

Workshop
"Penyusunan Kurikulum Pendidikan Hak Penyandang Disabilitas
atas Peradilan yang *Fair* bagi Hakim di Lingkungan Mahkamah Agung"

Hotel Grand Mercure Jakarta Harmoni, 1 – 2 September 2016

MAKALAH



**PERAN STRATEGIS MAHKAMAH AGUNG dan PENGADILAN
DI BAWAHCNYA dalam PEMENUHAN HAK PENTANDANG
DISABILITAS di PENGADILAN**

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PERAN STRATEGIS MAHKAMAH AGUNG dan PENGADILAN DI BAWAHNYA dalam PEMENUHAN HAK PENTANDANG DISABILITAS di PENGADILAN

I. Hak Asasi sebagai **KONSTITUSI KEHIDUPAN**

Manusia tidak akan dapat hidup sesuai dengan fitrah kemanusiaannya termasuk **HAK PENYANDANG DISABILITAS di PENGADILAN**, jika hak-hak dasarnya tidak dimiliki, seperti hak untuk hidup, hak untuk bebas, **hak untuk mendapatkan perlakuan hukum yang adil**, hak untuk tidak diperbudak, hak untuk berinteraksi dengan lingkungan sosial dan alamnya.

1. **Regulasi** merupakan proses penentuan Hak dan Kewajiban warga negara yang mempunyai konsekuensi hukum. Keseimbangan antara **HAK** dan **KEWAJIBAN** mencerminkan salah satu

aspek dari **KEADILAN**. *Justice is a fairness* _ John Rawls.

Dalam UUD 1945 dengan tegas disebutkan bahwa negara melindungi segenap warga negara dan HAM ditentukan dalam pasal 28a-k.

1.Regulation: *The act of regulating; a rule or order prescribed for management or government; a regulating principle; Rule of order prescribed by superior or competent authority relating to action of those under its control.*

2. **Advokasi** merupakan upaya penyadaran dan pendampingan bagi pihak yang memerlukan bantuan untuk memperoleh hak-hak dasarnya.

Advocacy: *The act of pleading for, supporting, or recommending active espousal.*

3. **Litigasi** merupakan upaya dan proses legal untuk memperoleh hak-hak yang telah ditentukan dalam perangkat perundang-undangan melalui proses peradilan, demi jaminan tentang hak

asasi yang telah ditentukan perangkat perundang-undangan serta demi tata hubungan sosial yang lebih adil.

Litigation: *A lawsuit. Legal action, including all proceeding therein. Contest in a court of law for purpose of enforcing a right or seeking remedy. A judicial contest, a judicial controversy, a suit at law.*

Dalam hubungannya dengan litigasi, Stuart A Scheingold (1977: 14) mengatakan: *The principal institutional mechanism of the myth of right is litigation, which we are encourage to view as an effective means for obtaining decralation of rights from the courts, for assuring of those rights, and for building a more just social order.*

- a. Hak-hak Konstitusional di Amerika Serikat.
 - a.1. Due Process of Law.
 - a.2. The Rights to Counsel.
 - a.2.1. The rights to Counsel at Trial.
 - a.2.2. The Pretrial Right to Counsel.

MIRANDA RULE/MIRANDA WARNING.

- *That you have a right to remain silent;*
- *That anything you says may be used against you.*
- *That have a right to have present and attorney; and.*
- *That if you have no money to pay a lawyer, you have a right to a lawyer without charge.*

a.2.3. The Right Against Self-Incrimination.

- * Plea bargain.
- * Crown Witness.

a.2.4. Confrontation and Cross-Examination.

- * Fairness.

a.2.5. Cruel and Unusual Punishment.

b. Obtaining Evidence.

b.1. The Exclusionary Rule.

b.2. Warrantless and Seizures.

b.3. Wiretapping and Eavesdropping.

- * What protection is there for cordless phones, cell phones, and email ?.

4. **Adjudikasi** merupakan upaya perkara HAM melalui prosedur penyelesaian legal.

- Adjudication is the legal process of resolving a dispute. The formal giving or pronouncing a judgement or a decree in a court proceeding; also the judgement or decision given.
- Adjudicative claims arbitration: This form of dispute resolution is concerned primarily with tort and other claims involving small amounts as distinguished from the traditional categories of arbitration in the fields of labor, commerce and international trade. Designed to relieve court of burden of handling such cases.
- Adjudicative facts. Factual matter concerning the parties to an administrative proceeding as contrasted with legislative fact which are general and usually do not touch individual questions of particular parties to a proceeding. Facts which

concern a person's motives and intent, as contrasted with general policy issues.

