Right to Women: Between Disabilities and Chance to Work in Government Sectors in Indonesia

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Abstract: Seven years after ratifying Convention on the Rights of Persons with Disabilities and reforming act of people with disabilities in 2016, some visible changes for implementing disabled people's right have been commenced in Indonesia. An excellent example in this stage is that the requirement in the government sector requirement for the disabled person. Under article 53 of Act number 8 the year 2016, the government must allocate at least 2 percent of the total percentage number for the disabled person. It is safe to submit that right to work for a disabled person is protected and recognized by the government. In this stage, the act also grants a legal guarantee to the disabled person by stating that disabled person has right to sit in the public office and for disabled women, the law recognizes their right to grant double protection. However, to sit as a public officer and work as a civil servant, disabled women in Indonesia has no priority line yet so far to be recruited. It is essential to remember that under articles 5 and 126 of Act number 8 the year 2016, the government obliges to give special protection to disabled women and prevent them from layered discrimination.

Keywords: Right to Women, Disabilities, Work, Government Sector

Introduction

Lack of awareness about disability and accommodation apprehensions, cost-related issues concern, and fear of legal abilities are some grounds for not hiring the disabled person in Indonesia (ILO, 2017). In this stage, it is safe to submit that hiring the disabled person as a worker is not a common decision because many barriers occur and prevent the employers from hiring a disabled worker although they might meet the requirement. A sign language capability is one of the good examples in this case. Not many people in a company can master a sign language; meanwhile, the ability to speak sign language is the only way to communicate with disabled people. In other words, talking, learning, or mastering sign language is not included as a national program in Indonesia so that only a few numbers of people who speak sign language. Moreover, In society, people tend to assume that disabled people are mostly more incapable for working in a professional team than non-disabled people and then label disabled women have not achieved the same level of social, economic, and political quality (Helen Meekosha and Carolyn Frohmader, 2010). Accordingly, some employers prefer hiring non-disabled women in the professional working scope rather than disabled women. A recent study from Indonesia shows that more than 63 percent of people with mild disabilities who are working are self-employed, whereas the equivalent figure for the disabled people is only 34 percent (UN ESCAP, 2015).

For many years before the term disability firstly introduced under Act Number 19 Year 2011 which replacing term '*penyandang cacat*' stated in the previous law: Act Number 4 Year 1997 ("Act 4/1997"), being disabled person has been used to be considered as an object and target for charity among society and engaged with obstacles and barriers sources (ILO, 2017). Accordingly, the treatment to the disabled people is always different compared to non-disabled people. After reforming the recent law, Act Number 8 the Year 2016 ("Act 8/2016"), the trend of recognizing the disabled person as a full man who has a full right as normal people go up gradually. Many independent groups or voluntary communities are established by some groups of people to educate society in wider scope about the disabled people right, to support the government for implementing the mandate of the 1945 constitution and the recent law for disabled person, and to introduce its community as a group of people who

support the existence of disabled person. In addition, since the government has revised the regulation for disabled person through Act Number 8 The Year 2016 ("Act 8/2016"), the hope for disabled person to work and be considered as ordinary people with capability among society is slowly being realized due to the affirmative action concerning on implementing right to work under article 53 of the Act 8/2016.

Article 53 of Act 8/2016:

- (1) The Government, Regional Government, State-Owned Enterprises, and Regional-Owned Enterprises must employ at least 2% (two percent) of disabled persons of the total number of employees or workers.
- (2) Private companies must employ at least 1% (one percent) of disabled persons of the total number of employees or workers.

