

Politics of Law of Employment on the Organization of Jobs for Persons with Disabilities

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Abstract

Indonesia is a country that upholds human rights, the protection of human rights is an obligation for the Government of Indonesia. This protection is also provided for persons with physical disabilities. Indonesia already has a set of laws that provide protection regarding the right to work for persons with disabilities, in this case the Government has an obligation to fulfill the rights of persons with disabilities in particular to get a job. Law No. 8 of 2016 concerning Persons with Disabilities Article 11 letter (g) states to have the opportunity to develop a career path and all the normative rights inherent in it. However, in reality Indonesia still faces problems in fulfilling the right to work for persons with disabilities. The method used in this research is normative juridical in which the data is collected by examining library research in the form of books, journals, and legislation. The purpose of this research is to find out the fulfillment of the right to work for persons with disabilities and the challenges they face in getting a job. Legal Politics used in analyzing this research are Legal Politics by Satjipto Rahardjo and Model Corporate Policy Practices in Labor Law by Tamara Lothion. The results of the study stated that the fulfillment of the right to work for people with physical disabilities in Indonesia has not been effective with several challenges and criticisms, namely the Government has excluded disabled workers and there are still errors between ministries in solving problems of disabled workers.

Keywords

persons with disabilities; legal protection; employment



I. Introduction

Humans are creatures created by God who have a set of rights as humans that must be guarded and protected. The State of Indonesia is a state of law, this is explicitly mandated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). As a state of law, of course, Indonesia has a set of legal rules in providing protection for human rights, especially the right to get a job for every citizen.

In general, the protection that guarantees the rights of workers is contained in Article 27 paragraph (2) of the 1945 Constitution which states that every Indonesian citizen has the right to work that is appropriate for humanity, and equal opportunity to be treated without discrimination in order to achieve the welfare of the workforce itself. as well as his family. Working for other people can be carried out by working for the state called as civil servants (PNS), or working as private employees who are called laborers or workers. Both employees have jobs and get wages for their lives, wages are a means for improving the welfare of workers or employees.

Article 38 paragraph (1) of Law No. 39/1999 on Human Rights (hereinafter referred to as Law No.39/1999) stipulates that “everyone” has the right to get a decent job. This article means that without exception Indonesian citizens have the right to get work,

including citizens with physical disabilities. Protection and guarantee of human rights are given to all citizens, including citizens with disabilities. However, in reality, persons with disabilities are still vulnerable to discrimination related to the fulfillment of the rights to education, work, and public facilities and equality before the law.

Since the ratification of *the Convention on the Rights of Persons with Disabilities* (hereinafter referred to as CRPD) by the Government of Indonesia through Law Number 19 of 2011, the enthusiasm to eliminate discriminatory practices that are often experienced by persons with disabilities in Indonesia has increased. The CRPD is a beginning and a bright spot in the promotion and improvement of protecting the rights of persons with disabilities because the CRPD emphasizes general rights and provides specifications for persons with disabilities. In addition, the CRPD also regulates the mandate and obligations of state parties in fulfilling the rights of persons with disabilities.

However, this Law has been updated to become Law Number 8 of 2018. In Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as Law No. 8/2018). There are various terms and terms related to disability. Mentioning or labeling is the beginning of the process of discrimination against people with disabilities such as mentioning people with disabilities such as *labeling* "disabled" appearing as a form of marking, sorting, separating, distinguishing, getting rid of because this kind of condition is not liked. The label as a person with a disability or disability certainly makes it difficult for workers who have physical limitations to find work. The fact is that people with disabilities are often discriminated against by employers in gaining access to the right to wages and social security, to the point where the government pays less attention to people with disabilities to get decent work in accordance with the constitutional mandate.

Basically, Persons with Disabilities have the same position, rights and obligations as non-disabled people, as part of Indonesian citizens, it is appropriate for persons with disabilities to get special treatment, which is intended as an effort to protect from vulnerability to various acts of discrimination and especially protection to get jobs. in order to meet their needs. This special treatment is seen as an effort to maximize the respect, promotion, protection and fulfillment of universal human rights.

