

Legal Protection of Persons with Disabilities as a Management of Guarantee on Human Rights

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ABSTRACT

Human rights are universal and fundamental to all human beings. Human rights are rights that are inherent in the human person since birth that are used to maintain their dignity and human values. These rights must be believed to be gifts or gifts from God Almighty which no one has the right to rob, remove or revoke these rights. In Indonesia, with a very high population, the existence of persons with disabilities cannot be denied. Disability can occur due to health problems that arise from birth, chronic or acute illnesses, and injuries that can be caused by accidents, wars, riots, disasters, and so on. Persons with disabilities make us realize that they are human beings who are given physical deficiencies, but are not different people. The existence of persons with disabilities is a minority who must receive guarantees for their survival. In Indonesia, persons with disabilities have been given legal protection, namely the promulgation of Law no. 8 of 2016 concerning Persons with Disabilities which provides legal protection for persons with disabilities, but is still not fully able to fulfill the basic rights of persons with disabilities, including the right to legal protection, the right to obtain decent work, the right to education and so on. For this reason, this paper aims to find out about how legal protection is given to persons with disabilities in Indonesia.

ARTICEL INFO

Keywords:

Legal Protection, Disability, Disabled.

How to cite:

Nurmala, L. D., Akili R. H., (2022). Legal Protection of Persons with Disabilities as a Management of Guarantee on Human Rights. *Musamus Law Review*, 3(2), 50-60

1. INTRODUCTION

World Health Organization (WHO) disability is humans have different abilities. But in its mention in several different terms, people with disabilities are mentioned by the Ministry of Social Affairs, by the Ministry of National Education called special needs, and disabled people mentioned by the Ministry of Health. Some mentions give a definition that swings at the weakening, limitations of activity, and obstacles in participating.¹

Weakness means a problem that occurs in the structure or function of the body, limited activity means a difficulty experienced by a person in performing a task or action,

¹ Marjuki, "Penyandang Cacat Berdasarkan Klasifikasi International Classification of Functioning for Disability and Health (ICF)," ., no. 43 (2010): 7-57.

while the obstacle of participating means a problem faced by a person in living his life.² Disability cannot be considered a health problem. Disability is a complex phenomenon, reflecting the interaction of a person's body with the society in which he or she lives. Overcoming the difficulties experienced by people with disabilities means needing help that can remove barriers with the environment and social life faced. Basically, people with disabilities need help in order to live a normal and decent life and carry out their functions as members of society. But on the other hand they also want to be treated as equal and independent individuals, without having to invite excessive compassion.³

In an effort to protect, respect, advance, and fulfill the rights of persons with disabilities, the Government of Indonesia has established various laws governing the protection of persons with disabilities. With regard to the definition of persons with disabilities, Article 1 of Law No. 18 of 2016 on Persons with Disabilities has mentioned that: Disability is any person who experiences physical, intellectual, mental or sensory limitations over a long period of time who in interacting with the environment can experience obstacles and sensitivities to participate in a long period of time. Full and effective with citizens of other countries based on equal rights.

According to the Convention on the Rights of Persons with Disabilities, disability is an ever-evolving concept, in which persons with disabilities include those with long-term physical, mental, intellectual, or sensory limitations and when faced with obstacles, this can hinder their full participation and effectiveness in society based on equality with others. The onset of disability can be motivated by health problems arising from birth, chronic and acute diseases, and injuries that can result from accidents, wars, riots, disasters, and so on. As the elderly population increases, it is suspected that it will increase the number of people with disabilities due to increasing health problems due to degenerative chronic diseases.⁴

In Indonesia, based on Law No. 4 of 1997 on Persons with Disabilities, it is clear that equality and non-discrimination are one of the conditions of open access for people with disabilities. The law contains various rights related to persons with disabilities, namely in the fields of education, employment, equality in development and in enjoying the results of development, accessibility, rehabilitation and social welfare, and the development of talent and social life equally. However, at the implementation stage, there is no harmonization between the rule of law and implementation at the community level and stakeholders at the local level. According to data compiled by the Ministry of Social Affairs through the Disability Management Information System (SIMPD), until January 13, 2021, the number of persons with disabilities recorded amounted to 209,604 individuals.⁵

² Dini Widinarsih, "Persons with Disabilities in Indonesia: Development of Terms and Definitions," *Journal of Social Welfare Sciences* 20, no. 2 (2019): 127–142.

