



Analysis of Article 433 of the Civil Code: Dilemma of Persons with Disabilities in Carrying Out Legal Acts

Shenti Agustini*, Agustianto & Febri Jaya

Department of Law, Faculty of Law, Universitas Internasional Batam, Indonesia

Abstract

The provisions of Article 433 of the Civil Code contain phrases that violate the rights of people with disabilities, especially for people with non-permanent mental disabilities. Through this provision, people with permanent mental disabilities are prevented from carrying out legal actions. This research aims to analyze the skills of people with disabilities in carrying out legal actions and analyze the provisions of Article 433 of the Civil Code with the Constitution. The research method used is normative juridical. A juridical and theoretical basis is used to formulate the answer to the problem. The research results show that the provisions of Article 433 have discriminated against people with non-permanent mental disabilities and it has been declared through the Constitutional Court Decision that Article 433 is conditionally unconstitutional. The challenge is that the district court as an institution with the authority to form pardons must be cautious and careful in making decisions/decisions on requests for pardons. Therefore, it is necessary to evaluate the implementation of these institutions on an ongoing basis to ensure that people with disabilities receive protection for their rights as people with disabilities.

Keywords: Persons with Disabilities; Article 433; Legal Acts

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INTRODUCTION

Indonesia is a legal state that recognizes humans as legal subjects supporting rights and obligations. (Win, Dyah, 2020) All citizens have the same position in law and government and are obliged to uphold the law and government without exception (Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia (Muhammad, 2014).

Humans are living creatures created by God, having reason, feelings, and will. In Indonesian positive law, humans are placed as legal subjects. The subject of law is the support between the rights and obligations of people. Humans are legal subjects who, according to biology, are natural phenomena, as creatures created by God Almighty. Recognition of humans as legal subjects from the mother's womb with the condition that they are born alive (regulated in Article 2 of the Civil Code) (Dewi Navisa, 2022).

Based on the 1945 Constitution, Indonesia is a legal state with popular or democratic sovereignty, as well as a democratic state based on the law (Article 1 Paragraph (2) and Paragraph (3)). The 1945 Constitution regulates and guarantees the constitutional rights of citizens. Regulations and guarantees for the recognition of human rights and citizens' rights, among others, are stated in Article 27, Article 28, and Article 29 of the 1945 Constitution. In quantity, Article 28 of the 1945 Constitution (namely Article 28A - Article 28J) has been very accommodating in recognizing and guaranteeing the constitutional rights of citizens. Of course, the guarantee of human rights applies to all citizens without exception and distinction between citizens. The constitutional rights of citizens are guaranteed by the 1945 Constitution which is then explained further in the Constitutional Court Law. In the Elucidation to Article 51 paragraph (1) of the Constitutional Court Law, it is explained that what is meant by constitutional rights are "... the rights regulated in the 1945 Constitution of the Republic of Indonesia". Because the 1945 Constitution guarantees and recognizes the existence of these rights, a mechanism for protecting these constitutional rights is urgently needed, namely through constitutional complaints (Subiyanto, 2016)

This constitutional right is a set of rights that all citizens must have without exception, including people with disabilities. Based on Law Number 8 of 2016 concerning Persons with Disabilities, Persons with Disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long period who in interacting with the environment may experience obstacles and difficulties in participating fully and effectively. with other citizens based on equal rights. Types of persons with disabilities consist of persons with disabilities with long-term physical, intellectual, mental, and/or sensory limitations who, in interacting with the environment, may experience obstacles and difficulties in participating fully and effectively with other citizens based on equal rights. There are 4 (four) types of persons with disabilities including: a. people with physical disabilities; b. people with intellectual disabilities; c. people with mental disabilities; and/or d. people with sensory disabilities (Marwandianto, 2018).

Since the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by the Indonesian Government through Law Number 19 of 2011, the enthusiasm to eliminate discriminatory practices that are often experienced by people with disabilities in Indonesia has increased. The CRPD is the beginning and bright spot in advancing and improving the protection of the rights of persons with disabilities because the CRPD emphasizes general rights and provides specifications for persons with disabilities. Apart from that, the CRPD also regulates the mandates and obligations of state parties in fulfilling the rights of persons with disabilities (Nasution & Marwandianto, 2019).

