

Indonesian Government Policies in Protecting the Rights of People with Disabilities in Getting a Job at Indonesian State-Owned Enterprises

Susiana¹, Wardah²

Faculty of Law, Syiah Kuala University

Email: ¹susiana@unsyiah.ac.id, ²wardah_fh@unsyiah.ac.id

ABSTRACT

The Government of Indonesia has approved and signed an important number of domestic laws and international conventions/treaties relating to the rights and opportunities of persons with disabilities, and one of those is the right to work. The right has been guaranteed in Article 27 of the 1945 State Constitution of the Republic of Indonesia. For assuring the persons with disabilities can access their rights for work, the Government of Indonesia has issued the Law Number 8 Year 2016 on Persons with Disabilities, and in Article 53 provides the obligations for the central and local government, state-owned enterprises of Indonesia, and provincial-owned enterprises to employ persons with disabilities at least 2% of their total workers. This research is conducted to analyze the policies and strategic planning of the government of Indonesia, local government, state-owned enterprises of Indonesia and provincial-owned enterprises, related to the obligations as declared in the Law. The results show that the Ministry of Labor and the Ministry of State Owned Enterprises of Indonesia has signed a Memorandum of Understanding on placement and training for persons with disabilities at state-owned enterprises of Indonesia. One of the state-owned enterprises of Indonesia (bank) has recruited persons with disabilities in every of its regional offices.

Keywords: *disabilities, rights, state-owned enterprises of Indonesia, job*

1. INTRODUCTION

Every Indonesian citizen must have equal access to a job opportunity as mandated in Article 27 of the 1945 Constitution. The right for the job applies to all Indonesian people, including people with disability. Disability is a condition which is not similar to the standard, as a result of chronic diseases, such as loss of vision, hearing, or others. (United Nations, 2019)

Article 1, point (1) Law Number 8 Year 2016 regarding people with disabilities states that people with disabilities refer to a condition with physical, intellectual, mental or sensory limitations for an extended period of time, and this limitation gives difficulties when interacting with others. This article emphasizes that people with disabilities have the same rights without any discrimination in any aspect.

In the human rights laws, discrimination is defined as direct or indirect restriction, assault, or isolation due to differences in religion, ethnic, race, group, social status, economic class, gender, language, political view, and this is caused by bias or ignorance of respect in the implementation

of human rights and freedom for individual or group in all aspects of life. (Dewi, 2019)

Equality is the instrument of human rights to eliminate bias and injustice in the working world. Recognition for people with disabilities in working world crates questions regarding how to ensure human dignity, equality, and freedom for the minority who have become an object for a very long time, and also a question about the effectiveness of law as the instrument to guarantee equality and social justice. (Ngwena, 2004)

Based on the previous research, in spite of the implementation of regional policies regarding equal rights for people with disabilities, people with disabilities still face many problems in seeking jobs. The training provided by Central Java provincial government for people with disabilities was outdated, and it could not fulfill what they need. (Latuconsina, 2014). The results of a study conducted in Surabaya concluded that the the implementation of regional policy has not been effective in ensuring equality for every Indonesian citizen to have access to jobs because of discrimination towards people with disabilities in applying for specific jobs. This case happened to a disabled person, Wuri Handayani, who were discriminated by the Surabaya city government. Her civil

servant application was rejected because the government misinterpreted the requirement of physical and mental health. They considered that disabilities are not physically healthy condition. Therefore, Wuri Handayani who used a wheelchair claimed not to meet the requirement to apply for a civil servant job. As a result, she sued the Surabaya government to Surabaya State Administrative Court on February 2015, for being discriminated. The court verdict stated that the interpretation of disability condition made by the Surabaya City Government was incorrect (Hamidi, 2016).

The other research has been conducted in Aceh shows that the fulfilment of the rights of people with disabilities to a job has not properly worked. There is only one Indonesian state-owned enterprises, namely PT. BRI Regional Aceh that employed three staff with physical disabilities while none of them were employed at PT. Angkasa Pura II, PT PLN and PT. Kimia Farma (Susiana, 2019).