- Adjudicatory action: *Administrative action are “adjudatory” in character when they culminate in final determination affecting personal or personal rights.*
- Adjudicatory hearing: *A proceeding before an administrative agency in which the right and duties of particular persons are adjudicated after notice and opportunity to be heard.*
- Adjudicatory process. *Method of adjudicating factual dispute; used generally in reference to administrative proceedings in contrast to judicial proceedings.*

The Role of Lawyers in Promoting Respect for the Rule of Law.

Aktivitas *the International Commission of Jurist (ICJ)* sejak tahun 1950an, mengembangkan penghargaan terhadap **HAK ASASI MANUSIA (HAM)**:

1). Melakukan telaah untuk mendefinisikan dan mengembangkan syarat-syarat yang diperlukan bagi tegaknya **RULE OF LAW**.

2). Menyusun standard instrument internasional bagi pelaksanaan *rule of law* dan perlindungan HAM (***THE PROTECTION OF HUMAN RIGHTS***)

3). Menegaskan pentingnya peran Lawyer *in promoting respect for the rule of law*.

The Role of lawyer in a changing world. Contained in *The Rule of Law and Human Rights: Principle and Definition*:

1. In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, in situations and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspiration of all people. The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfil his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice. The skill and knowledge of lawyers are not to be employed solely for the benefits of clients, but should be regarded as held in trust for society.

2. It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible legislature elected by democratic process and an independent, adequately remunerated judiciary, and to be always vigilant in the protection of civil liberties and human rights.

3. Lawyers should refuse to collaborate with any authority in any action which violate the Rule of Law.

4. Lawyers should be anxiously concern with the prevalence of poverty, ignorance and inequality in human society and should take a leading part in promoting measures which will help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.

5. Lawyers have a duty to be active in law reform. Especially where public understanding is slight and the knowledge of lawyers is of importance, they should review proposed legislation and present to the appropriate authorities programmes of reform.

6. Lawyers should Endeavour to promote knowledge of and to *inspire* respect for the Rule of Law, and an appreciation by all people of their rights under the law.

.....

12. In an *interdependent* world, the lawyer's responsibilities extend beyond national boundaries. They require his deep concern [or peace, and support for the principles of the United Nations and the strengthening and development of *international law* and organizations ... "

A NEW MODEL of LEGAL ASSISTANCE

(Sri Lanka Experience, by Neelan Tiruchelvam)

Our proposal is, therefore, directed towards the elaboration of a new model of legal assistance to the poor. The elements of this model include,

(a) emphasis on collective demands and group interests;

(b) establishment of clinic which are proactive in that they actively seek out the grievance of poverty groups and advocate their interests;

(c) expansion of the arenas of group advocacy to include administrative, legislative and other spheres of policy articulation and implementation;

(d) multiplication of the types of assistance to include counselling, the structuring of transactions, and the formation of associations; and

(e) ***the STRUCTURE OF THE delivery SYSTEM*** to include participatory involvement of potential beneficiaries. Such participation to take the form of management of **LEGAL AID** schemes, dissemination of information about social welfare schemes and redistributive legislation and an encouragement of self-help.

The implementation of the model would need to be preceded by the following steps:

(a) a careful examination of the differential legal needs of the urban and rural poor, the plantation

workers and other socially and economically disadvantaged group;

(b) the identification of informal social processes of para-professional who are responsive to these needs;

(c) operation of social welfare programmes directed towards the satisfaction of the basic need of the poor;

(d) an examination of the implementation of the more important **DISTRIBUTIVE LEGISLATION**, social welfare policies and programmes; and

(e) a study of the existing market for the provision of legal services.

BANTUAN HUKUM STRUKTURAL ?

Petition and Intake

The mechanism for bringing juveniles to the attention of the courts is through a petition, as opposed to an arrest warrant. This can be filed by the police, a victim, parents, school officials, or a social worker. Like an arrest warrant, the petition

specifies the alleged offense or delinquency, the name and address of the child, the names and residences of his or her parents, and a description of the circumstances of the offense. This petition initiates the formal judicial processing of a juvenile (see Exhibit 18.4).