Based on this, it can be seen that regulations at the international and national levels have protected a set of rights that persons with disabilities have. However, various phenomena of

violations of the rights of persons with disabilities are still found. One example is related to the regulatory phenomenon in Article 433 of the Civil Law Law. Article 433 of the Civil Code states, "Every adult who is always stupid, has brain disease or has dark eyes must be placed under guardianship, even if he is sometimes able to use his mind." Article 433 of the Civil Code relates to the skills of a person with a disability in carrying out legal actions. Legal skills are one of the essential things in carrying out various kinds of legal actions (Khoiriah, 2019). Skills are abilities, abilities, cleverness, or proficiency in doing something (Mangunsong, 2020). Legal skills are very important in all fields of law because every legal action requires legal skills (Afni et al., 2023).

In Article 433, the words stupid, crazy, and dark-eyed, have been identified and addressed to Persons with Mental Disabilities (PDM). The determination of pardon for PDM based on Article 433 of the Civil Code is a form of discrimination against the rights of people with mental disabilities. Article 433 of the Civil Code eliminates the right to recognition, guarantees, protection, and legal certainty as well as equal treatment before the law which are human rights that cannot be reduced under any circumstances for people with mental disabilities. Komnas HAM views that Article 433 is no longer by current developments and that mental disabilities have the right to autonomy to make their own decisions (Perhimpunan Jiwa Sehat Indonesia, 2023).

Based on the explanation of the problems in the background section, it can be seen that people with disabilities are part of citizens who must receive protection and guarantees for their rights as humans and citizens. The provisions in Article 433 of the Civil Code provide a dilemma in providing the promotion and protection of the rights of persons with disabilities. Therefore, this research aims to analyze the skills of people with disabilities in carrying out legal actions. Then analyze the provisions of Article 433 of the Civil Code whether they are by the constitution, that is, they provide guarantees and protection of rights for citizens in general and people with disabilities in particular, or conversely, whether the provisions of Article 433 of the Civil Code are unconstitutional.

RESEARCH METHODS

The research method used is normative juridical. The research approach used is through a literature approach and statutory regulations. (David, 2021) The type of data used is sourced from secondary data consisting of primary legal materials, namely the Civil Code, Law Number 8 of 2016 concerning Persons with Disabilities, and the Convention on the Rights of Persons with Disabilities. Secondary legal materials come from books and articles that discuss people with disabilities, empowered people, and the perspective of civil law books. In answering the formulation of this research problem, a juridical basis was used, namely the Civil Code, Law Number 8 of 2016 concerning Persons with Disabilities and the Convention on the Rights of Persons with Disabilities, as well as using a theoretical basis, namely the Legal Ideals Theory by Gustav.

RESULT AND DISCUSSION

The Phenomenon of Persons with Disabilities in Legal Actions

One case that has attracted the attention of disability activists is the case of what happened to Ripin. He is a person with mental/psychosocial disabilities. Ripin filed a lawsuit against his brother-in-law who had forgiven him and had taken his property without his permission or knowledge. The lawsuit was issued because his pardon was carried out unilaterally. While under pardon, Ripin was put in a mental hospital by force and experienced various forms of violence and deprivation of basic rights such as handcuffs, no food and no opportunity to defecate during the trip, forced to take medication, and not given clear information regarding the reason he had to be hospitalized.

The Ripin case has been processed in court with case Number 75/PDT/2018/PT JMB, where in principle the guardians are Yulwati (siblings) and Gunawan Chandra (Yulwati's husband) forcibly put Ripin in hospital Padang Soul. Then based on Determination Number: 9/PDT.P/2016/PN.Spn which states Ripin is under amnesty and declared Yulwati and Gunawan Chandra as guardians. Armed with the court's decision, Yulwati and Gunawan Chandra took Ripin's money from Bank BRI amounting to 532,766,943 (five hundred and thirty-two million, seven hundred and sixty-six, nine hundred and forty-three rupiah). Ripin's case illustrates a true incident that shows how easy a person can be people with mental disabilities apply for forgiveness from their relatives and/or by people closest to them, and the process of taking over property is so easy for people with mental disabilities by their guardians (Syafi'ie, 2024).

The study conducted by Albert and several other researchers from the Community Legal Aid Institute mentioned that 49 pardon decisions were issued to courts throughout Indonesia in the 2015-2018 range, there were 14 cases related to the sale and purchase of assets, 11 cases related to inheritance distribution, 10 cases related to taking wages, 9 cases carried out the desired legal action so that the applicant can take any action to represent his application in everyday life, and 5 cases for the benefit of others (Wirya & Muzaki, 2021).

