

The Legal Protection for Persons with Disabilities: Examining the Effectiveness of Protection and Enforcement Efforts

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Abstract

Every individual has equal human rights, without discrimination based on physical differences, skin color, race, ethnicity, or beliefs. This also applies to persons with disabilities who have the right to equal treatment. However, persons with disabilities often face discrimination, especially in obtaining employment. Law Number 8 of 2016 on Persons with Disabilities provides legal guarantees for persons with disabilities to obtain protection and fulfillment of their rights. Nevertheless, the implementation of these rights is still not optimal. This study uses a normative method with a statutory approach to analyze the legal protection for persons with disabilities from violence, exploitation, and in terms of employment. The results show that although there is a strong legal basis, its implementation still faces various challenges, such as social stigma, weak law enforcement, and lack of accessibility. Therefore, further efforts are needed to overcome these obstacles to effectively realize legal protection for persons with disabilities.

Keywords: Protection of rights, persons with disabilities, disability rights, human rights.



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Introduction

Every individual is entitled to equal human rights, which are not contingent upon physical distinctions, skin color, race, ethnicity, or views. Human rights are universally applicable to all individuals, including those with impairments, who are entitled to the same rights. Hence, it is incumbent upon every individual to uphold the rights of individuals with disabilities. Resolution No. A/61/106 on the Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly on December 13, 2006. The CRPD is a global and domestic legal framework that aims to uphold, achieve, and safeguard the rights of individuals with disabilities (a tool for development and a human rights instrument).¹ This resolution delineates the entitlements of individuals with disabilities and affirms the commitment to enforce the convention through appropriate measures. Indonesia formally ratified this agreement on March 30, 2007, in New York, demonstrating Indonesia's commitment to safeguarding the rights of those with disabilities.

In 2011, the Indonesian Government officially approved the Convention on the Rights of Persons with Disabilities (CRPD) by enacting the Law of the Republic of Indonesia Number 19 of 2011. This law ratifies the CRPD and its provisions regarding the rights of individuals with disabilities. Furthermore, in 2016, the Plenary Session of the House of Representatives passed the Bill on Persons with Disabilities, officially establishing it as the Law on Persons with Disabilities. This legislation aims to uphold the rights of individuals with disabilities, including their economic, political, social, and cultural rights, as well as ensuring their equality under the law.²

The implementation of Law No. 8/2016 on Persons with Disabilities ensures that individuals with disabilities receive protection and have their rights fulfilled, enabling them to develop in all areas of life within society. Nevertheless, this legislation has granted provisions for those with impairments, yet the effective implementation of these rights has not been fully achieved thus far.

Persons with disabilities continue to face discrimination in reality. This phenomenon arises due to the perception that individuals with impairments are viewed as a societal liability and are incapable of achieving self-sufficiency³. Discriminatory conduct towards individuals with disabilities encompasses challenges in securing work. According to Slamet Riyadi, the Chairman of the Banjarmasin Association of Persons with Disabilities (PPDI), a significant number of his disabled colleagues are engaged in entrepreneurial activities such as hairdressing, massage therapy, and tailoring. Despite the requirement stated in Law Number 8 of 2016 for private firms to employ at least 1 percent of

¹ Imas Sholihah, "Kebijakan Baru: Jaminan Pemenuhan Hak Bagi Penyandang Disabilitas," *Sosio Informa* 2, no. 2 (2016): 167–68, <https://doi.org/10.33007/inf.v2i2.256>.

² R.P.A. Priamsari, "Hukum Yang Berkeadilan Bagi Penyandang Disabilitas," *Masalah-Masalah Hukum* 48, no. 2 (2019): 216.

³ Geminastiti Purinami A, Nurliana Cipta Apsari, and Nandang Mulyana, "Penyandang Disabilitas Dalam Dunia Kerja," *Focus : Jurnal Pekerjaan Sosial* 1, no. 3 (2019): 234, <https://doi.org/10.24198/focus.v1i3.20499>.

individuals with disabilities, there is still a scarcity of such individuals working in government and commercial organizations.⁴

Individuals with impairments are also considered a distinct demographic. This particular group holds a position that necessitates specific safeguards owing to the unique challenges faced by individuals with disabilities in securing their rights. Nevertheless, there are individuals with impairments in society who refuse to acknowledge the presence of persons with disabilities and are inclined to attach a negative connotation to their existence. This prevailing social bias hinders individuals with impairments from fully exercising their entitlements within society. The Indonesian government is anticipated to persist in its endeavors to enhance policies that uphold the rights of individuals with disabilities, ensuring their protection, respect, and fulfilment.

