





Evaluative Review of Government Obligations in Protecting the Right to Work for Persons with Disabilities through National and Regional Regulations (Ambon City) After the Ratification of the Convention on the Rights of Persons with Disabilities

Siska Giofana Mapusa

Ministry of Law and Human Rights, Ambon, Indonesia

 : siskagiofana@aol.com

 : xxxxxxxxxxxxxx



Info Artikel

Keywords:
Rights to Work; Disability; Convention on the Rights of Persons with Disabilities.

Abstract

Introduction: Indonesia is a country that upholds the protection of human rights. One of the human rights pillars of concern for Indonesia is legal protection for Persons with Disabilities.

Purposes of the Research: The study aims to determine whether the national regulations in Indonesia have accommodated the implementation of the Right to Work in accordance with Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD) and the availability of regulation at the regional level, especially in Ambon as a form of protection for the Disability Right to Work.

Methods of the Research: This research was conducted using normative methods. The results of this study were presented in a descriptive analysis report.

Results of the Research: The results showed that the Act and regulations in Indonesia have not been maximal in providing protection for workers with disabilities because not all rights in Article 27 of the CRPD were regulated in national regulations. Relating to the protection of the right to work for persons with disabilities in the city of Ambon, there was no district regulations.

A. INTRODUCTION

Indonesia's active actions by ratifying the Convention on the Rights of Persons with Disabilities (CRPD) with Act Number 19 Year 2011 concerning Ratification of the Convention on the Right of Persons with Disabilities (CRPD) on November 11, 2011. One of the vital rights protected through the CRPD arrangement is the Right to Work. Based on Article 27 of the CRPD which has been ratified by Indonesia stated that:

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 labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment,

- hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Currently, data from the World Health Organization (WHO), the World Bank and the International Labor Organization (ILO) shows that persons with disabilities in the world is estimated at 15% of the world's population or 1 billion people, and there are at least 785,000,000 (seven hundred eighty five million) persons with disabilities are of working age. In Indonesia, based on data from the Ministry of Social Services up to 2010, the number of people with disabilities has reached 11,580,117. Meanwhile, data from the Ministry of Manpower and Transmigration states that the number of workers with disabilities in 2010 can be seen in Table as follows;¹

¹ Suara Pembaruan, *BUMN Wajib mempekerjakan Disabilitas*, <http://sp.beritasatu.com/home/bumn-wajib-pekerjakan-penyandang-disabilitas/80805>, diakses pada tanggal 26 Juli 2015. Jumlah Penyandang Disabilitas di Indonesia menurut Data Kementerian Ketenagakerjaan dan Kementerian Sosial Republik Indonesia yang terbaru diperbaharui sampai saat ini adalah tahun 2010. Belum ada perubahan informasi yang juga tercantum secara resmi melalui Kementerian Terkait maupun Badan Pusat Statistik.

Table 1. Number of Workers with disabilities in 2010

No	Type of Disability	Total
1	Blind	7.126.409
2	Disability	1.852.866
3	Deaf	1.567.810
4	Mental disability	712.641
5	Chronic Disability	855.169

Source: Ministry of Manpower and Transmigration Republic of Indonesia 2010

The right to work is a very complex topic at both national and international levels. In his study, Krzysztof Drzewicki stated, "*the right to work and rights in work constitutes a core of not only socio-economic rights, but also fundamental rights*". With this statement, this professor of Public International Law would like to emphasize, first, that the right to work and workers' rights (the rights in work which is more popular with normative rights) are classified as fundamental rights, which are often referred to as basic rights.² In the Indonesian context, the right to work is guaranteed in The 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) which states, "Every citizen has the right to work and a decent living for humanity". The fulfillment of this right is the responsibility of the state, as emphasized in the The 1945 Constitution of the Republic of Indonesia Article 28I paragraph (4) The guarantee of the right to work in the Indonesian constitution seems very appropriate, because this right has an economic function that has multiple effects and is a prerequisite for obtaining the right to an adequate standard of living.³ Referring to the study above, it is clear that the right to work, in addition to being classified as a basic right, also as socio-economic rights. In connection with this right to work, of course the subject who owns it is labor or workers. Specifically in this study, the author focuses more on the subject, namely labor or workers classified as persons with disabilities.

As is well known, Indonesia has ratified the Convention on Persons with Disabilities or what is commonly referred to as the CRPD. The CRPD is a very important convention because it recognizes that legal steps are not sufficient to guarantee the protection and advancement of the basic rights of persons with disabilities. For example, Article 8 of the CRPD requires states to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to maintain respect for the rights and dignity of persons with disabilities. Policies and programs to implement aspects of the Convention is needed at the national level, and this should be supported by measures based on the protection of the legal rights strongly. National law in Indonesia also regulates the protection of workers with

² H Amidham, *Masalah Pengangguran Dan Solusinya Ditinjau Dari Perspektif Hak Asasi Manusia; Hak Atas Pekerjaan* (Jakarta: Komnas HAM, 2005), h. 7.

