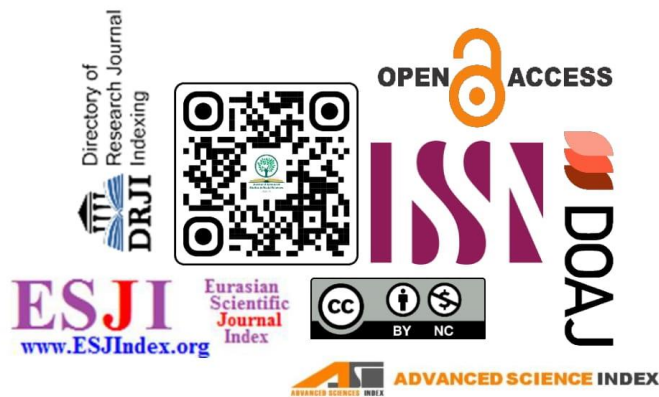
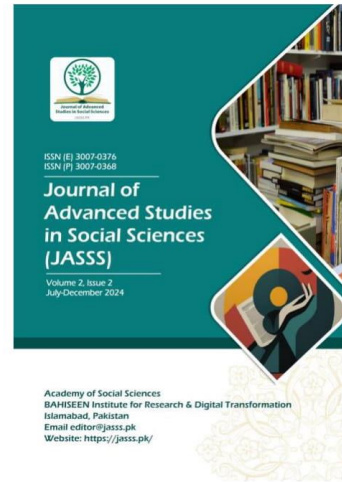


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# People With Mental Disorders (ODGJ) as Part of Vulnerable Groups in Indonesia

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## Abstract

Certainty, usefulness and justice are the main principles that should be the idea of a regulation. Regulations which fail to implement those principles will be ineffective and injustice. ODGJ as a part of the vulnerable category has experienced injustice from certain parties. Whereas there are regulations in Indonesia that protect the rights of ODGJ, however, the legal protection for ODGJ as part of vulnerable groups are not given the same as the protection to women and children who also as part of vulnerable groups. This research is normative legal research; the data used are primary, secondary, tertiary data which are analyzed using descriptive analysis method. The result of the study is that First, ODGJ as part of vulnerable group's has the right to receive more treatment and protection with regard to their particularities and deserves special facilities and treatment. Second, Recognition of the existence of vulnerable groups is regulated in Act Number 39 of 1999 on Human Rights and Act Number 17 of 2023 on Health which give the responsibility to the State (Government) to provide mental health services, facilities and infrastructure for ODGJ.

**Keywords:** People with Mental Disorders (ODGJ), Vulnerable Groups, Indonesia

People who experience mental or psychosocial disabilities are declared as vulnerable group by the World Health Organization (WHO). WHO assesses that people who have mental and psychosocial disabilities tend to be treated discriminatorily. This can be observed in the article Mental Health, Poverty and Development (Annan, 2019) released by WHO.

The vulnerable condition of people with mental or psychosocial disabilities will place them in difficult situations to gain access to justice. The potential for them to become victims of criminal acts is high. So, within the framework of procedural justice, the court is no longer only required to provide sanctions or punishment against perpetrators of criminal acts whose victims are ODGJ, but the court must also be able to encourage access to therapy and recovery for those with ODGJ. From this aspect, it is necessary to encourage regulations that are able to provide fair legal protection for ODGJ.

This was confirmed by Etienne Paradis-Gagne, Jean-Daniel Jacob and Pierre Pariseau-Legault in the Legal Journal, The Journal of Forensic Psychiatry & Psychology who stated that "In the philosophical foundations of procedural justice, the court no longer has a unique role of punishment and sanction, but also a role of therapy and support (Canada, 2014). Therefore, the criminal provisions in the law on mental health must be considered more comprehensively (Gouvernement du Québec, 2018). However, it is not only about criminal matters but also other things that can support the establishment of more comprehensive legal protection for ODGJ.

Legislation is seen as a complete system. Consistency in statutory regulations can be referred to as legal certainty. Consistency in statutory regulations is something that must be created. This consistency can also be observed from the aspect of law enforcement, namely the consistency of actions by law enforcement agencies. Consistency as another form of legal certainty will be observed by society, because society has sensitive feelings towards injustice (Kusumohamidjojo, 1999). The problem of unclear norms in Article 434 of Act Number 17 of 2023 on Health means that the formulation does not meet consistency which shows legal certainty and ultimately disrupts aspects of justice in the context of providing legal protection for ODGJ. Theoretically, this is certainly a problem.

