

International Human Rights Instruments and Indonesian Legal Protection For Persons With Disabilities

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International Human Rights Instruments and Indonesian Legal Protection For Persons With Disabilities

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Abstract

Persons with disabilities as Indonesian citizens, in fact have the same position, rights and obligations as other Indonesian citizens. This is guaranteed in the Indonesian Constitution. This study aims to discuss about how the legal protection for persons with disabilities in Indonesia. The juridical normative research method uses a statute approach and conceptual approach, and then the data is processed and analyzed qualitatively. Legal protection for persons with disabilities is the responsibility of the state. Indonesia has ratified the Convention on the Rights of Persons with Disabilities, which was followed up with the revocation of Law no. 4 of 1997 concerning Disabled Persons, then enactment of Law No. 8 of 2016 concerning Persons with Disabilities, which prioritizes the issue of human rights. Persons with disabilities are seen as subjects whose rights must be protected for the sake of their dignity. For the enforcement mechanism, the National Disability Commission was formed based on Presidential Regulation No. 68 of 2020, but the substance is not in accordance with the human rights and independent principles because it is attached to the Ministry of Social Affairs which should be the object of its supervision. Therefore the President must immediately revise it in accordance with the mandate of Law No. 8 of 2016.

Keywords: Legal Protection, Persons with Disabilities, Indonesia

Introduction

In Indonesia, the basic rights and freedoms of persons with disabilities are guaranteed by the constitution. Article 28H(2) of the 1945 Constitution states that "Every person has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice". In relation to 'special treatment', vulnerable groups of people are entitled to receive more treatment and protection with regard to their specificity (Article 5 (3) of the Human Rights Law) and every person with a disability has the right to obtain special facilities and treatment (Article 41 (2) of the Human Rights Law). Thus the state has an obligation to protect the rights and dignity of persons with disabilities, because the real responsibility of the

state, especially the Government, is to protect, advance, uphold and fulfill human rights (Article 28 I (4) of the 1945 Constitution).

The general condition of persons with disabilities faced in the community is the low level of participation in various sectors, for example education, training, employment, and others. Persons with disabilities are also considered to be still excluded from the social environment, access to facilities, and limited public services^{2,3}. Data on persons with disabilities from the 2018 National Socio-Economic Survey consisted of age groups of 2-6 years totaling 33,320,357 people (people with moderate disabilities: 1,150,173 people, people with severe disabilities: 309,784 people); The age group of 7-18 years was 55,708,205 people (people with moderate disabilities: 1,327,688 people, people with severe disabilities: 433,297 people); The age group between 19-59 years is 150,704,645 people (people with moderate disabilities: 15,834,339 people, people with severe disabilities: 2,627,531 people); The age group > 60 years is 24,493,684 people (people with

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moderate disabilities: 12,073,572 people, people with severe disabilities: 3,381,134 people)⁴. Hence, this study aims to discuss about how the legal protection for persons with disabilities in Indonesia.

Research method

The research method used is a normative juridical method⁵, using a statute approach and conceptual approach⁶. The data used are secondary data obtained through library research. The data is processed and analyzed qualitatively which is then presented in the form of systematic writing⁷.

International Human Rights Instruments of Persons with Disabilities

Universal Declaration of Human Rights (UDHR) is a common standard of the international community which must be maintained continuously through teaching and education to promote respect for the rights of freedom by taking progressive steps at both the national and international levels as universal recognition and effective adherence to people who are in the jurisdiction of a country^{8,9}. Human rights conventions impose international obligations on States parties to incorporate international human rights standards into their national legal systems and provide enforcement mechanisms^{10,11,12}. One of the new human rights conventions is the Convention on the Rights of Persons with Disabilities or CRPD. In accordance with modern human rights theory, the struggle for new rights is determined by several factors such as organized social movements that normatively convince the Government and the United Nations as the main guardians of human rights¹³. Previous models regarded disability as an individual medical problem so disability is usually described by way of condescending words such as 'dysfunction' or 'disability'. People with disabilities are considered 'objects' of charity, medical care, and dependent social protection¹⁴. On the contrary, the social model intends to replace this attitude by seeing people with disabilities as 'subjects' and active members of society, who are able to pursue their rights. In this model, responsibility for the difficulties experienced in everyday life by people with disabilities is transferred from the individual to the community and the way it is arranged. Social barriers such as discrimination, education, prejudice, etc. exclude people with disabilities

from taking part in social life with the same rights and possibilities as others. The social model has also been criticized, because it is too focused on external obstacles and underestimates personal experiences¹⁵. Another model has been proposed is the affirmation model, but this is not considered as the opposite of the social model but as a model that develops and complements it¹⁶.

Finally, the CRPD and its Optional Protocol were adopted during the UN General Assembly on December 13, 2006, open for signature on March 30, 2007 and took effect on May 3, 2008. Once international treaties came into force, the legal obligations of the international agreements became operative. In accordance with Article 38 (1) of the Statute of the International Court, treaty becomes a source of international law, especially for parties¹⁰, and legally the parties must obey the treaty in good faith (pacta sunt servanda, Article 26 Vienna Convention on the Law of Treaties). Pacta sunt servanda is the basic principle of contract law that the agreement is binding on the parties and must be implemented in good faith. Good faith is a legal principle that comes from an integral part of pacta sunt servanda⁸. The principle of pacta sunt servanda and good faith are the principle of equal importance (equal importance). Every time a State violates the principle of pacta sunt servanda, it also violates the principle of good faith, for example if a country does not carry out its obligations originating from an agreement means it violates both principles¹⁷.