In this stage, under the law, all parties either in private sector or in public sector oblige to spare quota between 1% and 2% of the total number of workers or employees in their respective recruitments. By mandating this regulation, the government commits to protect and recognize the right to work for disabled persons in Indonesia in many sectors, either private industries or government sectors. The penalty of preventing disabled people from working is stated under article 145 of act 8/2016. Under this article, the threats of punishment are imprisonment for a maximum of 2 (two) years and fine for maximum Rp. 200.000.000,00 (two hundred million rupiahs). In this context, the writer submits that the penalty of preventing the disabled people from getting a job or work shall be increased so that all parties, including private sectors, will be stimulated to recruit disabled people for at least the minimum percentage as mandated under the law. The form of this interference cannot be counted as a violation for the employer or shall not be assumed as a coercion because there is a national goal behind this scenario because poverty and disability are inextricably linked, in that poverty contributes to the likelihood of the occurrence of disability, and disability increases the likelihood of poverty (Yvette Basson, 2017). In international law, Indonesia as a states which signed and ratified the Covenant has an obligation to promote progressive realization of the relevant rights to the maximum of their available resources and should clearly to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities (CESCR General Comment No.5, 1994). Hence, penalties are highly recommended for employers who do not have the willingness to obey the law.

The ESCAP recent study found that women with disabilities are doubly discriminated against as a result of both their gender and disability and employment rates for women with disabilities are significantly lower than those for men with disabilities in most Asian and Pacific countries. To be exact, in many countries in the region, women with disabilities are only half as likely as men with disabilities to have a job (UN ESCAP, 2015). In Indonesia, the number of disabled people is about 6.008.641 people, and more than half of this number are female. To be exact, the number of disabled females are 3.097.452. It means that based on data released in 2015, the number of disabled males, which reaches 2.911.189 people, is slightly fewer than disabled female (UN ESCAP, 2015). By reading those data, it is safe to submit that the total number of disabled women in Indonesia is slightly more significant than disabled men and reach about 186.263 people indifference and generally, not all of the disabled women in Indonesia can work due to gender-doubly discrimination.

Under article 76 of the Act 8/2016, disabled people in Indonesia have the right to sit in public office. What the sit in public office means is that all positions at the state public body which including executive, legislative, judicial, and other institutions whose functions and main tasks are related to the state administration, some or all the state budget are sourced from state budget and expenditure and/or regional income and expenditure budgets (Act 8/2016, 2016). In other words, a disabled person has the same right as a non-disabled person to work and sit in public office, either in the executive field, legislative field, or judicial field. This paper will elaborate on the disabled women position to work in a particular area, namely in the government sector. The reason of concerning disabled women in this paper does not mean that the disabled men are not important as disabled women as the writer submits that there is no need to differentiate between disabled men and disabled women. However, in the

general comments number 5, it is stated that disabled people are sometimes treated as genderless human being. It means that double discrimination suffered by disabled women is often neglected and is mentioned several times in the report of the Secretary-General on the implementation of the World Programme of Action (CESCR General Comment No.5, 1994). Also, under article 5 paragraph (2) of Act 8/2016, the law in Indonesia recognizes double protection for disabled women to prevent layered discrimination.

Regarding the methodology used in this paper, this paper uses research paper-desk methodology which involving acts/laws, either local and international source; 1945 Indonesia Constitution, and Constitutional Court Verdicts as the primary sources and then using books, journals, academic articles, official websites, and official institutional reports as the secondary source. Since one writer only and the writer writes the paper does not involve any other writers, the writer submits that all contributions during the writing process are all dedicated to the writer herself.

Right to work and Disabled Women

In international scope, right to work for a disabled person is recognized under article 6 paragraph (1) of International Covenant on Economic, Social and Cultural Rights ("CESCR"). Despite section 6 does not explicitly mention about disabled person's right to work, this article includes the right to work for everyone. Moreover, the general comment number 5 of CESCR states that:

"The Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the CESCR provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. ... the requirement contained in article 2 (2) of the Covenant that the rights "enunciated ...will be exercised without discrimination of any kind" based on certain specified grounds "or other status" clearly applies to discrimination on the grounds of disability." (CESCR General Comment No. 5, 1994)