³ *Ibid*, h. 8.

disabilities which is then a state obligation, which is represented in Law Number 8 Year 2016 concerning Persons with Disabilities and Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower (Indonesian Labour Law) and several implementing regulations under it. Explicitly, in Article 5 Persons with Disabilities Act paragraph (1) letter f, it is stated that; "Persons with disabilities have the rights to work, entrepreneurship and cooperatives". In addition, Law Number 8 Year 2016 concerning Persons with Disabilities provides guarantees regarding the rights of persons with disabilities to find work. Article 53 of the Law on Persons with Disabilities regulates the quota issue of at least 2%, namely the Government, Local Government, State-Owned Enterprises, and Regional Owned Enterprises are required to employ Persons with Disabilities. Meanwhile, private companies are required to employ at least 1% of Persons with Disabilities of the number of employees or workers. In fact, companies that employ persons with disabilities are still very minimal⁴In conjunction with the normative regulation in the provisions of the national law, it is advisable for the legal protection of the right to work for persons with disabilities to continue to be improved. Considering that both internationally and nationally this is a guarantee for the protection of human rights and fundamental freedoms everyone.

According to data from the Central Bureau of Statistics Republic of Indonesia, amount of persons with disability in Maluku Province in 2018 totaled 2,610. For male amounting to 1,534 people while the female was 1,076 people. In Ambon City, amount of person with disabilities was 384 for the male gender totaling 240 people while the female number is 144 people⁵. In terms of quantity, this should be a serious concern of the Ambon City Regional Government. Based on the 2018 national labor force survey, there were 341,438 residents of Ambon City who fall into the working age population category (15 years and over) where 194,958 people were in the workforce. The proportion of the working population has increased slightly from 2017, from 86.01 percent to 87.78 percent of the total workforce. The Labor Force Participation Rate (LFPR) of Ambon City residents in 2018 was 57.10 percent. It shows that every 100 working age residents, there were 57 residents who participate in the Work Force. Meanwhile, open unemployment reached 12.22%. The number of job seekers in Ambon City in 2018 was 4,801 people, of which 63.38% were women.⁶

Unfortunately, based on the researcher's investigation of the Statistical Data from the Central Bureau of Statistics Republic of Indonesia and the Manpower and Transmigration Office of Ambon, there was no data on the number of workers from Disabilities class in Ambon City. Furthermore, it was continued with an investigation of regional legal products, where no regional regulations or regional head regulations regarding Persons with Disabilities are found. Ironically, a fundamental factor that must be considered by the Government regarding the existence of Persons with Disabilities in the regions is the availability of a systematic legal protection framework.

⁴ Suara Pembaruan, *Penyandang Disabilitas Masih Alami Diskriminasi*, <http://sp.beritasatu.com/home/penyandang-disabilitas-masih-alami-diskriminasi/45903> , diakses pada tanggal 26 Juli 2015.

⁵ Provinsi Maluku dalam Angka, h. 272

⁶ Kota Ambon Dalam Angka 2019, h. 62.

This could be evaluated through the availability of regional regulations that regulate rigidly the embodiment of the rights of Persons with Disabilities in the regions, which include the right to work. In particular, the author takes a small scope as material for evaluating the readiness of regional regulations in protecting the Work Rights of Persons with Disabilities in the area, namely Ambon City.

B. METODE PENELITIAN

This study was an normative legal research. Library research is research conducted by searching for secondary data obtained by literature studies obtained from various books, literature, laws and regulations, theses, papers, legal journals, magazines, decrees, and other materials related to research done after that to study and analyze the data obtained.⁷

C. RESULT AND DISCUSSION

1. Evaluation of National Regulations (Act) Related to the Protection of the Right to Work for Persons with Disabilities

Protection of the right to work for persons with disabilities is very important for the state to implement. The protection provided can be seen through the national policy, in this case national regulations, which regulates in detail the rights of persons with disabilities to access work but also through direct implementation in the technical field.

In writing this study, the researcher would conducted an evaluative review regarding Indonesia's national policy in protecting the accessibility of persons with disabilities to get a job, whether it was equivalent and in accordance with what was stipulated in Article 27 of the CRPD or not. Furthermore, the researcher would analyzed it from the substance of Act. the right to work for persons with disabilities related to the main material stipulated in Article 27 which then recommends the state party to the convention to regulate these materials in their respective national laws and regulations. - each country. The reviews related to the evaluative review can be further explained through the researcher's explanation of the Act as follows;

a. Rights to non-discrimination treatment (Article 27 CRPD section (1) point a)

The prohibition of discrimination is one of the most upheld principles in international law. Some of the principles covering international human rights are generally found in almost all international treaties and are applied to a wider range of rights. These principles include, among others, the principle of equality, prohibition of discrimination and positive obligations that exist in each country to protect certain rights.⁸

The prohibition of discrimination is a part of the principle of equality. If everyone is equal, then there should be no discriminatory treatment (other than affirmative

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), <https://doi.org/340.072>, 35.

