

## Access to justice for people with disabilities in employment

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### Abstract

*The right to obtain employment, including for workers with disabilities, is regulated in the Indonesian state constitution. Therefore, these rights are protected and guaranteed by law, so companies that employ persons with disabilities, in particular, must defend the rights of persons with disabilities. The method used in this study is this research is a type of normative law research using normative legal case studies in the form of legal behavior products. Persons with disabilities must receive the support needed in the structure of education, health, employment, and social services so that the rights of persons with disabilities are in the perspective of human rights. Normatively, several legal instruments have been born to protect the rights of persons with disabilities to work. Law No. 13 of 2003 concerning Employment which forbids discrimination to persons with disabilities The right of persons with disabilities to obtain accessibility contained in Article 18 of Law No.8 / 2016 concerning Persons with Disabilities, namely, securing availability to utilize public facilities and get adequate accommodation as a form of accessibility for individuals.*

**Keywords:** Access to Justice, Disability, Employment

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## 1. Introduction

Understanding the workforce itself is a person who can produce goods and services, both to meet their own needs and for the community, including everyone who works by receiving wages or rewards in other forms. The labor force itself includes civil servants, formal workers, informal workers, or people who are not working or unemployed. In other words, the meaning of labor is broader than workers/laborers (Wijayanti, 2017:1).

The role of labor in the framework of national development is increasing, accompanied by the challenges and risks faced. The purpose of the workforce can demand an increase in the quality of human resources in national development, both as a development agent and as a national development goal. Workforce development can increase national productivity and community welfare. Therefore, the workforce must be empowered so that they can have the value of personal and productive abilities to become more skilled and more qualified, to be maximally efficient in the context of national development, and be able to compete in the global era. So what needs to be improved is the ability, skills, and expertise of the workforce to demand quality human resources through planning and employment programs, including training, apprenticeship, and

employment placement services(Charda S., 2016:17). Looking at the political direction of labor law as contained in the fourth paragraph of the opening of the 1945 Constitution, namely: " protect all Indonesians and all Indonesian blood spills, advance public welfare " relating to Article 1 paragraph (3) of the 1945 Constitution, that: "The State of Indonesia is a state of law".

Article 1 paragraph (3) of the 1945 Constitution can be linked to several articles that regulate employment, such as Article 27 paragraph (2) which reads: "Every citizen has the right to work and a decent living for humanity", and Article 28D paragraph (2) reads: "Everyone has the right to work and to receive fair and appropriate compensation and treatment in an employment relationship". Then it is emphasized in Article 28I paragraph (2) of the 1945 Constitution, which states as follows: "Everyone has the right to be free from discriminatory treatment on any grounds and has the right to get protection against such discriminatory treatment." According to Ismail Sunny, the provisions of Article 27 paragraph (2) of the 1945 Constitution above constitute a constitutional or asemantic constitutional paper by recognizing the rights of its citizens to obtain a decent job(Suuny, 2004:8).

The right to get a job, including for workers with disabilities, is regulated in the Indonesian constitution. Therefore, these rights are protected and guaranteed by law, so companies that employ persons with disabilities, in particular, must defend the rights of persons with disabilities. Article 41 paragraph (2) of Law No. 39/1999 concerning Human Rights determines that every person with a disability, an older person, pregnant women, and children are entitled to unique facilities and treatment. The assumption that persons with disabilities do not have rights or exercise rights as they should on the grounds of their limitations is a form of deviation that leads to discrimination against persons with disabilities (Sutrisni, 2015:105).

The issuance of Law Number 13 Year 2003 concerning Manpower is the answer to the government's political will in the field of labor law, which has the objective of the legal protection of labor in terms of Empower and utilizes the workforce optimally and humanely — realizing equal employment opportunities and the provision of work in accordance with national and regional development needs. Protect workers in achieving prosperity, Improving the welfare of the workforce and their families.