This research was conducted to find out the politics of employment law on the implementation of employment opportunities for persons with disabilities, this is in accordance with the provisions in the legislation that provides legal protection for the availability of employment opportunities for persons with disabilities in Government Institutions, Regional Governments, State-Owned Enterprises (State-Owned Enterprises). BUMN) and Regional Owned Enterprises (BUMD) or private companies.

Identification of Main Problems

Based on the background of the problem above, the writer formulates the main problem as follows:

1. How is the application of legal politics to persons with disabilities to get access to work?
2. How should the Criticism and Application of Labor Law Politics for Persons with Disabilities get access to work?

II. Review of Literature

The theories related to the subject matter studied are:

- a. Legal Politics in the form of a Corporal Model according to Tamara Lothion
Corporate form this model in the field of employment law is carried out through the practice of legislative policies in the form of the formation of legislation as an effort by the government to carry out national law development. This is increasingly getting the basis of justification, if it is related to the legal system adopted by Indonesia since the beginning of independence based on the principle of concordance (from Dutch law) which adheres to the Continental European legal system (*Civil Law*).
This type of corporatist model is used, because the model of working relationship to be developed is a harmony model, namely:
 1. The parties do not have freedom, but are controlled by the government through repressive legal provisions;
 2. Consensus (cooperation) is required by prohibiting the occurrence of conflicts (strikes);
 3. Required to use a peaceful settlement and prohibit the use of coercive means (strikes or *out locks*).
- b. Legal Politics according to Satjipto Rahardjo
Legal Politics is the activity of choosing and the methods to be used to achieve a social goal with certain laws in society. Legal politics is one of the factors that causes the dynamics of society because legal politics is directed to the *ius constituendum*, the law that should apply.

III. Research Method

The approach used by researchers in conducting this research is a normative juridical approach. This research is a descriptive research, the data collection is carried out by library *research*, in the form of book literature, documents and laws and regulations relating to the politics of labor law on the implementation of employment opportunities for persons with disabilities.

Writing Objectives

Based on the subject matter above, the objectives of this study are as follows:

1. To find out the Legal Politics of Persons with Disabilities in order to gain access to jobs currently in force in Indonesia; and
2. To find out the criticism and application of the Politics of Labor Law that should be given to Persons with Disabilities to get access to work.

IV. Results and Discussion

4.1 Applying Legal Politics to Persons with Disabilities to gain Access to Work

Persons with disabilities are part of Indonesian citizens, every human being has the potential to become a person with a physical disability. Persons with disabilities also have a set of rights as complete human beings, especially the right to get a job, to have the same opportunities in work. The provision of equal opportunities is a condition in which the government as the person responsible for providing protection of these rights provides opportunities and/or provides equal access for persons with disabilities in channeling their abilities and potentials in various fields, including in terms of work. This is also confirmed

by Law Number 13 of 2003 concerning Manpower (hereinafter referred to as Law No. 13/2003), that the purpose of manpower development is to provide equal opportunities for every citizen in obtaining work and provide protection for workers in terms of the fulfillment of workers' rights to obtain welfare.

In the explanation of Article 5 of Law no. 13/2003 clearly provides Protection and Employment Opportunities for Workers with Disabilities, the explanation states that,

"Every worker has the same rights and opportunities to obtain work and a decent living without distinction of gender, ethnicity, race, religion, and political flow in accordance with the interests and abilities of the workforce concerned, including equal treatment of persons with disabilities".

A worker with a disability is every person with special needs who has the ability to carry out work like normal people in general in accordance with the characteristics or qualifications of their respective jobs according to their abilities. Workers with disabilities must be given special protection related to accessibility in meeting the needs of daily life with regard to the right to get a job. The right to work and employment as referred to in the Convention on the Rights of Persons with Disabilities is a human right that cannot be separated because every human being and everyone has the right to participate, contribute and enjoy economic, social, cultural and political development, in which all human rights human beings and fundamental freedoms can be fully realized.