⁸ Pusat Hak Asasi Manusia UII, *Prinsip-Prinsip Hak Asasi Manusia dalam Hukum Hak Asasi Manusia Internasional*, diakses dari http://pusham.uui.ac.id/ham/8_Chapter2.pdf, tanggal 14 Agustus 2015, h.40.

action taken to achieve equality). What is discrimination? In effect, discrimination is the difference between treatment differences from what should be equal. Direct discrimination is when a person is directly or indirectly treated differently (less favorable) than others. Indirect discrimination arises when the impact of the law or in legal practice is a form of discrimination, even though it is not intended for the purpose of discrimination.⁹

This form of discrimination can take the form of negative impressions or public expressions that demean persons with disabilities. Another form that might occur is that they are marginalized from the community because usually people still underestimate the ability of persons with disabilities to achieve something. Environmental discrimination occurs when public services, buildings and transportation are not designed with access for residents with disabilities in mind. Institutional discrimination occurs when existing laws clearly discriminate against or obscure the rights of persons with disabilities, making them second-class people without the right to vote, own land, go to school, have families, and have children.¹⁰

"Disability discrimination" means any distinction, exclusion or limitation on the basis of disability which intends or has the effect of limiting or eliminating recognition, enjoyment or exercise, on the basis of equality with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or other. This includes all forms of discrimination, including denial of reasonable accommodation ¹¹ With regard to legal protection of the right to work given to persons with disabilities, it was as already explained explicitly in Article 27 of the CRPD that discrimination is prohibited. Regarding the prohibition of discrimination, it includes conditions of recruitment, hiring and employment, extension of employment, career development and safe and healthy working conditions. In the following, the researcher would analyze it in a number of related national regulations in Indonesia whether or not they have regulated the right to non-discrimination treatment of persons with disabilities at work in accordance with what is stipulated in the CRPD.

- 1) The 1945 Constitution of the Republic of Indonesia, Article 28I section (2)
- 2) Law Number 8 year 2016 concerning Persons with Disabilities, Article 11 letter a
- 3) Law Number 39 year 1999 concerning Human Rights, Article 3
- 4) Act of the Republic of Indonesia Number 13 year 2003 concerning Manpower, Article 5, Article 6, Article 28.

Review By Researcher:

1) Related to The 1945 Constitution of the Republic of Indonesia Article 28I section (2), it is necessary to prohibit discriminatory treatment. The clause "everyone" in the article's sound grammatically, the author can interpret that the article applies to every citizen in Indonesia, including persons with disabilities. Article 28I paragraph

⁹ *Ibid*, h. 41.

¹⁰ Human Rights Advocay For Community Based Organisations of Persons With Disabilities, *Panduan Advokasi Hak Asasi Manusia Bagi Organisasi Penyandang Disabilitas*, Edisi Revisi, Australia Aid-Australia Indonesia Partnership for Justice-Handicap International, 2014, h. 15.

¹¹ Pasal 2 *Convention On The Rights Of Persons With Disabilities*

(2) of The 1945 Constitution of the Republic of Indonesia , not only states the existence of freedom for everyone, including persons with disabilities, from discriminatory treatment, but the article also lists the rights held by "everyone" at the top of the legal protection against discriminatory treatment. According to the Reseacher, this indicates that the state in this case wants to emphasize that persons with disabilities are right holders and the state positions itself as duty bearers. Thus persons with disabilities have a strong basis for obtaining protection against discriminatory treatment that they find in this case, for example in fulfilling the right to work.

2) Actually, related to Article 6 of the Manpower Constitutional above, the researcher regrets that it was not explicitly regulated regarding workers with groups of persons with disabilities. Given that the treatment to every worker in a company must be different between persons with disabilities and non-disabled people. Both Article 5 and Article 6 of the Manpower Act were not much different, but there were differences which, according to the researcher, e one of the advantages of the normative regulation of this law, namely that the meaning of equal treatment without discrimination from employers in Article 6 is more towards treatment from employers, both from before, during and after the employment relationship, whereas in Article 5, discrimination cannot be done only in terms of the opportunity to get a job or the period before the employment relationship exists.

b. Rights to Equality (Article 27 CRPD section (1) point b)

In the following, the researcher would analyzed a number of related national regulations in Indonesia, whether or not they have regulated the right to work for people with disabilities in accordance with what is stipulated in the CRPD.

- 1) The 1945 Constitution pf the Republic of Indonesia, Article 27 paragraph (2)
- 2) Law Number 8 Year 2016 concerning Persons with Disabilities, Article 52
- 3) Law Number Number 39 Year 1999 concerning Human Rights, Article 38 paragraph (3)
- 4) Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower, Article 67 paragraph (1), Article 31, Article 35 section (3), Article 76 section (3), Article 77 section (1), Article 86 section (1), Article 87 section (1), Article 88 section (1), Article 99 section (1).

Review By Researcher:

1) According to the author, regarding Article 27 section (2) The 1945 Constitution of the Republic of Indonesia above has represented the state's concern regarding the issue of equality for persons with disabilities to obtain their right to work, but also a decent living which the author can grammatically interpret as fair and favorable working conditions. , including opportunities and remuneration for work of equal value, healthy and safe working conditions, including protection from harassment and reduction of sadness because the consequences of the application of this clause are a decent life for persons with disabilities.