According to the research conducted by Susiana and Wardah in 2019, it has been found that individuals with disabilities face difficulties in finding employment in state-owned enterprises (BUMN). These challenges include discrimination in different aspects of the workplace, such as limited job opportunities that are only available for specific types of disabilities.⁵ In a 2024 study conducted by Adrian Cahdani Cakti and Yogo Pamungkas, it was found that 6 central agencies and 54 regional agencies did not allocate any positions for individuals with disabilities. Additionally, 21 central agencies and 185 regional agencies violated regulations by allocating less than 2% of positions for individuals with disabilities. This violates the provisions outlined in Article 53 paragraph (1) of Law No. 8 of 2016 and Permen-PANRB No. 23 of 2019, which require each agency to allocate at least 2% of total positions for individuals with disabilities.⁶

Considering the context of the problem mentioned, there are two research objectives. The first objective is to examine the legal safeguards for the rights of individuals with disabilities in relation to their right to be protected from violence and exploitation. The second objective is to investigate and analyze the existing laws that offer legal protection for individuals with disabilities in terms of employment.

METHOD

The data used in this research is secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques are carried out through literature studies by means of reading, recording, and quoting various literatures. The collected data were then analyzed qualitatively using the deductive method, which is a method of data analysis by drawing conclusions from general matters to specific matters.⁷

⁴ Muhammad JM, "Penyandang Disabilitas Di Banjarmasin Masih Kesulitan Dapat Pekerjaan," RRI, 2023, <https://www.rri.co.id/daerah/486694/penyandang-disabilitas-di-banjarmasin-masih-kesulitan-dapat-pekerjaan>.

⁵ Susiana Susiana and Wardah Wardah, "Pemenuhan Hak Penyandang Disabilitas Dalam Mendapatkan Pekerjaan Di BUMN," *Law Reform* 15, no. 2 (2019): 236.

⁶ Yogo Cakti, Adrian Cahdani; Pamungkas, "Pengangkatan Penyandang Disabilitas Sebagai Aparatur Sipil Negara Berdasarkan Peraturan Perundang-Undangan," *Amicus Curiae* 1, no. 1 (2024): 403.

⁷ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Cetakan. III, (Bandung: Citra Aditya Bakti, 2004), 81.

This study employs normative research methodologies with the objective of identifying legal justifications by thoroughly analyzing the topic matter. In this context, normative research is employed to analyze matters concerning legal goods that aim to safeguard and ensure the rights of individuals with disabilities. The legal materials used in this research are derived from primary and secondary sources.⁸ The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law No. 19 of 2011 which pertains to the Ratification of the Convention on the Rights of Persons with Disabilities, and Law No. 8 of 2016 which pertains to Persons with Disabilities. Secondary legal materials encompass books, legal journals, and legal papers. Collection strategies utilizing legal materials are conducted through literature reviews. The methodology employed is a statutory approach, wherein the relevant laws and regulations pertaining to the legal matters at hand are scrutinized. The statute approach involves a comprehensive examination of all regulatory legislation pertaining to the issues being addressed. The statutory method refers to the utilization of legislation and regulations.

RESULT AND DISCUSSION

Legal Protection of the Rights of Persons with Disabilities in the Context of the Right to Protection from Violence and Exploitation

Individuals with disabilities are those who have long-term physical, mental, and/or sensory limitations that can hinder their ability to fully and efficiently adapt to their environment and interact with other people on the same level.⁹ As per Article 4 Paragraph 1 of Law Number 8/2016 on Persons with Disabilities, the categories of individuals who are considered to have disabilities encompass:

- a. Individuals with physical disabilities are individuals who have limited or impaired mobility abilities, such as amputation, paralysis, paraplegia, cerebral palsy, stroke, leprosy, and dwarfism;
- b. Individuals with physical disabilities are those who have limited mobility due to conditions such as amputation, paralysis, paraplegia, cerebral palsy, stroke, leprosy, and dwarfism;
- c. Mental disabilities refer to impairments in cognition, emotion, and behavior, encompassing psychosocial conditions such as schizophrenia, bipolar disorder, depression, anxiety, and personality disorders, as well as developmental disabilities that impact social interaction skills, such as autism and hyperactivity;
- d. Sensory disability refers to the impairment of one or more of the five sensory functions, such as visual, auditory, or speech impairments.

