

## CHAPTER I

### INTRODUCTION

#### **A. Background**

Discrimination still becomes an issue these days. The group of communities which still have this experience is people with disabilities who may become like the way they are now not because of their desire but maybe because of an accident or indeed already congenital from birth. One form of discrimination against them is discrimination in terms of work opportunities where they are physically still considered as a burden or even unable to work. It does not mean that they are unnecessary because this community has its deficiency; but they also have passion and have the right to develop themselves to become the better human being with work which is no distinction with normal people as participants in society. Thus, if there is no discrimination the people and country will become wealthier even empowered the economy and social relationship between humans being.

Internationally, the persons with disabilities have been recognized equally with the normal people including in the employment by the United Nations and the provision exist inside UDHR (Universal Declaration of Human Right) in Article 23 where everyone has the right to work to free choice of employment, to just and favorable conditions of work and to protect against unemployment.<sup>1</sup>

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<sup>1</sup> United Nation, *Universal Declaration of Human Right* , <https://www.un.org/en/universal-declaration-human-rights/>, accessed on 27<sup>th</sup> October 2019.

To fulfill the right of persons with disabilities on employment, United Nation has adopted the convention to covers many key issues such as accessibility, personal mobility, health, education, employment, independent living, and rehabilitation, participation in political life, equality, and non-discrimination for persons with disabilities which is comprehensive and as the guideline and international regulation that must be addressed to the country members by appropriate measures called CRPD (Convention on the Right of Persons with Disabilities) on 13 December 2006 and entry into force on 3 May 2008.

Then, Indonesia as a member of the United Nations signed the convention of the right for persons with disabilities (CRPD) without reservation on March 30, 2007, and ratified on November 10, 2011, which indicate to respect, protect, and fulfill the right of persons with disabilities.<sup>2</sup> After the ratification of CPRD, Indonesia has conducted effort through legislation by formulating Law number 8 of 2016 which included the material about the chance of work and living for persons with disabilities. This law amends law no.4 of 1997 which still uses “*penyandang cacat*” which still creates a negative stigma, lowered by another, and underestimated. Besides, the law is not completely concerned about the fulfillment of their right which is different from normal people.

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<sup>2</sup> Explanation of Law no.19 of 2011 about Ratification on Convention on the Right of Person with Disabilities.

It indicates that the state must provide suitable support, funding, and give facility for persons with disabilities because the right to work aims to fill their economic and social needs which can even make a positive contribution to society and the country. Nevertheless, they have more limitations and complex problems than normal people. According to Karl Deutsch states have a function that must fulfill by the national government, some of the functions among others are the welfare of the people and increasing capability of people until achieving a specific purpose to give good support to each other.<sup>3</sup> Also, the costs of living for persons with disabilities are wide-ranging including additional out of pocket costs required for health services, medication, disability-specific aid such as assistive device and rehabilitation, the prices and accessibility of goods and services.<sup>4</sup>

In fact, according to the data from BPS (Central Bureau of Statistic) in 2018, it is causing unemployment disabilities for severe disabilities to amount to 8,40% from a total population of persons with disabilities which amount to 1,6 million people (approximately 1.662.249 people) and mild disabilities amount 2,26% or 0,4 million (approximately 447.224 people)<sup>5</sup>. Meanwhile, it is only 0.90 % of persons with disabilities who are employed in public and private institutions. The wealth of persons with disabilities can be seen in wealthiness data (income quintile) in 2018. Poverty rate

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<sup>3</sup> Awing Asmawi,2018,," *Kesejahteraan Rakyat dan Implementasi Kebijakan Transportasi Laut di Jawa Barat*", Jurnal Pembangunan Sosial, Vol.1, No.1, 89.

<sup>4</sup> Sophie Mitra et al, "*Extra costs of living with a disability: A review and agenda for research*", Disability and health journal, Vol.10, No.4, 476

<sup>5</sup> Hastuti et al., 2019, *Kendala Mewujudkan Pembangunan Inklusif Terhadap Peyandang Disabilitas*. Jakarta, SMERU, 18.

is higher than non-disabled people where the rate amount to 9,49% compared to 11,04% accumulated from 15,38 % (3,04 million people) of severe disabilities and 10,63% (2,1 million people) mild disabilities.<sup>6</sup>

The data explain how ironically where people in Indonesia who have the limitation of sense or body still find it difficult to obtain a job whether in the village or city and receive income for their prosperity. This matter causes differentiation of wealth between normal people and people with disabilities such as the data on above where people with disabilities have a higher rate of destitution than people with perfect limbs and sense.