Certainty, usefulness and justice are needed so that the guaranteed rights and obligations of every citizen are fulfilled. Guaranteeing these things is something important in a norm so that the laws formed are more useful. The formation of legal norms shows that there is a blurring of norms and results in legal uncertainty, one of which is caused by aspects of norm formation that do not fulfill the formation of good legislative regulations. This has implications for the potential for injustice for certain parties, in this context ODGJ as a part of the vulnerable category.

Therefore, it is important to have an in-depth study of fair legal protection for ODGJ as part of a vulnerable group. This is because the State has taken a major role in legal protection specifically for children and women who are also part of vulnerable groups, and it is time for the same legal protection to be given to ODGJ.

Based on the background above, this research will raise the main problem, namely: the condition of people with mental disorders (ODGJ) as part of vulnerable groups, what legal protection has been provided by the State for vulnerable groups in Indonesia in achieving justice and equality before the law.

## **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 status of people with mental disorders (ODGJ) as part of vulnerable groups in Indonesia.

## **RESULTS AND DISCUSSION**

Law enforcement is one of the factors that often hinders people, especially people with disabilities, from experiencing the justice they deserve. Apart from that, the role of the community is also very important in assisting law enforcement in helping people with disabilities who are victims of criminal acts (Monica, 2015). In the case of sexual violence against people with disabilities, for example, there are many factors that can maximize law enforcement against the perpetrators of this crime, which include several factors: 1. Motivation of the community to be able to report unlawful acts that occur in the community to law enforcement officials. 2. The organization's obligations and ability to enforce the law (policing).

On August 8<sup>th</sup> 2023, the President of the Republic of Indonesia finally signed Act Number 17 of 2023 on Health which was ratified at the House of Representative Plenary Session on July 11<sup>th</sup> 2023. The new Health Act has become a hot issue in the world of health in Indonesia. This Act provides new directions in regulating the health system in Indonesia. Health workers'

attitudes towards the law varied, but in general, they welcomed it as a step forward in improving the health system. Act Number 17 of 2023 on Health carries out the mandate of the 1945 Constitution of the Republic of Indonesia, especially Article 34 paragraph (3) which states that, "*The state is responsible for providing adequate health service facilities and public service facilities.*"

The background to the establishment of Act Number 17 of 2023 on Health is the development of health development and learning from the Covid-19 pandemic, so that it is necessary to transform the Indonesian health system. The aim of this transformation is to promote a healthy and strong Indonesian society through six things, namely: primary care, reference services, health resilience, funding, human resources and health technology. The transformation of Indonesia's health system requires support for regulatory transformation that aims to fulfill people's rights, create laws that are powerful and effective, as well as implementing.

In general, this Act contains main material which is arranged systematically, including general provisions, rights and obligations, responsibilities of the Central Government and Regional Government, Health implementation, Health Efforts, Health Service Facilities, Health Human Resources, Health Supplies, pharmaceutical security and Health Devices, Health Technology, Health Information Systems, Outbreaks and Outbreaks, Health funding, coordination and synchronization of Health system strengthening, community participation, guidance and supervision, investigations, criminal provisions, transitional provisions, and closing provisions. Attention and protection for victims is very important especially for victims who are mentally disabled, whether through the judiciary or by means of certain concerns which are absolute and can be considered in a criminal law policy as well as in social policies in existing social institutions or state institutions. Based on the state's responsibilities and goals in realizing equal distribution of welfare and equal justice in the general public. Therefore, the rights of vulnerable communities as victims of crime must be protected because they are an integral part of human rights in social security (Sari, 2018). To achieve equal rights (Suryani, 2016) and opportunities for people with disabilities, including mental disabilities, to lead a life of prosperity and without discrimination requires legislation that guarantees legal protection. The majority of people with disabilities in Indonesia are still in a vulnerable state due to obstacles or restrictions on the rights of people with disabilities. Therefore, it is necessary to respect and protect the rights of persons with disabilities, which is part of the state's obligations. Act Number 39 of 1999 on Human Rights, is a legal umbrella that gives special attention to vulnerable communities (Sulfasyah, 2019). This act guarantees human rights to all citizens, including ODGJ as part of the vulnerable community, so that society understands and has a sense of responsibility to respect people with disabilities. However, the fact is that there is a lot of discrimination currently experienced by people with disabilities which results in the rights of people with disabilities not being fulfilled, so that there is a need for equality and equal opportunities in all matters or aspects of state administration as well as protection in realizing the quality of life for people with disabilities, prosperous and fair physically and mentally. In the context of legal protection for ODGJ, the implementation and fulfillment of ODGJ's rights is also aimed at protecting ODGJ from exploitation and neglect and all forms of discrimination and human rights violations that could occur to them.