2) According to the author, regarding Article 77 section (1) of the Manpower Act, it should be observed carefully. In view of the physical condition of persons with disabilities, whether they have the same working hours provisions as other workers who are not classified as persons with disabilities. The enforcement of the provisions

stipulated in several articles stated by the author above, as a whole, uses the nomenclature of "every worker" which gives a definitive emphasis in general, not specifically regarding persons with disabilities. It was feared that these would create unfavorable conditions for workers who were classified as persons with disabilities.

c. Rights of Joining Association (Article 27 CRPD section (1) point c)

Rights of joining association is a very essential right which was given protection by the international community through its regulation in a number of provisions of international law. Based on the Universal Declaration on Human Rights (UDHR) or the Universal Declaration of Human Rights (UDHR) the right to freedom of association is guaranteed to state that;¹² "Everyone has the right to freedom of assembly and association without violence. No one should be forced to enter an association." In international human rights law, the right to freedom of association falls into the intersection zone between civil and political rights. This right may not be intervened by either the state or other parties because of the importance of the right to freedom of association for the existence and functioning of democracy. Individual political interests will be more able to be fought for through an association with other people either through political parties, professional groups, organizations or other unions in order to fight for their interests.¹³ The right to freedom of association is also stated in the International Covenant on Civil and Political Rights (ICCPR) or The 1966 International Covenant on Civil and Political Rights (ICCPR) which was ratified by Indonesia through Constitutional no. 12 Year 2005 which states that; ¹⁴"Everyone has the right to freedom of association with other people, including the right to form and join trade unions to protect their interests". Quoting what is stated in the ILO Convention No. 87/1948 on Freedom of Association and Protection of the Right to Organize, which the convention was ratified on June 9, 1998 states that;¹⁵ " Workers and employers, without any difference, have the right to establish and, according to the rules of their respective organizations, join other organizations of their own choice without the influence of other parties". Given that the objective of the ILO Conventions is to guarantee workers or laborers and employers the freedom to establish and become members of their organizations, for the advancement and certainty of their job interests, without the slightest involvement of the state. Then it reflects his own appreciation or respect for the worker. Included in this, according to the author, are persons with disabilities who are also classified as workers. In the following, the researcher would analyze a number of related national regulations in Indonesia, whether or not they have regulated equal rights for persons with disabilities in work as regulated in the CRPD.

- 1) The 1945 Constitution of the Republic of Indonesia, Article 28E section (3)
- 2) Law Number 8 of 2016 concerning Persons with Disabilities, Article 51
- 3) Law Number 39 Year 1999 concerning Human Rights, Article 24 section (1), Article 24 section (2)

¹² Pasal 20 UDHR

¹³ William A Schabas, *Nowak's CCPR Commentary: U.N. International Covenant on Civil and Political Rights 3rd Ed* (Germany: N.P. Engel Verlag, 2019), h. 496-497.

¹⁴ Pasal 22 ayat (1) ICCPR.

¹⁵ Pasal 2 Konvensi ILO No. 87/1948.

- 4) Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower, Article 104 section (1).

d. Rights to effective access to the general technical expertise guidance program and skills (Article 27 CRPD section (1) point d)

Skills training is any attempt to improve the performance of workers in a particular job which is their responsibility, or a job that is related to their job. To be effective, training usually must include learning experiences, be a planned organizational activity, and designed to respond to identified needs. Ideally, training should be designed to achieve organizational goals, while at the same time realizing the goals of individual workers (Gomes, 2003: 197).¹⁶ The International Labor Organization (ILO) concluded that the level of participation of persons with disabilities in the open labor market tends to be lower than other workers, while the unemployment rate tends to be high (O'Reilly, 2013, p.33). Some of the reasons for the low level of employment among persons with disabilities (O'Reilly, 2013, p. 35) include: low levels of education and training; lack of information on job opportunities; lose interest due to experience or failure to find a job or a negative self-image.¹⁷ Apart from being entitled to receive equal treatment, in the Manpower act, workers with disabilities receive special attention to providing job training. The Manpower act states that employers are responsible for providing job training to improve the competence of their workers. Job training in question is all activities to provide, obtain, improve, and develop work competence, productivity, attitude discipline, and work ethic at a certain skill and expertise level in accordance with the level and quality of position for In the following, the researcher would analyzed a number of relevant national regulations in Indonesia whether or not they have regulated the right to effective access to the general technical expertise guidance program and skills for persons with disabilities in work in accordance with those stipulated in the CRPD.work, while what is meant by job competence is the ability the work of each individual which includes aspects of knowledge, skills, and work attitudes in accordance with established standards.¹⁸

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering Act of 1945 just general things.
- 2) Law Number 8 of 2016 concerning Persons with Disabilities, Article 46 section (1)
- 3) Law Number 39 of 1999 concerning Human Rights, Article 24 section (1), Article 24 section (2)

¹⁶ Febrina Odelia M Simanjorang, "Efektivitas Program Pelatihan Keterampilan Bagi Penyandang Cacat Tuna Rungu Wicara Di UPT Pelayanan Sosial Tuna Rungu Wicara Dan Lansia Pematang Siantar," *Welfare State* 2, no. 4 (2013): 1-18.

¹⁷ Dwinda Mayrizka, "Strukturasi Implementasi Kebijakan Disabilitas (Studi Kasus Kebijakan Pemberdayaan Penyandang Disabilitas Di Kabupaten Sidoarjo)," *Jurnal Mahasiswa Sosiologi* 1, no. 4 (2015): 1-33.

¹⁸ Hardijan Rusli, *Hukum Ketenagakerjaan 2003* (Jakarta: Jakarta: Ghazali Indonesia, 2004), h. 27.