³ *Ibid*

⁴ Rahayu Repindowaty Harahap and Bustanuddin, "Legal Protection of Persons with Disabilities According to the Convention on the Rights of Persons with Disabilities (CRPD)," *Innovative Journal* VIII, no. 1 (2015): 17–29, <https://online-journal.unja.ac.id/index.php/jimih/article/view/2191>.

⁵ <https://menpan.go.id/site/berita-terkini/dari-istana/wujudkan-masyarakat-inklusi-indonesia-dengan-sinergi-seluruh-komponen-bangsa>, retrieved August 2, 2021.

Based on the above description, the author will limit the studies that will be discussed, namely about the legal protection of persons with disabilities in Indonesia and about human rights provisions for persons with disabilities in the laws and regulations in Indonesia.

2. METHOD

The research method used in this writing is Normative Juridical research. A juridical approach based on existing laws or regulations.⁶ Normative legal research always focuses on secondary data sources. Secondary data on this study were obtained from primary legal materials, secondary materials and tertiary legal materials. In this study sourced secondary data as follows: Primary legal material source, consisting of legislation related to the issues discussed in the research. Secondary legal material source, consisting of books and the results of previous research. Tertiary legal material source, consisting of articles, newspapers, magazines etc. The data analysis technique that the author uses in compiling this paper is qualitative analysis. Analyze the data in this study using qualitative analysis methods, in this case studying in depth the existing legal material then combined with other legal materials, and combined with theories that support and further conclusions in general..

3. RESULTS AND DISCUSSION

Legal protection of persons with disabilities in Indonesia and about human rights provisions for persons with disabilities in the laws and regulations in Indonesia

Every citizen needs legal protection. Philip M Hadjon, argued that there are two kinds of legal protection for the people, namely preventive legal protection and repressive legal protection. Preventive protection is a preventive legal protection. Protection gives the people the opportunity to object to their opinions before a government decision is definitive. So that this legal protection aims to prevent disputes and is very large for government actions based on freedom of action (discretion). Repressive legal protection serves to resolve in the event of a dispute, including its handling in the judiciary.⁷

Bambang Purnomo, in criminal law is known to have two legal protections: first, primary legal protection is to protect the public and individuals from criminal disorder; The second secondary legal protection is to protect society and individuals from unnatural treatment by the authorities. In this case, the legal protection is the protection of the law in abstracto against victims of trafficking. So it can be understood that the extent to which the community and victims can be protected their rights in accordance with applicable laws and regulations.⁸ In Indonesian Criminal Law, especially in the Criminal Code, it has provided legal protection for 3 things that are considered very important, namely life or body, honor, and property .⁹

⁶ Henni Muchtar, "Normative Juridical Analysis of Synchronization of Regional Regulations With Human Rights," *Humanus* 14, no. 1 (2015): 80.

⁷ Philipus M Hadjon, *Legal Protection for the People of Indonesia*, Bina Ilmu, Surabaya, 1987, p.

⁸ Hambali Talib, *Sanctions For Settlement in Land Conflict Alternative Policy of Settlement of Land Conflicts Outside the Codification of Criminal Law*, Kencana Prenada Media Group, Jakarta, 2009, 53.

⁹ Yusriyanto Kadir, et.al, (2021). The Relevance of Legal Protection to Human Rights Related to Euthanasia Law in Indonesia. *Jambura Law Review*, 3(2), 319-335

Satijpto Raharjo, the protection of the law is to provide protection to human rights that are harmed by others and that protection is given to the community in order to enjoy all the rights granted by law.¹⁰

Since man was born to maintain his human dignity and human values (human worth and dignity) who do not know the claims of race and nation, religion, degree and position of human rights he has been endowed with the rights inherent in the human person.