The concept of equality is one of the things that ODGJ in Indonesia are fighting for. State Guarantee as stated in Act Number 17 of 2023 on Health Article 76 Paragraph (3) states that "*People at risk and people with mental disorders have the same rights as citizens.*" According to the Encyclopedia of the Social Sciences, if it is said that humans are the same, even though

in reality humans are not the same in many characteristics. Characteristics are often associated with differences in sex, color, character or disposition and so on, and are also based on various different human institutions such as differences in citizenship, religion, social level and so on. Equality is the right for every human being to have their existence recognized without distinction which impacts on people's ability to access, control resources and receive benefits. In that context, equal rights become an absolute right that every human being has, even though there are different conditions that must be given affirmative action. The existence of differences due to power relations causes disadvantage, injustice and other negative impacts, including in the field of law enforcement. Equality can be divided into four types, namely (Hutabarat, 1985):

1. Natural Equality, is the equality that every human being carries from birth. Humans have the ability to be intelligent or rational, meaning that Natural Equality is the equality of every human being who has a mind that is able to distinguish them from other creatures.
2. Civil Equality, is a civil right that every human being has. This recognition of the equality of every human being shows that there is a guarantee of equal treatment and for everyone to enjoy the right to protection. Among them is the principle of equal treatment before the law.
3. Political Equality, is the equal right for every citizen to actualize their political rights in the form of participation in State affairs. This includes the right to be elected and vote in general elections. The existence of political equality is the basis of democracy.
4. Economic Equality, is equal rights in the economic sector as part of efforts to improve living standards. This equality places greater emphasis on opening up opportunities or access rather than equality in sharing results. Because results are seen as everyone's efforts to achieve something, but the main agenda is to open access to improve the level of the economic sector.

Based on the classification above, the theory of "Equality Before the Law" is included in civil equality, because it is related to the interests of every citizen to receive equal treatment before the law and the government. Based on the theory above, it can be intended that the implementation of the law is fair and equal and that everyone is considered the same or equal before the law.

The demand for siding with vulnerable communities should be followed by siding with ODGJ which must be realized by (one of them) providing assistance to ODGJ in terms of providing mental health measures so that they can show that traditional legal aid is no longer able to meet their health needs and ensure that this does not happen. violation of the rights of ODGJ both in the family environment of ODGJ and the surrounding community. The government should be able to collaborate with related agencies such as the Social Service and Health Service in collecting data on ODGJ in their respective regions. So, in the future the Government can be proactive in visiting ODGJ who need health assistance in order to carry out their duties and responsibilities as an extension of the State. Of course, providing health services for ODGJ cannot be equated with physically ill people in general. If ordinary patients can consciously come to a health facility to get health services, then in the case of ODGJ they will of course be more passive or wait. Therefore, the role of the Government is very crucial in ensuring that every ODGJ can obtain their right to receive proper mental health services.



This should also be a concern, especially for ODGJ who live in remote areas far from mental health facilities. Therefore, collecting data on ODGJ is one of the most fundamental steps in ensuring that each ODGJ's identity is properly recorded, followed by historical data on the mental health services they have received and the progress of the treatment they have received. The community should also take a role in helping the Government to inform them about the existence of ODGJ in their environment in order to jointly ensure that all ODGJ are recorded and their health rights as citizens are protected, especially for ODGJ who live in rural communities or marginalized groups. If it is clear that ODGJ are a marginalized or marginalized group, then it is appropriate to change the model of mental health service assistance to be more pro-active instead of passive, not waiting for ODGJ to come for treatment.