After the petition is filed an intake hearing is held, conducted by the court as a preliminary examination into the facts of the case. However, it is not presided over by a judge nor does it occur in open court. Rather, the hearing officer is usually a referee with a background in social work or one of the behavioral sciences, an attorney, a probation officer, or someone else assigned by the juvenile court. The purpose of this hearing is to protect the interests of the child and to quickly dispose of cases that do not require the time and expense of formal court processing.

In effect, the intake officer makes a legal judgment of the probable cause of the petition, and this may be the only time that the sufficiency of the evidence is evaluated. The officer may also conduct a brief investigation into the background

of the juvenile, have an informal hearing with the child and parents, or discuss the case with the police and attorneys. Depending on the hearing officer's judgment of the sufficiency of the evidence, the seriousness of the offense, and the need for court intervention, there are three alternatives:

1. The hearing officer can dismiss the case, in which instance the matter is over-no further court processing is required and the child can go home.
2. The officer can make an informal judgment, such as arbitration, restitution, or referral to some social agency.
3. The officer can authorize an inquiry before the juvenile court judge.

Although the intake process represents an excellent mechanism for screening juvenile cases, it is not without its problems and shortcomings. First, the "social service" worker in charge of the hearing is making legal judgments about probable cause. The hearing decision, in large measure, determines the immediate future of the child. Yet

most hearing officers have no formal legal training and may be ill-prepared to deal with the complexities of law. In some jurisdictions, such as California, there has been an increasing trend to involve prosecutors in screening hearings." Although this addresses the issue of legal judgments, it can also change the focus and effect of juvenile court intake procedures.

Second, as is the case with plea negotiation in the adult criminal courts, the intake hearing places pressures on the juvenile and his or her parents to proceed in a particular way. Statutes in most jurisdictions hold that if a child maintains his or her innocence or the parents so demand it, the case must be sent before a judge. However, the child's liability in the matter might not be disputed in an effort to avoid formal court inquiry.

Third, there are the issues of reliability and objectivity of case file data. The file begins at intake and the hearing officer gathers facts about the case and the juvenile. Quite often, none of these are verified.

opinions of the intake officer, the police, and the victim that cannot be effectively challenged. Yet this file information is generally accepted by the court as accurate. It is permanently entered and used as "fact" throughout the remainder of the process.

Fourth, there is the matter of discretion. Hearing officers, like police and judges, can exercise a considerable degree of discretion as to how a case ought to be handled. Decisions are often based on opinions as well as the factors used in deciding to take the juvenile into custody - both of which may be tainted by bias, resulting in the potential for arbitrary and discriminatory judgments."

Such difficulties as these, however significant, do not warrant the elimination of the juvenile intake process. Rather, they suggest areas of needed improvement. In the final analysis, intake continues to serve the dual purposes of protecting the juvenile from exposure to the formal adjudication process and to preserve court

resources for more serious cases. The intake procedures in the juvenile court thus fulfill much the same role as does plea negotiation in the adult court.

Detention and Bail

Subsequent to the intake decision that recommends a hearing before the juvenile court judge, most state statutes require a detention hearing to determine whether the child should be released to a parent or guardian, or retained in custody. The issues addressed include: (1) whether there is a need to protect the child; (2) whether the child presents a serious threat to the community; and (3) the likelihood that the child will return to court for adjudication.

In theory, the temporary detention of juveniles should meet three basic objectives:

1. secure custody with good physical care that will offset the damaging effects of confinement
2. a constructive and satisfying program of activities to provide the juvenile with a chance

to identify socially acceptable ways of gaining satisfaction

3. observation and study to provide screening for undetected mental or emotional illnesses as well as diagnoses upon which to develop appropriate treatment plans ?

Should these goals be met, the detention experience might actually aid both the child and the court. In practice, however, most children in detention are housed in facilities that provide little more than security. Many are held in police lock-ups or local jails; as recently as 1983, for some tens of thousands of juveniles temporary detention occurred in secure state correctional facilities and local jails for adults."

Should the detention hearing decision be to release the juvenile, the question of bail arises. Although there is a trend in some states to establish bail procedures in the juvenile courts, the federal courts have deemed it unnecessary to rule on the matter. On the one hand, there are liberal statutory

alternatives for juveniles, including release on recognizance or release to parents. On the other, there is considerable opposition to the use of bail bonds and other financial conditions of release. 21 A bail agreement is a contract that is not binding on a minor. Moreover, children are unlikely to have the independent financial means to make bail, thus making it necessary for them to rely on others for the needed funds or collateral. This would provide the juvenile with little personal motivation to appear in court as required. And finally, as is the case with adult defendants, bail tends to discriminate against the poor.

