

### SOCIAL INCLUSION FOR PERSONS WITH DISABILITIES THROUGH ACCESS TO EMPLOYMENT IN INDONESIA

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**Citation Guide:**

Siti Nurhayati, 'Social Inclusion For Persons With Disabilities Through Access To Employment In Indonesia' [2020] 1 (2) Prophetic Law Review 1.

**Received:**

30 January 2020

**Accepted:**

30 June 2020

**Published:**

30 June 2020

**DOI:**

10.20885/PLR.vol2.iss1.art1

**Abstract**

*The aim of this article is to identify the forms of legal protection provided by the government to fulfil the right to work for persons with disabilities in Indonesia, and to know the path to produce a special working condition for persons with disabilities in Indonesia. This article is a normative study following legislative and a comparative approach. The results showed that the form of legal protection provided by the Indonesian government to persons with disabilities in fulfilling the right to work is set forth in Law Number 8 of 2016 as stipulated in article 45 - article 60. This form of legal protection covers the procedure of recruitment, acceptance, work preparing, work position, sustainability of work, and the development of a fair career consideration without discrimination. It is possible to realize an inclusive work environment for persons with disabilities in the workplace by fulfilling the principle of inclusion, which mandates awareness, accessibility, involvement, and support for persons with disabilities.*

**Keywords:** law; disability; employment; inclusion

#### A. Introduction

It is important for all people to understand their rights and responsibilities related to employment. Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) says "States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities". In addition, the CRPD forbids all types

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of business discrimination, elevates access to professional training, encourages more spaces for self-employment, and calls for sensible settlement in the work environment, and some other different arrangements.

Indonesia has set up more noteworthy protection of the rights of people with disabilities by authorizing the Law No. 8 Year 2016 on the People with Disabilities. Before the enactment of this law, the CRPD indeed was ratified by Indonesia through Law No. 19 Year 2011. The Law No. 8 Year 2016 has actually replaced the previous Law No. 4 Year 1997, which providing more "strengthening" point of view in taking a gander at people with disabilities. The Law orders the association of this populace in all part of life – including budgetary.

Most people with disabilities are either unemployed or work in the informal sector, earning low wages. Most people with disabilities have lived in poverty, dependency, and social exclusion.<sup>2</sup> They are often segregated from the mainstream labor market. Many become underemployed or even discouraged from entering the labor market.<sup>3</sup>

The solid message in regard to incorporation of individuals with disabilities in the work regulated under Article 53 of the Law No. 8 Year 2016, which regulates organizations to utilize individuals with incapacities as at least one percent of its labor force for private area and two percent for the open segment (government and state-owned companies). Actualizing Article 53 presents difficulties considering the current status and newness of the conventional economy with respect to incapacities that have, thus, made boundaries for this population to enter the proper economy

If we take a look on the statistics, it shows how the numbers of people with disabilities is inconsistent. The percentage are really different range from less than 1 percent to more than 12 percent.<sup>4</sup> Such differences also sourced from the government and the existing NGO reports. This has caused the uncertain policy and unclear implementation of the laws that protect the people with disabilities. Contrasted with worldwide statistic, incapacity commonness from Sakernas 2016 information is still lower than those distributed by the

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<sup>2</sup> 'Facts on Disability in the World of Work' (*International Labour Organization*, 31 December 2007) <[https://www.ilo.org/asia/info/public/background/WCMS\\_098454/lang--en/index.htm](https://www.ilo.org/asia/info/public/background/WCMS_098454/lang--en/index.htm)> accessed 25 April 2019.

<sup>3</sup> Alin Halimatussadiah and others, 'Mapping Persons with Disabilities (PWDs) in Indonesia Labor Market' (2018) 63 *Economics and Finance in Indonesia* 1.

<sup>4</sup> The National Labour Force Survey (Sakernas) is a nationwide survey that collects information on the labour market characteristics of all working age individuals (ages 15 and over). This survey is conducted annually and is predominantly used to construct labor market statistics. The 2016 Sakernas included some questions designed to identify disability.

WHO (2011), with 15.6 percent disabilities pervasiveness rate by and large (18 years of age or more), running from 11.8 percent in high income nations and 18 percent in lower income nations. Those with extreme inability are determined at 2.2 percent of adults.<sup>5</sup>

## **B. Problem Formulation**

Unequal opportunity for people with disabilities in formal sector is still pervasive. This is due to the fact that the present regulation about the unequal opportunity for People with disabilities is weakly implemented and enforced. Hence, the key question to formulate in this article are: 1) What kind of legal protection is provided by the government in fulfilling the right to work for persons with disabilities in Indonesia? 2) How to create an inclusive work environment for persons with disabilities in Indonesia?

## **C. Methodology**

This article uses a normative method with a statute and comparison approach. The legislative approach focused on Law Number 8 of 2016 concerning People with Disabilities, while comparative approach is used to identify good practices in other jurisdictions regarding the right to work for persons with disabilities.

