decision-making. However, documentation of local cases from Kudus, such as patient statistics, shackling cases, or direct interviews with related parties, is not described in detail. This shows that the normative aspect is more dominant than field-based empirical exploration.

## **3. Analysis and Results**

### **3.1. Kudus Regency Government Regulation Instrument on People with Mental Disorders**

As part of Law No. 18 of 2014 on Mental Health, the Law on the Protection of People with Mental Disorders serves as an important tool in the field of mental health to ensure that people with mental disorders can enjoy their rights as Indonesian citizens, including access to health services. During the era of regional autonomy, each region was responsible for implementing regulations. They have the freedom to create regulatory instruments that suit their circumstances. Every region needs a mental health regulatory tool. This is related to the mental health of the community. Thus, people with mental disorders in their area will have legal certainty and the proper handlers.

There are no specific regional regulations to handle and protect people with mental disorders in Kudus Regency. However, Regent Regulation Number 58 of 2020 concerning the Implementation of Further Intervention of the Healthy Indonesia Program with a Family Approach in Kudus Regency, especially Article 5, letter h, states that "people with mental disorders receive treatment and are not abandoned" (Peraturan Bupati (Perbup) Kabupaten Kudus Nomor 58 Tahun 2020 Tentang Pelaksanaan Intervensi Lanjut Program Indonesia Sehat Dengan Pendekatan Keluarga Di Kabupaten Kudus, 2020). In addition, Regent Regulation Number 48 of 2020 concerning the Implementation of Minimum Service Standards in the Health Sector in Kudus Regency stipulates that, in Article 3, Letter J, people with mental disorders receive health services that meet mental health standards (Peraturan Bupati (Perbup) Kabupaten Kudus Nomor 48 Tahun 2020 Tentang Pelayanan Minimal Bidang Kesehatan Di Kabupaten Kudus, 2020).

Kudus Government policies such as Perbup No. 58 of 2020 and No. 48 of 2020 only provide general references regarding the care of ODGJ without establishing a legal protection mechanism or long-term strategy based on human rights. There are no regional regulations that explicitly protect the rights of ODGJ, including the right to non-discriminatory care, protection from stigma, and rehabilitation guarantees. In addition, the current policy structure does not guarantee systematic family and community participation in handling ODGJ, and does not yet have sanctions or legal procedures in the event of violations of ODGJ rights. The absence of these regional regulations creates gaps in the enforcement of legal justice and equal treatment.

In 2023, the Regent of Kudus issued Decree Number 441.3/212/2023, which stipulates that a Community Mental Health Implementation Team will be formed. The government sets goals to

achieve mental health standards for all individuals, families, and communities through the use of various promotional, prevention, curative, and rehabilitation strategies that are implemented comprehensively, integrated, and continuously (SK Bupati Kudus Tentang Pembentukan Tim Pelaksana Kesehatan Jiwa Masyarakat, 2023). In addition, in the decision, the government formed a health implementation team to develop policies and procedures for implementing community mental health.

Indonesia's decentralized governance system entrusts local governments with the responsibility to address the specific needs of their communities, including the care and protection of individuals with mental disorders (ODGJ). While national laws provide a general framework, the unique challenges faced by each region necessitate tailored local regulations. Each region in Indonesia has its own demographic, cultural, and infrastructural characteristics that influence the prevalence and management of mental health issues. For instance, rural areas may have limited access to mental health services, leading to higher rates of untreated mental disorders. Local regulations can address these specific challenges by establishing community-based care models and ensuring that resources are allocated where they are most needed. The Kudus Regency Government, for instance, has initiated the development of shelters for ODGJ to cater to the needs of vulnerable groups in rural areas (Antaranews., 2023).

Mental health care involves various stakeholders, including healthcare providers, social workers, law enforcement, and community organizations. Local regulations can facilitate coordination among these entities, ensuring a comprehensive approach to managing ODGJ. By establishing clear communication and operational protocols, local governments can promote more effective collaboration, which is crucial in providing holistic care. An example of such efforts is seen in Kudus, where the local government has worked to optimize shelter services for ODGJ in collaboration with provincial authorities (Regent of Kudus., 2023). National laws like Law No. 18 of 2014 on Mental Health provide a broad legal framework for the protection of ODGJ. However, local regulations are essential to translate these national policies into actionable measures that respect and uphold the rights of individuals with mental disorders. Such regulations can prevent human rights violations, such as the practice of chaining individuals with mental disorders, by establishing clear guidelines for their care and treatment. This is an area where local governments can make a significant impact by ensuring that facilities and services comply with human rights standards (Regent of Kudus., 2020).

