

# LEGAL PROTECTION ARRANGEMENTS FOR PERSONS WITH DISABILITIES IN THE CIVIL SERVICE RECRUITMENT SYSTEM IN THE PERSPECTIVE OF HUMAN RIGHTS

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**Abstract :** Indonesia is a country based on Pancasila and the 1945 Constitution of the Republic of Indonesia which respects and upholds human dignity. Article 53 of Law Number 8 of 2016 concerning Persons with Disabilities provides high expectations for persons with disabilities that they have the same opportunities as other normal people to get a job when in reality not all employment opportunities provide equal opportunities for persons with disabilities, so this article only provide facultative justice, the impact of which is that it is difficult for persons with disabilities to find work and even if they do find work, it is not uncommon for persons with disabilities to be discriminated against in the workplace. The recruitment of candidates for civil servants (CPNS) for persons with disabilities is a manifestation that every citizen has the right to have equal opportunities in government to implement the principle of equality. Although there are already formations for people with disabilities, they have not provided equal space and justice for all types of disabilities. There are a number of requirements for applicants with disabilities in certain institutions where the criteria for disabilities that can apply are being able to see, hear and speak well, then also be able to move using a walking aid other than a wheelchair. This discriminatory requirement will clearly close the opportunity for the blind, deaf, speech impaired and physically disabled to participate in the selection of CPNS admissions. Article 45 of Law Number 8 of 2016 concerning Persons with Disabilities, which stipulates that the Government and Regional Governments are required to ensure a fair and non-discriminatory process of recruitment, acceptance, job training, job placement, work continuity, and career development and without discrimination to Persons with Disabilities. discrimination, all persons with disabilities have equal opportunities, what will determine later is the competence and capability of each during the selection process. Therefore, it is necessary to interpret the laws and regulations on future concepts and ideas related to legal protection for persons with disabilities in the recruitment system for prospective civil servants from a human rights perspective.

**Keyword:** Legal Protection, Disabilities, Human Rights.

## 1. PRELIMINARY

The Republic of Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia which respects and upholds human dignity. Human rights as basic rights that are naturally inherent in humans are universal, need to be protected, respected, and maintained. "The right itself is a normative element that functions as a guide to behavior, protects freedom, immunity and guarantees opportunities for humans to maintain their dignity" (UIN ICCE Team, 2003, 199). In the fourth amendment to the

1945 Constitution of the Republic of Indonesia, Chapter XA regulates Human Rights (HAM), the addition of the formulation of human rights as well as guarantees for respect, protection, implementation and promotion in the 1945 Constitution are not solely due to the will to accommodate developments. The view of human rights that is increasingly considered important as a global issue, but because it is one of the requirements of the rule of law.

Indonesia as a member state of the United Nations has the obligation to implement various international human rights instruments that have been accepted by Indonesia, including the 1993 Vienna Declaration and the Convention on the Rights of Persons with Disabilities which were ratified through Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. This makes Indonesia a part of a global community that is committed to making every effort to realize the elimination of all forms of discrimination and to ensure the participation of persons with disabilities in every aspect of life. The mandate of the Vienna Declaration and the Convention on the Rights of Persons with Disabilities emphasizes that every country should establish and implement a National Action Plan related to human rights.

The vision and mission of the President of the Republic of Indonesia, namely President Jokowi, as outlined in the Nawacita contains 9 (nine) priority agendas for change in the context of realizing a sovereign, independent and personal Indonesia. The vision and mission include the President's policies in overcoming problems in the field of human rights. In order to realize the vision and mission as well as the obligations and responsibilities, the government considers it necessary to perfect and continue the implementation of the National Action Plan on Human Rights (RANHAM) 2011-2014 and the National Action Plan for Persons with Disabilities (RAN Penca) 2004-2013, by integrating the values of justice, humanity and inclusiveness of the elderly into one inclusive National Action Plan, namely the Indonesian National Action Plan for Human Rights (RANHAM).

The regulation regarding persons with disabilities was first regulated in Law Number 4 of 1997 concerning Persons with Disabilities, but this arrangement does not have a human rights perspective. The content of Law No. 4 of 1997 concerning persons with disabilities is more compassionate (charity based) and the fulfillment of the rights of persons with disabilities is still considered a social problem whose policies for fulfilling their rights are only social security, social rehabilitation, social assistance, and social welfare improvement. Persons with disabilities should have the same opportunities in an effort to develop themselves through independence as human beings with dignity.

With the enactment of Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities on November 10, 2011, it shows the commitment and seriousness of the Government of Indonesia to respect, protect, and fulfill the rights of persons with disabilities which ultimately is expected to improve the welfare of persons with disabilities. Thus, persons with disabilities have the right to be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and arbitrary treatment, and have the right to have respect for their mental and physical integrity on an equal basis with others, including it includes the right to obtain protection in the field of manpower in the context of independence.