Based on the description above, the fundamental problem for persons with disabilities is the lack of public understanding and government apparatus related to the meaning of disability and the existence of persons with disabilities as part of citizens. The notion that limitation is a disgrace, an embarrassing curse makes a family not open, regarding family members who have a disability. Persons with disabilities are likened to sick and powerless people, so there is no need to be given education and employment. They are pitied and cared enough for their survival. So that this results in persons with disabilities not getting the same rights and opportunities as other community members(Purnomosidi, 2017:168). In the field of law, because of their disability, they are deemed unable to act before the law, and their actions are considered to be null and void. Not infrequently, it is still often found that people with disabilities are sinners, shameful people, due to the sins committed by their parents or family. The view of behavior and

attitude above is a form of discriminatory treatment, which is a violation of the dignity and values inherent in persons with disabilities (Tyesta, 2015: 254). When looking at Article 9 letter an of Law No.8 / 2016, actually persons with disabilities have the same treatment before the law. From the above problem, there is an imbalance between the laws and regulations that have been comprehensively structured and the reality that there are currently many persons with disabilities who have not fully obtained the right to work and are free from discrimination. So the authors are interested in raising the discussion of (1) How to Access Justice for Persons with Disabilities in Labor? Furthermore, (2) how are the Barriers to Access to Justice for Persons with Disabilities in Labor?

## **2. Method**

This research is a type of normative legal analysis using normative legal case studies in the form of licensed products, for example, working on a draft law. The subject of research is the law conceptualized as a norm or rule that applies in society and as a reference for the protection of all people. Discusses normative legal research on positive law discovery, legal principles and doctrines, legal discovery in concrete cases, legal systematics, level of legal knowledge, comparative law, and legal history (Muhammad, 2004: 40).

## **3. Access to Justice for Persons with Disabilities in Labor.**

In 2007, Indonesia signed an international convention on disability from the United Nations on the Rights for Persons with Disabilities (UN CRPD) and was ratified in 2011. Subsequently, in April 2016, the Government of Indonesia officially passed Law No. 8 of 2016 concerning Persons with Disabilities, which replaced the law. No. 4/1997 concerning Persons with Disabilities. UU no. 8 of 2016 about Persons with Disabilities has objectives and principles in line with the UN CRPD to ensure the fulfillment of the rights of persons with disabilities. In the "Explanation" section, Law No.8 of 2016 states that one of the backgrounds of the replacement of Law No.4 of 1997 is because the law does not yet have a human rights perspective and is still charity based and is more focused on rehabilitation social and social security (Millati, 2016: 285).

Article 4 of Law No. 8/2016 persons with disabilities in four categories. First, people with physical disabilities, namely disruption of movement, including amputation, paralysis or stiffness, paraplegic, cerebral palsy (CP), due to stroke, due to leprosy, and small people. Second, people with intellectual disabilities, namely the disruption of thought functions, because the level of intelligence is below average, including slow learning, disability, and down syndrome. Third, people with mental disabilities, namely the disruption of the function of thought, emotion, and behavior, among others: (a) psychosocial including schizophrenia, bipolar disorder, depression, anxiety, and personality disorders; (b) developmental disabilities that affect the ability of social interactions including autism and hyperactivity. Fourth, persons with sensory disabilities, namely disruption of one of the functions of the five senses, including blindness, hearing impairment, and speech disability (Shaleh, 2018: 63).

Persons with disabilities are members of the community and have the right to remain in the local community. Persons with disabilities must receive the support needed in the structure of education, health, employment, and social services so that the rights of persons with disabilities in the Human Rights perspective are categorized as exclusive rights for certain groups of people (Manan, 2006: 140). Basically the issue of manpower is a social, political, and economic agenda which is quite crucial in modern countries, because the problem of labor is not only the relationship between workers and employers, but more broadly it also covers the issues of the economic system of a country and at the same time the system its politics. Therefore, a country's economy and politics will largely determine the style and color of an employment system that it applies (Jalil, 2008: 5). Regarding the percentage of employment opportunities for persons with disabilities contained in Article 53 paragraph (1) and paragraph (2) of Law No.8 / 2016 concerning Persons with Disabilities, namely, (1) Government, Local Government, State-Owned Enterprises, Regional-Owned Enterprises must employ at least 2% (two percent) of persons with disabilities from the number of employees or workers. (2) Private companies are required to hire at least 1% (one percent) of persons with disabilities from the number of employees or workers. The Minister of Manpower Muhammad Hanif Dhakiri said from the compulsory system data, the Ministry of Manpower reported that there were 440 companies with a total workforce of around 237 thousand people. Of that amount, only 2,851 people are absorbed, or about 1.2 percent have been successfully placed in the formal labor sector (Kustiani, 2018). Law enforcement, which is a barometer of the life of the Indonesian state administration, both of which have implications for cultural, social, and economic order, is disrupted due to the perspective of law enforcement (Seno Adji, 2009: 237).