Article 433 of the Civil Code: Dilemma of Persons with Disabilities in Carrying Out Legal Actions

According to Article 1330 of the Civil Code, those who have been declared incompetent by law to carry out legal acts are people who are minors (*minderjarigen*) and people who are placed under guardianship (*die onder curatele gesteld zijn*). This provision can be interpreted using the *argumentum a contrario* interpretation method where a person who is said to be legally competent is someone who is an adult and is not under guardianship. Furthermore, the law also regulates that the interests of people who are incompetent or unable to carry out legal actions must be taken care of by the party representing them. This is because according to the law, they are said to be in a guardianship or guardianship institution according to the cause of their incompetence).

Provisions regarding pardon are regulated in Article 433 of the Civil Code, which states: "Every adult, who is always in a state of imbecility, madness or dark eyes, must be placed under pardon, even if he is sometimes capable of using his mind. An adult may also be placed under custodial care for extravagance." According to Prof. Wahyono Dharmabrata, "Forgiveness is an institution that regulates adults who, for some reason, need protection, for example, because their mental health or mental health is disturbed, they are wasteful people, who cannot take care of their interests. Such people are deemed unable to act independently, and must be placed under protection or supervision, which is called Pardon or Curatele." (Darmabrata, 2004) .

Based on the opinion of P.N.H Simanjuntak, "pardon is a legal effort to place someone who is an adult to be the same as someone who is not yet an adult. The person placed under guardianship is called *Curandus*, the guardian is called *Curator* and the guardian is called *Curatele*" (Simanjuntak, 2009). There are not many requirements to become a guardian and it is not coercive, it only refers to one type of family member, in the sense that not only parents can be guardians, but siblings, both brothers and sisters, of prospective guardians can also become guardians. . It's just that several things must be fulfilled to obtain a position as someone's guardian. Moreover, this was validated in court (Kurnia Dafa & Adlhyati, 2023).

According to Article 434 of the Civil Code: "Every blood relative has the right to ask for forgiveness from a blood relative, based on his/her condition of being stupid, having brain disease or dark eyes. Based on extravagance, forgiveness can only be requested by blood relatives in a straight line and by blood relatives in a deviated line up to the fourth degree. In one case or another,

a husband or wife may ask for forgiveness from his wife or husband. Whoever, because of the weakness of his powers of reason, feels that he is unable to look after his interests as well as possible, is permitted to ask for forgiveness for himself."

Then, based on the Civil Code, Article 460 explains that: "Forgiveness ends when the causes that gave rise to it have disappeared; Meanwhile, release from Pardon will not be granted except by observing the procedures determined by law to obtain Pardon, and therefore a person who is placed under Pardon may not enjoy his rights again before the decision regarding his release has absolute force." Based on these provisions, one of the people who must be under pardon is someone who is crazy or mentally ill. An adult or in maturity is capable or able (be warm, capable) to carry out all legal acts because they meet the age requirements for carrying out legal acts. However, someone who is an adult while in a state of insanity or mental illness based on Article 433 of the Civil Code must be under guardianship (Windajani, 2008). There are groups of people who cannot carry out their human rights and obligations independently. This group consists of people who are not yet adults and those who are placed under guardianship (curated), one of whom is a person with a disability. People with disabilities are often known as "differently abled people" or are now known as "disabled people". In Indonesia, other terminology used to refer to "disabled" includes "people with disabilities", "people with disabilities", or "abnormal people". This term is not "value-free", meaning that there is a certain conception of values that have been imposed by a certain group of people who "label" and dominate other groups of society. This terminology has a direct influence on the treatment of society and the government towards the existence of "disabled people" (Harahap & Bustanuddin, 2015).

Persons with Disabilities in Law Number 8 of 2016 Persons with Disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long period who in interacting with the environment may experience obstacles and difficulties in participating fully and effectively with other citizens based on equal rights. The UN Convention on the Rights of Persons with Disabilities (CRPD) reaffirms the right of persons with disabilities to equal treatment before the law. This includes the right to be recognized everywhere as a person before the law (Rizka & Fadhilah, 2022)

Then, if it is linked to the provisions in Article 433, it indirectly recognizes that mental disorders can be episodic, namely by the inclusion of the phrase "sometimes able to use one's mind". Then the provisions in Article 433 of the Civil Code generalize between episodic conditions and people who are always in a state of stupidity, madness, dark eyes, and/or extravagance. Not all people with mental disabilities have permanent psychological disorders. In this case, people with mental disabilities with physical disorders that are not permanent should be able to take legal action. So people with mental disabilities who are permanent and those who are not permanent cannot be compared. People with mental disabilities are people with disabilities who have disorders in their thinking, emotional, and behavioral functions, including psychosocial ones, for example, schizophrenia, bipolar, depression, anxiety, and personality disorders. Then there are people with developmental disabilities that affect social interaction abilities, for example, autism and hyperactivity (Dinas Kesehatan Daerah Istimewa Yogyakarta, 2018).

