

Comparison Of Legal Protections For The Disabled In Air Transport Under Constitution No. 1, 2009 On Aviation And The Montreal Convention, 1999

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Abstract: Nowadays, a lot of people using air transportation services, including people with disabilities. Government commit to give special treatment to people with disabilities, to provide them protection through the regulations that should have implement and obeyed by government, citizen, and airline companies. That regulations aiming to ensure equal rights and freedom of people with disabilities. Has the legal protection for people with disabilities been regulated in Constitution No. 1,2009 and the Montreal Convention, 1999? How are the cases of people with disabilities resolved due to Ridwan Sumantri and Dwi Ariyani? Those are the question of this study. The purpose of this paper is to describe the role of national and international regulations in providing legal protection for people with disabilities. The study is a normative study with secondary data and supported by primary data and analyzed descriptively through a qualitative approach. Chapter 134 of Constitution No. 1, 2009 concerning Aviation is regulating people with disabilities, but the Montreal Convention of 1999 does not. Different judges applied the same legal basis for the two cases as the basis of the verdict, such as Constitution Number 1, 2009, whereas the implementation is different. The Ridwan Sumantri case applied Constitution Number 1, 2009 concerning Aviation, because the legal basis of the transportation agreement refers to chapter 134 of Constitution No. 1, 2009 regulates Disability. Based on that legal basis, the airline Lion Air responsible for paying fine along with apologies. But in the case of Dwi Ariyani, the airline didn't carry the verdicts, even though Dwi submitted a warning to the Etihad airline through ICAO (International Civil Aviation Organization) because the Etihad airline is subject to the Montreal 1999 international convention regulations which does not regulate disability.

Keywords: school-based management, school achievement, special-needs school, principal, Indonesia.

1 INTRODUCTION

The study of this paper was motivated by various incidents of discrimination against people with disabilities, including 2 (two) cases that were experienced by people with disabilities. First, the case of Ridwan Sumantri with the national airline, Lion Air. The incident occurred on 11 April 2011, Ridwan as a social activist for people with disabilities was flying from Jakarta to Denpasar. Ridwan was not given special services while on the plane and required to sign a statement letter containing that the airline will not be responsible for what happened during the flight and if it harmed other passengers. The point was that Ridwan must be responsible for everything that will happen during the flight, if not approved it Ridwan prohibited to follow the flight. Over the treatment of Lion Air, Ridwan filed an accusation to the central Jakarta District Court. The second case was experienced by Dwi Ariyani, a 36-year-old disabled person departed from Solo to Jakarta and would continue her flight to Geneva used international flights. Dwi departed on April 3, 2016 to attend the Convention on the Disability Rights at the United Nations office in Geneva and experienced acts of discrimination. The incident occurred 20 minutes before the plane took off by a flight attendant who gave several questions that cornered her, such as: the capability of Dwi to evacuate herself if something unexpected happened in the flight, besides the airport operation officer also asked her capability to walk. Dwi replied that she could walk when held. However, heard the answer, the officer asked Dwi to get off the plane because of she was flying without having a companion and could also endanger the flight because she could not evacuate herself if something unexpected happened, and based on the unacceptable treatment, Dwi filed an accusation to Etihad Airlines, through the South Jakarta District Court.² The Right in human rights has the first position or degree in community life because the existence of human rights has been possessed, carried, and inherent in the individual since their birth, at the same time the obligation of other human arises to

respect. 3 When the Universal Declaration of Human Rights were declared in 1948, have the consequences for each member country of the United Nations to recognize dan respect the rights of every person in order to prevent arbitrary actions and state policies towards their citizens and their consequences. The individual is the party that holds human rights, and the position of the state is the holder of obligations to human rights who is obliged to protect, guarantee and fulfill.⁴ Indonesia applied these human rights in the 1945 Constitution in Chapter XA Chapter 28A-28J concerning Human Rights that every person is free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment. In addition, there are also other rules of Constitution No. 39, 1999 concerning Human Rights, which stated: "everyone has the right to the protection of human rights and basic human freedoms without discrimination". Constitution No. 8, 2016 concerning Disabled People in Chapter 2 states: "the implementation and fulfillment of the rights of people with disabilities is based on respect for dignity, individual autonomy, without discrimination, full participation, human diversity and humanity, equality of opportunity, equality, accessibility, capacity that continues to develop and child identity, inclusiveness, and special treatment for more protection". So it is very clear that discrimination is an act that is prohibited by the state. The protection of the state can be seen in Chapter 29 paragraph (1) of Constitution Number 25, 2009 concerning Public Services, which states that: "The Organizer is obliged to provide services with special treatment to certain members of the community in accordance with the constitutions and regulations". Based on the above background, the author interests to do some research on the problem, with the following title: Comparison of legal protections for the disabled in air transport under Constitution No. 1, 2009 on Aviation and The Montreal Convention, 1999.

2. METHODOLOGY

This research used a qualitative case study design with descriptive-qualitative approach that endeavors to know and describe the reality of the field that conducted on independent or single variables, i.e. without making comparisons or connecting with other variables and only analyze behaviors and events in the site of research without an intervention (natural setting) and also case study method is widely used in the investigations of school leadership [7, 8]. In this research we selected the SLB Tenggarong as the research object. In this research, we also used qualitative methods as research procedures that produce descriptive data in the form of written words and people and observable behavior about principals' work plan and its implementation in the SLB Tenggarong. This approach is directed at the background and the individual holistically (intact). So that in qualitative research, the data taken is in the form of written or oral words and observed behavior of the object of research through observation (direct and indirect) and interviews. Data collected must be able to describe or describe the object under study in accordance with the actual situation. The data analysis technique used in this study is descriptive data analysis, meaning that the data obtained through research on the implementation of school-based management in improving the achievement of the SLB Tenggarong is reported as it is and then analyzed descriptively to get an overview of the facts.