The implementation of CRPD shows global concern to give serious attention to persons with disabilities. The CRPD aims to promote, protect and guarantee the overall and balanced fulfillment of all human rights and fundamental freedoms of all persons with disabilities and to increase respect for the dignity inherent in them. CRPD refers directly to the values promoted by the social model. The principle of fulfilling the rights of persons with disabilities is expressly stated in Article 3 of the CRPD, namely respect for inherent dignity, individual autonomy, including freedom to make choices, and individual independence; non-discrimination; full and effective participation and participation in society; respect for differences and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; respect for the evolving capacity of children with disabilities of children and respect for

the rights of children with disabilities to maintain their identity.

States parties must guarantee and advance the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination in any form. The steps taken include: taking legislative and administrative steps in fulfilling the rights recognized by the CRPD; take policy to change or revoke the provisions of the law (laws), regulations (regulations), customs (customs), and applicable practices that contain elements of discrimination against persons with disabilities; adopt practical policies and programs in the context of protecting and promoting the rights of persons with disabilities; refrain from taking action and / or make discriminatory policies and so on (Article 4 CRPD). The CRPD emphasizes 15 groups of categories of rights for persons with disabilities. These rights are women's rights, children's rights, accessibility to adequate public facilities, right to life, legal rights, free from torture, free from exploitation, the right to citizenship, social rights and mobility, the right to information and expression, personal integrity and family, education and health, decent work and livelihoods, politics, and participation in culture.

National Legal Instruments to the Rights of Persons with Disabilities

Human rights as fundamental rights are universally recognized as rights inherent in humans because of their human nature and nature¹⁸. The inherent nature of human rights because it cannot be deprived or revoked¹⁹. Nowak said there are four human rights principles namely universality, indivisibility, interdependent, and interrelated⁹. Smith & van den Anker added equality and non-discrimination²⁰. The indivisibility principle means that all human rights are equally important, therefore it is not allowed to exclude certain rights or certain categories of rights from their share²¹. According to Article 1 (1) of the Human Rights Law stated that human rights are a set of rights inherent in the nature and existence of humans as God's creatures and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity and. Thus, humans should not be treated arbitrarily because humans have natural rights attached to him. Regarding the rights of persons

with disabilities, Article 5 (3) of the Human Rights Law states that every person who belongs to a vulnerable group of people has the right to receive treatment and protection with regard to their specificity. Thus, every person with a disability has the right to obtain facilities and special treatment (Article 41 (2) of the Human Rights Law). This is reiterated in Article 42 of the Human Rights Law that every citizen with physical or mental disability has the right to receive special care, education, training and assistance at the expense of the state to guarantee a decent life in accordance with his human dignity.

In the framework of realizing equal rights and opportunities for persons with disabilities towards a prosperous, independent, and non-discriminatory life, legislation is needed that can guarantee their implementation. In 1997 Law No. 4 of 1997 concerning Disabled Persons, but is no longer in line with the paradigm of the needs of persons with disabilities. The law has been replaced by Law No. 8 of 2016 concerning Persons with Disabilities, where the State guarantees the survival of every citizen, including persons with disabilities who have a legal position and have the same human rights as Indonesian citizens and as an inseparable part of Indonesian citizens and citizens to live forward and develop fairly and dignified²².

Legal Protection for Persons with Disabilities

Regarding legal protection for persons with disabilities, the Government of Indonesia signed the CRPD on March 30, 2007 in New York and has ratified it through Law No. 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities on November 10, 2011. This is a step forward of the Government of Indonesia in order to recognize the importance of protection and fulfillment and special attention for persons with disabilities. Legally according to the principle of pacta sunt servanda, Indonesia is obliged to implement it in good faith because international treaties that have been ratified must be implemented at the national level²³. This is reinforced by Article 7 (2) of the Human Rights Law that provisions of international law that have been accepted by the Republic of Indonesia concerning human rights become national law.

The CRPD calls on the state parties to immediately accelerate in order to achieve equality between persons

with disabilities and non-disabilities. Equality requires policies that favor the realization of the rights of persons with disabilities, so affirmative action is needed from the government to remove barriers to social interaction so that persons with disabilities can access all public services independently. Law no. 4 of 1997 concerning Disabled Persons, is no longer in accordance with the paradigm of the needs of persons with disabilities so that it is revoked and replaced with Law No. 8 of 2016 concerning Persons with Disabilities, to realize the equal rights and opportunities for persons with disabilities towards a prosperous, independent, and non-discriminatory life^{24,25}. In the framework of implementing the respect, protection and fulfillment of the rights of persons with disabilities, a National Disability Commission (KND) was established as an independent non-structural institution (Article 131). The KND has the task of carrying out monitoring, evaluation, and advocacy for the implementation of respect, protection and fulfillment of the rights of persons with disabilities, the results of which are reported to the President (Article 132). KND was formed based on Presidential Regulation No. 68 of 2020 concerning the National Disability Commission.

Conclusions

Legal protection and dignity of persons with disabilities are the responsibility of the state. Indonesia has ratified the Convention on the Rights of Persons with Disabilities, which was followed up with the revocation of Law no. 4 of 1997, then enactment of Law No. 8 of 2016 concerning Persons with Disabilities, which prioritizes the issue of human rights. Persons with disabilities are seen as subjects whose rights must be protected and respected for their dignity. For the enforcement mechanism, KND was formed based on Presidential Regulation No. 68 of 2020. However, the substance is not in accordance with the principle of human rights (independent principle) because it is attached to the Ministry of Social Affairs which should be the object of supervision. Therefore, the President must immediately revise it in accordance with the mandate of Law No. 8 of 2016 and CRPD.

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Conflict of Interests: There are no conflict of interests

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