From a human rights perspective, vulnerable communities, also known as minority groups, are at an equal level with other rights-bearing individuals. However, because minority groups are actually members of a subordinate class, special rights are needed to elevate their dignity. Special rights are not privileges, but these rights are given so that minorities are able to maintain their identity, distinctive characteristics and traditions. Special rights are important to achieve equal treatment without discrimination.

Meanwhile, Human Rights National Commission (Komnas HAM) provides a definition of minorities with key words that must be considered, namely lexically, the term minority can be understood numerically, namely as a population that is smaller than a larger population as a whole (at the national level). But minorities can also be seen in terms of influence, namely not being dominant, and receiving detrimental treatment or being in a disadvantaged situation in social and state life (Human Rights National Commission, 2016).

Not much different from minority groups, Indonesia also accepts the existence of vulnerable groups. This is as stated in Act Number 39 of 1999 on Human Rights and Act Number 17 of 2023 on Health. In Article 5 Paragraph (3) of Act Number 39 of 1999 on Human Rights, it is stated that *"Every person who is a vulnerable group of people has the right to receive more treatment and protection with regard to their particularities."* Furthermore, in the explanation of the article, it is stated that what is meant by "vulnerable community groups" include the elderly, children, the poor, pregnant women, and people with disabilities, both physical and mental. The existence of vulnerable groups of people is also reaffirmed in Article 41 Paragraph (2) that; *"Every person with disabilities, elderly people, pregnant women and children have the right to receive special facilities and treatment."* One of the important things to analyze is what special protection should be given to vulnerable groups of people. In the Elucidation to Article 42 Paragraph (2) it is explained that what is meant by "facilities and special treatment" is the provision of services or provision of facilities and means for smooth running, security, health and safety. In the context of fair legal protection for ODGJ in Indonesia, it is mandatory that the provision of mental health services, facilities and infrastructure for ODGJ be provided by the State, in this case represented by the Government or related officials. So, if one of these things is not fulfilled by the State, either intentionally or through negligence, the protection of the security and safety of ODGJ and their families and surrounding communities will also be harmed.

Apart from that, special protection for vulnerable groups of society must also take the form of guarantees of fulfilling their rights to care, education, training and even special assistance so that they can have a life worthy of human dignity. This is as regulated in Article 42 of Act Number 39 of 1999 on Human Rights that *"Every citizen who is elderly, physically disabled and/or mentally disabled has the right to receive special care, education, training and assistance at state expense, to ensure life. worthy of human dignity, increasing self-confidence"*

*and the ability to participate in the life of society, nation and state.*" Unfortunately, this is in stark contrast to the real conditions in society where ODGJ lose their ability to be part of society because they are shackled by the reality where most ODGJ lose their independence either because they are locked up or shackled by health institutions or by their own families. The negative and discriminatory perception that has developed in society makes it difficult for ODGJ to be accepted by the surrounding community as social creatures. In fact, based on the provisions in Article 42 of Act Number 39 of 1999 on Human Rights, the State must strive to increase the self-confidence of vulnerable community groups in order to grow their ability to participate in social life. So, this matter must of course receive serious attention from the Government and related officials. On the other hand, society plays an important role in avoiding stereotypes of ODGJ so that when they have recovered, they can be accepted and given the opportunity to become part of society again.

The debate regarding who is responsible for upholding the struggle, protection and fulfillment of human rights has now become an endless discourse. In relation to this issue, there are two views. The first view is that the state must be responsible for advancing human rights. The state was formed as a forum for the welfare of its people. People need to be given education, especially issues related to human rights. A state that does not facilitate the people through human rights education means that the state has ignored the mandate of the people. The state has the responsibility to provide human rights guarantees. Therefore, the UN Declaration on Human Rights, several covenants, international treaty law, the Medina Charter, and the Cairo Declaration must be placed as international legal norms that regulate how countries in the world guarantee their individual rights, especially vulnerable community groups. Every citizen has human rights, both non-derogable rights (rights which in an emergency situation of war must be protected) and derogable rights (rights which in normal circumstances must be protected) (Online Law, 2022). The implementation of these rights must be guaranteed by the State. If the State is unable to protect the human rights of its citizens, the State concerned will automatically lose the legitimacy of its people. Thus, analysis of human rights violations is always in the area of human rights violations by the State against the people. Human rights violations by the state against the people are called vertical human rights violations. This violation is not only a direct violation of human rights by the State, but also an indirect violation of human rights. Indirect violations occur when the State allows human rights violations to occur and does not fulfill human rights.