This research focuses on employment because of its centrality to social integration, remaining out of poverty, the realization of rights, and other elements of life. People with disabilities should be free to choose gainful employment, whether within the boundaries of a labor market or thorough self-employment or other informal initiatives, providing benefits that are both instrumental means and ends in themselves.

## **D. Discussion and Results**

### **1. Legal Protection by The Indonesian Government in Fulfilling the Right to Work for Persons with Disabilities**

#### **a. Paradigm Shift in Disability**

Disability is a part of the human condition. In English, a few terms are identified with an individual who can't perform ordinary physical and mental capacities expected of a "solid" person. There are a wide range of methods of comprehension and deciphering

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<sup>5</sup> ILO; LPEM FEB UI, *Mapping Persons with Disabilities (PWD) in Indonesia Labor Market - Final Report* (2017) <[http://www.ilo.org/jakarta/whatwedo/publications/WCMS\\_587669/lang--en/index.htm](http://www.ilo.org/jakarta/whatwedo/publications/WCMS_587669/lang--en/index.htm)> accessed 25 April 2019.

incapacity. Incapacity takes different structures and it is very hard to comprehend for both non-crippled people and individuals with disabilities. The accessible data reflect this confusion as well: as based on WHO figure, the predominance of individuals with disabilities is on average 10% around the world. In any case, DISTAT, the UN database on disability which sums up measurements from various nations, makes reference to figures going from 0.3% (in Thailand) to 20% (in New Zealand). These models show that disability is hard to gauge and characterize.<sup>6</sup>

According to CRPD persons with disabilities is defined as “*People who have long-term physical, mental, intellectual, or sensory impairment and face barriers due to certain environments, which hinder their full and effective participation in society.*”<sup>7</sup> The Preamble to the CRPD acknowledges that disability is “an evolving concept,” but also stresses that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.” Defining disability as an interaction means that “disability” is not an attribute of the persons.

The World Health Organization (WHO) suggested three basic definitions:

*“Impairment is any loss or abnormality of psychological, physiological, or anatomical structure or function, e.g. paraplegia. Disability is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being”, e.g. inability to walk. Handicap is a disadvantage for an individual, resulting from an impairment or a disability, that limits or prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual, e.g. lack of wheelchair access to public buildings and transport because no ramps are provided.”*<sup>8</sup>

Based on the WHO explanation, the notion of disability is classified as “one of three: impairment, disability, and handicap. Impairment refers to the reduction or loss of normally existing physical, psychological or behavioral structures. Disability refers to the functional impairments resulting from primary damage, and the effect of the loss of function in daily life is thus the handicap”.<sup>9</sup>

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<sup>6</sup> Ursula Miller and Stefanie Ziegler, *Making PRSP Inclusive* (Handicap International ed, Projekt Print 2006) 56.

<sup>7</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entry into force 3 May 2008) 2515 UNTS (CRPD).

<sup>8</sup> Peter Coleridge, *Disability, Liberation, and Development* (Oxfam 1993) 100.

<sup>9</sup> Vardit Rispler-Chaim, *Disability in Islamic Law* (Springer Science & Business Media 2006) 1.

The International Labor Organization also defines that “a disabled person means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment”.

ADA (The Americans with Disabilities Act), which was signed into law in 1990, also provides the definition of person with disability by mentioning that:

- a. “Having a physical or mental impairment that substantially limits him or her in some major life activity; and
- b. Having experienced discrimination resulting from this physical or mental impairment.”<sup>10</sup>

In disability studies, there are two here are two principle strings to the idea of disability: the clinical model and the social model. The two models see disability as a troublesome problem normally looked by individuals; in any case, while the clinical model ganders at inability as a condition that requires clinical intercession, the social model glances at it as a condition that requires the change of cultural mentalities and state arrangements.<sup>11</sup>

Article 1 of the CRPD explains the main aims of the promulgation of disability rights treaty is:

“...to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity, ”[f]rom a human rights perspective, there are at least three implications of pluralism in defining disability. *First*, the size of the group that qualifies for protection under the CRPD is questionable. Generally, persons with disabilities constitute one of the world’s most vulnerable and largest minorities. Current estimates categorize one billion persons as having a disability.<sup>12</sup> A second implication concerns the scope of the “protected group” under the CRPD. In light of controversies that have ensued about how disability should be defined, the international community has refrained in the operational part from providing a definition of the phenomenon. Finally, as a practical matter, the disability rights movement had to unite itself on grounds other than the mere existence of a disability. For many activists, the share experience of discrimination, as well as the over medicalization and pathological aspect of disability, served as a common ground.<sup>13</sup>

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<sup>10</sup> *ibid* 2.

<sup>11</sup> Kamal Lamichhane, *Disability, Education and Employment in Developing Countries: From Charity to Investment* (Cambridge University Press 2015) 3.