Thus, as a state which ratified CESCR and Convention on the Rights of Persons with Disabilities (UNHR), Indonesia obliges to ensure the enjoyment of the right to work for a disabled person and to promote equal treatment in working field. In General Comments Number 5 about Persons with Disabilities paragraph 20-2, it reads that persons with disabilities are employed and mostly engaged in low-paid jobs with little social and legal security and are often segregated from the mainstream of the labor market. Also, sentence "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts..." under article 6 paragraph (1) is not realize where the only real opportunity open to disabled workers is to work in so-called "sheltered" facilities under sub-standard conditions (CESCR, GENERAL COMMENTS NO.5). As the disabled person is frequently categorized and described as vulnerable groups (UNDP Regional Centre for Europe and the CIS, 2013) among society, the state also has to protect these members and prevent them from severe resource constraints (CESCR General Comment No.5, 1994). Some factors contributed to their marginalization and in addition to that an increased vulnerability, such as (UNDP Regional Centre for Europe and the CIS, 2013)

- Stigma and discrimination;
- Violence and abuse;
- Restrictions in exercising civil and political rights;
- Exclusion from participating fully in society;
- Reduced access to health and social services, and also to emergency relief services;
- Lack of educational opportunities;
- Exclusion from income generation and employment opportunities;
- Increased disability and premature death.

On the other hand, some people view disabilities are that not supposed to be categorized as a vulnerability. This group of people proposes that despite disability implies personal weakness, disabled people cannot be identified to the meaning of vulnerability as one group of vulnerable individuals, neither can the mainstream population be deprived of the experience of weakness. Further, the definition of vulnerability was emphasized as a mark of those individuals who are particularly affected by greater physical vulnerabilities such as people with intellectual disabilities and mental disorders. Also, vulnerability became a mark of women and children, as well as, the marginal, weak, sick, and disabled individuals. Regarding the distribution by the type of disability in Indonesia, the data depicts that multiple comes sitting in the first place and reaches 40%, following by remembering/concentration which gets about 29.6%, and in the third place, physical reach 10.3%. Meanwhile, the percentages of the rest types of disability which obtain less than 10% are such as visual, speech, self-care, and hearing which respectively attain 7.9%, 6.7%, 2.8%, and 2.7% (UN ESCAP, 2015). Despite the fact that this data does not show about the result based on gender, this data can be a guide for the public to comprehend the ratio percentages and types of disability in Indonesia.

As a public office

As regards the right to disabled women to work, as mentioned above that under article 76 of the Act 8/2016, the law mandates the right of disabled women to sit in public office. There are some acts in Indonesia which can be elaborated because it is related to this issue. Act Number 7 the Year 2017 about General Election (“Act 7/2017”) is one of the acts that will be elaborated in this section. An issue about women representative mentioning in this act is about political party required to be able to participate as a general election participant. However, article 173 paragraph (2e) of act 7/2017 merely concern about the 30% (thirty percent) requirement of women representative in the political parties as a management party for participating as a participant in the general election in Indonesia. Further, there is no single article which mentions about political parties’ requirement to recruit disabled women. In Indonesia, those who have a passion for sitting and working as a legislator in the legislative field must collect the total number of citizen’s vote in the parliamentary election. Then, to be a candidate to compete in the election, the candidate must be proposed by political parties because, under article 172 of act 7/2017, it is clear that participant in the general election for legislative must be coming from political parties. The law 7/2017 mentions the word ‘disabled people’ for about only 8 (eight) times and all of them do not specifically elaborate or explain about disabled women. However, it is essential to remember that in this act, the government through the legislators who created this act affirms that

- 1.Disabled people in Indonesia, who meet the requirements, has the same right as a voter, as a legislative candidate, as a President/Vice President candidate, and as a general election organizer (Article 5 of Act 7/2017);
2. Disabled voters who are physically incapable of coming to the poll station, can help by other people based on disabled voter’s request and those people who support the disabled person in the polling station oblige to keep hide the disable person’s choice for the public (Article 356 of Act 7/2017);