People with disabilities should be legally protected because of their rights as a legal citizen, and they should not be a subject to discrimination in any aspect of life. One type of protections is legal protection for the right to be hired. Regarding the right of people with disabilities to work, Article 53 of Law Number 8 Year 2016 requires state-owned enterprises to provide 2% of the quota for people with disabilities to work. However, the number of disabled people working for state-owned enterprises is very small.

Based on the background above, this research was aimed at finding out policies and strategies made by the central government, provincial government (especially Aceh provincial government), and state-owned enterprises in guaranteeing rights for people with disabilities to work at the enterprises.

2. REVIEW OF LITERATURE

People with disabilities struggle to find jobs anywhere throughout the world. According to United Nations Enable, in developing countries, 80-90% of people with disabilities are in their productive ages, and they do not have any job, and in industrial countries, the percentage is between 50% and 70% (Larson, 2014).

The Indonesian government is responsible for ensuring that the rights of people with disabilities are equal to others. The government can make policies to ensure that their rights are respected. According to Abraham Amos (Amos, 2007), government policies, also known as public policies, are identical with policymakers, as stated by James E. Anderson that public policies are the actions of a number of government officials, groups, and institution, or a series of actors in a certain sector, meanwhile, a social science experts Carl Friedderich states that policy is a set of actions

to achieve objectives proposed by an individual, group, or government, performed in a certain situation due to certain obstacles and to find chances to achieve objectives and intended goals. According to R. M. Girindro Pringgodigdo, state policy is formally defined as policies formulated by government officials and institutions. However, in practice, non-government or private actors can informally influence the development or formulation of the state policies (Pringgodigdo, 2004).

One of the international regulations regarding people with disabilities is the United Nations Convention on the Rights of Persons with Disabilities (CRPD). There are 160 countries in the world which have ratified the CRPD, and this convention is the fastest human right convention to be approved by the United Nations in history. This fact proves the world commitment for people with disabilities. (UNESCAP, n.d.). Ratification of CRPD by Indonesia also proves the Indonesian government concern for people with disabilities. The Republic of Indonesia established Law No 19 of 2011 regarding the ratification of the Convention on the Rights of Persons with Disabilities. Four years later, the Indonesian government replaced Law No 4 of 1997 regarding people with disabilities with Law No. 8 of 2016 regarding people with disabilities. This law contains all rights of people with disabilities, which are not included in the previous law (Purwanto, 2017).

3. METHODS

This research used empirical legal study with descriptive-analytical design that is a research design with the purpose to describe the data analytically. (Marzuki, 2008). The problem was approached by a procedure of field research through an interview with respondents and informants related to policies made by the government and state-owned enterprises regarding the implementation of law for people with disabilities. In this research, the author interviewed officials from Ministry of State-Owned Enterprises, Ministry of Labor, Regional Government, and four state-owned enterprises (PT. Angkasa Pura II, PT. PLN, PT. BRI and PT. Kimia Farma). In addition to that, a library research was also conducted by reviewing literature, regulations and legislations which regulate the rights of people with disabilities to be hired.

4. RESULTS AND DISCUSSION

Policies made by a state, government/president, minister, or others are a set of actions or activities which are intended to achieve goals and purposes. Therefore, policies should consider future circumstances. While wisdom can be immediate actions based on instant decisions due to urgency

and condition, and it is in the form of writing and/or written or oral decision based on discretionary authority (Purwanto, 2017).

Policies and strategic steps are taken by the government in ensuring the implementation of rights for people with disabilities to have access to jobs in state-owned enterprises. Those policies are described in the following:

4.1. Public Policies By The Government Of Indonesia

Ministry of National Development Planning / National Development Planning Board in National Medium-Term Planning for 2010 – 2024 determines disabilities as one of the priorities in all categories. (kompas.com, n.d.). In specific, the Law Number 8 Year 2016 on Persons with Disabilities mandates that the government develops a number of technical regulations, that is 15 government regulations, but the government simplified them into seven government regulations (hukumonline, 2018). However, the draft of government regulations have not been approved, so Law Number 8 Year 2016 can not be implemented due to a condition where there is no regulation can be referred to in the law. Other impacts are listed in the following:

1. Legal rights for people with disabilities are not guaranteed;
2. Regulations in all articles in the law regarding people with disabilities cannot be implemented;
3. Many gaps in the laws open the possibility for government and private institutions to make policies which are potential to violate the rights of people with disabilities regulated in the law.

