



Faculty of Law



Mental health patients and Danish Health Law – Stigma and Discrimination

A PhD project

Annika Frida Petersen

PhD Scholar, LL.M.

University of Copenhagen

Faculty of Law

Centre for Legal Studies in Welfare and Market (WELMA)

Denmark

Mail: Annika.Frida.Petersen@jur.ku.dk

Phone: +45 35 33 47 75



The project

- The project researches the phenomena of structural discrimination and stigmatization of people with mental illnesses from a legal perspective and within a Scandinavian Health Law context.
- Moves across different legal disciplines: Mental health law, human rights law, non-discrimination and equality rights.



- Aim and purpose:
 - To shed light on the nature and extent of structural discrimination and stigmatization of psychiatric patients in a Health Law context.
 - To discuss and develop the concept and meaning of stigma in a legal context.



Is this relevant research?

- National research reveals that a significant percentage of people with mental disorders have experienced being discriminated against or have received negative differential treatment when in contact with the health system. (Source: Rasmussen (2015) "Oplevet diskrimination og stigmatisering blandt mennesker med psykisk sygdom" (in english: "Perceived discrimination and stigmatization of people with mental illness"). Initiated and financed by the state-funded "One of us-campaign". Uses the Discrimination and Stigma Scale (DISC-12) with 1.269 respondents.)



- I will examine the contribution of the legal framework to the discrimination and stigmatization of persons with mental illnesses by shedding light on these concepts on a structural level as conceptualized through legislation and actual legal practices within the mental health care system.

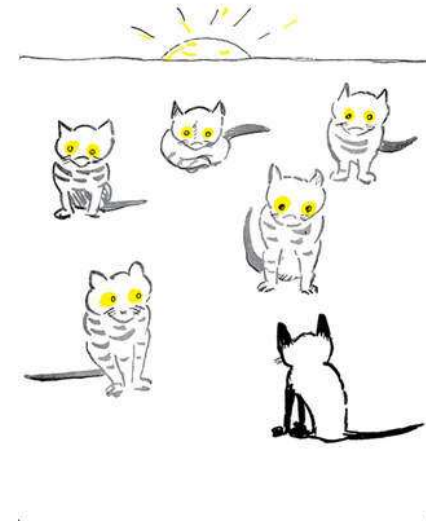
The research question

To which extent does the legal framework of Danish health law work to create, enforce, or dispute discrimination and stigmatisation of persons with mental illnesses?



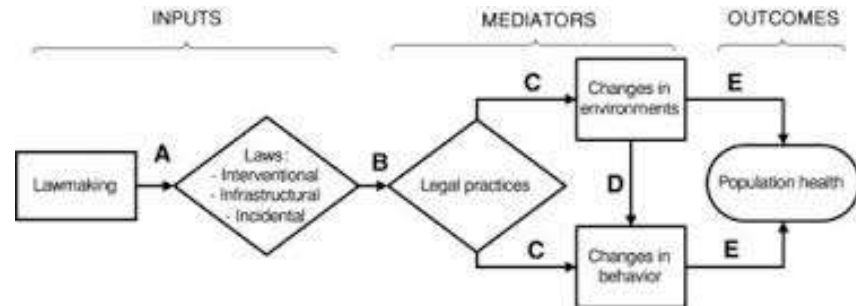
What makes a social phenomenon such as stigma interesting in a legal perspective?

- Stigma exists when elements of labelling, stereotyping, separation, status loss, and discrimination co-occur in a power situation that allows these processes to unfold (Link and Phelan (2001) p. 367).
- What makes stigma interesting in a human rights and health perspective?
 - Stigma may act as a barrier or impediment to the realisation of social human rights
 - Right to dignity and non-discrimination and health
 - Stigma as a central driver of morbidity and mortality at a population level. (Hatzenbuehler, Phelan and Link (2013) 'Stigma as a fundamental cause of population health inequalities', American journal of public health, May 2013, Vol.103(5), p. 813)



How can we understand a social phenomenon such as stigma from a legal standpoint?

- According to Burris there are three broad areas where law affects the operation of stigma in society.
 - Law can be a means of preventing or remedying the enactment of stigma as violence, discrimination, or other harm
 - **Law can be a medium through which stigma is created, enforced, or disputed**
 - And law can play a role in structuring individual resistance to stigma. (Burris (2006) "Stigma and the law", Lancet (London, England), 11 February 2006, Vol. 367(9509), p.529)



Identifying patterns in the legal framework



- The legislative level
 - Health-related legislation such as the Psychiatric Act and the Health Law and other relevant legal documents and sources.
- The judicial level
 - Cases and decisions from ‘Det Psykiatriske Patientklagenævn’ (a national mental health tribunal) a specialized judicial organ deciding on complaints from psychiatric patients regarding the use of various legally supported measures of force such as involuntary medical treatment. Cases from The Patient Compensation Association - - a board that decides on compensation claims for patients injured in connection to treatment by the Danish Health Service.
- The structural patterns and legal discourses reflect the status of mental health patients and how the legal framework situates this group of persons.
- It may also reflect how the legal framework works to create, enforce, or dispute discrimination and stigmatisation of persons with mental illnesses.



Differences between the somatic and the psychiatric system

- The Patient Compensation Association decides compensation claims for patients injured in connection to treatment by the Danish Health Service.
- % of acknowledged compensation claims – Treatment injuries

Psychiatric health system	Somatic health system
13 %	26 %



- % of acknowledged compensation claims - Injuries related to pharmaceutical treatment

Pharmaceutical treatment of mental illness

9,2 %

Compensation average

Pharmaceutical treatment of somatic illness

10 - 71,4 % (average of 37,3 %)

Psychiatric health system

29.500.-

Somatic health system

68.670,-



Differences between the somatic and the psychiatric system

Why?



- **Legal structures**

- **Rules of severity of the damage structurally work against patients with mental illnesses because their initial illness is so severe that they must tolerate more severe injuries**
- **Rules of compensation for drug injuries specifically exclude psychological injuries – only physical injuries are compensated (NB! Until this week)**
- **Rules of compensation based on income structurally work against patients with mental illnesses who are statistically more frequently without employment**



Thank you

Questions and comments