Development is a change towards improvement (Shah et al, 2020). Manpower Law Politics is an inseparable part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Manpower has a very important role and position as actors and targets of national development. The rights of workers as regulated in Indonesian labor regulations, which include the protection of workers, are things that must be fought for so that the dignity and humanity of the workforce are raised. Labor protection is intended to guarantee the basic rights of employees while taking into account the progress of the national and international business world.

The application of Legal Politics towards Persons with Disabilities to gain access to work has been regulated in the constitution, namely based on Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that,

"Every citizen has the right to work and a decent living for humanity".

Then the Constitution reaffirmed based on Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that,

"Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship".

The Indonesian constitution has guaranteed every citizen to have the opportunity to get a job in order to maintain his life, and as Indonesian citizens with disabilities also have the same position, obligations, rights and roles as other citizens who are non-disabled. This shows that the government has an obligation to provide equal treatment and eliminate all forms of discrimination against persons with disabilities in all aspects of life.

Persons with disabilities, both men and women, can become productive members of society. This is because the position of workers with disabilities in obtaining job opportunities is the same as normal or non-disabled workers.

The application of Labor Law Politics towards persons with disabilities in positive law is contained in Article 5 of Law No.13/2003 which states that,

"Every worker has the same opportunity without discrimination to get a job".

This is the basis of a national strategy for equal rights and the elimination of discrimination for workers in a job, including for persons with disabilities. Accessibility for persons with disabilities in a workplace must also be met so as to facilitate persons with disabilities in carrying out their work.

The Indonesian Government's legal politics towards persons with disabilities is reflected in the form of the Corporal Model, in which the scope of employment law is based on the practice of legislative policies in the form of the formation of laws and regulations as the government's effort to carry out national law development. In particular, Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as Law No. 8/2016) has provided legal certainty and protection for the rights of work obtained by persons with disabilities. Based on Article 53 paragraph (1) of Law No. 8/2016 which states that,

"The Government, Regional Government, BUMN, and BUMD are required to employ at least 2% (two percent) of Persons with Disabilities of the total number of employees or workers".

The application of labor law politics to persons with disabilities is not only mandatory for the government sector to employ persons with disabilities at least 2% (two percent) of the total workforce. On the other hand, the private sector is also required to employ persons with disabilities at least 1% (one percent) of the total workforce, this is in accordance with Article 53 paragraph (2) of Law No. 8/2016 which states that,

"Private companies are required to employ at least at least 1% (one percent) of Persons with Disabilities from the total number of employees or workers".

Article 53 paragraph (1) and Article 53 paragraph (2) of Law No. 8/2016 above clearly state that companies should be obliged to employ 1 (one) person with a disability out of 100 (one hundred) workers in a government agency, local government agency, company private companies and state-owned companies (BUMN), but in reality it is very rare to find government agencies, local governments, private companies and state-owned companies willing to employ people with disabilities in their companies because companies only view people with disabilities as not having the ability in the field of work. Therefore, job opportunities for people with disabilities often state the requirements for being physically fit or not physically disabled for applicants, this is a form of mild discrimination.

Lower regulations or regulations related to job training and placement of workers with disabilities, namely through the Circular Letter of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 01.KP.01.15.2002 concerning the Placement of Workers with Disabilities in Companies which essentially states that ,

"The company is obliged to provide equal opportunity and treatment to employ persons with disabilities in the company according to the type and degree of disability, education and ability. The number of workers with disabilities is adjusted to the number of employees and/or qualifications of the company, at least 1 (one) worker with disabilities for every 100 (one hundred) people employed".