- 4) Act of the Republic of Indonesia Number 13 of 2003 concerning Manpower, Article 11, Article 12 section (3), Article 18 section (1), Article 19.

e. Rights to career development (Article 27 CRPD section (1) point e)

In terms of career development for persons with disabilities in the labor market, the ILO has actually arranged technical guidelines on the promotion of career development for persons with disabilities, as follows;¹⁹

- 1) Workers with disabilities should be provided with equal opportunities to other workers in the workplace to acquire the skills and experience necessary to advance their careers.
- 2) Information on career development and promotion opportunities should be provided and communicated in a format accessible to workers with disabilities of different types of disabilities within the same company. Special attention needs to be paid to accessibility, if the information provided electronically.
- 3) Workers with disabilities should be encouraged to apply for promotion, especially for positions where they appear hesitant to apply, because of deficiencies or other barriers related to their disability, or which are seen as obstacles in their work environment.
- 4) In considering promotion of workers, employers should take into account their previous experience, if any, current competencies, performance and abilities, in addition to formal qualifications that are appropriate for the main requirements of the job.

The national regulations regarding the right to career development for persons with disabilities at work are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
There are no articles that regulate. It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the 1945 Constitutional of the Republic of Indonesia only regulates general matters, not specific provisions on employment.
- 2) Law Number 8 of 2016 concerning Persons with Disabilities, Article 45.
- 3) Law Number 39 Year 1999 concerning Human Rights
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Constitutional Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower.
There is no regulating article yet.

¹⁹ International Labour Organization, *Pedoman ILO Tentang Pengelolaan Penyandang Disabilitas Di Tempat* (Jakarta: International Labour Office, 2013).

Review By Researcher: Related to career development for persons with disabilities in Indonesia has not been set explicitly in national law in Indonesia. It was then become a big chore for the government to accommodate the regulations.

f. The right to develop cooperatives, and start their own business (Article 27 CRPD section (1) point f)

The national regulations regarding the right to career development for persons with disabilities at work are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the act of the Republic of Indonesia year 1945 only regulates general matters, not specific provisions on employment.
- 2) Law Number 8 of 2016 concerning Persons with Disabilities, Article 11 letter h.
- 3) Law Indonesia Number 39 Year 1999 concerning Human Rights
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Law Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 of 2003 concerning Manpower.
There is no regulating article yet.

Review by researcher; The development of the business climate has been regulated in various laws and regulations and Government policies, including Act Number 9 Year 1995 concerning Small Business. The implementation of business climate development for persons with disabilities is based on the existing laws and regulations and Government policies as well as the conditions and skills or expertise of the person with disabilities concerned.²⁰ However, after the researcher explores the provisions in Act Number 9 year 1995 concerning Small Business, there was no provision that regulates the provisions specifically intended for Persons with Disabilities. There was also no clause regarding the specialization of persons with disabilities in regulating their own small businesses. Referring to the above, there needs to be a new policy carried out by the Indonesian government through national legal provisions that accommodate the rights of persons with disabilities to self-employment in more detail.

g. Rights to work in the government sector (Point (g) section (1) Article 27 CRPD)

The national regulations related to the right to work in the Government Sector for persons with disabilities are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the 1945 Constitution of the

²⁰ Penjelasan Pasal 32 ayat (2) PP Nomor 43 Tahun 1998 tentang Upaya Peningkatan Kesejahteraan Sosial Penyandang Cacat.

Republic of Indonesia only regulates general matters, not specific provisions on employment.

- 2) Law Number 8 Year 2016 concerning Disability, Article 11 point a, Article 53 section (1)
- 3) Law Indonesia Number 39 of 1999 concerning Human Rights
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Constitutional Number 39 of 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 of 2003 concerning Manpower
There is no regulating article yet.

h. Rights to work in the private sector (Article 27 CRPD section (1) point h)

The national regulations regarding the right to work in the private sector for persons with disabilities are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the 1945 Constitution only regulates general matters, not specific provisions of employment.
- 2) Law Number 8 of 2016 concerning Persons with Disabilities, Article 11 point a, Article 53 section (2)
- 3) Law Number 39 of 1999 concerning Human Rights
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Law Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 of 2003 concerning Manpower
There is no regulating article yet.

i. Rights to workplace accommodation (Point (i) section (1) Article 27 CRPD)

"Adequate accommodation" means necessary and appropriate modifications and adjustments, without imposing disproportionate or undue additional burdens, where necessary in certain cases, to ensure the comfort or exercise of all human rights and fundamental freedoms of persons with disabilities on an equal basis with those other²¹ It is often thought that creating a workplace suitable for people with disabilities does not require a large financial investment. However, accommodation need not be very costly. Accommodating some types of disabilities does not always mean physical changes, but may be in the form of changes in working hours or the way of communicating information. Persons with disabilities are experts in determining what they need and will be diligent in helping to adjust the workplace accordingly. Following are some examples: Adequate Physical Accommodation in the form of;

- a) A clean and tidy workplace;
- b) Arranging wide and barrier-free corridors;
- c) Make signs / symbols easy to read;

²¹ Pasal 2 CRPD

- d) Ensure that toilet facilities are accessible to persons with disabilities;
- e) Add ramps or handrails where needed.

Meanwhile, Adequate Non-Physical Accommodation in the form of accommodating the workplace does not mean only by adjusting in physical form.