In Indonesia, a monitoring system is required to supervise the implementation of laws and other related regulation, and to evaluate the development of laws over a certain period of times, so the mandate in laws can be implemented as initially intended (monash.edu, n.d.).

Although there is no complete regulation, the government made significant effort to implement the law through a number of policies. The policy made by the Ministry of Labor is a Memorandum of Understanding (MoU) with the Ministry of State-Owned Enterprises to recruit employees from the group of people with disabilities. The Ministry of State-Owned Enterprises issued a policy in the form of instruction to all directors of state-owned enterprises to recruit people with disabilities to work in the enterprises. In 2019, based on the instruction from the Ministry of State-Owned Enterprises to the directors of the enterprises, a joint recruitment was conducted and coordinated by Forum Human Capital Indonesia (FHCI), which is a forum of directors of human resources in state-owned enterprises.

In addition to the joint recruitment policies at the Ministry of State-Owned Enterprises, the Ministry of Labor also appreciated companies that open a recruitment for people with disabilities. According to Selviana, the purpose of this appreciation is to motivate other companies to recruit people with disabilities and not to restrict them from getting jobs at the companies. In the future, companies which hire people with disabilities will receive incentives (Selviana, 2019).

4.2. Policies Made By The Government Of Aceh (GoA)

The GoA has issued Aceh Qanun Number 7 Year 2014 regarding human resources that guarantees job opportunities for people with disabilities. As written in Article 40, paragraph (1), GoA must facilitate job opportunities for employee candidates from people with disabilities in both formal and informal sectors. The potential employee referred to in this article means employees who have a similar capacity with non-disabled employees with certain criteria based on the level of their disabilities. Furthermore, Article 40, paragraph (4), stated that business owners must recruit people with disabilities based on their expertise in formal sector at least one in a hundred employees. From this regulation, it can be seen that GoA has considered opening job opportunities for people with disabilities very seriously; however, the implementation has not been so effective.

Municipality of Banda Aceh has issued Mayor Regulation Number 1 Year 2019 regarding rights of people with disabilities to access to proper job opportunities. The regulation requires state-owned enterprises in Banda Aceh to recruit people with disabilities at least 2% of total employees, as regulated by the law regarding people with disabilities. However, the execution of the regulation was not issued so that the Mayor Regulation cannot be implemented.

Municipality of Banda Aceh has made many programs to improve services for people with disabilities and increase their involvement in the community through a program called inclusive community program. Additionally, the Municipality of Banda Aceh collaborates with the provincial and central governments to help improve the quality of life and economy of people with disabilities by providing social support, such as financial capital and certain equipment for them to start their business. As a commitment to implement disabled people-friendliness environment, the Municipality of Banda Aceh has made some strategies, including guaranteeing rights for people with disabilities by issuing a number of regulations. Some of the regulations are Municipality of Banda Aceh regulation Number 10 Year 2004 regarding building construction, and Municipality of Banda Aceh regulation Number 4 Year 2009 regarding Banda Aceh Spatial Planning for 2009 – 2029 (Suhendra, 2017).

4.3. *Internal Policies At State-Owned Enterprises In Aceh*

From four state-owned enterprises, three of them (PT Angkasa Pura II, PT Bank Mandiri and PT Kimia Farma) have not recruited any people with disabilities. Only PT. BRI recruited people with disabilities in 2016 because of the internal enterprise policy. This internal policy is the letter from the Director of BRI Bank No. B.1.e.DIR/DKO/05/2016 issued on May 16, 2016 regarding formation fulfillment policy, that is a vacancy for 3-4 people with disabilities to work at each working unit, without disregarding the availability of formation and qualification for the targeted position.

