



WORLD CLASS ISLAMIC CYBER UNIVERSITY  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

**Sept 5th 2019**

# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

**UNISSULA PRESS**

# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
UNISSULA PRESS

ISBN. 978-623-7097-23-5

The 5<sup>th</sup> PROCEEDING

*“Legal Reconstruction in Indonesia Based on Human Right”*

Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

Hak Cipta © 2019, pada penulis

Hak Publikasi pada penerbit PDIH UNISSULA

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk

apapun, tanpa izin tertulis pada penerbit.

Hal I-X, 1-358

Cetakan Pertama Tahun 2019

Penerbit PDIH UNISSULA

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN. 978-623-7097-23-5**

COMMITTEE OF THE 3<sup>rd</sup> INTERNATIONAL CONFERENCE  
AND CALL FOR PAPER  
“Legal Reconstruction in Indonesia Based on Human Right”

Responsible Person	: Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum	(Dean)
Advisory	: Dr. Hj. Widayati.,S.H.,MH	(Vice Dean I)
	Arpangi.,S.H.,M.H	(Vice Dean II)
	Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
	Dr. H. Ahmad Khisni.,S.H.,M.H	(Head of M.Kn)
	Dr.H. Umar Ma’ruf, SH.,Sp.N.,M.Hum	(Head of MIH)
	Kami Hartono.,S.H.,M.H	(Head of S1)
Chairwoman	: Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
Secretary	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	(Secretary of MIH)
Drafting Team	: Dr. H. Amin Purnawan.,SH.,CN.,M.HumH	
	Denny Suwondo.,S.H.,M	
	Hj. AryaniWitasari.,S.H.,M.H	
Event Division	: Erna Sunarti.,S.S.,M.H	
Secretariat and Supplies		
Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto	
	Dyan Teguh Aryanto, Amd	
	M. Ngaziz.,S.H.,M.H	
	Hendro Widodo.,S.H.,M.H	
	NailulMokorobin.,S.Psi	
	AgusPrayoga	
Publication and		
Documentation Division	: Ikrom.,S.H	
Member	Ahmad Mutohar.,S.H	
	Achmad Arifullah.,S.H.,M.H	
Consumption Division	: Shinta Pratiwi	
Member	Latifah Rosdiyati.,S.E	
	Siti Pardiyah	
	Laili Rohmah.,S.E	
	Laila Najihah.,S.H	
Receptionist	: Riftia Anggita W.S.,S.H	
	M Auliana	
General Assistant	: Riswanto	
	Nur Alamsyah	
	Rofiq	
Security	: Rohmani	
	Arif	
Driver	: Irwanto	

## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

### The 5<sup>th</sup> International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

#### Table of Contents

<i>FRONT PAGE</i> .....	<i>I</i>
<i>Information of The International Seminar</i> .....	<i>III</i>
<i>Committee Composition</i> .....	<i>IV</i>
<i>PREFACE</i> .....	<i>V</i>
<b>Fulfillment Of Teacher Protection Rights</b>	
<i>Yenny AS, Rini Setiawati</i> .....	<i>1</i>
<b>Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Review To The Constitutional Court</b>	
<i>Umar Ma'ruf</i> .....	<i>13</i>
<b>Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia</b>	
<i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i> .....	<i>29</i>
<b>Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City)</b>	
<i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i> .....	<i>40</i>
<b>Legal Analysis Of Racist Exams In Surabaya Papua Dormitory</b>	
<i>Ma'aruf Akib</i> .....	<i>49</i>
<b>Reconstruction Of Misdemeanor Settlement Based On Pancasila Value</b>	
<i>S. Andi Sutrasno</i> .....	<i>56</i>
<b>Urgency Of Legal Assistance For Poor People As A Request Of Human Rights</b>	
<i>Adhi Budi Susilo, Indra Yuliawan</i> .....	<i>62</i>
<b>Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice</b>	
<i>Rahmatsyah</i> .....	<i>66</i>
<b>Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice</b>	
<i>Widayati , Winanto</i> .....	<i>72</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i> .....	81
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i> .....	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i> .....	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i> .....	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i> .....	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i> .....	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i> .....	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i> .....	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i> .....	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i> .....	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng (Sripatum UniversityOng Argo Victoria ,Sri Yulianingsih</i> .....	149
Reconstruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i> .....	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i> .....	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i> .....	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i> .....	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i> .....	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i> .....	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i> .....	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i> .....	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i> .....	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i> .....	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i> .....	234
Reconstruction Of Criminal Responsibility For Actors Prostitutorial Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i> .....	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i> .....	248



**Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice**

*Sumanto* ..... 252

**Reconstruction Of Justice Law Protection Law Protection**

*Wamyani* ..... 260

**Criminal Code Draft Law And Development In Indonesia**

*Nany Pujianti Suwigjo* ..... 265

**Deconstruction of the Principle of Legal Thinking**

*Sriyati* ..... 270

**Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java**

*Desy Dwi Nurhayati Hartanti* ..... 279

**Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions**

*Burham Pranawa, Hartiwiningsih, Hari Purwadi* ..... 293

**Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice**

*Rahmatsyah* ..... 301

**Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012**

*Jaenudin Umar* ..... 307

**The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom**

*Supena Diansah* ..... 313

**Urgency Of Legal Assistance For Poor People As A Request Of Human Rights**

*Adhi Budi Susilo, Indra Yuliawan* ..... 327

**Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035**

*Ahmad Agus Bahauddin* ..... 331

**Policies Against Crime Criminal Law Made By Children**

*Achmad Arifulloh* ..... 340

**Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia**

*Andri Winjaya Laksana , Lathifah Hanim* ..... 350



# Legal Protection Against Disability In Getting Work

Oktavianto Setyo Nugroho  
Doctoral Program Law  
Sultan Agung Islamic University in Semarang

## A. Preliminary

Every person is created by God as a living being is the same, but the reality is a lot of discrimination in particular against persons with disabilities or disabilities either inborn or young adults because of an accident or illness that causes people to become physically disabled and mentally.

In various matters relating to physical activity, persons with disabilities recognize and realize that they are indeed “different” and not in the sense of ability, but rather on the mode of production or the means of production. Often the way people see the work or work of persons with disabilities leads to quantity approach. It will certainly be biased and reinforce the inability of persons with disabilities, so as to be pitied. Viewed in terms of quality, as if it is difficult to conduct an assessment of the work of persons with disabilities with normal people in general, although, in reality a lot of the work of persons with disabilities was awesome. The fact that persons with disabilities make expressly reject using the term disabled for designations of persons with disabilities and replace it with the term diffable which means different ability. Diffable considered more

appropriate terminology to describe differences in physical abilities of persons with disabilities. How a community that tends to discriminate against persons with disabilities, a large influence on the difficulty to obtain a decent job for the survival of persons with disabilities.

Government in its implementation, especially the Ministry of Labor as a duty bearer and technical functions in the field of employment, philosophical and constitutional, referring to the basic philosophy of Pancasila and the Constitution - Constitution of the Republic of Indonesia Year 1945. In the provisions of Article 27 paragraph (2) of the Constitution - Constitution of the Republic of Indonesia Year 1945 gives a global reference framework that:

*“Every citizen has the right to work and a decent living for humanity “,*

Meaning contained in Article 27 paragraph (2) have a meaning, that there is no difference every citizen to obtain employment, both pernyandang disabilities and society in general. They have rights, obligations and position, and the same role in the livelihood and life. Thus, persons with disabilities have the right to compete and get the job done by adjusting the type and level

of the degree of their disability.

Their views (stigma) people who are still wrong on the work of persons with disabilities, it has been proved by the existence of the independence of persons with disabilities in producing goods or services. Persons with disabilities are proven to work productively either individually or in groups. For example, most people, especially in Indonesia still think that blind people, although it has been given rehabilitation, including educational rehabilitation and vocational rehabilitation, nonetheless persons with disabilities can not be a human resources self-sufficient and productive, as a result, persons with disabilities are placed as citizens should always be disantuni and pitied. But in fact, not a few persons with disabilities gain financially welfare with their work. It is inseparable from the role of appropriate employment on the job the right (the right person on the right job) in accordance with their talents, interests and abilities. The success of life with disabilities can certainly reassure some people that Manpower with disabilities are less productive when compared with workers in general, and when hiring workers with disabilities, the company will lose money and production will slump. Not to mention they are considered to be very limited mobility, so it becomes a burden for the company to provide facilities. It is inseparable from the role of appropriate employment on the job the right (the right person on the right job) in accordance with their talents, interests and abilities. The success of life with disabilities can certainly reassure some people that Manpower with disabilities are less productive when compared with workers in general, and when hiring workers with disabilities, the company will lose money and production will slump. Not to mention they are considered to be very limited mobility, so it becomes a burden for the company to provide facilities. It is inseparable from the role of appropriate employment on the job the right (the right person on the right job) in accordance with their talents, interests and abilities. The success of life