Article 433 of the Civil Code is a discriminatory provision because it specifically aims to distinguish or limit adults who are always in a state of stupidity, madness, or dark eyes even though the person concerned is sometimes capable of using his mind and is a person with a mental disability to be unable to take action. civil law which has the effect of limiting or eliminating the recognition, enjoyment, or implementation on any other basis of all human rights and fundamental freedoms in the political, social economic, civil cultural, or other fields.

For example, Rhino Ariefiansyah said that in 2006 he experienced psychotic schizophrenia with symptoms of hallucinations and delusions that were not permanent, especially experiencing a condition of fatigue. He received treatment at Marzoeki Mahdi Bogor Hospital and then underwent treatment or took medication for five years plus one year with the latest technology medication so that these symptoms could be managed well. Even though he is mentally disabled with a psychotic diagnosis of schizophrenia, he managed to complete his postgraduate education. Since 2016 he has worked as a teacher and researcher in the field of anthropology at UI. As a person with a mental disability, he knows and understands himself and needs positive support where he works and has activities. This proves that people with mental disabilities who are not permanent should be able to carry out legal actions without being pardoned.

Then there was also a case where a person with a non-permanent mental disability lost custody of his child because he suffered from bipolar disorder, which is a type of non-permanent mental disability. When caring for children, people with mental disabilities also have to lose custody of their children, as experienced by one soap opera artist, Marshanda, who had to be separated from her only child. During the divorce and child custody hearing, the Central Jakarta Religious Court Judge decided that her child should be raised by her husband because the mother was deemed unable to take care of her child. After all, she was suffering from bipolar disorder.

Apart from that, based on previous research conducted by Angie Aurelia Londa, Toar Neman Palilingan, and Syamsia Midu with the title "Judicial Review of the Political Rights of People with Mental Disabilities in General Elections in North Sulawesi", shows that people with mental disabilities who are not permanent also still have rights. his politics are the same as other humans. Every citizen has the right to be elected and to vote in elections by equal rights through voting which is carried out directly, publicly, freely, secretly, honestly, and fairly by the provisions of statutory regulations. People with mental disabilities are people whose thinking, emotional, and behavioral functions are disturbed, and based on information from physical experts, mental disabilities are episodic or non-permanent conditions. This is in line with Article 27 of the 1945 Constitution of the Republic of Indonesia, Article 23 paragraph (1), and Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which states that everyone is free to choose and have beliefs. his politics (Londa et al., 2023).

In implementing the political rights of people with non-permanent mental disabilities in Sulawesi, they also face various problems. Based on the results of this research, it shows that there are many facts in the field that there is still a lot of discrimination and bullying against people with mental disabilities in North Sulawesi. However, the North Sulawesi KPU has facilitated meeting every need of people with disabilities. Because the KPU has a very important role in efforts for the political rights of people with disabilities, especially mental disabilities.

Based on several of these phenomena, it can be seen that people with non-permanent mental disabilities are equated with people with permanent mental disabilities by the provisions of the phrase in Article 433 of the Civil Code. The situation of people with non-permanent mental disabilities is very different and they are still considered capable of carrying out legal actions on behalf of themselves in certain circumstances because the mental disorders they experience are not permanent and can be cured.

Provisions of Article 433: Forms of Discrimination Against the Rights of Persons with Disabilities

The provisions of Article 433 contain many aspects of discrimination against people with non-permanent mental disabilities. Many forms of discrimination that occur, namely in this provision, violate the Constitution. Article 433 of the Civil Code is considered to conflict with

Article 28B paragraph (1) of the 1945 Constitution relating to recognition and equality before the law and the principle of fair legal certainty. The reason is that Article 433 of the Civil Code makes the condition of disability, in this case dumbness, and dark eyes, a reason to deny legal capacity for mental disability. So that the person concerned does not have the right to be recognized and treated equally before the law.

Equality before the law is a general and basic principle in the protection of human rights and is indispensable for the implementation of other human rights. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights specifically guarantee the right to equality before the law. Article 12 of the Convention on the Rights of Persons with Disabilities further explains the content of these civil rights and focuses on areas where persons with disabilities have traditionally been denied rights.