3. RESULT AND DISCUSSION

A. The Principal Work Plan Initiation.

The SLB Tenggarong is one of the state special-needs school that be part of pilot project of school-based management that actively arranging school program plans jointly between school principals, teachers, and school committees as well as community leaders. Planning activities in school management in SLB Tenggarong, Kutai Kartanegara Regency, i.e.: (1) socialization of work plan that carried out by the principal, teachers and school committees to the community through meetings that can foster the community's participation in advancing schools; (2) meetings held by school principals with teacher boards; (3) meetings held by school administrators; and (4) joint meetings between school principals, teachers and school committees and community leaders.

B. Implementation of the Principal Work Plan.

The findings of this research are that the implementation of the principal's work plan is carried out thoroughly, the short-term programs carried out include general fields, i.e.: (1) academic, and non-academic fields; (2) management organization areas including organization, administration, and school management; (3) teaching-learning process that include curriculum, teaching and learning activities, and evaluation of teaching and learning activities; (4) the field of education personnel including teachers, and educational staff; (5) the field of school environment including environmental hygiene, school order, security, and health; (6) the field of educational facilities; (7) the field of student affairs; and (8) the field of cooperation includes cooperation with school decision-making authority [12]. School-based management is a new paradigm of education management, which gives broad autonomy to schools, and community involvement within the framework of national education policy. Autonomy is given so that schools are free to manage resources, sources of funds, learning

resources and allocate them according to priority needs, and are more responsive to local needs. The evaluation focuses on academic programs rather than the effectiveness and efficiency of learning and teacher performance. The evaluation and monitoring process conducted by the principal based-on constructivist viewpoint that supports all the stakeholders by the constructive interaction among the principal, teachers, and educational staffs [13, 14].

D. Supports and Inhabitants Factors of Principal Leadership.

Based on the observation, interview, and review of documentation about supports and inhabitants' factors to the implementation of school-based management in the SLB Tenggarong trying to give the best, it remains based on the school's vision and mission. A prominent supporting factor in the leadership of the principal in the SLB Tenggarong is the teacher support even though the teacher is not a civil servants or temporary teacher (wiyata bhakti grade), teacher support is inseparable from the role of the principal who has the ability to form a teamwork with teachers in order to achieve the goals according to the school's vision and mission. These supporting factors are in line with the characteristics of school-based management, i.e.: unity and transparent teamwork [10]. In

4. CONCLUSION

Chapter 134 Constitution No. 1, 2009 about aviation regulates disability, but the Montreal, 1999 convention don't. Different judges apply the same legal basis for the two cases as the basis of the decision, namely Constitution Number 1, 2009, in fact the implementation is different. The case of Ridwan Sumantri applies Constitution No. 1, 2009 concerning aviation, because the legal basis of the carriage agreement refers to the constitution No. 1 of 2009 which in chapter 134 regulates the disability and the Lion Air has been responsible to pay the losses and be accompanied by an apology. However in the case of Dwi Aryani the airline did not execute the verdict, although Dwi submitted a warning against the Etihad airline through ICAO (International Civil Aviation Organization) Since Etihad's airline is subject to the International Convention of Montreal 1999 regulations which does not regulate disability.

5. REFERENCES

- [1] and J. H. M. G. Vernez, R. Karam, "Implementation of School-Based Management in Indonesia.," RAND Corp., 2012.
- [2] W. Hutabarat, "Implementation of School Based Management in Indonesia (Affecting Work Motivation, Job-Satisfaction, and Teacher Job-Performance)," Int. J. Sci. Basic Appl. Res, 2015.
- [3] and P. P. P. Sermisirikarnjana, K. Kiddee, "An integrated science process skills needs assessment analysis for Thai vocational students and teachers," Asia-Pacific Forum Sci. Learn. Teach, 2017.
- [4] and W. D. J. Bantjes, L. Swartz, L. Conchar, "When they call me cripple: a group of South African adolescents with cerebral palsy attending a special needs school talk about being disabled," Disabil. Soc, 2015.
- [5] and E. S. L. E. R. Barnett, C. R. Yackley, "Developing, implementing, and evaluating a trauma-informed care program within a youth residential treatment center and special needs school," Resid. Treat. Child. Youth, 2018.

- [6] I. Hardy, "Teachers' professional development in special needs settings: creating 'kid-cool' schools in challenging times," *Int. J. Incl. Educ.*, 2012.
- [7] B. H. Hayadi, A. Bastian, K. Rukun, N. Jalinus, Y. Lizar, and A. Guci, "Expert System in the Application of Learning Models with Forward Chaining Method," vol. 7, pp. 845–848, 2018.
- [8] J. H. McMillan, "Educational research: Fundamentals for the consumer," Boston, MA, 2012.
- [9] B. H. Hayadi, R. E. Wulansari, I. Mouludi, O. Candra, and R. Saputra, "Design of expert system to determine a major in higher Education using forward chaining method," vol. 7, pp. 127–130, 2018.
- [10] and J. P. V. C. Tam, J. W. W. Chan, S. C. Li, "Developing and managing school human capital for information and communication technology integration: a case study of a school-based e-learning project in Hong Kong," *Int. J. Leadersh. Educ.*, 2018.
- [11] P. K. and B. Y. Li, "Empowerment or impediment? School governance in the school-based management era in Hong Kong," *Asia Pacific J. Educ.*, 2015.
- [12] R. Winter, "Academic manager or managed academic? Academic identity schisms in higher education," *J. High. Educ. Policy Manag.*, 2009.