Adjudication and Disposition

At the adjudication inquiry, which is generally closed to the public and the media, the judge determines whether the facts of the case and the child's behavior warrant a formal hearing by the court^{*}. This inquiry is similar in purpose to the

^{*} Many jurisdictions have "masters" or "commissioners" who have been given the authority to hear case on behalf of judges. Intake workers may refer the more routine case to these quasi-judicial officers, a process established for the sake of relieving judges of the burden of the less serious matters. However, in the event that the juvenile is dissatisfied with the master's decision, the case is subject to review before a juvenile court judge

intake hearing, but now it is a magistrate who rules on the need for further processing. The magistrate can dismiss the case, order a formal adjudication hearing, or refer the juvenile elsewhere.

In recent years, the juvenile justice system in the United States has sought out any number of alternatives for avoiding the official adjudication of youths. The major mechanism is diversion out of the court system into community agencies for counseling and treatment. However, a youth may refuse diversion and request a formal adjudication hearing.

The adjudication hearing is not a trial. Given the chancery court and *parens patriae* roots of juvenile justice processing, ***the adjudication hearing is legally classified as a civil rather than a criminal proceeding.*** The judge presides ***on behalf of the child*** to determine if he or she actually committed the alleged offense, and, if so, to use the misconduct described to determine if the youth's parents are providing adequate care,

supervision, and discipline. The judge relies on any clinical, social, or diagnostic reports that may have been prepared. Should the judge determine that no misconduct occurred, the case is dismissed. If youthful misconduct is apparent, a disposition hearing is scheduled.

At disposition hearings, ***Juvenile Court Judges have extremely broad discretion.*** They have the authority to dismiss a case, give the juvenile a warning, impose a fine, order the payment of restitution, require the performance of community service, refer the offender to a community agency or treatment facility, place the child on probation under the supervision of a court officer, place the child on some informal probationary status, put the child in a foster home, enter an order against the parents for the protection of the child, or mandate commitment into a juvenile institution. In practice, the most common dispositions are probation, court-sponsored restitution programs, and institutional commitment.

Juveniles and the Constitution

The juvenile court process, as noted earlier, *is not a criminal proceeding.* It is not a matter of "State Child": there is no prosecutor who acts in behalf of the state to prove the guilt of the youth, and there is no jury. Rather, it is a civil process designed, at least in theory, ***to aid and protect the child.***

In 1967 three years after Gault's arrest, **the United States Supreme Court** reviewed the case. The Supreme Court ruled against the Arizona courts, holding that Gerald Gault had been denied the following **basic rights** :

1. ***notice of charges***
2. ***rights to counsel***
3. ***rights to confrontation and cross-examination of witness***
4. ***privilege against self incrimination***
5. ***right to a transcript of the proceedings***
6. ***right to appellate review***

The result of **the Supreme Court's** decision was **to extend these constitutional guarantees** to every case in every juvenile court in the United States.

SOURCE: In re Gault. 38 U.S. 1 (1967).

II. HAK PENYANDANG DISABILITAS di PENGADILAN.

Dalam pasal 5 ayat (1) huruf d UU No: 8 tahun 2016 ditentukan bahwa Penyandang Disabilitas memiliki hak KEADILAN dan Perlindungan HUKUM.

Dan dalam pasal 9 dijamin secara yuridis bahwa hak keadilan dan perlindungan hukum untuk Penyandang Disabilitas meliputi hak:

- a. **Atas perlakuan yang sama di hadapan hukum;**
- b. Diakui sebagai subyek hukum;
- c. memiliki dan mewarisi harta bergerak atau tidak bergerak;
- d. mengendalikan masalah keuangan atau menunjuk orang untuk mewakili kepentingannya dalam urusan keuangan;
- e. memperoleh akses terhadap pelayanan jasa perbankan dan nonperbankan;
- f. memperoleh penyediaan Aksesibilitas dalam pelayanan peradilan;
- g. atas Pelindungan dari segala tekanan, kekerasan, penganiayaan, Diskriminasi, dan/atau perampasan atau pengambilalihan hak milik;
- h. memilih dan menunjuk orang untuk mewakili kepentingannya dalam hal keperdataan di dalam dan di luar pengadilan; dan
- i. dilindungi hak kekayaan intelektualnya.