This was stated by Sudharman that the Republic of Indonesia, which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, respects and upholds human dignity. Human rights as basic rights that are naturally inherent in humans are universal, need to be protected, respected and maintained, so that respecting, protecting and covering the human rights of vulnerable groups, especially people with disabilities, is the state's obligation (Sudharma, 2017). With the increasing escalation of discrimination against groups of people with disabilities (physical and mental), humanity is becoming aware of the importance of recognizing that they are the same human beings as other humans, equal in rights and freedom in making choices. Therefore, there are special rights for groups of people with disabilities (Fadhli, 2014). Special rights are not privileges, but these rights are given so that people with disabilities are able to maintain their identity, distinctive characteristics and traditions. Special rights such as non-discriminatory treatment are equally important to achieve equal treatment. Therefore, the principles of equality and non-discrimination are very important in Human Rights.

In terms of regulations, the principle of equality and non-discrimination is contained in several instruments, both at international and regional levels (which are intended for a particular region, namely Africa, America (North America, South America and the Caribbean), Asia and Oceania (South Pacific) sub-regional (such as Southeast Asia) and national (limited to the country concerned). In the international context, the provisions for equality of rights and non-discrimination are contained in the UN Charter, Article 1 paragraph (3), where the UN organization and its members have the aim: *"to carry out international cooperation for the purpose of solving international problems in the economic, social, cultural or humanitarian fields, as well as in efforts to promote and encourage respect for human rights and basic freedoms of all mankind without distinction of race, sex, language or religion."* Article 55 letter (c) of the UN Charter mandates that the United Nations promote: *"Respect for human rights throughout the world as well as their realization and basic freedoms for all, without distinction of race, gender, language or religion"* (Yuliartini, 2019).

In the classic document of the Universal Declaration of Human Rights (UDHR), Article 2 and Article 6 emphasize; Article 2 mentions *"Everyone has the right to all the rights and freedoms contained in this declaration without any exceptions, such as differences in race, color, sex, language, religion, political or other opinion, origin or community, property rights, birth, or other status"*. Furthermore, no differentiation is permitted on the basis of the political, legal or international status of the country or region where a person comes from, whether from an independent country, trust territories, colonies or from territories under other sovereign boundaries, Article 6 mentions; *"Everyone is equal before the law and has the right to equal protection of the law without discrimination. All have the right to equal protection against any form of discrimination that is contrary to this declaration and against all incitement to discrimination"*. The principle of non-discrimination is also found in the International Covenant on Economic, Social and Cultural Rights. Article 2 paragraph (2) stated; *"The states parties to this Covenant undertake to guarantee that the rights contained in this Covenant will be applied without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national origin or social, ownership, descent or other status."*

Apart from that, it is also found in the International Covenant Civil and Political Rights (ICCPR) Article 2 paragraph 1 which states that *"Each state party to this covenant undertakes to respect and guarantee the rights recognized in this covenant for all individuals within its territory and in under its jurisdiction, without distinction of any kind, such as race, color, sex, language, religion, political or other views, national or social origin, property rights, birth status or other status."* Meanwhile, Article 26 states that *"All people are equal before the law and have the right, without any discrimination, to the same protection of the law. In this case the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, sex, language, religion, political or other opinion, national or social origin, property objects, birth status or other status"*. Meanwhile, in the context of national law in the State of Indonesia, apart from the ICCPR which has been ratified by Act Number 12 of 2005, the principle of non-discrimination is also contained in several statutory regulations, including the Republic of Indonesia Constitution of 1945, Act Number 39 of 1999 on Human Rights. Humans (Article 3 paragraph (3)), Act Number 23 of 2002 on Child Protection (Article 2 letter a), Act Number 23 of 2004 on the Elimination of Domestic Violence (Article 3 letter c), and Act Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination.

The principle of protection and fulfillment of human rights is recognized for people with mental disabilities in Act Number 39 of 1999 on Human Rights. ODGJ are also human beings,



so human rights for ODGJ must still be protected and their needs met. Based on Act of the Republic of Indonesia Number 39 of 1999 on Human Rights in CHAPTER I, General Provisions article 1, "*Human Rights are a set of rights that are inherent in the essence of human existence as creatures of God Almighty and are His gifts that must be respected, is upheld and protected by the State, law, government and everyone for the sake of honor and protection of human dignity.*" Respect for human rights is a noble thing. The existence of mutual respect and tolerance between fellow creatures of God Almighty can always provide a sense of peace for anyone in this world.