Recognition and the right to equality before the law are universal principles inherent in all people based on their humanity and must be upheld for people with disabilities on an equal basis with other people. Regarding equality of recognition before the law, Article 12 of the Convention on Persons with Disabilities requires each party state to:

- a) reaffirms that persons with disabilities have the right to recognition as individuals before the law wherever they are;
- b) recognize that persons with disabilities are legal subjects who are equal to others in all aspects of life;
- c) adopt appropriate policies to provide access to persons with disabilities in the form of support that may be required by them in exercising their authority as legal subjects;
- d) ensure that all policies concerning the exercise of authority as a legal subject contain appropriate and effective safeguards to prevent abuse based on international human rights law;
- e) These safeguards must ensure that policies regarding the exercise of authority as a legal subject respect the rights, wishes, and choices of the person with disabilities concerned, are free from conflicts of interest and undue influence, are proportional and adapted to the circumstances of the person with disabilities concerned.

Article 12 paragraph (1) of the Convention on the Rights of Persons with Disabilities reaffirms that persons with disabilities must be recognized as individuals before the law. This provision guarantees that every human being is respected as a person who has a legal personality, which is a prerequisite for recognizing a person's legal capacity. Article 12 of the Convention on the Rights of Persons with Disabilities number 13 states that legal capacity and mental capacity are different concepts. Legal capacity is the ability to hold rights and obligations (legal standing) and carry out these rights and obligations (legal agency). This is key to accessing meaningful participation in society. Mental capacity refers to a person's decision-making skills, which naturally vary from one person to another and may differ for a particular person depending on many factors, including environmental and social factors. Legal instruments such as the Universal Declaration of Human Rights (Article 6), the International Covenant on Civil and Political Rights (Article 16), and the Convention on the Elimination of All Forms of Discrimination Against Women (Article 15) do not establish a distinction between mental and legal capacity. However, Article 12 of the Convention on the Rights of Persons with Disabilities, explains that "unsound mind and other discriminatory labels are not valid grounds for denial of capacity".

Then the provisions of Article 433 of the Civil Code, still combine mental capacity and legal capacity, so that every adult who is always in a state of stupidity, madness, or dark eyes, even though he is sometimes able to use his mind, is considered to not have the capacity to make decisions and must be in under pardon.

In addition, Article 433 of the Civil Code makes the condition of disability (idiot, crazy, dark-eyed, or extravagant) a reason to deny legal capacity to people with mental disabilities, so that the person concerned does not have the right to be recognized and treated equally before the law.

Then Article 433 of the Civil Code has multiple interpretations and is contradictory because it contains two different phrases, namely the phrase "Every adult, who is always in a state of stupidity, madness or dark eyes, must be placed under guardianship, even if he is sometimes able to use his mind, and the phrase "an adult may also be placed under guardianship for extravagance."

Then Article 433 of the Civil Code in one phrase is mandatory and in another phrase is permissive, where both phrases have different legal consequences. Article 433 of the Civil Code recognizes that mental disorders can be episodic, namely by including the phrase "sometimes able to use one's mind". However, Article 433 of the Civil Code generalizes between episodic conditions and people who are always in a state of stupidity, madness, dark eyes, and/or extravagance. Not all people with mental disabilities have permanent psychological disorders. For example, schizophrenia is a mental problem that is episodic, not permanent. This episodic nature means that people with mental disabilities are not always in a state called being unable to think or act rationally.

Based on this, the provisions of Article 433 of the Civil Code have been subjected to material review at the Constitutional Court and based on Decision Number 93/PUU-XX/2022. Declare that the content of Article 433 of the Civil Code (Staatsblad Number 23 of 1847) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as the words "dumb", "crazy", "dark eyes" and/or "wasteful" is interpreted as a person with a mental disability. The Constitutional Court's decision states that the provisions of Article 433 of the Civil Code violate the Constitution, namely as follows:

- a) Article 433 of the Civil Code eliminates the rights to recognition, guarantees, protection, and legal certainty as well as equal treatment before the law which are human rights that cannot be reduced under any circumstances for people with mental disabilities as regulated in Article 28D paragraph (1) in conjunction with Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia;
- b) Article 433 of the Civil Code is discriminatory and violates the guarantee that every person is free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment as regulated in Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia;
- c) Article 433 of the Civil Code eliminates the guarantee of personal protection, honor, dignity, and property under one's control, doing or not doing something that constitutes a human right as regulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

In its ruling, the Constitutional Court stated that the words "dumb, brain diseased or dark eyes" and the words "must" in Article 433 of the Civil Code are contrary to the 1945 Constitution and have no binding legal force as long as the words "dumb, brain diseased or dark eyes" are not interpreted as "are part of from people with mental disabilities and/or intellectual disabilities", and as long as the word "must" is not interpreted as "can".