The result of the convention was the enactment of Law Number 8 of 2016 concerning Persons with Disabilities in lieu of Law Number 4 of 1997 concerning Persons with Disabilities. The government is obliged to realize the rights contained in the law, including

ensuring the fulfillment of the rights of persons with disabilities in all aspects of life such as education, health, employment, politics and government, culture, and tourism, as well as the use of technology, information and communication.

Persons with disabilities have the same rights and obligations as society in general, so it is appropriate that in the context of implementing good governance, persons with disabilities are also entitled to decent work opportunities, one of which is the opportunity to become part of civil servants, which is marked by the issuance of a Ministerial Regulation. Empowerment of State Apparatus and Bureaucratic Reform of the Republic of Indonesia Number 23 of 2019 which in the recruitment of Civil Servant Candidates (CPNS) in 2019 prepares general and special formations for persons with disabilities.

The existence of CPNS recruitment for persons with disabilities is a form of realization that every citizen has the right to have equal opportunities in government. Everyone has the right to have equal opportunities in government. The aim is to implement the principle of equality, including for persons with disabilities who will register as CPNS.

Even though there are already formations for disability, discrimination still occurs in disability formations, which has not provided equal space and justice for all types of disabilities. There are a number of requirements for applicants with disabilities in certain institutions where the criteria for disability that can apply are being able to see, hear and speak well, then also be able to move using a walking aid other than a wheelchair. , deaf, speech impaired and quadriplegic to take part in the selection of CPNS acceptance.

Article 45 of Law Number 8 of 2016 concerning Persons with Disabilities, which stipulates that the Government and Regional Governments are required to guarantee a fair and non-discriminatory process of recruitment, acceptance, job training, job placement, work continuity, and career development and without discrimination to persons with disabilities. discrimination, all persons with disabilities have equal opportunities, what will determine later is the competence and capability of each during the selection process. This recruitment stage is a very important stage of the selection and placement mechanism for CPNS, if the recruitment system is not good, it is feared that equality of opportunity for persons with disabilities in the government will not be realized.

Based on the background of the problems above, the authors are interested in discussing various laws and regulations in Indonesia relating to the regulation of protection for persons with disabilities.

## **2. RESEARCH PURPOSES**

The purpose of this study is to understand and analyze the legal protection arrangements for persons with disabilities in the recruitment system for prospective civil servants (CPNS) from a human rights perspective.

## **3. LITERATURE REVIEW**

### **State Theory of Law**

Philipus M. Hadjon, said that:

The basic idea of Indonesia's legal state cannot be separated from the basic idea of rechtsstaat. This can be understood in many ways, among others, because Indonesia is a country that follows the Netherlands and adheres to the idea of rechtsstaat which was born in Germany at the end of the XVIII century. legality i.e. all laws must be "positive". This means that the law must be formed consciously, he further argues, that the idea of rechtsstaat places the "wetgever" position to be important because the "positive" law that is formed is expected to guarantee legal protection for the people, among others through the distribution of power (Philipus M.Hadjon, 1994 : 4).

### **Theory of Justice**

Law has the aim of realizing order in society and legal certainty, but there is a much more important goal which is the goal of law, namely justice. According to (Notohamidjojo, 1975:84) says that:

“There is a deeper and more essential purpose of the law, namely that the law leads to justice. Laws that do not lead to justice are not laws. Laws that are voided in terms of justice, embody a tool of coercion, a tool of power rather than a dictatorial government. Therefore, we who are called to shepherd the law, need to remain vigilant so that the law that we shepherd leads to justice and fulfills justice”.

The ultimate goal of law is justice, which must be achieved through a legal and independent institution within a state. This shows the importance of realizing justice for every citizen (human) as a legal orientation.

### **Principles of Equality and Non-Discrimination**

With the increasing discrimination against groups of people with disabilities, the State was then made aware of the importance of recognizing that "persons with disabilities are human beings who are the same as other humans, equal in rights and free to make choices, therefore there are special rights for groups of people with disabilities" (Fadhli , 2014: 357). Special rights are not special rights, but these rights are given so that persons with disabilities are able to maintain their identity, characteristics and distinctive traditions. “Special rights as well as non-discriminatory treatment are equally important to achieve equal treatment. Therefore, the principles of equality and non-discrimination are very important in human rights” (Soeprapto, 2012:16).

## **4. RESEARCH METHOD**

This research is a normative legal research, namely "research on legal principles and legal systematics, namely research that is focused on examining the application of rules or norms in positive law" (Ibrahim, 2005:240). The research approach used in this research is the statutory approach, the conceptual approach, and the case approach. In addition, the method of collecting legal materials is carried out with a computerized system consisting of Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials.