5. Conclusion

The Government of Indonesia has purposeful issued the policy relates to the fulfillment of the people with disabilities right to be hired, as confirmed in the National Medium-Term Planning for 2010 – 2024. There is also an MoU between the Ministry of Labor and the Ministry of State-Owned Enterprises for recruiting the people with disabilities in state-owned enterprises. Next, the joint recruitment programme for 1000 vacancies for people with disabilities for working at state-owned enterprises that directed by the FHCI in 2019. Specifically in Aceh, GoA has issued Qanun Number 7 Year 2014 that emphasizes 1 of 100 employees in a company must be people with disabilities, but the implementation has not been effective. Lastly, the Municipality of Banda Aceh has issued regulation Number 1 Year 2019 for supporting the Law Number 8 Year 2016, however this regulation has not been implemented yet.

REFERENCES

Books

- Amos, H.F.A, (2007). *Sistem Ketatanegaraan Indonesia (Dari ORLA, ORBA Sampai REFORMASI) [Indonesian Administration System (From old order, new order to reformation)]*, Jakarta: PT. Raja Grafindo Persada.
- Australia Indonesia Partnership for Economic Governance, (2017). *Disability in Indonesia: What can we learn from the data?*
- Marzuki, P. M. (2008). *Pengantar Ilmu Hukum [Introduction to Law Science]*. Jakarta: Kencana.
- Pringgodigdo, R.M.G, (2004). *Kebijaksanaan, Hirarkhi Perundang-undangan dan kebijakan dalam Konteks Pengembangan Hukum administrasi Negara di Indonesia [Wisdom and hierarchy of*

legislation and policies in the context of State Administration Law development in Indonesia], Professor inauguration speech, in *Buku Politik hukum Tata Negara Indonesia*, Depok: Pusat Studi Hukum Tata Negara, FHUI.

Journal Articles

- Suhendra, A. (2017). *Strategi pemerintah Kota Banda Aceh dan Kota Surakarta dalam mewujudkan kota ramah disabilitas [Strategies made by Banda Aceh and Surakarta Government in implementing disabled people friendly cities]*, *Matra Pembaruan*, 1(3).
- Susiana, Wardah. (2019). *Pemenuhan Hak Penyandang Disabilitas Dalam Mendapatkan Pekerjaan Di BUMN*, *Law Reform*, 15 (2).
- Dewi W, I. I. (2019). *Anti-discrimination unemployment regulation for persons with disabilities in Indonesia*, *Yustisia*, 8(1).
- Larson, D. A. (2014). *Access to justice for persons with disabilities: An emerging strategy*, *Laws*, 3 (2).
- Hamidi, J. (2016). *Perlindungan hukum terhadap disabilitas dalam memenuhi hak mendapatkan pendidikan dan pekerjaan [Legal protection towards the rights of people with disabilities to have access to education and work]*, *Jurnal Hukum Ius Quia Iustum*, 23(4).
- Latuconsina, Z. (2014). *Afirmasi kebijakan pemerintah dalam fasilitasi kerja bagi penyandang disabilitas [Affirmation of government policies in facilitating job for people with disabilities]*, *Pandecta*, 9(2).
- Ngwena, C. (2004). *Equality for people with disabilities in the workplace: An overview of the emergence of disability as a human rights issue*, *Journal for Juridical Science*, 29(2).
- Purwanto, (2017). *Kepentingan Indonesia meratifikasi the Convention on the Rights of Persons with Disabilities [The interest of Indonesia in ratifying the Convention on the Rights of Persons with Disabilities]*, *JOM FISIP*, 4(1).

Internet

- Bappenas prioritaskan penyandang disabilitas pada rencana pembangunan [National Development Planning Board prioritized people with disabilities in development planning], <https://nasional.kompas.com/read/2018/05/25/19555091/bappenas-prioritaskan-penyandang-disabilitas-pada-rencana-pembangunan>.

- Disability at a Glance. 2015. Strengthening employment prospects for persons with disabilities in Asia and the Pacific, https://www.unescap.org/sites/default/files/SDD%20Disability%20Glance%202015_Final.pdf.
- 7 RPP Ini Penting Bagi Penyandang Disabilitas [Draft of this Government Regulation is significant for people with disabilities], <https://www.hukumonline.com/berita/baca/lt5a96ae1e655ef/7-rpp-ini-penting-bagi-penyandang-disabilitas/>.
- United Nations, International Day of Persons with Disabilities, <https://www.un.org/en/events/disabilitiesday/background.shtml>.