Furthermore, within the framework of international law, Indonesia has ratified the *Convention on the Rights of Persons with Disabilities* into Law Number 19 of 2011 concerning Ratification of the CRPD. The Convention on the Rights of Persons with Disabilities in Article 27 concerning Employment and Employment which states that,

"States parties recognize persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to earn a living by work chosen or accepted legally. free work market and an open, inclusive and accessible work environment for persons with disabilities".

The rights contained in the convention on the rights of persons with disabilities become the basis for persons with disabilities to defend their lives and fight for the rights that exist in themselves, but in reality there are still rights of persons with disabilities that are ignored by the government, one of which is the right to work and get a job. The right to work and employment as referred to in the convention on the rights of persons with disabilities is a human right that cannot be separated because every human being and everyone has the right to participate, contribute and enjoy economic, social, cultural and political development, where all human rights human beings and fundamental freedoms can be fully realized.

In the convention on the rights of persons with disabilities, one of the obligations of the state is to guarantee and promote the fulfillment of the rights of persons with disabilities through legislative (making regulations) and administrative (supporting procedures) steps as well as harmonizing regulations including eliminating rules and cultures that violate the rights of persons with disabilities. The commitment of the Government of Indonesia is realized by the passing of Law Number 8 of 2016 concerning Persons with Disabilities to respect, protect, fulfill and promote the rights of persons with disabilities.

Legal Politics in the form of a Corporal Model is reflected in a law that should have guaranteed certainty of an equal opportunity quota for workers with disabilities which has been stated in the disability law and labor law as well as a circular letter from the Minister of Manpower and Transmigration of the Republic of Indonesia. This is because people with disabilities are classified as more vulnerable to poverty because it is related to the limited opportunities for people with disabilities to work, so that the dominant role of the government is needed in implementing existing regulations. On the other hand, persons with disabilities also have skills and potential that can contribute to community development if they are given equal opportunities and adequate supporting facilities. However, in reality, there are still many people with disabilities whose rights to get work are not guaranteed because most companies have not carried out these obligations.

Currently, the law on persons with disabilities and the labor law do not provide for strict sanctions for private companies and state-owned companies that do not employ persons with disabilities, which is not more than 1% (one percent) for private companies and 2% (two percent) for companies. state property. Due to the sanctions imposed on government agencies, state-owned companies and private companies are still administrative in nature, of course this slows down people with disabilities to get the fulfillment of their rights to decent work like other normal workers (non-disabled workers).

4.2 Criticism and Application of Politics of Employment Law that should be for Persons with Disabilities to gain Access to Work

In general, these persons with disabilities have limitations in movement, depend on other people's assistance for their lives, are pessimistic, *unskilled* because of their physical limitations, therefore companies that want to employ persons with disabilities think about it. Whereas people with disabilities also have the same rights as other citizens, including one of them is to get a job.

The right to obtain decent work for persons with disabilities is an application of the fulfillment of economic and social rights as part of the implementation of human rights. The constitutional rights of persons with disabilities need to be regulated both in the constitution and in laws which aim not only to guarantee the fulfillment of the rights and needs of persons with disabilities, but also to give the government and society the responsibility to play a more active role in increasing the dignity of persons with

disabilities. The fulfillment of human rights in a country cannot be separated from the existence of an obligation that arises either by a country or the community in that country so that there appears a harmony that runs in harmony and balance between human rights and obligations.

Persons with disabilities are subjects who are very vulnerable to being deprived of their rights or treated unfairly and it is not uncommon for them to be treated differently from normal humans, especially their rights and opportunities to get work. Based on the research conducted by the author, there are several critical views on government policies in carrying out labor law politics, namely as follows:

a. The Government Excludes Persons with Disabilities

That the government's plan to build factories tends to exclude persons with disabilities. If the logic is drawn, the construction of a factory that will be carried out by the government is the same as building a Special School (SLB) to accommodate students with disabilities in the world of education. Special factories for workers with disabilities and SLB are both separated from an inclusive environment and gather people with disabilities in one location, this of course makes people with disabilities more exclusive from the outside world and further away from interaction with normal (non-disabled) workers;

b. The government, through the ministry, is throwing responsibilities at each other