## **5. DISCUSSION**

### **Legal Protection Arrangements for Persons with Disabilities**

Indonesia has built and changed the paradigm of persons with disabilities for the better. This is reflected in the Law on Persons with Disabilities. In the Law on Persons with Disabilities, the paradigm of persons with disabilities is from a compassion perspective to an empowerment perspective. Disability is better known by the public as people with disabilities, but at this time it is no longer using the term people with disabilities and has been replaced with the term people with disabilities due to the negative impression contained in the use of the term people with disabilities.

According to Law Number 19 of 2011 concerning the Ratification of the Rights of Persons with Disabilities: "Persons with disabilities are people who have physical, mental, intellectual or sensory limitations for a long time who in interacting with the environment and attitudes of the community can encounter obstacles that make it difficult to participate. full and effective on the basis of equal rights”. This change in terminology changes the paradigm in Indonesia for persons with disabilities from a compassion-based approach to a rights-based approach. As a result, overcoming the problem of persons with disabilities does not only focus on persons with disabilities, but also on the provision and maintenance

of the physical environment to support the accessibility of persons with disabilities.

Accessibility according to Article 1 point 8 of the Law on Persons with Disabilities is the facilities provided for persons with disabilities in order to realize equal opportunities. In Article 19 of the Law on Persons with Disabilities it is stated that the right of accessibility includes the right to: a) obtain accessibility to utilize public facilities and b) obtain adequate accommodation as a form of individual accessibility.

Law Number 39 of 1999 concerning Human Rights regulates human rights to provide legal certainty for the protection of human rights for everyone, one of which is persons with disabilities whose needs must be protected and fulfilled. Based on the Law of the Republic of Indonesia Number. 39 of 1999 concerning Human Rights in CHAPTER I, General Provisions Article 1, Human Rights are a set of rights that are inherent in the nature of human existence as creatures of God Almighty and are His grace that must be respected, upheld and protected by state, law, government and everyone for the sake of honor and protection of human dignity. Respect and dignity for human rights is a noble thing. The existence of mutual respect, tolerance among fellow creatures of God Almighty, can always provide a sense of peace for anyone in this world. In the Human Rights Law, regulating the rights of everyone at work is regulated in Article 38 which states that everyone, both men and women, has the right to choose a decent job in accordance with their wishes, talents, skills and abilities. In addition, the conditions stipulated in the work agreement are also non-discriminatory between men and women in terms of the work having the same burden. The most important thing is that everyone at work has the right to fair wages in accordance with the achievements given in their work.

One of them is employment opportunities for persons with disabilities in the government sector, namely CPNS recruitment. The policy for employment opportunities for persons with disabilities is based on the Regulation of the Minister of PAN and Republic of Indonesia Bureaucratic Reform Number 23 of 2019 concerning Criteria for Determining the Needs of Civil Servants and Implementation of CPNS. Based on the Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform (Permen PAN RB) Number 36 of 2018 concerning Criteria for Determining the Need for Civil Servants and Implementation of the Selection of Candidates for Civil Servants in 2018 opens a quota for the number of formations for persons with disabilities of at least 2% of the total formations for central agencies and the quota for persons with disabilities in regional agencies is at least 1%, while judging from the Regulation of the Minister for Empowerment of Bureaucratic Reform in 2017, formations are opened as much as 0.44% of the total existing formations for central agencies (CPNS, 2018). However, as many as 2,892 formations were opened for people with disabilities, only covering 0.013% of the total population of people with disabilities (SUPAS 2015) in Indonesia, namely 21,843,588 residents, even if it is criticized more deeply, the number of people with disabilities who pass the 2018 CPNS is potentially less of it.

Based on this, the legal protection given to workers with disabilities in order to guarantee their rights in the field of employment is reflected in the laws and regulations that regulate disability and employment. The body of the 1945 Constitution states that citizens have the right to a decent life. In addition, everyone has the right to get a job, proper remuneration and fair treatment in every working relationship. Based on this statement, the meaning of everyone here is that everyone has the same right to get a decent job and is free from discrimination to get a job, in this case people with disabilities have the right to get decent work and be treated fairly at work.

In Law Number 19 of 2011 concerning Ratification of the Convention On The Rights Of Persons With Disabilities (Convention Concerning the Rights of Persons with

Disabilities). The Convention on the Rights of Persons with Disabilities is a multilateral treaty adopted by the United Nations General Assembly adopted on 13 December 2006. This agreement aims to raise awareness of the issues facing persons with disabilities, promote equality and combat discrimination, make accessible physical environment, provide protection in risky situations, ensure access to education, health care and employment opportunities.