Local governments have a better understanding of their community's needs and can allocate resources more effectively. By enacting regulations that prioritize mental health services, local governments can ensure that funding is directed toward building infrastructure, training personnel, and providing services that directly benefit ODGJ. This approach leads to more efficient use of resources and better outcomes for individuals with mental disorders. The local government of Kudus has been proactive in utilizing funds for infrastructure improvement to ensure the availability of proper facilities for ODGJ (Regent of Kudus., 2023). Local regulations can encourage community participation in the care and support of ODGJ. By involving community members in awareness campaigns, training programs, and support networks, local governments can reduce stigma and promote a more inclusive society. Such community engagement is crucial for the successful integration of ODGJ into society and for the sustainability of mental health programs. In Kudus, for example, community involvement has been essential in reducing stigma and improving the acceptance of ODGJ among local populations (Regent of Kudus., 2022).

While national laws provide a foundational framework for the care and protection of ODGJ, local government regulations are indispensable for addressing the unique challenges and needs of each community. By enacting tailored regulations, local governments can ensure that individuals with mental disorders receive the care, protection, and respect they deserve, leading to improved mental health outcomes and a more inclusive society.

### **3.2. Protection and Assurance of Persons with Mental Disorders from a Human Rights Perspective**

Human rights are universally recognized as rights given to humans because of their essence as human beings. These rights include the right to life, the right not to be tortured, enslaved, or detained inappropriately, and the right not to be discriminated against before the law. Human rights theory recognizes human rights as "universal," meaning everyone, including the sick and the healthy, has the same status (equality before the law). Equality before the law means that everyone should be treated fairly, including people with mental disorders, both those who are abandoned on the streets and those in hospitals.

Until now, many people who suffer from mental disorders can see social problems. Especially in a world full of demands, humans are distressed with various problems. In addition, people with mental disorders are stigmatized negatively. This stigma is not only experienced by individuals with mental disorders but also experienced by their family members. This stigma causes people with mental disorders to feel embarrassed, irritated, sad, hurt, unsettled, and blame each other, which ultimately negatively affects the treatment of people with mental disorders. Mental disorders continue to be one of the most pressing health issues, often linked to broader social problems. In a world full of pressures—economic demands, social shifts, and the fast pace of life—more individuals are becoming vulnerable to mental health conditions. Unfortunately, society still attaches a strong negative stigma to people with mental disorders (ODGJ), which affects not only the individuals themselves but also their families.

This stigma causes emotional distress such as shame, sadness, frustration, guilt, and internal family conflict. As a result, the healing process is often hindered due to a lack of social and emotional support from the surrounding environment, including from the family (Rumengan et al., 2023). Families, who are supposed to serve as the primary support system, often face psychological burdens due to the stigmatization they experience in their communities. A study by (Rahmaniar & Tupan, 2023) found that perceived stigma plays a significant role in delaying families' decisions to seek mental health treatment for their loved ones. This delay worsens the condition of the person with mental illness, as they do not receive appropriate or timely care. In many cases, families tend to hide the presence of a mentally ill family member due to fear of social exclusion and being labeled a disgrace (Widodo et al., 2023).

Furthermore, stigma negatively impacts the quality of life of families caring for ODGJ. These families often face psychosocial stress and difficulty fulfilling social roles in their communities. However, some families who demonstrate better understanding and acceptance of mental illness can still maintain a relatively good quality of life despite the stigma they face (Rumengan et al., 2023). To address this issue, continuous public education is essential. Increasing public knowledge about mental illness helps reduce stigma and fosters social acceptance of ODGJ. Such education also plays a critical role in strengthening family and community support systems, which are vital for recovery (Permatasari & Nuraini, 2023). However, the family plays an important role in the recovery of individuals with mental disorders.