The term human rights is a translation of the term "droits de L'homme Et Do Citoyen" in French which means "human rights", or in English human rights which means the rights attached to it as people's creation of God YME or basic rights that principle as divine grace. In Dutch, it is called *menselijke rechten*.¹¹ In Indonesia, the term "human rights" is commonly used, which is a translation of basic rights in English and *grondrechten* in Dutch. Some people refer to it with fundamental rights, as a translation of fundamental rights in English and fundamental rights in Dutch. In the United States, in addition to the term human rights, the term civil rights is also used.¹²

As benefits the right to demand an obligation for the other party. What is meant by basic human obligations is a set of obligations that, if not implemented, do not allow the establishment and establishment of human rights.¹³ Sudikno Mertokusumo said that every legal relationship created by law always has two aspects that contain it on one side as a right, while on the other it is an obligation. There is no right without obligation, but there is no obligation without rights. This is what he thinks the law is different from rights and obligations, although the two cannot be separated. Rights and obligations become more firmly applicable when the law is involved in concrete cases. Thus the implication is the birth of rights and obligations. Rights and obligations are not a set of rules or rules, but a balance of power in the form of individual rights on the one hand reflected in obligations to the other. In other words, rights and obligations are the authority granted by law. Therefore, for the more guaranteed implementation of human rights, there is a need for balance to perform obligations by humans both as individuals and citizens, and by the state to equally maintain it.^{14 15 16}

With regard to disability rights, Indonesia has enacted Law No. 19 of 2011 concerning the Ratification of the Rights of Persons with Disabilities, people with disabilities who have long-term physical, mental, intellectual or sensory limitations who in interacting

¹⁰ Satijpto Rahardjo, Legal Sciences, PT, Citra Aditya Bakti, Bandung, 2000, Hal. 20.

¹¹ Qamar Nurul, "Manusia Human Rights in a State of Democratic Law", (east Jakarta: sinar garfika, 2013) hal: 17.

¹² Tri Dwi Sulisworo Dkk, "Human Rights (HAM)," Materials Taught Non-Conventional Spending Material Grant 2012 (2019).

¹³ Firdaus Firdaus, "Human Rights Defenders on Natural Resources Issues in South Central Timor Regency of East Nusa Tenggara Province," Journal of Human Rights 8, no. 2 (2017): 83.

¹⁴ Understanding Rights, UIN Suska Riau, 2019, <http://repository.uin-suska.ac.id/18954/8/8>. Chapter III_2018657IH.pdf.

¹⁵ Ade Mahmud, "Urgency of Progressive Law Enforcement To Restore State Losses in Corruption Crimes," Legal Issues 49, no. 3 (2020): 256–271.

¹⁶ Osgar S Matompo, "Restrictions on Human Rights in an Emergency Perspective," Media Hukum 21, no. 1 (2014): 57–72, <https://media.neliti.com/media/publications/113633-ID-pembatasan-terhadap-hak-asasi-manusia-da.pdf>.

with the environment and attitudes of their people can encounter obstacles that make it difficult to participate fully and effectively based on equal rights.¹⁷

Law No. 4 of 1997 on Persons with Disabilities in the subject of convention point 1 (first) opening provides an understanding, namely: Any person who has a physical and/or mental disorder, which can interfere or is an obstacle and pest for him to perform properly , consisting of, a person with a physical disability; people with mental disabilities; people with physical and mental disabilities.¹⁸

People with special needs (disabilities) are people who live with special characteristics and have differences with people in general. Because of these different characteristics it requires special service in order for him to have his rights as a living human being on this earth. People with special needs have a very broad definition, including people who have physical disabilities, or low IQ (Intelligence Quotient) abilities, as well as people with very complex problems, so that their cognitive functions are impaired.

There are several types of people with special needs/ disabilities. This means that every person with a disability has their own definition, all of whom need help to grow and develop properly. Types of people with disabilities:¹⁹

1. Mental disability. This mental disorder consists of:
 - a. Mentally high. Often known as intellectually gifted people, where in addition to having above average intellectual abilities he also has creativity and responsibility for tasks.
 - b. Mentally low. Low mental ability or intellectual capacity / IQ (Intelligence Quotient) below average can be divided into 2 groups, namely children slow learning (slow learners) that is children who have an IQ (Intelligence Quotient) between 70-90. Children who have an IQ (Intelligence Quotient) under 70 are known as children with special needs.
 - c. Specific learning. Learning is related to the achievement of learning (achievement) obtained.
2. Physical disability. These disorders include several types, namely:
 - a. Body Abnormalities (Tuna Daksa). Tunadaksa is an individual who has a movement disorder caused by neuro-muskular disorders and bone structure that is congenital, sick or due to accident (loss of organs), polio and paralysis.
 - b. Visual Impairment (Visually Impaired). Visually impaired are individuals who have barriers in vision. Visually impaired can be classified into two groups: total blind (blind) and low vision.
 - c. Hearing Loss (Deafness). Deaf is an individual who has a barrier to hearing both permanent and non-permanent. Because it has an obstacle in