- a) Set flexible working hours;
- b) Use of sign language in communication or the opportunity to “work from home” can be used. This will enable persons with disabilities to perform their duties satisfactorily.

The national regulations regarding the right to accommodation at work for persons with disabilities are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the the act only regulates general matters, not specific provisions on employment.
- 2) Law Number 8 Year 2016 concerning Persons with Disabilities, Article 11 point c
- 3) Law Number 39 Year 1999 concerning Human Rights.
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Law Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower, Article 76 section (4).

Review by researcher, Indonesian national legal arrangements relating to the provision of workplace accommodation for persons with disabilities are regulated in the Manpower Act, although it does not explicitly list persons with disabilities. Based on the Manpower Act Article 76 section (4) which reads; "Entrepreneurs are obliged to provide shuttle transportation for female workers / laborers who leave and return from work between 23.00 and 05.00".

However, the article above does not explicitly explain the specialization of treatment for persons with disabilities. In the elucidation part of the Article it was written only as "quite clear".

j. Rights to enhance work experience (Article 27 CRPD section (1) point j)

The national regulations regarding the right to improve work experience are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that the act only regulates general matters, not specific provisions on employment.
- 2) Law Number 8 of 2016 concerning Persons with Disabilities
There is no regulating article yet.
- 3) Law Number 39 year 1999 concerning Human Rights

It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Law Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.

- 4) Act of the Republic of Indonesia Number 13 of 2003 concerning Manpower
There is no regulating article yet.

Review by researcher, The researcher does not find improvement in work experience for persons with disabilities in the substance of the relevant national laws and regulations that the researcher examines in this article.

k. Rights to expertise and professional rehabilitation, job security and re-employment programs (Article 27 of the CRPD section (1) point k)

The national regulations regarding the right to professional and expertise rehabilitation, job security and return to work programs for persons with disabilities are as follows;

- 1) The 1945 Constitution of the Republic of Indonesia
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Given that act only regulates general matters, not specific provisions on employment.
- 2) Law Number 8 Year 2016 concerning Persons with Disabilities, Not regulated regarding the right to rehabilitation and professional skills, It is regulated regarding the re-employment Program in Article 11 point e which reads. "The rights to work, entrepreneurship, and cooperatives for people with disabilities includes the right to get a re-employment program".
- 3) Law Number 39 Year 1999 concerning Human Rights
It does not regulate because this aspect is a special provision which is further regulated in the product of the law. Considering that Law Number 39 Year 1999 only regulates human rights points in general, not specific provisions on employment.
- 4) Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower
There is no regulating article yet.

Review by researcher, If seen from the normative arrangements that exist in Indonesia, it is not explicitly regulated regarding the legal protection provided to persons with disabilities regarding the guarantee of returning to work. In the Manpower Constitutional only regulates the protection of workers in the case of inconsistent termination clauses. Based on the Manpower Law Chapter XII Termination of Employment Relations Article 153 paragraph (2) which reads; "Termination of employment made on the grounds referred to in paragraph (1) shall be null and void and the entrepreneur is obliged to re-employ the worker / laborer concerned". This is actually very unfortunate because there is no strict legal protection for persons with disabilities at work, especially for re-employment.

2. Evaluation of Regional Regulations of Ambon City Related to the Protection of the Rights to Work for Persons With Disabilities

Persons with Disabilities are state entities whose rights cannot be reduced. As part of a legal subject, of course every right of Persons with Disabilities must be

properly protected and fulfilled. Indonesian law guarantees this. In the Law Number 8 of 2016 concerning Persons with Disabilities, there are obligations given by the state regarding the implementation of respect, protection and fulfillment of the rights of Persons with Disabilities. Even in this case it is the Local Government. Local governments based on Article 27 Law Number 8 of 2016 are required to plan, organize and evaluate the implementation of Respect, Protection and Fulfillment of the rights of Persons with Disabilities. It is further stipulated that the effectiveness of the implementation of Respect, Protection and Fulfillment of the rights of Persons with Disabilities must be formulated in a Master Plan. This means that the framework for protecting the rights of Persons with Disabilities should be properly considered by the Regional Government. Departing from this, several facts that have occurred in Ambon City through several online media quotes highlight the absence of Regional Regulations or Regional Head Regulations which regulate the Protection of the Rights of Persons with Disabilities which regulates the rights to work. Until now, Ambon city do not have regulation yet, which regulates the fulfillment of the rights of persons with disabilities as a follow-up to higher laws and regulations related to the protection of the rights of persons with disabilities, especially in the regional scope. This has become one of the inhibiting factors for stakeholders in the region, for example the Manpower and Transmigration Office in carrying out its main duties and functions in empowering Workers with Disabilities in Ambon City. In addition, law enforcement in the context of affirming the protection of the rights of workers with disabilities in Ambon City is not well implemented because there is no standard guideline through a regional law product. The Ambon branch of the Indonesian Association of Women with Disabilities (IAWD) urged the Regional Government through the Regional House of Representatives to immediately form a Regional Regulation which protects people with disabilities in Ambon City. There are 24 rights in Law Number 8 year 2016 which are highlighted for inclusion in the Regional Regulation on Persons with Disabilities.²²