Bagian Kedua
Keadilan dan Perlindungan Hukum

Pemerintah dan Pemerintah Daerah wajib menjamin dan melindungi hak Penyandang Disabilitas sebagai subjek hukum untuk melakukan tindakan hukum yang sama dengan lainnya. (pasal 28).

Pemerintah dan Pemerintah Daerah wajib menyediakan bantuan hukum kepada Penyandang Disabilitas dalam setiap pemeriksaan pada setiap lembaga penegak hukum dalam hal keperdataan dan/atau pidana sesuai dengan ketentuan peraturan perundang-undangan.(pasal 29).

- (1) Penegak hukum sebelum memeriksa Penyandang Disabilitas wajib meminta pertimbangan wajib atau saran dari:
 - a. dokter atau tenaga kesehatan lainnya mengenai kondisi kesehatan;
 - b. psikolog atau psikiater mengenai kondisi kejiwaan; dan/atau
 - c. pekerja sosial mengenai kondisi psikososial.
- (2) Dalam hal pertimbangan atau saran sebagaimana dimaksud pada ayat (1) tidak memungkinkan dilakukan pemeriksaan, maka dilakukan penundaan hingga waktu tertentu. (pasal 30)

Penegak hukum dalam melakukan pemeriksaan terhadap anak penyandang disabilitas wajib mengizinkan orang tua atau keluarga anak dan pendamping atau penerjemah untuk mendampingi anak penyandang disabilitas. (pasal 31)

Penyandang Disabilitas dapat dinyatakan tidak cakap berdasarkan penetapan pengadilan negeri. (pasal 32)

Pasal 33

- (1) Penetapan pengadilan negeri sebagaimana dimaksud dalam Pasal 32 diajukan melalui permohonan kepada pengadilan negeri tempat tinggal Penyandang Disabilitas sesuai dengan ketentuan peraturan perundang-undangan.
- (2) Permohonan penetapan sebagaimana dimaksud pada ayat (1) didasarkan pada alasan yang jelas dan wajib menghadirkan atau melampirkan bukti dari dokter, psikolog, dan/atau psikiater.
- (3) Keluarga Penyandang Disabilitas berhak menunjuk seseorang untuk mewakili kepentingannya pada saat Penyandang Disabilitas ditetapkan tidak cakap oleh pengadilan negeri.
- (4) Dalam hal seseorang sebagaimana dimaksud pada ayat (3) ditunjuk mewakili kepentingan Penyandang Disabilitas melakukan tindakan yang berdampak kepada bertambah, berkurang, atau hilangnya hak kepemilikan Penyandang Disabilitas wajib mendapat penetapan dari pengadilan negeri. (pasal 33).

- (1) Penetapan pengadilan negeri sebagaimana dimaksud dalam Pasal 32 dapat dibatalkan.**
- (2) Pembatalan penetapan pengadilan negeri sebagaimana dimaksud pada ayat (1) diajukan ke pengadilan negeri tempat tinggal Penyandang Disabilitas.**
- (3) Pembatalan sebagaimana dimaksud pada ayat (1) diajukan oleh Penyandang Disabilitas atau keluarganya dengan menghadirkan atau melampirkan bukti dari dokter, psikolog, dan/atau psikiater bahwa yang bersangkutan dinilai mampu dan cakap untuk mengambil keputusan. (pasal 34).**

Proses peradilan pidana bagi Penyandang Disabilitas dilaksanakan sesuai dengan ketentuan hukum acara pidana. (pasal 35).

- (1) Lembaga penegak hukum wajib menyediakan Akomudasi yang Layak bagi Penyandang Disabilitas dalam proses peradilan.**
 - (2) Ketentuan mengenai Akomodasi yang Layak untuk Penyandang Disabilitas dalam proses peradilan sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Pemerintah. (pasal 36).**
-
- (1) Rumah tahanan negara dan lembaga permasyarakatan wajib menyediakan Unit Layanan Disabilitas.**
 - (2) Unit Layanan Disabilitas sebagaimana dimaksud pada ayat (1) berfungsi:**

- a. menyediakan pelayanan masa adaptasi bagi tahanan Penyandang Disabilitas selama 6 (enam) bulan;
- b. menyediakan kebutuhan khusus, termasuk obat– obatan yang melekat pada Penyandang Disabilitas dalam masa tahanan dan pembinaan; dan
- c. menyediakan layanan rehabilitasi untuk Penyandang Disabilitas mental. (pasal 37).