Disabled Peoples' International Asia Pacific (DPIAP) reports that the global population of those with disabilities exceeds 665 million. Consequently, the global disability rate exceeds 15%. According to the UN, almost 60% of the global population of 650 individuals with disabilities reside in the Asia and Pacific region. According to the information sheet from the UN Department of Economic and Social Affairs, 80 percent of individuals with disabilities reside in impoverished

⁸ Mukti Fajar; Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Cetakan ke (Yogyakarta: Pustaka Pelajar, 2017).

⁹ Ananda Cindy, "Perlindungan Hukum Terhadap Anak Penyandang Disabilitas Yang Menjadi Korban Perkosaan," *Jurist-Diction* 5, no. 3 (2022): 30, <https://doi.org/10.20473/jd.v5i3.35242>.

rural areas¹⁰. The exact number of individuals with impairments in Indonesia is indeterminate. The Ministry of Social Affairs assessed the percentage to be 3.11% in 2018, however the Ministry of Health reported a figure of 6% based on their statistics. The 2018 WHO data indicated that, on average, 10% of the population in developing nations, including Indonesia, consists of individuals with disabilities. Indonesia, with a population of 200 million individuals, has around 20 million individuals who have disabilities. Considering the ratio of males to females (1:3), it can be estimated that there will be around 13.7 million women who have disabilities¹¹. Individuals with disabilities are susceptible to diverse types of violence and exploitation, whether inside their homes, communities, or institutions. Within this particular framework, the law assumes a crucial function in safeguarding their entitlements.

1. Legal Standing

- a. The 1945 Constitution of the Republic of Indonesia, specifically Article 28E paragraphs (1) and (2), ensures that every individual has the right to be exempt from torture or any form of cruel, inhuman, or humiliating treatment. Additionally, it guarantees the right to seek justice and legal assurance.
- b. Law No. 8/2016 on Persons with Disabilities, namely Article 14, governs the entitlement of individuals with disabilities to be safeguarded against any kind of violence, negligence, abandonment, exploitation, and discrimination.
- c. Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD) guarantees the right of individuals with disabilities to be free from violence, exploitation, and arbitrary treatment.

Regarding the rights of disabled victims who suffer from violence and exploitation, Article 16 of the CPRD provides more clarification:

- 1) The government must enact laws, implement policies, and take other actions to protect individuals with disabilities from experiencing any kind of exploitation, abuse, or mistreatment, whether it occurs within their homes or outside of them.
- 2) Besides prevention, the state must also guarantee age- and gender-specific support to individuals with disabilities, their families, and caregivers. This support should involve giving information and education on how to prevent, identify, and report instances of exploitation, abuse, and mistreatment.
- 3) States must also guarantee that an independent entity efficiently supervises all facilities and programs intended to cater to individuals with impairments;
- 4) States must implement suitable measures to facilitate the physical, cognitive, and psychological recuperation, rehabilitation, and social reintegration of individuals with disabilities who have been subjected to any type of exploitation, violence, or mistreatment. This includes offering protective services. The process of rehabilitation and reintegration will be conducted in a setting that guarantees the person's physical and mental health,

¹⁰ Aah Laelatul Barkah, "PERLINDUNGAN HAK PENYANDANG DISABILITAS TUNA GRAHITA SEBAGAI SAKSI KORBAN DALAM PROSES PERADILAN PIDANA DI INDONESIA Aah Laelatul Barkah," *'Adiya* 12, no. 2 (2018): 124.

¹¹ Barkah, 125.

overall welfare, respect, dignity, and autonomy. Additionally, it will consider the specific requirements related to gender and age.