with disabilities can certainly reassure some people that Manpower with disabilities are less productive when compared with workers in general, and when hiring workers with disabilities, the company will lose money and production will slump. Not to mention they are considered to be very limited mobility, so it becomes a burden for the company to provide facilities. The success of life with disabilities can certainly reassure some people that Manpower with disabilities are less productive when compared with workers in general, and when hiring workers with disabilities, the company will lose money and production will slump. Not to mention they are considered to be very limited mobility, so it becomes a burden for the company to provide facilities. The success of life with disabilities can certainly reassure some people that Manpower with disabilities are less productive when compared with workers in general, and when hiring workers with disabilities, the company will lose money and production will slump. Not to mention they are considered to be very limited mobility, so it becomes a burden for the company to provide facilities.

### **Definition of Disability**

Law in Indonesia, which was first set on persons with disabilities is Law No. 4 of 1997, but in that Act still uses the term with Disabilities. In the general provisions of Law No. 4 of 1997 on Persons with Disabilities, Article 1 and on the part of the explanation is mentioned, that the meaning of the Disabled is every person who has a physical disorder and / or mental can “interfere with or constitute obstacles and barriers for him to activities are appropriate. “People with disabilities made up of three groups, namely:

1. Persons with physical disabilities, including:
  - a) Persons with disability (disabled)
  - b) Persons with visual disabilities (blind)
  - c) People with disabilities or speech impaired / impaired

- d) Persons disabled due to chronic disease (chronic lara disabled)
- 2. Persons with mental disabilities, including:
  - a) The mentally handicapped (mentally disabled);
  - b) Handicapped ex-psychotics (tuna barrel);
  - c) Persons with physical and mental disabilities or multiple disabilities.

In Article 1 (2) to paragraph (6) described on matters relating to people with disabilities, such as understanding the degree of disability as the level of severity of disability were carried someone. Furthermore, described in the next paragraph concerning the equalization of opportunities for persons with disabilities which is defined as a state that provides opportunities for people with disabilities to get equal opportunity in all aspects of life and livelihood.

In an effort to bridge the embodiment of the rights of the equalization of opportunities for persons with disabilities as defined in Section 1, then the next paragraph described the notion of accessibility as the convenience provided to persons with disabilities in order to achieve equality of opportunity in all aspects of life and livelihood. Furthermore, in the context described empowerment of persons with disabilities on rehabilitation as refunctionalization and development process to enable persons with disabilities were able to carry out their social function normally in social life.

In another section of the Act - Act No. 4 of 1997 outlines the meaning of social assistance in order to give assistance to people with disabilities who can not afford that will not be fixed, so that they can improve their standard of social welfare, and further described also on the meaning of social welfare standard maintenance as a safeguard and services that are continuously, so that people with disabilities can realize a

reasonable living standard. In line with the formulation of the notion that people with disabilities, in the provisions of the declaration of the rights of persons with disabilities of the United Nations,

In 2016, the Law on Disability changed into Law No. 8 of 2016 by replacing the words with Disabilities with the terms of Persons with Disabilities. The law is a realization of equal rights and opportunities for Persons with Disabilities towards a prosperous life, independently and without discrimination based on Sila 2nd of Pancasila and based 5P Human Rights, namely: respect, protection, fulfillment, promotion, and enforcement of rights Human.

In the general provisions of Article 1 paragraph 1 of Law No. 8 of 2016 on Persons with Disabilities, say that the Disability is any person who has limited physical, intellectual, mental, and / or sensory long periods which in interaction with the environment can be experienced obstacles and difficulties to participate fully and effectively with other citizens based on equality.