Pembantaran terhadap Penyandang Disabilitas mental wajib ditempatkan dalam layanan rumah sakit jiwa atau pusat rehabilitasi. (pasal 38).

Pasal 39

- (1) Pemerintah dan Pemerintah Daerah wajib melakukan sosialisasi perlindungan hukum kepada masyarakat dan aparaturnegara tentang Pelindungan Penyandang Disabilitas.
- (2) Sosialisasi sebagaimana dimaksud pada ayat (1) meliputi:
 - a. pencegahan;
 - b. pengenalan tindak pidana; dan
 - c. laporan dan pengaduan kasus eksploitasi, kekerasan, dan pelecehan. (pasal 39).

BAB X LARANGAN

Pasal 142

Setiap Orang yang ditunjuk mewakili kepentingan Penyandang Disabilitas dilarang melakukan tindakan yang berdampak kepada bertambah, berkurang, atau hilangnya hak kepemilikan Penyandang Disabilitas tanpa mendapat penetapan dari pengadilan negeri.

Pasal 143

Setiap Orang dilarang menghalang-halangi dan/atau melarang Penyandang Disabilitas untuk mendapatkan:

- a. hak pendidikan sebagaimana dimaksud dalam Pasal 10;**
- b. hak pekerjaan, kewirausahaan, dan koperasi sebagaimana dimaksud dalam Pasal 11;**
- c. hak kesehatan sebagaimana dimaksud dalam Pasal 12;**
- d. hak politik sebagaimana dimaksud dalam Pasal 13;**
- e. hak keagamaan sebagaimana dimaksud dalam Pasal 14;**
- f. hak keolahragaan sebagaimana dimaksud dalam Pasal 15;**
- g. hak kebudayaan dan pariwisata sebagaimana dimaksud dalam Pasal 16;**
- h. hak kesejahteraan sosial sebagaimana dimaksud dalam Pasal 17;**
- i. hak Aksesibilitas sebagaimana dimaksud dalam Pasal 18;**
- j. hak Pelayanan Publik sebagaimana dimaksud dalam Pasal 19;**
- k. hak Pelindungan dari bencana sebagaimana dimaksud dalam Pasal 20;**
- l. hak habilitasi dan rehabilitasi sebagaimana dimaksud dalam Pasal 21;**
- m. hak pendataan sebagaimana dimaksud dalam Pasal 22;**
- n. hak hidup secara mandiri dan dilibatkan dalam masyarakat sebagaimana dimaksud dalam Pasal 23;**
- o. hak berekspresi, berkomunikasi, dan memperoleh informasi sebagaimana dimaksud dalam Pasal 24;**
- p. hak kewarganegaraan sebagaimana dimaksud dalam Pasal 25;**
- q. hak bebas dari Diskriminasi, penelantaran, penyiksaan, dan eksploitasi sebagaimana dimaksud dalam Pasal 26; dan**
- r. hak keadilan dan perlindungan hukum dalam memberikan jaminan dan Pelindungan sebagai subjek hukum untuk melakukan tindakan**

hukum yang sama dengan lainnya sebagaimana dimaksud dalam Pasal 28.

BAB XI KETENTUAN PIDANA

Pasal 144

Setiap Orang yang melakukan tindakan yang berdampak kepada bertambah, berkurang, atau hilangnya hak kepemilikan Penyandang Disabilitas tanpa mendapat penetapan dari pengadilan negeri sebagaimana dimaksud dalam Pasal 142 dipidana dengan pidana penjara paling lama 5 (lima) tahun dan denda paling banyak Rp500.000.000,00 (lima ratus juta rupiah).

Pasal 145

Setiap Orang yang menghalang-halangi dan/atau melarang Penyandang Disabilitas untuk mendapatkan hak sebagaimana dimaksud dalam Pasal 143 dipidana dengan pidana penjara paling lama 2 (dua) tahun dan denda paling banyak Rp200.000.000,00 (dua ratus juta rupiah).

Butir-butir pokok:

- 1. Perlakuan hukum yang sama bagi Penyandang disabilitas sebagai bagian dari warga negara___merupakan kewajiban asasi bagi setiap warga negara.**
- 2. Tugas yuridis penegak hukum dalam berhadapan dengan penyandang disabilitas adalah mempertimbangkan keadaan khusus dari Penyandang disabilitas untuk memperoleh perlakuan hukum positif guna terwujudnya keadilan.**