<sup>12</sup> Theresia Degener, *Disability as a Subject of International Human Rights Law and Comparative Discrimination Law* in Stanley S Herr, Lawrence O Gostin and Harold Hongju Koh (eds), *The Human Rights of Persons with Intellectual Disabilities: Different but Equal* (Oxford University Press 2003) 158.

<sup>13</sup> Maya Sabatello and Marianne Schulze, *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 18-19.

CRPD maintains that all people, regardless of disability, should have the same opportunities for finding employment. Sadly, this is not the case. Based on WHO survey in 51 countries, men with disabilities have an employment rate of 52.8% compared with 64.9% for men without disabilities. For women, those percentages are 19.6% and 29.9% respectively.<sup>14</sup> Focusing attention on disability and employment in low-and middle-income countries, though, can be challenging. Many of these countries have high poverty rates and other challenging issues. The phenomenon of disability, however, is complex, and thus care must be taken not to treat the population as a homogenous group. For example, disability does not necessarily have any effect on primary or secondary education if the onset of disability occurs later in life. This, of course, will have an impact on the effect of disability on employment, because disability can arise at any age. Some people are disabled from birth, some others are disabled after they have already obtained an education and employment experience, and some when they are at the end of their working years. Therefore, general comparisons of disabled versus nondisabled people can sometimes mask important differences in the types of problems people face and the most appropriate policies. A recent study at Vietnam showed that disability in childhood had a more profound impact on employment and poverty than the onset of a disability in adulthood.<sup>15</sup> Looking at overall rates of employment for disabled and nondisabled people will mask this effect.<sup>16</sup>

Model of disability based on each paradigm. There are several types of disability model as explained below:

### **1) The Charity Model of Disability**

The charity model views at individuals with disability as those needing assistance. They can't get things done for themselves, as well as other people would need to take care of them, ensure them, and settle on choices for their sake. As quite a bit of this "care" isn't state-subsidized, so noble cause need to fund-raise, and customarily this was finished by underlining the weakness of individuals with inabilities. While noble cause offer indispensable administrations, the peril is that this takes any self-governance, freedom, and even rights from disabled individuals.

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<sup>14</sup> Jody Heymann, Michael Ashley Stein and Gonzalo Moreno (eds), *Disability and Equity at Work* (Oxford University Press 2014) 23.

<sup>15</sup> Daniel Mont and Nguyen Viet Cuon, 'Disability and Poverty in Vietnam' (2011) 25 World Bank Economic Review 323-359.

<sup>16</sup> Heymann, Stein and Moreno (n 14) 24-25.

Control and power rests with well-meaning people without disabilities who strive to bring about change for the benefit of the “afflicted,” The language used is similar to that used in the medical model.<sup>17</sup> Persons with disabilities are ultimately expected to be grateful for what they receive and to be submissive.<sup>18</sup>

## 2) The Medical Model of Disability

The medical model came about as modern medicine and the enhanced role of the physician in society began to develop during the nineteenth century.<sup>19</sup> The medical model spotlights on the disability – on what is "off-base" with the individual.<sup>20</sup> It views at the manners by which the individual goes amiss from the norm, and attempts to limit that gap. The "issue" lies with the individual and what they should or shouldn't do. Under this model, the problems that are associated with disability are deemed to reside within the individual. In other words, society has no underlying responsibility to make a “place” for persons with disabilities, since they live in an outsider role waiting to be cured.

This model is presented as viewing disability as a problem of the person, directly caused by disease, trauma, or other health conditions, which therefore requires “fixing” by sustained medical care provided in the form of treatment by professionals. Management of the disability is aimed at a “cure,” or the individual adjustment and behavioral change that would lead to an “almost-cure”, or effective cure.<sup>21</sup>

## 3) The Social Model of Disability

This model recommends that individual is disabled by community’s incapability to conform to their necessities. The social model of disability sees the issue of “disability” a socially created problem and a matter of the full integration of individuals into society. With this regard, in example, the stairs are problem for them, but wheelchair is not the problem. In this model, disability isn't a trait of an individual, yet rather a complex assortment of conditions, a significant number of which are made by the social condition. Consequently, the management of the issue requires social

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<sup>17</sup> Andrew Picard and Myk Habets, *Theology and the Experience of Disability: Interdisciplinary Perspectives from Voices Down Under* (Routledge 2016) 204.

<sup>18</sup> Ursula Miller and Stefanie Ziegler (n 6).

<sup>19</sup> Deborah Kaplan, ‘The Definition of Disability: Perspective of the Disability Community’ (2000) 3 *Journal of Health Care law & Policy* 353.

<sup>20</sup> ‘The “Models” of Disability – Evenbreak’ <<https://blog.evenbreak.co.uk/2012/03/19/models-of-disability/>> accessed 25 April 2019.