The number of companies in Indonesia that employ people with disabilities is said to be still minimal; both government agencies, state companies, and private companies. Though ideally, every company must hire at least one person with a disability who meets the job requirements and job qualifications as workers in his company for every 100 workers in his company. Normatively, several legal instruments have been born to protect the right of persons with disabilities to work. Law No. 13 of 2003 concerning Manpower, which prohibits discrimination against persons with disabilities (Suhartoyo, 2014: 471). Therefore, as an Indonesian citizen, persons with disabilities must be juxtaposed equally and equally without any difference with other Indonesian citizens. As a form of human rights protection in Indonesia, persons with disabilities must obtain special protection to fulfill the rights of persons with disabilities to achieve decent work for persons with disabilities without discrimination.

Article 41 paragraph (2) of Law No. 39/1999 concerning Human Rights stipulates that every person with disabilities, older people, pregnant women, and children are entitled to specialized facilities and treatment. Then in Article 67, paragraph (1) of Law No. 13/2003 concerning human resources determines that employers who employ persons with disabilities are required to protect under their degree of disability. Therefore, companies that hire persons with disabilities, in particular, must protect disability rights under the degree of disability. Besides, employers also provide wages to persons with

disabilities that are the same as workers who are not disabled with the same type and responsibilities, as referred to in Article 49 of Law No. 8/2016 about people with disabilities.

Legal protection provided by persons with disabilities to provide legal certainty with the aim of welfare for persons with disabilities without differences in position and the right to obtain wages, decent work, and free from discrimination by employers. Enforcement and application of these laws and regulations as an effort to maintain a balance between the rights and obligations of workers and employers to maintain business continuity and calmness at work, which in turn increases work productivity and workforce welfare, including workers with disabilities. In the midst of society there are still many behaviors that do not support the existence of persons with disabilities with various assumptions, including that persons with disabilities are objects to be pitied for because they are extraordinary/unique, cannot be independent, troublesome, must always be helped, challenging to adapt, are land for charity and must be given alms.

The government, as the organizer of the state, must pay attention to the needs of persons with disabilities to get accessibility and supportive facilitation for persons with disabilities, to support persons with disabilities able to develop their talents and believe in and be independent. Persons with disabilities are also entitled to special education, as stated in Article 32 of Law no. 20/2003 on the National Education System, namely "Special education is education for students who have difficulty in participating in the learning process due to physical, emotional, mental, social, and/or potential disabilities and special talents." Therefore, the importance of education for people with disabilities is a career support access. Then in Article 45 of Law No. 8/2016 concerning Persons with Disabilities, the Government and Regional Governments must guarantee the process of recruitment, recruitment, job training, job placement, continuing work, and career development that is fair and without discrimination to persons with disabilities. The right of persons with disabilities to obtain accessibility is contained in Article 18 of Law No.8 / 2016 concerning Persons with Disabilities, that is, getting availability to utilize public facilities and obtain appropriate accommodation as a form of accessibility for individuals.

In Article 52 of Law No.8 / 2016 on Persons with Disabilities, requires the central government / regional governments and entrepreneurs to ensure equal access for persons with disabilities to benefits and programs in the social security system in the labor field. The legal protection provided by persons with disabilities must naturally be balanced with the availability of accessibility and facilitation to make it easier for persons with disabilities to gain employment opportunities. Below this is the accessibility/facilitation that must be given to persons with disabilities (ILO, 2013: 70):

1. Increasing employment opportunities for people with disabilities by facilitating recruitment, returning to work guarantees, guaranteed employment, and job promotion opportunities.
2. Adjustment of engine and equipment component modifications to work, provide access to workplaces, to facilitate the employment of persons with disabilities.
3. Health services to provide preventive functions, to provide a safe and healthy environment.