If the government has given the responsibility for solving this problem to the Ministry of Social Affairs, then the question is whether the ministry of social affairs is fully responsible for solving labor problems? Instead, it is hoped that the synergy between the ministry of manpower and the ministry of social affairs should take this responsibility together to solve the problem of minimal and difficult employment experienced by workers with disabilities;

c. Increasing Number of Workers with Disabilities

The construction of factories specifically for workers with disabilities will not completely solve the employment problems experienced by workers with disabilities. This is because the number of workers with disabilities is not only hundreds or thousands of people who will be accommodated in one factory simultaneously. According to data from the Central Statistics Agency (BPS) in 2016 which published the SAKERNAS (National Employment Survey), the number of persons with disabilities who are of productive age is around 22.9 million. So of course it is not possible to solve the issue of labor rights for workers with disabilities with just one quick policy by only building factories (jobs) only specifically for people with disabilities.

The following is the distribution of the number of persons with disabilities in Indonesia:



Figure 1. The following is data on the participation of persons with disabilities in the Indonesian labor market:

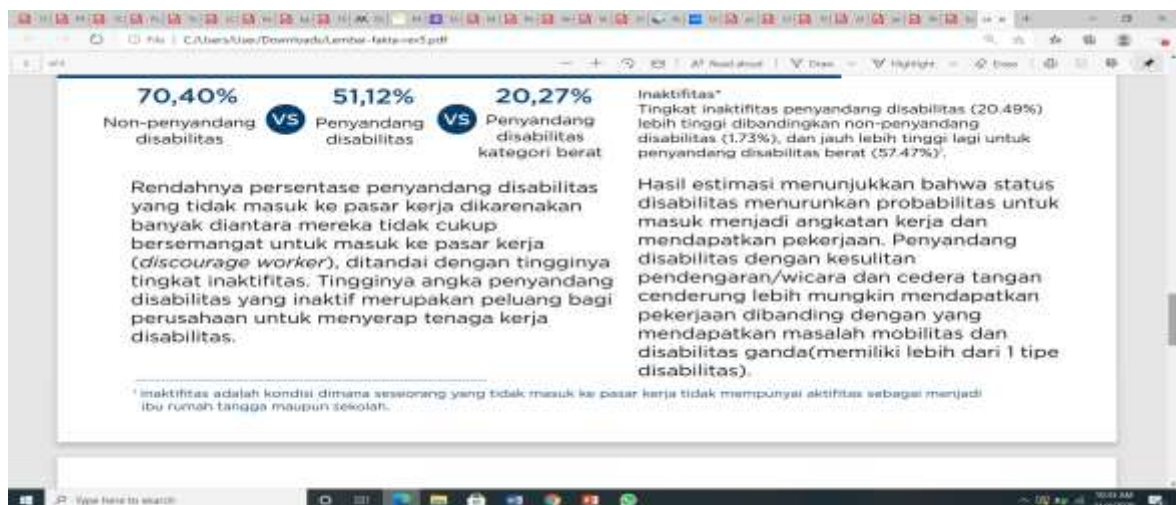


Figure 2. The following is data on the comparison of workers in the Formal and Informal sectors in Indonesia:



Figure 3

The government and entrepreneurs (companies) as well as the general public need to ensure the elimination of various obstacles in terms of employing persons with disabilities. However, the fulfillment of state obligations is not only limited to statutory arrangements, but the state also guarantees that the participation of persons with disabilities in all aspects of life such as education, welfare, work, politics, sports, arts and culture as well as the use of technology, information and communication is fulfilled.