Regional Regulation is one type of Legislation and is part of the national legal system based on Pancasila. At this time Regional Regulations have a very strategic position because it was given a clear constitutional basis as regulated in Article 18 section (6) of the 1945 Constitution. Regional Regulations have various functions, namely: ²³

- a) as a policy instrument for implementing regional autonomy and co-administration as mandated in the 1945 Constitution of the Republic of Indonesia and the Law on Regional Government.
- b) as a regulations implementation of the higher laws and regulations. In this function, Regional Regulations are subject to the hierarchical provisions of the Legislation. Thus the Regional Regulation must not conflict with the higher laws and regulations.
- c) To accommodate the specificities and diversity of the regions as well as to channel the aspirations of the people in the regions, however, in its regulation

²² DPRD Harus Buat Perda Penyandang Disabilitas, <http://intim.news/2017/03/dprd-harus-buat-perda-penyandang-disabilitas/>, diakses pada tanggal 1 Mei 2020.

²³ Direktorat Jenderal Peraturan Perundang-undangan Kementerian Hukum dan Hak Asasi Manusia RI, Panduan Praktis Memahami Perancangan Peraturan Daerah, , Edisi Kelima, Jakarta, 2011, h. 8

it remains within the corridors of the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution.

d) As a development tool in improving regional welfare.

Evaluating what happened in Ambon City, there is no Regional Regulation which regulates Legal Protection for Persons with Disabilities, then there are legal implications that are felt by the existence of this legal vacuum including weak legal protection provided to Persons with Disabilities in Ambon City. There is no legal certainty for Persons with Disabilities in the Regions. Although there are national regulations governing the Protection of Rights of Persons with Disabilities. However, this is not specifically regulated according to the needs and characteristics of each region. If we look at the constitutional for Persons with Disabilities, the constitutional requires local governments, state-owned enterprises / municipally-owned corporations to employ at least 2% of people with disabilities from the total number of workers, while 2% for private companies are workers with disabilities. Thus, the Regional Government should formulate an Implementing Regulation in the region which includes provisions that oblige the public and private sector regarding recruitment techniques for Persons with Disabilities. In addition, for example, in relation to the wage system given to persons with disabilities, what should it be. More than that, the Regional Regulation will also rigidly regulate what law enforcement will be carried out if any provisions protecting the right to work are violated. For example, the provision of administrative sanctions for employers who do not provide adequate accommodation and facilities that are easily accessible to workers with disabilities. The absence of a Regional Regulation or Regional Head Regulation in Ambon City to Fulfill the Rights of Persons with Disabilities, including the Right to Work, which affects a number of variables below;

- 1) Effectiveness of the fulfillment of the 24 Rights of Persons with Disabilities in the Law Number 8 of 2016 in Ambon City, especially in this case the Right to Work which is the focus of the writer's writing;
- 2) Efficiency of Local government budget: towards fulfilling the rights of Persons with Disabilities in Ambon City;
- 3) Effective Implementation of Duties and Functions regarding the obligation to protect workers with disabilities from relevant agencies in the region, in this case the Ambon City Manpower and Transmigration Office;
- 4) Supervision of efforts to respect, protect and fulfill the rights of Persons with Disabilities in Ambon City;
- 5) Accessibility of Persons with Disabilities in Ambon City to develop a decent life and work in particular;
- 6) Empowerment of Persons with Disabilities in Ambon City;
- 7) Partnerships with NGOs or related partners in the context of empowering Persons with Disabilities in Ambon City;

Referring to the lack of regulation in the city of Ambon on legal protection especially Right to Work for Persons with Disabilities in Ambon, then there are some things that can be used as recommendations related to the substance which can be loaded by local regulation to be formed. Adjustments to the content stipulated in the Ambon City Regional Regulation should pay attention to the above provisions, namely the Law Number 8 of 2016 concerning Persons with Disabilities and as far as

possible be able to accommodate what is stipulated in Article 27 of the CRPD. In this study, researcher emphasized the fulfillment of the Right to Work for Persons with Disabilities. Thus, several matters that can be regulated related to the Protection of the Right to Work for Persons with Disabilities in Ambon City in a Regional Regulation or Regional Heads Regulation include;

- 1) The availability of a Disability Service Unit at the agency that administers regional government affairs in the manpower sector in Ambon City in accordance with the mandate of Article 55 of Law Number 8 Year 2016;
- 2) Regulations regarding the right to work include equal opportunities in the Government and private sectors, including setting quotas on employment opportunities for Persons with Disabilities in both the Government and Private Sectors in accordance with Law Number 8 of 2016, namely Regional Government and Regional Owned Enterprises are required to provide the quota for job formation is at least 2% for Persons with Disabilities of the needs of employees or workers. (2) Private companies are required to provide a quota of job formation of at least 1% (one percent) for Persons with Disabilities of the needs of employees or workers.
- 3) Guarantee from constitutional article 45 of Law Number 8 Year 2016 in terms of the obligations of Local Governments in ensuring recruitment, recruitment, job training, job placement, job continuity and career development that is fair and without discrimination to Persons with Disabilities;
- 4) Right to do business independently;
- 5) The right to participate in job skills training at government, local government, and / or private job training institutions in accordance with constitutional Article 46 of Law Number 8 of 2016;
- 6) Efforts to encourage and facilitate efforts to strengthen and develop the economic enterprises of Persons with Disabilities through cooperation and partnerships with business actors;
- 7) Support for access to capital at banking and / or non-bank financial institutions;
- 8) The obligation to facilitate the marketing of products produced by independent business units organized by Persons with Disabilities is in accordance with the mandate of constitutional Article 59 of Law Number 8 of 2016.
- 9) Provision of work facilities in accordance with the needs of workers with disabilities;
- 10) Provide fair wages for workers with disabilities in accordance with wage requirements;
- 11) The right to associate and assemble in a work environment;
- 12) Equal access for Persons with Disabilities to benefits and programs in the national social security system in the field of employment;
- 13) Administrative Sanctions Arrangements.