<sup>21</sup> Ursula Miller and Stefanie Ziegler (n 6) 56.

activity, and it is the aggregate obligation of society everywhere to make the ecological alterations fundamental for the full contribution of individuals with disabilities in every aspect of public activity.<sup>22</sup>

#### **b. The Legal Protection Framework for Persons with Disabilities in Indonesia**

Legal protection is all endeavors to satisfy rights and give help and security to witnesses and additionally casualties. Legal protection for victims of crime as part of community protection can be realized in various forms, such as through restitution, compensation, medical services, and legal assistance<sup>23</sup> meanwhile, based on the opinion of Satjipto Raharjo, legal protection means that:

"Providing protection for human rights (HAM) that is harmed by other people and the protection is given to the community in order to enjoy all the rights given by law."<sup>24</sup>

In addition, Maria Theresia Geme defines legal protection as:  
"Relating to the actions of the state to do something by (enacting exclusive state law) with the aim of providing assurance of the rights of a person or group of people."<sup>25</sup>

Philipus M. Hadjon argues that legal protection is the protection of dignity, as well as recognition of human rights that are owned by legal subjects based on legal provisions of arbitrariness, with "government action" as a central point, (associated with legal protection for the people).<sup>26</sup> According to Hadjon, legal protection is divided into two objectives, namely preventive legal protection and repressive legal protection. Preventive legal protection gives people the opportunity to raise objections (*inspraak*) or provide their opinions before a government decision becomes a definitive form. Preventive legal protection is very meaningful for of government action based on freedom because preventive legal protections encourage the government to exercise its discretion carefully. The purpose of preventive legal protection is to prevent the occurrence of disputes, while repressive protection aims to resolve disputes.

According to CST Kansil, legal protection is an assortment of legitimate endeavors that must be embraced by legal authorities to give security, both mentally and physically,

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<sup>22</sup> *ibid.*

<sup>23</sup> Soerjono Soekanto, *Pengantar penelitian hukum* (Penerbit Universitas Indonesia (UI-Press) 2006) 133.

<sup>24</sup> Satjipto Rahardjo, *Ilmu hukum* (Citra Aditya Bakti 1991) 54.

<sup>25</sup> Salim HS and Erlies Septiana Nurbani, *Penerapan teori hukum pada penelitian tesis dan disertasi* (Rajawali Pers 2016) 262.

<sup>26</sup> Philipus M Hadjon, *Perlindungan hukum bagi rakyat di Indonesia: sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara* (Bina Ilmu 1987) 2.

from obstruction and different dangers from any party. The definition of legal protection theory is,

"...the theory that examines and analyzes the form or purpose of protection, protected legal subjects and objects of protection provided by law to the subject."<sup>27</sup>

Sudikno Mertokusumo made a statement not only about the purpose of the law, but also about the functions of law and legal protection. He argues that:

"In its function as protection of the interests of human law, it has a purpose. The law has goals to achieve. The main purpose of the law is to create an orderly society, and create balance. With the achievement of order within the community, it is hoped that human interests will be protected. In achieving its objectives, the law is in charge of dividing the rights and obligations between individuals in the community, dividing authority and regulating how to solve legal problems, and maintaining legal certainty."<sup>28</sup>

There are three important things based on Sudikno Mertokusumo's view above, namely legal functions, legal objectives, and duties. The function of law is to protect human interests, while the main purpose of the law is to create an orderly societal order, and balance.

Issues of the people with disabilities have been recognized by the Indonesian Government. The previous Law No. 4 of 1997 used the terminology of "handicapped" rather than disabilities that adopted into the new law. The Law No of 2016 promotes equal rights and opportunities for people with disabilities in all aspects of life, including the right to obtain education, employment, a proper standard of living, equal participation in national development, accessibility, and rehabilitation, including and especially for children with disabilities. This new law then followed by ratification of the CRPD in 2007 by the Law No. 19 of 2011 on Ratification of the UNCRPD.

This law indicates the commitment of the Indonesian government to eradicate discrimination against people with disabilities and to actively work to support and provide services to this segment of the population. It also espouses the principle that public programs should be inclusive and accessible to people with disabilities.<sup>29</sup> This new

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<sup>27</sup>Thus, the elements listed in the definition of legal protection theory include: 1) The existence or form of protection or purpose of protection; 2) Legal subject; and 3) Object of legal protection. Basically, the theory of legal protection is a theory relating to the provision of services to the public. Roscoe Pound argues that law is a social engineering tool (law as a tool of social engineering). Human interests, is a demand that is protected and fulfilled by humans in the field of law. Law as protection of human interests is different from other norms, because the law contains orders and/or prohibitions, and divides rights and obligations. HS and Nurbani (n 25) 263.

<sup>28</sup> Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Liberty 1999) 71.

<sup>29</sup> 'Development for All 2015-2020: Strategy for Strengthening Disability-Inclusive Development in Australia's Aid Program' (Australian Government Department of Foreign Affairs and Trade)

law reaffirmed that Indonesia is committed to respecting, protecting, and meeting the rights of people with disabilities.