In this stage, the writer submits that to recognize and protect the disabled women’s right to work in public office, especially as a legislator, the government shall take a necessary measure by stating clearly the minimum

percentages for disabled women in the parliament. This can be called as affirmative action for disabled women so that the disabled women will have a priority line and first percentage to compete for sitting as a public office in the parliament. Alongside, the disabled women candidate does not need to compete with non-disabled women because they will concern on their respectively different missions and goals. Moreover, today is the transition time for the government to change people's perspective about the disabled person's image from a 'charity' object-oriented to an 'empowerment' oriented (ILO, 2017) and it is widely recognized that a disabled person is being considered as a marginalized group and that special attention should be paid to their socio-economic needs (Yvette Basson, 2017). Therefore, under the Act Number 19 the Year 2011 ("Act 19/2011") about CRPD Ratifications, the government must take a necessary step, including change laws, habits, and practices that indicated be able to discriminate disabled person; and obliges to ensure the enjoyment of equal human right for disabled people. It is safe to submit that propose some articles in the Act 7/2017 about the general election and recognize disabled person right clearly to sit in the parliament is also able to categorize as an obligation for the government under international law and domestic law in Indonesia.

As a civil servant

Being a civil servant in Indonesia means that those people entirely and automatically work for the government because the field those people work for is related to the public-service system. In other words, civil servants are paid by the people and work for the public interest. Since act 8/2016 has been released and published, the hope of disabled people for being treated fairly in society increased because it has been for a long time that being a disabled person in Indonesia means that you cannot choose any work you want. There are many limitations for the disabled person to implement their right to work in Indonesia although their human rights are recognized and protected universally. For instance, there are many requirements for civil servants before 2018 which stated that for applying and being civil servants, people must grant a letter from a doctor which declared fit mentally and physically. For non-disabled people, this form of requirements does not become a problem at all; however, for disabled people, this requirement is clearly against their right to work or even for applying to this position. By releasing and publishing article 53 paragraphs (1) of act 8/2016 does not mean that automatically the disabled people are allowed to work as a civil servant. However, this rule benefits disabled people to work in the government sector as a civil servant in Indonesia.

A local non-profit foundation in Yogyakarta-Indonesia submits that the process of recruiting civil servants for local government in Yogyakarta last year still discriminated to disabled people, especially for the deaf, blind, and mentally disabled. In the recruitment formation, the slots for disabled people are only concerned on physic disabled, meanwhile others cities/provinces, such as Jakarta, Central Java, and East Java, has not made particular restrictions about the types of disabilities (SAPDA, 2018). In this stage, despite the government has not released and legitimated the government rule about the persons with disability in Indonesia, the act 8/2016 has its power to bind all parties, including the government, to recruit disabled people for working in government sector. In Indonesia, government rule uses to follow and explain the technical method of the norms contained under the act. In this case, the government rule about the persons with disabilities has not been released and legitimated yet by the government.

As regard disabled women right to work in government sectors, the act 8/2016 does not explicitly set about the chance of disabled women to be prioritized to get a job in government sector. Even though the law does not expressly state about the priority of disabled women to work in the government sector, the law recognizes some rights for disabled women to grant a special treatment under article 5 paragraph (2c) and article 126.

Article 5 paragraph (2) reads: "... disabled women have rights to: (c) Grant more protection from layered discrimination treatment."

Article 126 reads:

The government and local government oblige to give provide special treatment for disabled women and disabled children in accordance with the provisions of the laws.

The act 8/2016 does not explain specifically about the grounds why the law mandates the government to give special treatment for disabled women and disabled children.

Act Number 5 the Year 2014 (“Act 5/2014”) about state civil apparatus which being an act/law guide for civil servant also does not accommodate about the disabled people right to work. Although the revised act of persons with disability published and legitimated almost three years ago, in the previous law of persons with disabilities, law 4/1997 has also stated about the chance of disabled people to work in the government company. However, in this stage it submits that since the act 4/1997 had mentioned and recognized the disabled people chance to work in private sectors and stated-company sectors, it had not significantly affected the disabled people to grant a special treatment to work in government sector because the act 4/1997 has been arranged in 1997 and act about state civil apparatus has been written in 2004. The disharmony between two laws can be proved that at that time disabled people had not granted well-treatment and special attention from the government. On contrary, by revising act about persons with disabilities, disabled people expect that the harmony between one law and another law will affect disabled people’s life as for more than 70 years since the Republic of Indonesia has declared its independence, the systems for disabled people never have special treatment as required under the international law and the 1945 constitution. It is submitted that disabled women shall be granted special treatment for applying for a position as a civil servant because the study found that disabled women often receive serious exploitation violations.