D. CONCLUSION

The constitutional in Indonesia which regulates the legal protection of the right to work for Persons with Disabilities in accordance with what is stipulated in Article 27 of the CRPD is deemed not optimal. Although most types of rights to work in Article 27 of the CRPD have been accommodated in the Law on Persons with Disabilities. However, there are some rights that have not been accommodated in it. Likewise, the Manpower Law has not regulated several rights in Article 27 of the CRPD. The rights that have not been regulated in the constitutional for Persons with Disabilities include the right to improve work experience and the right to rehabilitation of expertise. Whereas in the labor constitutional, the rights that have not been regulated include the right to career development for persons with disabilities, the right to develop cooperatives, and start their own business, the right to work in the government sector, the right to work in the private sector, the right to improve work experience, and the right rehabilitation of skills and professionals, job guarantees and re-employment programs. Until now, there has been no Regional Regulation in Ambon City in the context of implementing the obligations of the Regional Government in protecting the Right to Work for Persons with Disabilities in Ambon city. This needs to be a serious concern considering that the higher legislation (the constitutional of Persons with Disabilities) obliges the Regional Government to formulate a number of policies in the regions in the context of embodiment of the protection of the rights of Persons with Disabilities, including concerning the Right to Work. In the absence of a Regional Regulation regarding the Exercise of the Right to Work for Persons with Disabilities in Ambon City, there is no clear reference for exercising effective control over the implementation of the Regional Government's obligations in fulfilling the right to work for Persons with Disabilities in Ambon City. 1) The suggestions that the researcher can give after doing this legal research were as follows; 2) It was necessary to adjust the substance of the contents of the Law on Persons with Disabilities and the Manpower Law with the provisions contained in Article 27 of the CRPD; 3) It was necessary to establish a Regional Regulation in Ambon City regarding the Protection of the Right to Work for Workers with Disabilities. It was necessary to establish a joint forum between the Regional Government and Non-Governmental Organizations in the regions that are specifically concerned with the Problems of Persons with Disabilities and Academics from Higher Education to formulate a joint policy in the framework of forming a regional regulation and a number of policies in order to fulfill the right to work for Persons with Disabilities in Ambon City.

REFERENSI

Amidham, H. *Masalah Pengangguran Dan Solusinya Ditinjau Dari Perspektif Hak Asasi Manusia; Hak Atas Pekerjaan*. Jakarta: Komnas HAM, 2005.

DPRD Harus Buat Perda Penyandang Disabilitas, <http://intim.news/2017/03/dprd-harus-buat-perda-penyandang-disabilitas/>

International Labour Organization. *Pedoman ILO Tentang Pengelolaan Penyandang Disabilitas Di Tempat*. Jakarta: International Labour Office, 2013.

Marzuki, Peter Mahmud. *Penelitian Hukum*,. Jakarta: Kencana, 2016. <https://doi.org/340.072>.

- Mayrizka, Dwindi. "Strukturasi Implementasi Kebijakan Disabilitas (Studi Kasus Kebijakan Pemberdayaan Penyandang Disabilitas Di Kabupaten Sidoarjo)." *Jurnal Mahasiswa Sosiologi* 1, no. 4 (2015): 1-33.
- Pusat Hak Asasi Manusia UII, *Prinsip-Prinsip Hak Asasi Manusia dalam Hukum Hak Asasi Manusia Internasional*, diakses dari http://pusham.uui.ac.id/ham/8_Chapter2.pdf
- Rusli, Hardijan. *Hukum Ketenagakerjaan 2003*. Jakarta: Jakarta: Ghazali Indonesia, 2004.
- Schabas, William A. *Nowak's CCPR Commentary: U.N. International Covenant on Civil and Political Rights 3rd Ed.* Germany: N.P. Engel Verlag, 2019.
- Simanjorang, Febrina Odelia M. "Efektivitas Program Pelatihan Keterampilan Bagi Penyandang Cacat Tuna Rungu Wicara Di UPT Pelayanan Sosial Tuna Rungu Wicara Dan Lansia Pematang Siantar." *Welfare State* 2, no. 4 (2013): 1-18.
- Suara Pembaruan, *BUMN Wajib mempekerjakan Disabilitas*, <http://sp.beritasatu.com/home/bumn-wajib-pekerjakan-penyandang-disabilitas/80805>.
- Suara Pembaruan, *Penyandang Disabilitas Masih Alami Diskriminasi*, <http://sp.beritasatu.com/home/penyandang-disabilitas-masih-alami-diskriminasi/45903> , diakses pada tanggal 26 Juli 2015.