4. They are facilitating courses to improve communication between coworkers who have difficulty speaking, hearing, or understanding spoken the language.
5. They are facilitating workers with disabilities to keep in contact, to streamline their pooling process at work.
6. Employers increase the accessibility of the workplace for persons with disabilities, including the provision of gates/entrances, the ease of using restrooms and bathrooms.

From the statement above, it is necessary to have policies and rules for access for persons with disabilities. The company is obliged to provide employment opportunities for workers with disabilities who are capable and intended and skilled in their respective fields. The company provides equipment and infrastructure, as well as regulations for workers with disabilities to obtain work. Policy providers for workers with disabilities motivate workers with disabilities to develop independently. When unable to sew to produce shoes, persons with disabilities must be given training or skills training. There are some companies that still pay attention to people with disabilities, by providing facilities that can be utilized by workers, especially workers with disabilities, in the hope that employees with disabilities and non-disabilities can be able to communicate well so they can work together and produce high productivity (Effendi, Burhan, Yunianto, & Rahaditya, 2012: 100). Opportunities to obtain equality of position, rights, and obligations for persons with disabilities can only be realized if accessibility is available, namely the ease for persons with disabilities to achieve equal opportunities in obtaining equality of positions, rights, and obligations.

With the hope that people with disabilities can integrate into total to improve the social welfare of people with disabilities in particular. The implementation of efforts to improve social health, among others, is carried out through equal opportunities for persons with disabilities, which are necessarily the joint responsibility of the government, the community, and the family. With this equality of chance, it is expected that persons with disabilities can integrate through direct communication and interaction in the community. The role of the state that provides protection and welfare for Indonesian citizens must be able to be realized in reality (Rahardjo, 2012: 34).

#### **4. Barriers to Access to Justice for Persons with Disabilities in Employment**

Companies in Indonesia that employ people with disabilities are said to be still minimal, both government agencies, state companies, and private companies. Though ideally, every company must hire at least one person with a disability who meets the job requirements and job qualifications as workers in his company for every 100 workers in his company. Normatively, several legal instruments have been born to protect the right of persons with disabilities to work. Like Law No. 13 of 2003 concerning Manpower, which prohibits discrimination against persons with disabilities. Since the advent of Law No. 8 of 2016 concerning disability until now, there are still no implementing regulations, namely government regulations, the community continues to urge the government to immediately issue a government regulation (PP) as implementing Law No. 8 of 2016 concerning disability. Associated with the absence of government regulations that

regulate will undoubtedly cause an injustice against persons with disabilities in employment. Persons with disabilities cannot grow and develop optimally, the right to be protected, and the right to humane treatment is not fulfilled (Putri A, 2019: 215).

In Article 27 of Law No. 8 of 2016 reads, "The Government and Regional Governments must carry out planning, organizing and evaluating the implementation of respect, protection, and fulfillment of the rights of persons with disabilities." Then in Article 55 of Law No. 8 of 2016 reads, "Local Governments are required to have a disability service unit at the office that organizes regional government affairs in the field of employment." Related to the absence of government regulations that regulate Article 27 and 55 above becomes the absence of legal certainty, then persons with disabilities in employment have not been able to get maximum access to justice. The nature of a statutory regulation must reflect a legitimate objective and cannot be separated from the principle of truth, the principle of certainty, and the principle of expediency.

#### **4. Conclusion**

That access to justice for workers with disabilities in employment must prioritize the principle of non-discrimination means that every citizen including persons with disabilities has the right to be treated the same as a person with no special needs in general, in any form of fair, equitable treatment, not putting persons with disabilities into an exception. Legal protection provided by persons with disabilities to provide legal certainty with the aim of welfare for persons with disabilities without differences in position and the right to obtain wages, decent work, and free from discrimination by employers, like Law No. 13 of 2003 concerning Manpower which prohibits discrimination against persons with disabilities. The emergence of Law No. 8 of 2016 concerning disability and the absence of government regulations creates a legal vacuum, the government, as the organizer of the state must refer to the fundamental rights of the people.