By giving the disabled women special access to apply as a civil servant, the disabled women can be an independent woman with dignity and can stimulate, help, and create her environment to be a better environment for disabled people. In the global scope, disabled women are twice to three times more likely to be victims of physical and sexual violence than other women. Also, the employment rates of disabled women are significantly lower than those of their male peers, and the activity gap between them is higher than that between disabled and non-disabled persons. Worldwide, less than 25% of disabled women are in the workforce, and disabled women earn less than their male counterparts. In developing countries, many disabled women have no income at all (WWDA, 2010). Thus, giving a particular line for disabled women to apply and work in the government sector in Indonesia is necessary and a real step to prevent disabled women get layered discrimination.

Poverty and Disability

As mentioned above that poverty and disability are inextricably linked, in that poverty contributes to the likelihood of the occurrence of disability, and disability increases the likelihood of poverty (Yvette Basson, 2017), then giving an obligation to all parties in this state to spare particular percentage for disabled people is a good idea. Poverty can be decreased if the right to work as a fundamental right is well-implemented and well-protected. The study found that in the region’s developing countries, disabled people are often victims of a vicious-cyclical relationship between disability and poverty. On one level, disabilities may themselves be caused by the preventable illness that accompany poverty, and on another level, meanwhile, disabled people are prevented from accessing education or employment opportunities, which increases their exposure to poverty (UN ESCAP, 2015). The right to an adequate standard of living is also a right which cannot be separated with disability issue. As mentioned in article 11 of the ICESCR, everyone is entitled to social security and an adequate standard of living. Term “everyone” has a right to an adequate standard of living means that disabled people are included in this meaning. In terms of General Comment 19, social security benefits provided to disabled people “must be adequate in amount and duration.” This is also confirmed by ICESCR General Comment No. 5 on Persons with Disabilities

which provides that persons with disabilities are entitled to adequate income support as per the rules of the social security system in that particular country (Yvette Basson, 2017).

Conclusion

Despite the revised act about persons with disabilities has set the minimum percentages of disabled people to work in the government sector and has not set about the priority line for the disabled women to work in the government sector, the act 8/2016 gives the disabled people a new hope to implement its right to work in Indonesia. It is safe to submit that the commitment of the government has started to emerge and shown seriously. However, the writer proposes that the government need to revise the policy by granting more space or special and priority line for disabled women to apply and work in the government sector. In this stage, it is essential to bear in mind that the recent study found that women with disabilities are doubly discriminated against as a result of both their gender and disability and employment rates for women with disabilities are significantly lower than those for men with disabilities in most Asian and Pacific countries. To be exact, in many countries in the region, women with disabilities are only half as likely as men with disabilities to have a job (UN ESCAP, 2015). In Indonesia, the number of disabled people is about 6.008.641 people, and more than half of this number are female. To be exact, the number of disabled females are 3.097.452. It means that based on data released in 2015, the number of disabled males, which reaches 2.911.189 people, is slightly fewer than disabled female (UN ESCAP, 2015). Moreover, In society, people tend to assume that disabled people are mostly more incapable for working in a professional team than non-disabled people and then label disabled women have not achieved the same level of social, economic, and political quality (Helen Meekosha and Carolyn Frohmader, 2010).

The aim for preventing disabled women, as recognized and stated in the Act 8/2016, from layered discrimination, is in line with the writer proposal in this article namely by giving and sparing priority access for disabled women in the government recruitments. By giving them special attention, the rate for employment for disabled women in Indonesia will increase. Accordingly, the impact will lead to the decreased number of poverty rates. In other words, there are simultaneously affect caused by this proposal, including implementing the right of an adequate standard of living, as mandated under article 11 of ICESCR, which also has been ratified by Indonesia in 2011.

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