The Post-Amendment 1945 Constitution includes Chapter XA which discusses Human Rights. The provisions in this chapter are a form of protecting the constitutional rights of citizens in general, including citizens with disabilities. The aim is that people with disabilities who are part of Indonesian society have the same position, rights and obligations as other citizens and its implementation is the obligation of the Government and all elements of society. These provisions can be divided into two types, namely special human rights protection for citizens and human rights protection for everyone, which means not only Indonesian citizens. Within these two types of groups there are no other classifications, which means that, whether in terms of protection for citizens or for every person, ODGJ is included in both.

Fulfillment and protection of the rights of ODGJ are all actions and/or activities to guarantee and protect the constitutional rights of ODGJ in accordance with human dignity and avoid acts of violence and discrimination. The objectives of protecting and fulfilling the rights of ODGJ include: increasing the level of welfare, quality and survival and independence of persons with disabilities; (a) increasing the social and economic resilience of persons with disabilities; (b) increase the capacity, awareness and responsibility of the Provincial Government, business world and society in protecting and fulfilling the rights of persons with disabilities in an institutional and sustainable manner; and (c) improve the quality of life and livelihood of persons with disabilities. From the explanation above, the 1945 Constitution firmly protects the constitutional rights of persons with disabilities in the context of "everyone" and as part of "citizens." In addition, it is also possible for persons with disabilities to obtain affirmative action or the right to convenience and special treatment in the context of fulfilling their rights. its constitutionality. These two concepts must be understood and incorporated into the formation of laws and policies as implementation of the provisions in the 1945 Constitution (Rompis, 2016).

The second perspective is that the responsibility for protecting, promoting, respecting and fulfilling human rights lies with the Government. This perspective states that the responsibility for promoting, respecting and protecting human rights is not only imposed on the State, but also on citizens. Thus, States and individuals both have a responsibility to promote, respect and protect human rights. Therefore, human rights violations are actually not only carried out by the State against its people, but also by the people. This violation is referred to as a horizontal human rights violation. Examples of these forms of human rights violations include the shooting of citizens by armed civilians, abuse of workers by employers, robbery, and suicide bomb explosions in public places by terrorists. There are at least three reasons why citizens have a responsibility to uphold and protect human rights for vulnerable groups. These reasons include; 1) A large number of human rights issues not only involve aspects of the government, but also the private sector or groups outside the state, in this case citizens. 2) Human rights rely on normative considerations so that human beings are treated in accordance with their human dignity. 3) Citizens have responsibilities based on democratic principles. Every citizen has an obligation to participate in monitoring government actions. In

a democratic society, something that is the obligation of the government is also the obligation of citizens. The obstacles that occur in efforts to fulfill the human rights of vulnerable community groups, especially in this case ODGJ, are marked by the large number of cases of human rights violations of ODGJ. This shows that the law enforcement system is still weak and the government's political will is weak in implementing human rights norms. The power possessed by the State is often used by the Government as a tool to maintain power. The low level of legal awareness among citizens is also a cause of human rights violations.

Act Number 17 of 2023 on Health emphasizes the position of ODGJ who are part of vulnerable communities as stated in the Human Rights Law. This is as stated in article 28 Paragraph (4) that "*Providing access to primary health services and secondary health services covers vulnerable communities and is inclusive and non-discriminatory.*" Furthermore, in the explanation of the article, it is stated that those included in vulnerable communities include, among others;

- a. individuals who do not have access to adequate Health Services and health insurance;
- b. individuals with low socioeconomic status;
- c. people with comorbidities (chronic diseases);
- d. women, including those who are pregnant and breastfeeding, babies, toddlers, teenagers and the elderly;
- e. individuals with disabilities;
- f. individuals with mental disorders;
- g. individuals who are socially excluded due to religion/belief, race or ethnicity, sexual orientation, gender identity, disease, and citizenship status;
- h. individuals living in disadvantaged, remote, outermost and border areas, including indigenous communities;
- i. individuals living in households without access to clean water and adequate sanitation; or
- j. individuals who live in cramped housing or social institutions with limited private space.