Implementation and fulfillment of Human Rights for Persons with Disabilities have a purpose, namely

- a. Realizing Respect, promotion, Protection, and fulfillment of human rights and fundamental freedoms Disability full and equal;
- b. Warrants the effort Respect, promotion, Protection, and the fulfillment of the right as the dignity inherent in a Disability;
- c. Realizing Disability living standards are more qualified, fair, physical and spiritual prosperity, independence, and dignity;
- d. Protecting Persons with Disabilities of neglect and exploitation, abuse and all acts of discrimination, and human rights violations; and
- e. Ensure the successful implementation Respect, promotion, Protection, and

fulfillment of the rights of Persons with Disabilities to develop themselves and to empower the ability to match talents and interests they have to enjoy, play a role and contribute to an optimal, secure, privacy, and dignity in all aspects of the life of a nation, a state, and society.

The nation attention of Disability for jobs also provided for in Article 53 of Law No. 8 of 2016. In Article 1 and 2, states that “The Government, Local Government, State-Owned Enterprises, and Local Owned Enterprises shall employ at least 2 % (two percent) Disability of the number of employees or workers. Private companies are required to hire at least 1% (one percent) Disability of the number of employees or workers. Reality is currently happening in Indonesia is more private company that employs Disability dibandingkan with Government Agencies (State). This is due to, Private firm view that Disability have jobs are more productive and more orderly than normal workers in general. This is in contrast with Government Agencies (State), which create a rule to employ at least 2% (two percent) of Persons with Disabilities, but the reality on the ground Disability amount employed fewer than what has been mandated by the Act.

### **Attention International Society Against Persons with Disabilities**

The rights of persons with disabilities has long been the center of attention of the United Nations (UN) and other international organizations. The most important outcome of the 1981 International Year of Disabled Persons was the World Program of Action concerning Persons with disabilities who have been assigned by the General Assembly in its resolution 37/52. International Year of Persons with Disabilities and the World Program of Action, is a strong driving force for progress in this field of disability. Both of these, emphasized the right of persons with disabilities to the same opportunities

as other citizens, as well as the right to an equal share in the improvement of living conditions resulting from social and economic development.

Global meeting of experts to review the implementation of action programs concerning persons with disabilities world in the mid of the UN Decade for Persons with disabilities was held in Stockholm in 1987. At the meeting recommended that developed a philosophy that can be used as a guideline to determine the priority for action in -year come. The basic philosophy should be the recognition of the rights of persons with disabilities. In this regard, the Meeting recommended that the General Assembly convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by the countries towards the end of the decade.

A draft outline of the convention was prepared by Italy and presented to the general assembly of the 42nd. Further presentations concerning a draft convention were made by Sweden at the session of the 44th, however, in both the trial can not be reached a consensus on a suitable convention. Many representatives argued that the documents on human rights that have been there already can ensure that persons with disabilities to obtain equal rights with others.

### **Legal Regulation of International Standards Concerning Disabled Per- sons**

Standard regulations equalization of opportunities for persons with disabilities has been developed on the basis of experience gained during the United Nations Decade of Disabled Persons (1983-1992). International Charter of Human Rights, which consists of the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil Rights and Politics, the Convention on the Rights of the Child, and the Convention on the

Elimination of All Forms of Discrimination against Women, and the World Program of Action concerning Persons with Disabilities, the political and moral foundation for this regulation. Although this rule is not mandatory, but it can become international customary rules, if set by a large number of countries with the intention of respecting a rule in international law.

The regulation contains high moral values, and states require a strong political commitment to implement them in order to create equality of opportunity. Essential principles for responsible, act and work together are indicated. The fields are very important for the quality of life and for the achievement of full participation and equality are pointed. These rules can be used as an instrument for policy-making and action to persons with disabilities and their organizations. These rules can also be used as a basis for technical and economic cooperation among the countries, the United Nations (UN) and other international organizations.

The regulation aims to ensure that persons with disabilities of children and adults, men and women, acquire the same rights and obligations as other people as citizens. In all societies of the world there are still barriers that lead to persons with disabilities can not use the rights and freedom that it is difficult for them to participate fully in activities in the community. It is the responsibility of states to take appropriate action for the sake of eliminating those barriers. Persons with disabilities and their organizations should play an active role as partners in the process of removing these barriers.