¹⁷ Law No. 19 of 2011 concerning the Ratification of The Rights of Persons with Disabilities, (State Gazette of the Republic of Indonesia Year 2011 Number 107, Tambahan State Gazette of the Republic of Indonesia Number 5251).

¹⁸ Article 1 number 1 of Law No. 4 of 1997 on Persons with Disabilities, (State Gazette of the Republic of Indonesia Year 1997 Number 9, Supplement to State Gazette of the Republic of Indonesia Number 3670).

¹⁹ Grouping of persons with disabilities in Law No. 4 of 1997 on Persons with Disabilities is divided into people with mental disabilities, people with physical disabilities and people with mental and physical disabilities, Article 1 paragraph (1)

the hearing of deaf individuals have barriers in speech so they are commonly called speechless.

- d. Speech Disorder (Deafness), is someone who has difficulty expressing thoughts through verbal language, making it difficult even incomprehensible to others. This speech disorder can be understood by others. This speech disorder can be functional where it is likely caused by deafness, and organic which is indeed caused by the imperfection of the speech organ or the presence of disorders in the motor organs related to speech.
3. Deaf (double disability). People with disabilities have more than one disability (i.e. physical and mental disabilities)

The United Nations General Assembly passed Resolution A/61/106 *on the Convention on the Rights of Persons with Disabilities* on 13 December 2006. The resolution contains the rights of persons with disabilities and states that it will take steps to ensure the implementation of the convention. Article 25 of the Convention states that States Parties (which sign the Convention) recognize that persons with disabilities have the right to enjoy the highest standards of health available without discrimination on the basis of their disability. States Parties shall take all necessary policies to ensure access for persons with disabilities to gender-sensitive health services, including health rehabilitation.²⁰

The Indonesian government signed the convention on March 30, 2007 in New York. The signing demonstrates the determination of the Indonesian state to respect, protect, fulfill, and advance the rights of persons with disabilities, which are ultimately expected to meet the welfare of persons with disabilities. According to the Convention on the Rights of Persons with Disabilities, disability is an ever-evolving concept, in which persons with disabilities include those with long-term physical, mental, intellectual, or sensory limitations and when faced with obstacles, this can hinder their full participation and effectiveness in society based on equality with others.

In an effort to protect, respect, advance, and fulfill the rights of persons with disabilities, the Government of Indonesia has established various laws governing the protection of persons with disabilities, including Law No. 36 of 2009 on Health which contains on The Health of Elderly and Disabled people in Section Three, article 138-140.²¹

Various causes of disability can be motivated by health problems arising from birth, chronic and acute diseases, and injuries that can be caused by accidents, wars, riots, disasters, and so on. As the elderly population increases, it is suspected that it will increase the number of people with disabilities due to increasing health problems due to degenerative chronic diseases

Based on Law No. 4 of 1997 on Persons with Disabilities, it is clear that equality and non-discrimination are one of the conditions of open access for people with disabilities. The law contains various rights related to persons with disabilities, namely in the fields

²⁰ Imas Sholihah, "New Policy: Guarantee of The Fulfillment of Rights for Persons with Disabilities," *Socio Informa* 2, no. 2 (2016): 166–184.

²¹ Frichy Ndaumanu, "Rights of Persons with Disabilities: Between Responsibility and Implementation by Local Governments," *Journal of Human Rights* 11, no. 1 (2020): 131.

of education, employment, equality in development and in enjoying the results of development, accessibility, rehabilitation and social welfare, and the development of talent and social life equally.²²

More specifically, Law No. 8 of 2016 on Persons with Disabilities says that the protection, fulfillment, and respect for the rights of persons with disabilities is the responsibility of the state. The above regulations are in accordance with the concept of human rights, where the state is obliged to protect, respect and fulfill their rights for all citizens unrelated to persons with disabilities.