Furthermore, the Ministry of Manpower said from 440 companies in Indonesia there were 2.760 disable worker from 230.000 worker which only amounts to 1,2 % and this is just the company which has been recorded by the government.<sup>7</sup> This phenomenon happens because of several factors, among others, people with disabilities still sustain several labeling, and negative behavior by the company to persons with disabilities among others is the assumption that those people can't work. From work providers themselves also do not have an understanding of the terminology of disability, clarification of disability, even job fair or opportunity for them. Therefore, the majority of the company still considering the outcome for an infestation to facilitate persons with disabilities, as a result, the company more prefers to employing people without

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<sup>6</sup> Ibid, 17.

<sup>7</sup> CNN Indonesia, 2020, “*Serapan Pekerja Difabel oleh Perusahaan Masih Minim*”, <https://www.cnnindonesia.com/ekonomi/20181030140004-92-342624/serapan-pekerja-difabel-oleh-perusahaan-masih-minim>, accessed on 2<sup>nd</sup> of June 2020.

disabilities than people with disabilities caused by the cheaper outcome if they employing people which is have the perfect body.

It can be seen as an example, in 2019, a blind man called Ankara which already 40 years old applying for a job at PT Pelindo II as administration staff. Then he passed all selection tests from basic skill tests, English competence tests, medical checkups, interviews, and any relevant tests related to this job. Ankara also performs to the management that he can use the cellphone for communication fluently. However, at last, he still got rejected by this company after one month.<sup>8</sup>

The second factor that makes people with disability lack of work and job opportunity is when they had worked at the previous time, but the placement of employment not relevant with skill and capability of persons with disabilities, the issue lead persons with disabilities can't be optimal for performing their job and capability within their work achievement assumed by the company that they have lower quality than non-disabled people with result inclined for discharge. Then the company will reconsider the recruitment of people with disabilities or even never recruit at all.<sup>9</sup>

Ironically, the problems can happen in the recruitment for public sector with the result that disabled people could not get suitable work or developing their careers. For example, in the case of Romi Syofpa Ismael as a dentist, she has received the decree from the regent of South Solok assert that she doesn't fulfill the general criteria as a

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<sup>8</sup> Robertus Roni Setiawan,2020, "*Kaum Disabilitas, Bekerja Dalam Bayang – Bayang Diskriminasi*",<https://www.alinea.id/nasional/kaum-disabilitas-bekerja-dalam-bayang-diskriminasi-b1ZHR9rlj>, accessed on 2<sup>nd</sup> of June 2020.

<sup>9</sup> Loc.cit, Hastuti et al, 29

state employee. Therefore, she could not become a state employee even she passed all selection tests.<sup>10</sup>

In this matter, the government role is very important and even improving or change their policy and their program in order to decrease or even eliminate discrimination on employment opportunity, but many factors and challenges make their effort not completely effective, with the result there are still many cases of persons with disabilities as Jobseeker have barrier to obtain work while this right guaranteed by the law and must be fulfilled.

## **B. Research Problem**

1. How are the role of the national Government to eradicate discrimination to find and obtain work based on the Human Rights Perspective?
2. What are the obstacle by national government to implement its role and barrier that face by disabilities regarding discrimination of work opportunity?

## **C. Objective of Research**

1. To Understand the rights of persons with disabilities regarding employment issues from a human rights perspective and Indonesian legislation.

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<sup>10</sup> Mohammad Bernie, "Kasus Drg Romi: Bukti Komitmen Pemerintah Lemah Terhadap Disabilitas", <https://tirto.id/kasus-drg-romi-bukti-komitmen-pemerintah-lemah-kepada-disabilitas-eeYd>, accessed on 27<sup>th</sup> of October 2019.

2. To evaluate the role of the national government to give equal chance for persons with disabilities in obtaining work based on the human right perspective.
3. To finding and analyze the national government obstacle to executing their policy related to work opportunity issues and challenge for persons with disabilities.

#### **D. Benefit of research**

The research provided benefits as follows:

Theoretically, the research is expected to give contribution to the development of science, particularly in the area of the constitution, human rights, and national government policy regarding persons with disabilities in employment issues.

Practically, the results of the research are expected to give benefit to writers and academics, as scientific learning in legal writing and insight by increasing knowledge including the community even give some recommendation to policymaker regarding government effort against discrimination on the employment opportunity that faces by disabilities.