- 5) States must implement efficient policies and legislation, specifically targeting women and children, to ensure the identification, investigation, and appropriate punishment of exploitation, aggression, and cruelty towards individuals with disabilities.

Article 13 of the CPRD ensures that individuals with disabilities who have experienced exploitation and abuse have the right to seek legal recourse. It mandates that the state must ensure that individuals with disabilities have equal access to the court system. This encompasses the implementation of suitable measures and considerations regarding processes and suitability based on age, with the aim of enabling individuals with disabilities to actively and indirectly engage in various activities, such as serving as witnesses, throughout all stages of proceedings, including investigations and preliminary phases. Government Regulation No. 39/2020 focuses on providing detailed guidelines for accommodating individuals with impairments in the judicial process. Accommodation comprises services, facilities, and infrastructure. The provision of appropriate accommodations for individuals with impairments in all legal proceedings encompasses:

- a. Equal treatment without discrimination;
- b. Meeting the need for safety and comfort;
- c. Efficient communication;
- d. Access to information about the rights of individuals with disabilities and updates on legal proceedings;
- e. Availability of long-distance audiovisual communication tools;
- f. Establishment of guidelines for examining individuals with disabilities and providing legal services; and
- g. Availability of disability assistants/translators.

Individuals with disabilities who have experienced trauma as victims have the right to request to be separated from the perpetrator throughout the legal proceedings. Individuals with disabilities who have been victimized also possess the entitlement to get updates on the status of their legal proceedings from investigators and prosecutors. This information can be conveyed to them either directly or through the involvement of their family members or advocates specializing in disability issues.

The amenities and physical structures offered to those with disabilities who face obstacles encompass:

- a. Vision, at a minimum, includes computers equipped with screen reader apps, web pages designed for simple readability by those with disabilities, printed documents featuring braille, and/or audio communication media;
- b. Auditory, consisting at least of visual information boards, communication media using writing and other visual forms, and/or teaching aids;
- c. Speech impaired, at least consisting of visual information boards, communication media using writing and other visual forms, and/or teaching aids;
- d. Communication, at least consisting of visual information boards, communication media using writing and other visual forms, and/or teaching aids;

- e. Mobility, at least consisting of wheelchairs, wheeled beds, and/or other mobility aids as needed;
 - f. Memory and concentration, at least consisting of pictures, mock-ups, puppets, calendars, and/or other teaching aids as needed;
 - g. Intellectual, at least consisting of medicines, health facilities, and other facilities as needed;
 - h. Behavior and emotions, at least consisting of medicines, health facilities, comfortable and quiet rooms, and/or other facilities as needed; and
 - i. Self-care, at least consisting of medicines, easily accessible changing rooms, and/or other facilities as needed; and j. Other barriers determined based on the results of a personal assessment.
2. Enactment of Legal Safeguards

Although there is a solid legislative framework in place, the enforcement of legal safeguards for individuals with disabilities to prevent abuse and exploitation has multiple obstacles. The following items are included:

- a. Insufficient comprehension regarding the entitlements of those with impairments.
- b. Prejudice and marginalization towards individuals with impairments.
- c. Inadequate police enforcement.
- d. Insufficient availability of protective services.

Legal Safeguards for Individuals with Disabilities in the Workplace

The Republic of Indonesia, via the enactment of Law Number 19 of 2011, demonstrates its commitment to the principles outlined in the Convention on the Rights of Persons with Disabilities. This legislation reflects Indonesia's dedication to protecting and promoting the human rights of its citizens with disabilities.¹² Individuals with impairments has the subsequent entitlements, namely:¹³ a. Life; Absence of stigma; Privacy; Justice and legal safeguards; Education; Employment, entrepreneurship, and cooperatives; Health; Politics; Religion; Social welfare; Accessibility; Public service; Protection from disasters; Freedom from discrimination, neglect, abuse, exploitation; and other related aspects.

According to the established disability rights, individuals with disabilities possess an equal entitlement to employment, just like any other person. Nevertheless, individuals frequently encounter prejudice when it comes to securing and retaining jobs.

1. Legal Standing

- a. The 1945 Constitution of the Republic of Indonesia, specifically Article 27 paragraph (2), ensures that every citizen has the right to secure employment and a decent standard of living.