ODGJ as a part of vulnerable society with their particularities must receive more legal treatment and protection. It can be done by formulating criminal provisions that support ODGJ, for example formulating heavier criminal sanction if the victim is ODGJ, as in other criminal acts involving children and women victims. However, the formulation of the criminal article for mental health crimes in Act Number 17 of 2023 on Health still does not defend ODGJ. According to Article 434, the criminal sanction for the crime of shackling, for example, can be punished with a maximum imprisonment of 2 (two) years and 6 (six) months or a maximum fine of IDR 10,000,000.00 (ten million rupiah). Even though the criminal provisions related to the criminal act of shackling also already exist, it is regulated in Article 446 Paragraph (1) of Act Number 1 of 2023 on the Criminal Code that "*Every person who unlawfully deprives a person of their freedom or continues such deprivation, shall be punished with a maximum imprisonment of 7 (seven) years.*" The criminal sanction of the same criminal act has a lighter criminal sanction in a special law. In fact, it is possible for the Health Law to formulate heavier criminal sanction compared to the provisions in the Criminal Code, especially for victims who are ODGJ who belongs to vulnerable groups.

The legal principle "*lex specialis derogate legi generalie*" is the basis of legal norms which means that specific laws override general laws. According to this principle, if there are two types of statutory provisions that are of the same level or position and apply at the same time and conflict with each other, then the judge must apply or use the specific one as the legal basis, and override the general one (Sugiarto, 2013). However, in the case of the criminal act of shackling against ODGJ, the criminal sanction in the special law actually has a lighter

criminal sanction when compared to the provisions in the Criminal Code. Of course, this must be reviewed again to see whether the criminal sanction is in accordance with the basic principles of legal protection for ODGJ as part of a vulnerable society.

## CONCLUSION

The urgency of fair legal protection for ODGJ is related to the status of ODGJ as part of a vulnerable group. ODGJ as part of a vulnerable group are not only objects of mental health services, but also are dignified as legal subjects whose basic rights must be respected and fulfilled. Fair legal protection is also an effort to prove Indonesia's commitment to providing respect and legal protection for the rights of ODGJ as formulated in Act Number 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities.

The government has duties and responsibilities which are manifested in three forms of obligations towards the human rights of ODGJ. First, in carrying out its obligation to respect the human rights of ODGJ, the Government must ensure that there are no actions or policies that prevent access to ODGJ's rights, including rights to health, social rights, political rights, economic rights and others. Second, ODGJ as part of a vulnerable community must be seen as individuals who need legal protection (to protect) and extra attention from the state because of their specificity. So, ODGJ must receive appropriate respect according to their needs and not be seen as second-class citizens or citizens who are considered incompetent and therefore lose their rights. Third, the obligation to fulfill the human rights of ODGJ, especially in terms of fulfilling the basic rights of ODGJ and the right to mental health for ODGJ. Recognition of the existence of vulnerable groups is also regulated in Act Number 39 of 1999 on Human Rights and Act Number 17 of 2023 on Health. Article 5 Paragraph (3) of Act Number 39 of 1999 on Human Rights states that "*Every person who is a part of vulnerable group has the right to receive more treatment and protection with regard to their particularities.*" People with mental disabilities are a vulnerable group. The existence of vulnerable is also reaffirmed in Article 42 of Act Number 39 of 1999 on Human Rights that "*Every citizen who is elderly, physically disabled and/or mentally disabled has the right to receive special care, education, training and assistance at state expense, to guarantee a decent life in accordance with human dignity, increase self-confidence and the ability to participate in the life of society, nation and state.*" Furthermore, in Paragraph (2) that; "*Every person with disabilities, elderly people, pregnant women and children have the right to receive special facilities and treatment.*" As for the Elucidation of Article 42 Paragraph (2), it is explained that what is meant by "facilities and special treatment" is the provision of services, services, or provision of facilities and means for smooth running, security, health and safety. In the context of fair legal protection for ODGJ in Indonesia, it is mandatory that the provision of mental health services, facilities and infrastructure for ODGJ be provided by the State, namely by the Government or related officials. So, if one of these things is not fulfilled by the State, either intentionally or through negligence, the legal protection for ODGJ and their families and surrounding communities will also be harmed.

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