The rules in the Indonesian legal system have actually greatly guaranteed the rights of persons with disabilities as citizens. especially Law No. 8 of 2016 on Persons with Disabilities which ensures the fulfillment, protection and respect for persons with disabilities. But the problem that has long existed is the lack of implementation of various laws and regulations. The state as the most responsible party in the protection, fulfillment and respect for the rights of persons with disabilities also seems to often ignore this minority group. Rights violations and discrimination against people with disabilities are still quite easy to find. Violations of these rights occur in various sectors and sometimes even committed by government institutions.

Various human rights violations experienced by people with disabilities certainly have causative factors. What is common is that discrimination against people with disabilities occurs because the power holders are less perspective on disabilities. People who have the authority in policy making do not have much knowledge related to people with disabilities. In addition, construction in society also plays a big role in discrimination experienced by people with disabilities. Indonesians who still think with the traditional paradigm model will think that people with disabilities are people who deserve pity because they can't do anything about it. Physical incompetence is considered a barrier for a person to participate in public and state life. That led to these policy makers making a policy for people with disabilities with compassion. Giving compensation, and making people with disabilities become objects is a common thing to listen to.²³

As one form of legal protection against human rights in Indonesia, especially for the right to a decent job for disabilities, Indonesia must have a set of legal regulations that are fair and firm in regulating, a swift and pro-disability state apparatus, and an inclusive society on disability issues. Everyone is entitled to a job. The right to work is contained in the Universal Declaration of Human Rights and is recognized as a major right in international human rights law and is also contained in the Covenant on Economic, Social, and Cultural Rights. Indonesia has ratified the ICESCR since 2005. Article 6 of the Convention clearly states that the right to work is a human right. Indonesia as an ICESCR member country has an obligation to respect, protect, and fulfill all rights in the ICESCR without discrimination. On the issue of persons with disabilities, there are several laws and regulations governing employment opportunities for persons with disabilities. Based on Government Regulation No. 43 of 1998, employers must employ 1 person with disabilities for every 100 workers

²² Republic of Indonesia, *Law No.4 of 1997 concerning Persons with Disabilities*, 1997.

²³ Geminastiti Purinami A, Nurliana Cipta Apsari, and Nandang Mulyana, "Persons with Disabilities in the World of Work," *Focus: Journal of Social Work* 1, no. 3 (2019): 234.

employed. This means that there is a quota of 1% (minimum) for people with disabilities to access the workplace and their economic rights. Although the law regulates this, this rarely happens even in the government sector. There have been many cases of discrimination against people with disabilities in the employment sector.

Legally, this arrangement certainly cannot be separated from the constitutional guarantee of the 1945 NRI Constitution which has clearly guaranteed the right to get a job for all citizens. Further arrangements as an emposition of the right to a decent job such as Law No. 4 of 1998 on Persons with Disabilities, Law No. 13 of 2003 on Employment, Law No. 19 of 2011 on Ratification of UNCRPD, and Law No. 8 of 2016 on Persons with Disabilities, all mandate that persons with disabilities get decent employment opportunities for their livelihood. All of these arrangements only mention the right to a job in general, but do not elaborate further on how the right can then be obtained for a person with a disability. The high unemployment rate in Indonesia or as many as 7.39 million unemployed people based on BPS data in 2014. This number includes people with disabilities and normal people. Based on the lower limit theory alleged by Sjachran Basah, then the arrangement on the right to get a job for disabilities can be considered to be a form of exclusivity from the realm of human rights that must be protected in Indonesia. That means for people with disabilities it is something that is prone to discriminatory treatment. Therefore, an affirmation policy is very necessary. Article 28 I paragraph (2) of the 1945 NRI Constitution states that "everyone is free of discriminatory treatment on any basis and entitled to protection against discriminatory treatment". A positive affirmation or discrimination policy is a policy made to protect the rights of people who are prone to discrimination, and people with disabilities are one of those people. The form of arrangement about the right to get a job for the disabled can be in the form of guarantees or protections.²⁴

One form of affirmation policy offered by researchers is to provide a quota of 1% of employment as Civil Servants (PNS) for disabilities. This policy is considered to provide a win win solution both for the Government, the community, and disability itself. For disabilities, of course this makes it easier to compete with millions of the workforce who are also targeting civil servants as their dream jobs. For the Government, the provision of civil servant seat quotas can solve the problem of state accountability to its citizens, while getting additional human resources (HR) that have filled the unemployment rate. With the advancement of the government as an agent of change in employing people with disabilities into civil servants, it will open the eyes of private companies to participate in empowering people with disabilities.