¹² Cindy, "Perlindungan Hukum Terhadap Anak Penyandang Disabilitas Yang Menjadi Korban Perkosaan."

¹³ FJP Law Offices, "Hak Keadilan Dan Perlindungan Hukum Penyandang Disabilitas," Fredrik J Pinakunary Law Office, 2020, <https://fjp-law.com/id/hak-keadilan-dan-perlindungan-hukum-penyandang-disabilitas/>.

- b. The text refers to Law No. 21/1999, which ratifies ILO Convention No. 111. This convention addresses the issue of discrimination in employment and occupation.
- c. Law No. 39 of 1999, which pertains to Human Rights.
- d. According to Article 5 of Law Number 13 Year 2003 Concerning Manpower, all workers are entitled to equal job opportunities without any form of discrimination. Law No. 19/2011 pertains to the endorsement of the Convention on the Rights of Persons with Disabilities.
- e. Law No. 8/2016 on Persons with Disabilities, namely Article 28, governs the entitlement of individuals with disabilities to fair employment and means of subsistence.
- f. Law No. 8/2016 on Persons with Disabilities mandates that firms in the private sector must provide employment opportunities for at least 1% of their whole workforce to individuals with disabilities. In the government sector, the requirement is even higher, with a minimum of 2% of the total workforce being reserved for persons with disabilities.
- g. Government Regulation Number 70 of 2019 addresses the planning, implementation, and evaluation of the rights of persons with disabilities. Article 40 specifically mandates that employers must ensure accessibility and reasonable accommodation for individuals with disabilities in the workplace.

Law No. 8/2016 Article 11 delineates the entitlement of individuals with disabilities to employment, entrepreneurship, and cooperatives, encompassing their right to:¹⁴

- a. Attain employment facilitated by the government, local government, or private sector without any kind of bias or prejudice.
 - b. Receive remuneration equivalent to that of non-disabled employees engaged in similar job roles and duties.
 - c. Acquiring appropriate accommodations in the workplace;
 - d. Being protected from termination based on disability;
 - e. Participate in a reintegration program for returning to work;
 - f. Ensuring job placement that is fair, proportional, and dignified;
 - g. Securing possibilities for professional development and the associated legal rights;
 - h. Promoting company growth, self-employment, cooperative development, and entrepreneurship.
2. Enactment of Legal Safeguards

Although there is a solid legal basis, the execution of legal safeguards for individuals with impairments regarding employment is nevertheless suboptimal. The following items are included:

- a. Employers' insufficient knowledge on their responsibility to ensure accessibility and accommodation for those with impairments.
- b. Insufficient availability of information regarding job openings that are accommodating to individuals with disabilities.

¹⁴ Novia Hasanah, "Kesempatan Kerja Bagi Penyandang Disabilitas," Hukum Online, 2019, <https://www.hukumonline.com/klinik/a/kesempatan-kerja-bagi-penyandang-disabilitas-lt4b8cf8abc7dc4/>.

- c. Insufficient expertise and education for individuals with disabilities.

CONCLUSION

Individuals with disabilities are a susceptible demographic that necessitates legal safeguards against assault, exploitation, and employment discrimination. International laws and treaties have established a robust legal framework, which includes the state's responsibility to prevent, offer help, ensure access to justice, provide compensation for victims, and implement appropriate protection programs. Regarding employment, individuals with disabilities are entitled to the same rights as others, including equal opportunities for employment, fair salaries, suitable accommodations, protection against dismissal based on disability, opportunities for professional advancement, and the ability to pursue entrepreneurship. These rights are safeguarded by the 1945 Constitution, Labor Law, Law on Persons with Disabilities, and ILO Conventions.

There are still various obstacles to overcome to effectively establish legal protection in this particular situation. Obstacles in the context of violence and exploitation include lack of public understanding, stigma, inadequate law enforcement, and limited access to protection services. However, in terms of employment, the suboptimal implementation is due to employers' lack of awareness, insufficient information on disability-friendly job openings, and inadequate skills and training opportunities for individuals with disabilities. Hence, further endeavors are required to surmount these obstacles to effectively achieve legal safeguarding for individuals with impairments.

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