#### **References**

- Charida S., U. (2016). Karakteristik Undang-Undang Ketenagakerjaan Dalam Perlindungan Hukum Terhadap Tenaga Kerja. *Jurnal Wawasan Yuridika*, 32(1), 17. Retrieved from <https://doi.org/10.25072/jwy.v32i1.86>
- Effendi, Burhan, A., Yuniarto, & Rahaditya. (2012). Implementasi Diversity Program bagi Tenaga Kerja Penyandang Disabilitas pada PT. Wangta Agung Kota Surabaya. *Indonesian Journal of Disability Studies*, 4(2), 100. Retrieved from <http://dx.doi.org/10.21776/ub.IJDS.2017.004.02.2>
- ILO. (2013). *Pedoman ILO tentang Pengelolaan Penyandang Disabilitas di tempat kerja*. Jakarta: International Labour Office.
- Jalil, A. (2008). *Teologi Buruh*. Yogyakarta: LKIS Yogyakarta.
- Kustiani, R. (2018). Disabilitas yang bekerja di sektor formal. Retrieved from tempo.Co website: <https://difabel-tempoco.cdn.ampproject.org>.
- Manan, B. (2006). *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia*. Bandung: PT. Alumnus.

- Millati, S. (2016). Social-Relation Model Dalam Undang-Undang Penyandang Disabilitas. *Inklusi: Journal Of Disability Studies*, 3(2), 285–304. Retrieved from <https://doi.org/10.14421/ijds.030207>
- Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti.
- Purnomosidi, A. (2017). Konsep Hak Perlindungan Konstitusional Penyandang Disabilitas di Indonesia. *Refleksi Hukum*, 1(2), 168. Retrieved from DOI: 10.24246/jrh.2017.v1.i2.p161-174
- Putri A, R. (2019). Hukum Yang Berkeadilan Bagi Penyandang Disabilitas. *Masalah-Masalah Hukum, Jilid 48(2)*, 215–223. Retrieved from DOI: [10.14710/mmh.48.2.2019.215-223](https://doi.org/10.14710/mmh.48.2.2019.215-223)
- Rahardjo, S. (2012). *Hukum Progresif*. Semarang: Pustaka Rizki Putra.
- Seno Adji, I. (2009). *Humanisme dan Pembaharuan Penegakan Hukum*. Jakarta: Kompas.
- Shaleh, I. (2018). Implementasi Pemenuhan Hak Bagi Penyandang Disabilitas Ketenagakerjaan di Semarang. *Kanun Jurnal Ilmu Hukum*, 20(1), 63–82. Retrieved from <https://doi.org/10.24815/kanun.v20i1.9829>
- Suhartoyo. (2014). Perlindungan Hukum Terhadap Pekerja/Buruh Penyandang Disabilitas di Indonesia. *Masalah-Masalah Hukum*, 43(4), 471. Retrieved from DOI: [10.14710/mmh.43.4.2014.468-477](https://doi.org/10.14710/mmh.43.4.2014.468-477)
- Sutrisni, N. K. (2015). Pengaturan Advokasi Terhadap Hak-Hak Penyandang Disabilitas Di Bidang Penegakan Hukum. *Magister Hukum Udayana*, 4(1), 105. Retrieved from <https://doi.org/10.24843/JMHU.2015.v04.i01.p08>
- Suuny, I. (2004). *Hak Asasi Manusia*. Jakarta: Yasif Watampoe.
- Tyesta, L. (2015). Prospek Perlindungan Disabilitas Terhadap Perilaku Diskriminasi di kota Semarang. *Masalah-Masalah Hukum*, 44(3), 254. Retrieved from DOI: [10.14710/mmh.44.3.2015.253-264](https://doi.org/10.14710/mmh.44.3.2015.253-264)
- Wijayanti, A. (2017). *Hukum Ketenagakerjaan Pasca Reformasi*. Jakarta: Sinar Grafika.