For the community, especially for those who are family or friends of people with disabilities will feel the benefits of the quota. Family or friends of those with disabilities who have been unable to work for their families will get a greater opportunity to work and of course ease the burden on the family financially. People will also pay more attention to the issue of disability, because the possibility of interacting is greater, so that the life of inclusion will automatically wake up. The Constitution already very firmly protects the constitutional rights of persons with disabilities in the context of "every person" as well as as part of a "citizen". Persons with disabilities may also

²⁴ Wet Sjahran, Protection against The Attitude of State Administration, Alumni, Bandung, 1992, pp. 12-14

receive affirmative action or positive discrimination over convenience and special treatment in the context of their constitutional fulfillment.

Indonesia has also ratified the Convention on the Rights of Persons with Disabilities (hereinafter referred to as CRPD) into Law No. 19 of 2011 (Law No. 19 of 2011) on CRPD Ratification. The formal implication of the ratification is that Indonesia must take all efforts to optimally realize all forms of values listed in the CRPD. In addition, Indonesia also has 114 legal instruments related to disability rights in all aspects of life.²⁵

However, the various legal instruments on disability rights have no correlation between each other, so there is no integrated system to create a life of inclusion. The arrangement of disability rights also tends to be based on compassion (charity based) means that the condition of a person with a disability is forced to adjust environmental conditions by providing compensation for the disability obtained.

Article 28 I paragraph (2) of the 1945 NRI Constitution states that "everyone is entitled to freedom of discriminatory treatment on any basis and is entitled to protection against discriminatory treatment". Employment opportunities for disabilities often mention physical health conditions or not physical disabilities for applicants, this is one form of mild discrimination. Furthermore, in Article 3 paragraph (3) of Law No. 39 of 1999 on Human Rights has also affirmed the prohibition of discrimination. Discrimination cases are very rare to be brought to the realm of a district court, when in fact a case can be resolved through two stages, namely the path of litigation and non-litigation. Article 13 of Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination has provided an explanation that, "Everyone has the right to file a claim for damages through the district court for acts of racial and ethnic discrimination that harm him or her."²⁶

The government, as a representative of the state should be obliged to make anti-discrimination policies, both through legislation and in their implementation. The government as a representative of the state, must not make policies that lead to discriminatory acts.²⁷ If with the policy he made, a group of citizens feel discriminated against, then the rule should be reviewed, especially if the regulation refers to a person's physical limitations. In fact, physical limitations do not reduce a person's intelligence and capacity to be treated equally before the law.²⁸

4. CONCLUSION

Equality for persons with disabilities lies in Article 27 paragraph (1) of the 1945 Constitution: "All citizens are equal to their position in law and government and are obliged to uphold the law and government with nothing but". The rules in the Indonesian legal system have actually greatly guaranteed the rights of persons with disabilities as citizens. especially Law No. 8 of 2016 on Persons with Disabilities which ensures the fulfillment, protection and respect for persons with disabilities. But the

²⁵ Fajri Nursyamsi, et al, Disability Law Framework in Indonesia: Towards Disability-Friendly Indonesia, Center for Indonesian Legal and Policy Studies, 2015, pp. 25-30

²⁶ See, Article 13 of Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination.

²⁷ Lihat, Pasal 28I ayat (4) UUD NRI Tahun 1945.

²⁸ See, Article 28D paragraph (1) of the 1945 NRI Constitution.

problem that has long existed is the lack of implementation of various laws and regulations. The state as the most responsible party in the protection, fulfillment and respect for the rights of persons with disabilities also seems to often ignore this minority group. Rights violations and discrimination against people with disabilities are still quite easy to find. Violations of these rights occur in various sectors and sometimes even committed by government institutions.

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