Indonesia has ratified this convention with Law Number 19 of 2011 which was ratified on November 10, 2011. In the convention, which regulates the rights of persons with disabilities in the field of work, the state is obliged to guarantee the following:

- a) The rights of persons with disabilities to work so that persons with disabilities are free to choose the work they want and ensure an inclusive work environment.
- b) Prohibiting discrimination against persons with disabilities in terms of requirements in employment relations, career paths, wages, and occupational health and safety.
- c) Creating equal opportunities and equality for persons with disabilities in wages and working conditions which include health conditions and free from violence.
- d) Conduct training for persons with disabilities and guarantee the right to associate and assemble in trade unions like other workers.
- e) Informing about job vacancies to persons with disabilities including providing assistance in finding, applying, working until persons with disabilities stop working.
- f) Provide encouragement to work independently and open a business independently.
- g) Employ persons with disabilities in the government sector.
- h) Ensure accessibility of persons with disabilities in the workplace.
- i) Ensure that persons with disabilities do not experience slavery in the workplace or perform overly strenuous work.
- j) Ensure the right of persons with disabilities and their families to always receive primary and secondary needs and always promote the prohibition of discrimination against persons with disabilities.

Fulfillment and protection of the rights of persons with disabilities are all actions and/or activities to guarantee and protect the constitutional rights of persons with disabilities in accordance with human dignity and to avoid acts of violence and discrimination. The purpose of protecting and fulfilling the rights of persons with disabilities includes increasing the level of welfare, quality and survival and independence of persons with disabilities. There are several forms of protection provided to workers with disabilities to ensure their rights, including:

- a. Implementing a quota system for persons with disabilities in the world of work. The quota system in force in Indonesia consists of a quota for persons with disabilities working in the government, BUMN, and BUMD sectors is 2 (two) percent while for the private sector, the quota for persons with disabilities is 1 (one) percent of the total number of workers working in the company. This quota regarding persons with disabilities is required to be fulfilled by employers and provides opportunities for employers to open vacancies for persons with disabilities to work in their agencies/companies.
- b. Require employers to provide accessibility to persons with disabilities and an inclusive environment. Creating inclusive working conditions and environments for persons with disabilities is the obligation of employers. An inclusive environment such as the availability of access to up and down floors, disability-friendly bathrooms, and a supportive workplace will make people with disabilities easy to adapt and move freely to work.
- c. Require employers to be fair and non-discriminatory. Employers are obliged to be fair

and non-discriminatory towards workers with disabilities. Acting fairly and non-discriminatory here is related to wages and career paths for persons with disabilities.

- d. Forming disability service units in the regions. The establishment of service units in the regions aims to plan for the protection and fulfillment of the rights to employment of persons with disabilities, provide information on recruitment, job training, job placement, work continuity and career development and assist employers who employ persons with disabilities and assist persons with disabilities themselves in finding work. .
- e. There are sanctions for employers who prevent persons with disabilities from working.

These protections are a form of government protection for its citizens. Persons with disabilities are a weak group and have the right to have their rights protected, especially rights in the field of employment. With this protection, social justice and general welfare will be created for all Indonesian people.

## 6. CONCLUSION

The Republic of Indonesia is based on Pancasila and the 1945 Constitution of the Republic of Indonesia which respects and upholds human dignity. Human rights as basic rights that are naturally inherent in humans are universal, need to be protected, respected, and maintained. One of them is for people with disabilities. According to Law Number 19 of 2011 concerning the Ratification of the Rights of Persons with Disabilities: "Persons with disabilities are people who have physical, mental, intellectual or sensory limitations for a long time who in interacting with the environment and attitudes of the community can encounter obstacles that make it difficult to participate. full and effective on the basis of equal rights". Law Number 39 of 1999 concerning Human Rights regulates human rights to provide legal certainty for the protection of human rights for everyone, one of which is persons with disabilities whose needs must be protected and fulfilled. One of the rights of persons with disabilities is to get the same job as other people, which is to implement the principle of equality, including for persons with disabilities who will register as CPNS. However, in 2018, as many as 2,892 formations were opened for people with disabilities, covering only 0.013% of the total population of people with disabilities in Indonesia, namely 21,843,588 people. of the. Therefore, it is necessary to regulate legal protection for persons with disabilities to obtain the fulfillment of the same rights. The purpose of protecting and fulfilling the rights of persons with disabilities includes increasing the level of welfare, quality and survival and independence of persons with disabilities.

## 7. SUGGESTION

The government is expected to regulate and provide definite legal protection for persons with disabilities in participating in CPNS recruitment activities and to provide special attention and supervision in the implementation of CPNS recruitment tests for persons with disabilities. In addition, maximizing the role of persons with disabilities in working in government and increasing the quota for ASN with disabilities as a manifestation of the state's responsibility to its people by not replacing the quota position for ASN with disabilities with non-disabled ASNs.

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