Equalization of opportunities for persons with disabilities is an essential contribution to the effort to mobilize human resources in general and globally. Special attention may need to be given to specific groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. Besides, there are also a large number of refugees with disabilities

who have special needs that require the attention of the state, community, business and nongovernmental organizations.

In the Declaration on the Rights of Persons with disabilities (the Declaration on the Rights of the Disabled Persons), which was adopted by General Assembly resolution 3447 (XXX) of 9 December 1975, states that this declaration is a follow up of the intention of the community to create standards the high life, the fulfillment of the rights of labor and the progress and development of socio-economic conditions, as well as strengthen its belief in human rights, fundamental freedoms in the principles of peace, human dignity and the value of the individual and social justice. This declaration distinguish between persons with disabilities and people with mental retardation. The discussion here is limited to people with disabilities by the Declaration be interpreted as follows:

*“Unable to Ensure any person by himself or herself, wholly or partly, the necessities of a normal individual and / or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities “.*

In relation to the protection of civil and political rights which are owned by persons with disabilities is stated by Article 4, which reads:

*“Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons Applies to any possible limitation or suppression of Reviews those rights for mentally disabled persons “.*

With the distinction between persons with disabilities and people with mental retardation will be possible distinction in terms of the breadth of the rights held by the two groups. It is clearly stated in Article 4 above. Or in other words, persons with disabilities are entitled to full civil and political rights as befits those ‘normal’. However, the appropriateness for future

leaders can be rejected.

The approach used by the international human rights regime of the rights of persons with disabilities are as follows. The first approach, considers that persons with disabilities rather than as part of the health and welfare issues. Thus, there must be understood in relation to the issue of the generosity of a person or just based on mere moral impulses. According to the conventional expert group of persons with disabilities have been viewed as “abnormal”, which is to be pitied and ignored. Not as well as individuals are entitled to the full, as well as the individuals ‘normal’ that can lead a normal life as part of other community members. As a consequence,

This thought is then reflected in the attitude of the international community began to concentrate on the formation of the norms that are expected to ensure the enjoyment of basic rights by persons with disabilities. The approach called for by the group of experts referred to as:

*“the move from the patronizing and paternalistic approach to persons with disabilities represented by the medical models to viewing them as members of the community with equal rights”.*

That is the approach later adopted by international human rights instruments. In the 1970s, the international community’s concern about the human rights of persons with disabilities dimanifestikan by the increasing number of UN initiatives in relation to the conception of the human rights of persons with disabilities related to equality of opportunity. To realize the full enjoyment of human rights by persons with disabilities, there is a framework known as the United Nations Decade of Disabled Persons 1982-1993. One year earlier, in 1982, has been named as the persons with disabilities. As the main achievement is produces the World Program of Action concerning Disabled Persons (1982),

*The Standard Rules on the Equalization of Opportunities for Persons with Disabilities*

(1993) is the main result of the Decade of Disabled Persons, which is an instrument for the formation of policy and as a basis for technical and economic cooperation. Besides, there are still some common conventions and rekomendasi recommendations that may be imposed on persons with disabilities who have been adopted by various agencies-governmental inter-institutional and international institutions such as the ILO, UNESCO and ECOSOC.

Recognition and inclusion of the human rights of persons with disabilities in such documents as the Vienna Declaration and Program of Action (1993), the Copenhagen Declaration and Program of Action (1995), and the Beijing Declaration and Platform for Action (1995) showed that persons with disabilities holds the rights for a human being ‘normal’.

### **Legal and Moral Obligation**

Persons with disabilities are part of Indonesian people who also have accrued rights and obligations as well as the same role. Government concern has materialized with the issuance of Law No. 4 of 1997 on Persons with Disabilities, as amended by Act No. 8 of 2016 neighbor Disability and Government Regulation No. 43 of 1998 on Efforts to Increase Social Welfare of Persons with Disabilities. In accordance with the contents implied in the Constitution of 1945 in which every citizen has the same and equal opportunity in obtaining life and livelihood. Affirmed also in Act No. 8 2016, that under Article 11 of Persons with Disabilities have the right to work, entrepreneurship, and cooperatives that include:

- a. Getting a job held by the Government, local government, or private without discrimination;
- b. Obtain the same wage labor is not Disability in this type of work and the same responsibilities;
- c. Getting a Decent accommodation in employment;



- d. Not dismissed for reasons of disability;
- e. Getting back to work program;
- f. Job placement fair, proportionate, and dignity;
- g. Getting a chance to develop a career path and all the basic rights inherent in it; and
- h. Advancing the business, have their own jobs, self-employment, the development of cooperatives and starting my own business.