For the rights of people with mental disorders, see Article 148, paragraph (1), and 149 of the Health Law, which state that "People with mental disorders have the same rights as citizens" and "People with mental disorders who are neglected, homeless, threaten the safety of themselves and/or others, and/or disturb public order and/or safety are obliged to receive treatment and treatment at health care facilities." The Kudus Regency Regulation on the Handling of Persons with Mental Disorders is needed to solve the legal and sociological problems of people with mental disorders. This regional regulation will serve as a legal basis for the implementation of the handling of people with mental disorders with legal certainty in the regions. Regional regulations related to people with mental disorders must contain elements and principles of human rights.

The protection and assurance of the rights of individuals with mental disorders have garnered increasing attention globally, particularly within the framework of human rights. This focus

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aligns with international conventions such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which emphasizes the rights of persons with disabilities, including those with mental health conditions, to enjoy full and equal human rights. In Indonesia, the enactment of Law No. 17 of 2023 on Mental Health represents a significant step toward safeguarding the rights of individuals with mental disorders. This legislation aims to provide legal protection and promote mental health services. However, its implementation faces challenges, including persistent social stigma and limited public awareness, which hinder the effectiveness of mental health services (Naura & Simarmata., 2023).

Globally, the CRPD serves as a legally binding instrument obligating signatory countries to uphold the rights of persons with disabilities. Key rights protected under the CRPD include equality before the law, freedom from arbitrary interference, the right to make one's own decisions, participation in social activities, and access to quality care (PAHO/WHO, n.d.). Despite widespread ratification, many countries struggle with fully implementing these standards, often due to entrenched societal attitudes and systemic barriers (Tandfonline, 2022). Stigmatization of individuals with mental disorders remains a pervasive issue, contributing to discrimination and human rights violations. In Indonesia, practices such as "pasung," involving the physical restraint of individuals with mental illnesses, persist despite being officially banned. These practices reflect deep-seated misconceptions and a lack of adequate mental health care infrastructure (Human Rights Watch, 2016).

Transitioning from institutionalized care to community-based mental health services is advocated to promote the dignity and autonomy of individuals with mental disorders. The World Health Organization's Quality Rights initiative emphasizes the development of person-centered, rights-based community mental health services, aiming to eliminate coercive practices and enhance the quality of care (Tandfonline, 2022). Legal protections extend to ensuring informed consent for medical procedures and limiting the use of seclusion and restraint to situations where they are absolutely necessary for safety. Legislation should also recognize the vital role of families and caregivers in supporting individuals with mental disorders, ensuring they have access to necessary information and support (PMC, 2022).

The right to political participation, including voting, is a fundamental human right. In Indonesia, the Constitutional Court's decision No. 135/PUU-XIII/2015 marked a significant advancement by affirming the voting rights of individuals with mental disorders, challenging discriminatory practices, and promoting inclusive democratic participation (Sanusi et al., 2023). The intersection of mental health and family law presents complex challenges, particularly concerning child custody. Progressive legal approaches advocate for individualized assessments that consider the best interests of the child while respecting the rights of parents with mental disorders, rather than imposing blanket restrictions based on mental health status (Raharjo et al., 2023).

#### **4. Conclusion**

Regulation of legal protection for people with mental disorders in hospital services in Indonesia still needs strengthening based on justice values. Although the right to mental health has been guaranteed in various regulations, its implementation at the regional level, such as in the Kudus Regency, is still not supported by specific regional regulations. They have the right to receive equal treatment and access to health without discrimination. However, social stigma is still a significant obstacle. Therefore, more comprehensive regulations are needed to guarantee the rights of people with mental disorders and improve fair and humane mental health services. There need to be special regional regulations on mental health, especially human rights, to deal with and protect people with mental disorders. Local governments can work with communities and experts to create local regulatory instruments for people with mental disorders that take human rights into account.

The recommended implementation strategy for local regulations includes the formulation of regulations based on human rights principles, such as equality, non-discrimination, and community participation. The regulations should contain explicit provisions on the prohibition of shackling, the right to adequate care, and a complaint mechanism for ODGJ who experience rights violations. This strategy also includes cross-sectoral involvement (health, social, law enforcement) and communities in the implementation and monitoring of policies, as well as increasing public education to reduce stigma. Thus, the implementation of human rights-based regulations at the local level will strengthen legal protection, open access to services, and encourage the rehabilitation of ODGJ in a fair and humane manner.

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