Nevertheless, notwithstanding these solid responsibilities from the government, projects and exercises to improve the day to day environments of individuals with disabilities are still insignificant. The existing laws are not all around implemented and subscribe in additional to the more seasoned idea of disability similar to a medical issue that an individual has (and along these lines ought to be thought about) as opposed to a disability resulting from barriers faced by individuals with certain functional restrictions that ought to be effectively limited.

Based on the data, most people with disabilities work in sole proprietorships or household businesses (75% of people with a severe disability, compared with 62% of people without disability) or are household workers. Only 3% of Indonesian's with disabilities work in for-profit institutions (17% for people without a disability) and 3% in the government (compared to 8%). People with disabilities, accordingly, have fewer opportunities and are more likely to be in more vulnerable jobs, with less security and worse conditions.<sup>30</sup> One culprit of this limitation is mobility restriction. In urban zones, the extent of individuals with disabilities working at their homes is twofold the extent of individuals without disabilities. This conceivable reflects constrained conventional work openings and the need to make work open doors for themselves in a spot that is effectively available.

## **2. The Need for Inclusive Work Environments for People with Disabilities in Indonesia**

### **a. The Importance of Gainful Employment**

The opportunity for meaningful employment is essential to not only an individual's economic security, but also their physical and mental health, personal wellbeing and sense of identity.<sup>31</sup> Work is essential to an individual's economic security and is important to achieving social inclusion. Employment is equally important to all people. Thus, without it, social inclusion and economic independence are unlikely to be achieved.

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<<https://www.dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020>> accessed 24 April 2019.

<sup>30</sup> Lisa Cameron and Diana Contreras Suarez, 'Disability in Indonesia: What Can We Learn from the Data?' (Monash University 2017) 17.

<sup>31</sup> Kirsten Deane and others, *Shut out: The Experience of People with Disabilities and Their Families in Australia: National Disability Strategy Consultation Report* (Dept of Families, Housing, Community Services and Indigenous Affairs 2009) 5.

Employment has the potential to improve a person's financial condition, open up opportunities for social interaction, build (new) friendships, and increase people's self-esteem. On the other hand, joblessness can cause destitution and social prohibition, yet in addition bring about a lower sense of self-worth. Income from employment increases financial independence and raises living standards.

Employment can form a conduit to a spectrum of civil and human rights. Work provides the material means through which people acquire adequate food, clothing, and shelter; access to education, health care, and support services; and participate in the cultural, recreational, and social community.

Article 27 of the CRPD states that "States Parties recognize the rights of persons with disabilities to work, on an equal basis with others; this includes the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities."<sup>32</sup> The term "work" is broad and includes unpaid work in the home or in a family enterprise, paid work for another person or organization in the formal or informal economy, and self-employment.<sup>33</sup> A person with a disability has the right to the same employment opportunities as a person without a disability. Disability discrimination is when a person with a disability is treated less favorably than a person without the disability in the same or similar circumstances.<sup>34</sup>

A lower level of formal training has caused people with disability difficult to discover employment. Even though, they participate in formal training, they also face discrimination. Thus, the joblessness and underemployment paces of individuals with disabilities are a lot higher contrasted with the remainder of the population. Even if people with disabilities have an occupation, on average, they earn less than normal people. This lack of employment usually caused them living in poverty.

Discrimination in hiring and in the workplace is one possible reason for the observed disparities in the employment of people with disabilities. To encourage the employment of people with disabilities and prohibit discrimination, many countries have laws prohibiting discrimination on the basis of disability or have set quotas for the

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<sup>32</sup> Convention on the Rights of Persons with Disabilities (n 7)

<sup>33</sup> World Health Organization and World Bank (eds), *World Report on Disability* (World Health Organization 2011) 236.

<sup>34</sup> 'Know Your Rights: Disability Discrimination | Australian Human Rights Commission' <<https://humanrights.gov.au/our-work/disability-rights/know-your-rights-disability-discrimination>> accessed 25 April 2019.

employment of persons with disabilities.<sup>35</sup> For example, Japanese laws promote the employment of people with disabilities quite efficiently. Although Japan's approach centers on the use of employment quotas, these would not be as effective without a system of complementary legislation and policy, including administrative guidance from the Japanese government, the use of a variety of subsidies for training and accommodation, and a solid public system of vocational rehabilitation.<sup>36</sup>

In addition, the quota system is complemented by a labor contracts doctrine, which in some ways functions as nondiscrimination legislation and mandates reassignments and reductions of workloads in response to disability onset while penalizing dismissal. Last, the quota system exists in an environment of social responsibility, in which both employers and government acknowledge the scale of the employment problem for persons with disabilities and generally act in good faith to solve it.