Furthermore, in Article 53 also states that the Government, Local Government, State-Owned Enterprises, and Local Owned Enterprises shall employ at least 2% (two percent) Disability of the number of employees or workers. Private companies are required to hire at least 1% (one percent) Disability of the number of employees or workers.

The amount that should not be rigidly enforced, for the empowerment of Labor Disability due not to the norm, but on the moral responsibility of human beings and the nation. These efforts need the support and commitment of the entire society and this support needs to be formulated in the forum together.

Rights of persons with disabilities in employment is also regulated in Act 13 of 2003, which said in one of the articles that the companies that employ persons with disabilities, are obliged to provide facilities and accessibility to support for workers with disabilities are in the line of duty.

### **Supporting and Inhibiting Factors Against Disability Employment Em- powerment disability**

Persons with disabilities are part of Indonesian people who also have the status, rights, obligations, and the same role. Government concern has materialized with the issuance of Law No. 4 of 1997 on Persons with Disabilities, as amended into Law No.

8 of 2016 About Disability and Government Regulation No. 43 of 1998 on Efforts to Increase Social Welfare of Persons with Disabilities. In accordance with the contents implied in the Constitution of the Republic of Indonesia in 1945 where every citizen has the same and equal opportunity in obtaining life and livelihood.

Affirmed also in Act No. 8 2016 on Disability, that Government, Local Government, State-Owned Enterprises, and Local Owned Enterprises shall employ at least 2% (two percent) Disability of the number of employees or workers. Private companies are required to hire at least 1% (one percent) Disability of the number of employees or workers. This amount should not be applied rigidly, for the empowerment of the Disabled Labor not for their norms, but on moral responsibility as a fellow human being and a nation. These efforts need the support and commitment of the entire society and this support needs to be formulated in the forum together.

Based on that description, the activities of employment need to be implemented properly without knowing the difference between discrimination and labor in general and specialized workforce with Disabilities. Despite the current economic conditions are still not stable berekses in unemployment was increasing, the Ministry of Labor still perform its function as a service unit in coaching in the placement of the Labor one of which is employment of persons with disabilities. Please note that the obstacles are technical and non technical employment issues including:

1. Barriers have limited employment opportunities open to workers in general as well as persons with disabilities.
2. Barriers nonconforming labor skills of persons with disabilities with the work requirements and working conditions.
3. Barriers community awareness and acceptance in the world of work on employment of persons with disabilities.

4. Obstacles in the smooth co-operation and integration between institutions / organizations that have a relationship interconnections in workforce management with disabilities.
5. The resistance of a private internal employment of persons with disabilities themselves or their families.
6. Limited ability of the state budget both routine and development to maintain or improve activities related to labor problems of persons with disabilities.

Therefore, efforts to solve these problems need to be developed coordination and communication among relevant agencies, both government and private institutions in an integrated manner, and one other alternative for creating jobs for workers with disabilities can be through entrepreneurship reliable and independent both in form individual or Joint Business Group.

Labor empowerment of persons with disabilities to gain expertise and skills, so that they can work productively and remuneratif necessary training, organized by the government and private agencies. This training is meant for the workers with disabilities be able to:

1. Increases personality and more confident and able to do the job;
2. Improving the quality of knowledge and skills; and
3. Foster a sense of independence and ready to enter the workforce.

With these methods it will get employment potential of persons with disabilities who are ready to enter the workforce. There are examples of other advantages of labor potential of persons with disabilities on the type of work that is fixed (stational) which is not much need mobility such as a telephone operator, computer operator and others. In addition, a person deaf and has the advantage to be placed on the work that has a working environment with a

high noise level.