The provision of employment opportunities for persons with disabilities should be recognized as a step with a larger goal than “*just*” respecting and protecting the rights of persons with disabilities. For the government, providing employment opportunities for people with disabilities will help reduce the number of unemployed which has implications for alleviating community poverty and national economic growth. Increasing the participation of persons with disabilities in the world of work certainly requires a transition period because the employing agency, especially the company, will always consider economic principles in running the company. Employing agencies that are not convinced to employ persons with disabilities can provide internship opportunities or work trials for persons with disabilities. This internship or work trial opportunity will be an opportunity for employers to measure the ability and work capacity of persons with disabilities and open the possibility to consider hiring after the internship or work trial period is over.

All the regulations only mention the right to get a job in general, but do not explain further how this right can then be obtained for a person with a disability. The regulation on the right to work for persons with disabilities should be considered as a form of exclusivity from the realm of human rights that must be protected in Indonesia.

The application of Labor Law Politics that should be for Persons with Disabilities to get access to work carried out by the government according to the form of the Corporal Model in order to achieve a social goal with certain laws in society must pay attention to the following matters:

1. Intensive and Massive Socialization

The government should conduct socialization to government institutions and private institutions regarding the existence of policies to employ workers with disabilities with a composition of 2% (two percent) for government institutions (of the total workforce) and as much as 1% (one percent) for private institutions (of the total workers). This is done so that the implementation of regulations is known and effective for the affected parties;

2. Strengthening Coordination and Synergy between Ministries

The government is expected to be able to coordinate and synergize between institutions to resolve employment problems for persons with disabilities. The burden of problem solving is not only borne by the ministry of social affairs, but the ministry of manpower, the ministry of industry, and the ministry of SOEs should also have the obligation to resolve the issue;

3. Providing training for Workers with Disabilities that is right on target

The government in the future can better prepare workers with disabilities to enter an inclusive job market. This preparation can be done by holding training that is in accordance with the times and prioritizing the advancement of science and technology. This is because some groups of persons with disabilities feel that the trainings organized by the government are no longer in line with the times, making it difficult for them to enter and compete in the labor market;

4. Intensive and Massive Supervision

The government must further enhance supervision of the implementation of the provisions stipulated in the legislation intensively and massively. Supervision is an important part of law enforcement in the field of manpower, this is done to prevent violations of the rights of groups of workers with disabilities in the field of employment by employers (companies);

5. Enforcement of Giving Policy *Rewards and Punishment*

The government must dare to apply the provisions of *reward* and *punishment* (awards and sanctions) to parties (both government agencies, regional governments, state-owned companies or private companies) who have implemented the provisions of the applicable laws and regulations and those who violate them. mechanism *reward* and *punishment* is already contained in the legislation, now it's just a matter of how the government steps to implement it. The explanation of the awards and sanctions is as follows:

a) Awards

Government and Regional Government⁸ of 2016; and

b) Sanctions

The government can provide administrative sanctions to companies, if the company does not provide proper accommodation and facilities that are easily accessible to workers with disabilities, this is in accordance with the provisions of Article 50 paragraph (4) of Law no. 8 of 2016.

V. Conclusion

Based on the author's analysis above, it can be concluded as follows:

1. The politics of labor law on the implementation of employment opportunities for persons with disabilities is good, this is because the legislation as a political product has accommodated persons with disabilities to get a job. But in reality on the ground, the fulfillment of the employment quota with a composition of 2% (two percent) for government institutions (of the total employees) and 1% (one percent) for private institutions (out of the total workers) for persons with disabilities who are still far from expectations and the lack of further implementing regulations regarding how then the right to receive such work can be obtained for a person with a disability;
2. The view on government policies in carrying out labor law politics is that the government excludes persons with disabilities from non-disabled workers, the government through the ministry of social and manpower, mutual responsibility, and the number of workers with disabilities. So the application of labor law politics, which should be for persons with disabilities to gain access to work, the dominant role of the government in carrying out legal politics in the form of a corporatist model is carried out through efforts, namely, intensive and massive socialization, continuing coordination and synergy between ministries, providing training to workers with disabilities who are right on target, as well as supervising the implementation of policies for providing rewards and punishments.

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