Employment quotas require that employers hire and retain a certain number of persons with disabilities as a percentage of their regular employees, according to the Act on Employment Promotion of Persons with Disabilities. This obligation applies to private sector employers with 56 employees or more, as well as to national and local public bodies. Currently, the rates for ordinary private employers are 1, 8%, and for national and local government are 2,1% (2,0% for the Prefectural Board of Education).<sup>37</sup>

For a long time, special vocational training programs have been the main solution utilized in the business division. However, such workshops are a western notion imported by developing countries, with two key disadvantages in that they are limited in number and don't improve social consideration. A few arrangements by and large propose enhancements to the legitimate system, which ought to dispense with avoidance and encourage work, for instance by offering sponsorships to bosses who enroll individuals with disabilities.

In developing countries, majority of people with disabilities works in the informal sector and on subsistence agriculture; and unfortunately, only a few numbers of people are formally employed. However, employment policies only address these small numbers. Thus, there is a need some favorable policies to include people with disabilities in rural areas.

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<sup>35</sup> World Health Organization and World Bank (n 33) 236.

<sup>36</sup> Heymann, Stein and Moreno (n 14) 362.

<sup>37</sup> *ibid.*

**b. Social Inclusion for Persons with Disabilities**

The vast majority satisfy themselves and build up their own remarkable character through collaborating with others. A great many people incorporate and associate in the work environment, at school, in sports, in culture and in recreation. The vast majority have free access to the equity framework and to the more extensive political framework. Be that as it may, numerous people with disabilities either are rejected from, or experience hindrances inside all elements of network life. Since they are not expected to be there, they are successfully barred as no stipend is made for their essence.

This isolation is a result of the total impacts of partiality, antagonistic vibe, separation, and detachment. The resulting invisibility of persons with disabilities and their social disconnectedness combines and fortifies the pattern of prohibition. Social inclusion is one of the key establishments of the human rights outline on disability.

The CRPD is fearless in its promise to the privileges of people with incapacities to "full and viable cooperation and consideration in the public arena" (article 3 (c)). This guideline is reflected in the vast majority of the feature articles of the Convention managing, for instance comprehensive instruction (article 24) and the open work advertise (article 27). Generally, this implies people with inabilities reserve the option to be wherever on the planet<sup>38</sup> living, learning, working and socializing with and alongside persons without disabilities.

The CRPD, therefore, also promotes a decisive shift away from all forms of involuntary and "congregated" arrangements, such as institutional living, sheltered workplaces, special segregated schools, day centers and other arrangements that separate persons with disabilities from the wider community. However, doing so requires activity by States and different actors to make the conditions fundamental for powerful cooperation and full incorporation of individuals with disabilities, including finding a way to "open up" society and its foundations and committing open assets to expel boundaries and bolster support. For instance, in relation to employment, this may incorporate presenting and authorizing anti-discrimination law, leading mindfulness raising projects to handle negative employer stereotypes in regards to the capacities of

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<sup>38</sup> 'OHCHR | Vienna Declaration and Programme of Action' <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>> accessed 25 April 2019.

people with disabilities, and investing public resources in the support that people with disabilities and employers may require.<sup>39</sup>

The governments forming the ESCAP<sup>40</sup> declared the Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific. The Incheon Strategy provides basic principles of the CRPD:

1. “Respect for inherent dignity, and individual autonomy, including the freedom to make one’s own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women; and
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”<sup>41</sup>

The Incheon Strategy builds on the CRPD and the Biwako Millenium Framework for Action and Biwako Plus Five towards an Inclusive, Barrier-free and Rights-based Society for Persons with Disabilities in Asia and the Pacific. They set the period between 2013-2022 to set the goals and results within the Asia Pacific region. Indicators measure progress towards the targets and verify that the targets have been achieved. There are two types of indicators: core indicators and supplementary indicators. All indicators should be disaggregated by sex wherever possible. For example to reduce poverty and enhance work and employment prospects, there are some targets as in the followings: first, eliminate extreme poverty among persons with disabilities; second, increase work and employment for persons of working age with disabilities who can and want to work; third, increase the participation of persons with disabilities in vocational training and other employment-support programs funded by governments.<sup>42</sup>

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<sup>39</sup> ‘Disability and Human Rights: A New Perspective’ (*Asia pacific Forum*, 2017) <<https://www.asiapacificforum.net/human-rights/people-disabilities/new-perspective/>> accessed 25 April 2019.

<sup>40</sup> ESCAP is the regional development arm of the United Nations and serves as the main economic and social development center for the United Nations in Asia and the Pacific. Its mandate is to foster cooperation among its 53 members and 9 associate members.

<sup>41</sup> ‘Enabling Masterplan 2012-2016’ (*Ministry of Social and Family Development*) <<https://www.msf.gov.sg/policies/Disabilities-and-Special-Needs/Enabling-Masterplan-2012-2016/Pages/default.aspx>> accessed 20 April 2019.