Community empowerment in pursuing accessibility can support efforts to achieve accessibility for people with disabilities in Indonesia. Empowerment in this case is meant as a business that allows people to take part, both in actualizing the aspirations and interests freely and protected, as well as to take part in the formulation of state policies that determine their fate (persons with disabilities).

Community empowerment is an effort based on the principle of siding with those who are weak and oppressed, in order that they have the bargaining power so as to solve the problem and change the condition and position. Empowerment in this sense includes steps to improve the quality of life of the people, which is not only measured by the increase in prosperity is economic, but also the power of decision-making at all levels. Empowerment in this sense means that efforts to encourage the process of transformation of unequal power relations, into a new relationship that is fair and equitable.

Public participation in order to realize the independence and well-being of persons with disabilities, among others by forming groups of community organizations. In Indonesia there are more than 50 community organizations whose activities wrestle in various activities in order to empower and improve the independence of persons with disabilities. Among other activities carried out by administering management, education, research, training, and advocacy for persons with disabilities. These community organizations are indispensable in making affirmative action in order to realize the objectives to be achieved, namely to realize the independence and well-being of persons with disabilities. Such an organization is expected to bridge with disabilities with policy holders.

Pattern internal awareness of the disability itself is very important. The only slight disability in Indonesia who have an awareness of their rights and persistent in fighting for their rights and obligations.

Feeling inferior is a psychological problem that tends to be shared by most persons with disabilities, especially those living in remote areas and are not getting a higher education. Feeling inferior because of problems or physical limitations and accept the fate that happened to him as if made of legitimacy to not think critically, fight harder, not give up and be fair. Ease of service and special treatment does not necessarily make people with disabilities to enjoy complacent. This psychological barriers that must first be removed.

## **Conclusion**

From problems - the problems faced by persons with disabilities in employment, it can be concluded:

1. Ensure that the legal aspects of accessibility for persons with disabilities in terms of number of laws and regulations in Indonesia are adequate, but the implementation has not been entirely implemented properly;
2. The government's policy to accommodate the rights of persons with disabilities, especially in gaining employment, normatively only refers to Law No. 8 in 2016 and other implementing regulations as well as international law that have been ratified by Indonesia; and
3. The obstacles are technical and non

technical manpower issues in general and in particular persons with disabilities, among others, are as follows:

- a) Barriers have limited employment opportunities open to workers in general as well as persons with disabilities;
- b) Barriers nonconforming labor skills of persons with disabilities with the work requirements and working conditions;
- c) Barriers community awareness and acceptance in the world of work on employment of persons with disabilities;
- d) Obstacles in the smooth co-operation and integration between institutions / organizations that have a relationship interconnections in workforce management with disabilities;
- e) The resistance of a private internal employment of persons with disabilities themselves and or their families; and
- f) The limited ability of funds to improve workforce development activities of persons with disabilities.

## **REFERENCES**

- Abdul Khakim, 2003. *Introduction Hukum Ketenagakerjaan Indonesia According to Law 13 of 2004*, PT. Citra Aditya Bakti, Bandung
- Bagus Kurniawan, 2005. *Persons with Disabilities Yogya Demands Fair Treatment*, <http://google.com>
- Didi Tarsidi, (translator), 1998. *UN Resolution 48/96 In 1993, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities*
- Mark Salter, *International Conference On Global Issue Statement On Voting Rights for Persons*

with Disabilities, <http://google.com>

Muladi (edt), 2005. *Human Rights: The nature, Concepts and Implications in Law and Society Perspective*, PT.Refika Aditama, Bandung.

Saru Arifin, *Paper Analysis of Legal Protection of the Rights of Disabled Persons in Employment Achieved*

Uning Pratimarti, 2005. *Security Accessibility For Disabled Persons As Embodiment Protection of Human Rights*, in Muladi, PT. Refika Aditama, Bandung

Peace Wayan and Ayu Triyani, 2003. *Redefining Disability Day Celebrations of the World*, in <http://www.balipost.co.id>

### **Constitution**

1. Constitution of the Republic of Indonesia 1945
2. Law No. 4 of 1997 on Persons with Disabilities
3. Law No. 13 of 2003 on Labor
4. Law No. 39 of 1999 on Human Rights
5. Law No. 8 of 2016 on Persons with Disabilities