Thus, the full provisions of Article 433 of the Civil Code read "Every adult, who is always in a state of imbecility, brain disease or dark eyes, is part of a person with mental disabilities and/or intellectual disabilities, can be placed under guardianship, even if he sometimes -sometimes able to use his mind. An adult may also be placed under pardon for his extravagance." The Court thinks that Article 433 of the Civil Code must be reinterpreted by aligning it with the spirit of Article 32 of Law No. 8 of 2016 concerning Persons with Disabilities. Such reinterpretation aims to ensure the realization of the effects or impacts of legal protection efforts for people with mental

disabilities and/or intellectual disabilities while maintaining the existing institutions of protection in Article 433 of the Civil Code.

If related to the Theory of Legal Ideals, Gustav suggests that there are 3 (three) basic values of law which are then known as legal ideals. These three values are certainty, justice, and benefit. Gustav Radbruch also stated that there are difficulties in realizing these three basic legal values simultaneously. If it is said that law aims to simultaneously realize justice, benefit and legal certainty, is that possible to achieve? In reality, one goal and another often conflict. For example, a case where the judge wants the decision to be fair according to his perception, but the results are often detrimental to the benefit of the wider community, and vice versa. So Radbruch teaches, using the principle of priority where the priority always falls on justice, then expediency, and finally legal certainty (Vallen Noya & Walakutty, 2022).

If we relate the Constitutional Court's decision on the provisions of Article 433 to the Theory of Legal Ideals, then the Constitutional Court's decision has provided certainty by stating that Article 433 is unconstitutional and has changed the phrase in Article 433. However, in terms of achieving justice and legal benefits specifically for people with disabilities, it is certainly not that easy. This is because even though the Court declares the norms of Article 433 of the Civil Code to be conditionally unconstitutional, and this meaning is not as requested by the petitioners in their petition, the Court thinks that the petition has legal grounds in part.

Thus, the change in the meaning of Article 433 of the Civil Code means that the district court, in adjudicating an application for a pardon order, has a wider choice when faced with the legal fact of a person's mental disability and/or intellectual disability. The district court no longer has to determine that the person in question is placed under guardianship, the district court can decide on other mechanisms to assist someone with a mental disability and/or intellectual disability, especially one that is not permanent, for example determining assistance for the person concerned. However, in this case, a new problem has emerged, namely the removal or abolition of the institution of guardianship from Article 433 of the Civil Code which can be the cause of reduced legal protection for people or legal subjects who experience conditions of "dumbness", "brain disease" and "dark eyes" which are part of from people with mental disabilities and/or intellectual disabilities.

Loose/easy implementation of forgiveness without clear guidelines has the potential to increase the burden on people with mental disabilities and/or intellectual disabilities. For this reason, the district court as an institution with the authority to determine pardon must be very careful and careful in making decisions/decisions on requests for pardon. Therefore, achieving the legal ideals of justice and benefit is still a challenge in terms of providing protection and guaranteeing the rights of persons with disabilities in carrying out legal actions.

CONCLUSION

Article 433 of the Civil Code has been declared unconstitutional based on Constitutional Court Decision No. 93/PUU-XX/2022. Therefore, people with permanent mental disabilities can still take legal action. Constitutional Court Decision Number 93/PUU-XX/2022 which has been ratified provides changes to forgiveness. Forgiveness gives the freedom to choose whether to be forgiven or not for someone with a mental disorder and provides mandatory forgiveness to someone with mental disorders which is permanent. The position of mentally ill people after the Constitutional Court decision has greater protection for the rights of people with disabilities in carrying out legal actions. This is certainly a legal advancement in providing human rights protection for people with mental disabilities. However, the Constitutional Court determined it to be conditionally unconstitutional. The challenge is that the district court, as the institution that has

the authority to determine pardon, must be really careful and careful in giving a decision/determination on a request for pardon. Therefore, it is necessary to evaluate the implementation of such care institutions on an ongoing basis to ensure that people with disabilities receive protection for their rights as people with disabilities.

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