<sup>42</sup> ‘Incheon Strategy to “Make the Right Real” for Persons with Disabilities in Asia and the Pacific and Beijing Declaration and Action Plan to Accelerate the Implementation of the Incheon Strategy | United Nations ESCAP’ <<https://www.unescap.org/resources/incheon-strategy-make-right-real-persons-disabilities-asia-and-pacific-and-beijing>> accessed 20 April 2019.

Indicators for tracking progress consist of core indicators and supplementary indicators. Core indicators are proportion of persons with disabilities living below the US\$ 1.25 (PPP) per day international poverty line, as updated by the World Bank and compared to the overall population. Supplementary indicators is proportion of persons with disabilities living below the national poverty line.<sup>43</sup>

Another experience from Singapore is about the attempt to increase employability and employment options mentioned in Enabling Masterplan 2. With more training and employment options, persons with disabilities can gain skills for independent living. Increased accessibility to employment services will:

1. Help persons with disabilities enhance their skills and employment prospects by working closely with both jobseekers and employers;
2. Support persons with disabilities and their caregivers through information and referral, grants and help schemes and assistance in use of assistive technology;
3. Manage an inclusive community space, enabling village, with a strong focus on training and employment for persons with disabilities;
4. Engage the wider community in disability-related initiatives to increase understanding and inclusion of persons with disabilities in our society.<sup>44</sup>

### **c. Pathways to Decent Work for People With Disabilities**

In the field of law, justice results from a legal duty or a legal use. Justice which is a legal task is the result of harmony or synchronization between legal certainty and legal equality.<sup>45</sup> Thomas Hobbes states that justice is an act that can only be said to be "fair" if it has been based on agreement.<sup>46</sup> From the statement above, Hobbes concluded that justice or a sense of justice can only be achieved when there is an agreement between or among two or more parties. The agreement intended here is in a broad form, which basically does not take sides, but prioritizes the interests and welfare of the public.

Legal theories describe three things about the enactment of the law as a rule, namely:<sup>47</sup>

- a. The rule of law applies juridical if the determination is based on a higher-level rule (Hans Kelsen),<sup>48</sup> or according to a predetermined method (W. Zevenbegen), or if it shows the relationship between a condition and its consequences (J.H.A. Logemann).

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<sup>43</sup> *ibid.*

<sup>44</sup> 'Enabling Masterplan 2012-2016' (n 41) 18-19.

<sup>45</sup> Muhammad Syukri Albani Nasution and others, *Hukum Dalam Pendekatan Filsafat* (Prenadamedia Group 2016) 216.

<sup>46</sup> *ibid* 217.

<sup>47</sup> Lili Rasjidi, *Dasar-dasar filsafat hukum* (Alumni 1985) 72.

<sup>48</sup> The notion of Stufentheorie Hans Kelsen said that the legal system is a hierarchy if certain legal provisions are derived from other higher legal provisions. *ibid* 44.

- b. The rule of law applies sociologically if the rule is effective, meaning that it can be enforced by the authorities even though it is not accepted by the community (the theory of power), or the rule applies because it is accepted and recognized by society (recognition theory).
- c. The rule of law applies philosophically, meaning that it is in accordance with the ideals of the law as the highest positive value.

With the goal of protecting people with disabilities, Indonesia enacted the PWDA in 2016, which mandates that two percent (2%) of total workforce in State-owned enterprises and provincial administration-owned companies are persons with disabilities and one percent (1%) of total workforce in private companies are persons with disabilities. The PWDA specifically states:

Article 53

- (1) The Government, Regional Government, State-Owned Enterprises, and Regional-Owned Enterprises must employ at least 2% (two percent) of persons with disabilities from the number of employees or workers.
- (2) Private companies must employ at least 1% (one percent) of persons with disabilities from the number of employees or workers.

Article 54

- (1) The Government and the Regional Government must provide incentives to private companies that employ persons with disabilities.
- (2) Provisions regarding the form and procedure for granting incentives as referred to in paragraph (1) shall be regulated by Government Regulation.<sup>49</sup>

Engagement in formal sectors consists of 22% people with disability, 40% people without disability. State budget allocation for disability issues is 0.015% in Indonesia compared to 1.1% in Australia. Among people aged 15 and above, there are 12.15% people with disabilities (around 22.8 million people). Taking the severity of disability into account, there are 1.87% people with severe disability and 10.29% people with mild disability.<sup>50</sup> When compared to Australia's budget allocation, it is apparent that Indonesia allocates far less for disabled programs. This political budget should be considered in the future to better secure the welfare of persons with disabilities. We shall compare this budget to Singapore that established SG Enable to enhance employability of persons with disabilities in 2014. Afterwards, it supported 650 employers in total and increased employability of 850 persons with disabilities at 2016.

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<sup>49</sup> Law No. 8 of 2016 on Person With Disabilities.

<sup>50</sup> Halimatussadiah and others (n 3) 132.

If this quota can be fulfilled, this quota system will be able to fulfill a sense of justice for persons with disabilities in the realm of employment. There are several recommended measures to bolster the right to decent work for persons with disabilities as follows:

1. Priority: National Level

- a. Establish a National Commission on Disability (NCD). An independent body under the Ministry of Social Affairs, responsible to cover holistic support for employers. It is recommended to make significant steps to fine decent work for persons with disabilities such as pre hiring counseling, job placement, job coaching, and employee training and company policy review. Why? Because this will provide a nurturing environment for employers, supporting persons with disabilities to work in formal sector, support behavioral changes and eliminate social stigma in companies.
- b. Increase state budget for disability issues. Disability is included in Sustainable Development Goals. Promoting inclusive economic growth and full and productive employment allow persons with disabilities to fully access the job market.

2. Priority: Regional Level.

Expand and integrate local vocational centers (LVCs) across all provinces. Training institutions under NCD, working closely with local governments. Provision for courses and training for persons with disabilities, coordination of job placement in respective province, and encourage local government to prioritize their funds in program for persons with disabilities. Expand the coverage to reach more people with disabilities and employers. Monitor activities of LVCs and ensure their programs are aligned to enhance the skills of persons with disabilities.<sup>51</sup>

Justice seekers (*justiciabellen*) certainly want the decisions given by the judges in the court not only to adhere to aspects of legal certainty (procedural justice), but also to adhere to legal justice, moral justice, and social justice.<sup>52</sup> This is because the main goal is justice. Gustav Radbruch states that "*Summum ius summa iniuria*", meaning that the highest justice is conscience. Thus, justice is actually related to conscience, not just to a definition.

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<sup>51</sup> 'Pathways to Decent Work for People with Disability - Knowledge Center' <<https://indonesiadevelopmentforum.com/2019/knowledge-center/detail/12701-pathways-to-decent-work-for-people-with-disability>> accessed 23 April 2019.

<sup>52</sup> Mohammad Koesnoe and M Syamsudin (eds), *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, Dan Kemungkinan Pengembangannya Di Era Postmodern* (Cetakan pertama, Pusat Studi Hukum (PSH) FH UII kerja sama dengan FH UII Press 2013) 270.

The obligation to provide excellent services to justice seekers shall include the rights for persons with disabilities. The most basic rights include:<sup>53</sup>

- a. Equality of opportunity, which means a situation that provides opportunities for persons with disabilities to get equal opportunities in all aspects of life and livelihood, including aspects of the availability of facilities and infrastructure needed for persons with disabilities in the judicial environment;
- b. Accessibility, is an amenity provided for persons with disabilities to realize equal opportunities; and
- c. Rehabilitation means the process of finalization and development to enable persons with disabilities to carry out their legal and social functions appropriately in the fulfillment of rights and justice and in the social life of the community.

As for the legal protection and legal accessibility for persons with disabilities, basically, all rights owned by humans apply equally to persons with disabilities. The fact is that people with disabilities are a minority group in number and representation, and are subordinated because of stigma, level of understanding, and political domination at the community and state level.

Based on the problems faced by persons with disabilities in planning and budgeting, the researcher recommended the following points:

1. Mandating all ministries/agencies and local governments to promote strategies for mainstreaming planning and budgeting in favor of persons with disabilities;
2. Mandating Bappenas to develop regional development planning guidelines that involve organizations of persons with disabilities;
3. Ensuring the implementation of planning and budgeting that is disability inclusive in the APBN/APBD/APBDesa;
4. Finance ministers and synergize with village ministries and PDTT to develop regulations that open up the use of village funds to support budgeting planning that is pro-disabled; and
5. Increasing advocacy efforts to ensure the realization of regulations mainstreaming budgeting planning in favor of persons with disabilities.

CRPD, along with other regional and national international conventions and initiatives, will contribute to improving the living conditions and status of persons with disabilities throughout the world for years to come. Effective implementation will encourage the realization of the rights and dignity of persons with disabilities, empower them, and strengthen the economy and enrich the community as a whole.

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<sup>53</sup> *Varia Peradilan Th. Ke XXX No.357 Agustus 2015 (IKAHI 2015) 55-56.*

## E. Conclusion

The form of legal protection provided by the Indonesian government to persons with disabilities in fulfilling the right to work is set forth in Law Number 8 of 2016 concerning persons with disabilities as stipulated in Articles 45 - article 60. This form of legal protection covers the process of recruitment, acceptance, job training, work placement, sustainability of work, and the development of a fair career without discrimination. Employment rights for persons with disabilities include the right to access employment organized by the government, regional government or private sector without discrimination, get equal salary, get adequate accommodation, and persons with disabilities are not dismissed for reasons of disability.

Providing an inclusive workplace for persons with disabilities will make it easier for persons with disabilities to remove barriers. To create an inclusive work environment for persons with disabilities in the workplace, we need the principles of inclusion that covers: awareness, accessibility, involvement, and support for persons with disabilities. In addition, special treatment and more protection must be given to persons with disabilities to achieve equality with non-disabled people.

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