



Regulation of Labor with Disabilities in Facing the Digital Revolution: Comparison of Indonesia, Malaysia and Australia

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Abstract

This study focuses on research on persons with disabilities in the employment sector. The research method used is normative law by using library research techniques to process secondary data and a comparative study approach. The results of this study reveal that Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees that every citizen has the right to have the same rights in work. In addition, several policies such as Law no. 8 of 2016 and Law No. 12 of 2003 have regulated the same thing to eliminate discrimination in the workforce. However, the existing policies are still not running according to the applicable regulations. People with disabilities in Indonesia still experience discrimination in getting a job, so the unemployment rate for people with disabilities is still high. In addition, with the entry of the industrial revolution 4.0 era in Indonesia, it is increasingly difficult for people with disabilities to find work. Thus, there is a need for regulatory reformulation to become the right of persons with disabilities in employment based on the policies of Malaysia and Australia.

Abstrak

Pada penelitian ini memfokuskan penelitian terhadap penyandang disabilitas di sektor ketenagakerjaan. Metode penelitian yang digunakan adalah hukum normatif dengan menggunakan teknik studi kepustakaan dalam mengolah data sekunder dan menggunakan pendekatan studi perbandingan. Adapun hasil penelitian ini mengungkapkan bahwa Pasal 27 ayat (2) UUD NRI 1945 menjamin setiap warga negara berhak memperoleh hak yang sama dalam pekerjaan. Selain itu, beberapa kebijakan seperti UU No. 8 Tahun 2016 dan UU No. 12 Tahun 2003 telah mengatur hal yang sama dalam upaya penghapusan diskriminasi dalam tenaga kerja. Namun, kebijakan yang telah ada masih belum berjalan sesuai aturan yang berlaku. Penyandang disabilitas di Indonesia masih mengalami diskriminasi dalam memperoleh pekerjaan, sehingga tingkat pengangguran bagi penyandang disabilitas masih tinggi. Selain itu dengan masuknya era revolusi industri 4.0 di Indonesia, semakin menyulitkan penyandang disabilitas untuk mencari pekerjaan. Sehingga, perlu adanya reformulasi regulasi dalam upaya menjadi hak penyandang disabilitas dalam ketenagakerjaan dengan berpedoman kebijakan negara Malaysia dan Australia.



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A. INTRODUCTION

The development of the world of the industrial revolution 4.0 has changed how human activities lead to the digital era in interacting in all aspects of life (Savitri, 2019). This, of course, has a significant impact on the world of employment. Based on research conducted by Mckinsey Global, it is estimated that by 2030 the presence of intelligent technology will eliminate 3% to 14% of jobs and force approximately 375 million workers to change their livelihoods (Setiawan, 2020). The 2018 World Bank report related to the Human Capital Index states that human competitiveness in Indonesia ranks sixth and is far behind Singapore and Vietnam (Databoks, 2020).

On the other hand, the quality of HR (Human Resources) in Indonesia in the world of technology as a weapon of war against the technological, industrial revolution is still relatively low (Ellitan, 2003; Ilyas et al., 2020). This was also revealed by the head of the Central Statistics Agency (BPS) that the level of the gap in technology in Indonesia is still substantial (Indonesia, 2018). It can be said that this will undoubtedly make it difficult for workers in Indonesia to face the challenges of the digital revolution, especially for people with disabilities. In Indonesia, a person with a disability is defined as someone who has physical, intellectual, mental, and/or sensory limitations for a long time, who experiences obstacles and difficulties both in fulfilling life and so on, who have the same rights as non-disabled people (Putra, 2019).

In 2015, the number of people with disabilities in Indonesia reached 21.5 million people (Tempo.co, 2019). In addition, employment opportunities for people with disabilities still seem discriminated against. This is further strengthened by data found from the Data and Information Center (Pusdatin), which revealed that the unemployment rate for persons with disabilities reached 74.4% in 2008 (Susiana & Wardah, 2019). In 2014 the number of unemployed participants from persons with disabilities increased to 1.5 million (Susiana & Wardah, 2019). According to Hernandez's view, business actors' understanding of the benefits of employing people with disabilities is still shallow, thus raising doubts about recruiting disabled workers (Poerwanti, 2017). The concept of thinking that people with disabilities are not independent and less agile is a problem that causes people with disabilities to find it challenging to find work (Shaleh, 2018). The 1945 Constitution of the Republic of Indonesia states efforts to get a job without discrimination in Article 27 paragraph 2. Education as the primary weapon in improving the quality of workers with disabilities still seems discriminated against (Databoks, 2018). Based on educational statistical data in 2018, children aged five years as persons with disabilities only 5.48% of the 25.83% who attend school. Ages over five years who have disabilities but are no longer in school touch the figure of 70.62%. For children aged 7-12 years, the school participation rate for

persons with disabilities is 91.12%. In addition, people with disabilities who have not or have never attended school reach 23.91% (Databoks, 2018).

This study takes a comparison between Malaysia and Australia, as countries that can fulfill disability rights well. In Malaysia, in demonstrating their capabilities to address the rights of persons with disabilities, they form regulations that favor persons with disabilities (Nursyamsi et al., 2015). In addition, the Malaysian government established a National Council, which is contained in a special regulation for persons with disabilities (Nursyamsi et al., 2015). Australia issued the same policy as one of the developed countries that prioritize people with disabilities without discrimination. This can be seen from the regulations that are very pro-disabled for people with disabilities (Darcy & Taylor, 2009).

Considering that research related to persons with disabilities in the world of employment has been carried out, such as 1) Research conducted by Istifarroh and Widhi Cahyo Nugroho which focuses on protecting the rights of persons with disabilities in obtaining employment (Istifarroh & Nugroho, 2019); 2) Research conducted by Sugi Rahayu and Utami Dewi focusing on public services for persons with disabilities in Yogyakarta (Rahayu & Dewi, 2013); 3) Research conducted by Abdul Latief Danu Aji and Tiyas Nur Haryani which focuses on diversity in the world of work which is an opportunity and challenge for persons with disabilities (Aji & Haryani, 2017); and 4) Research conducted by Susiana and Wardah which focuses on the fulfillment of disability rights in obtaining employment in BUMN (State-Owned Enterprises) (Susiana & Wardah, 2019). Based on the background study previously mentioned, the problems that will be studied in this research can be formulated, namely: 1) What are the efforts to fulfill the rights of persons with disabilities in employment?; and 2) What is the urgency of regulatory reformulation to fulfill the rights of persons with disabilities?. This study aims to determine the fulfillment of disability rights in Indonesia and compare the fulfillment of disability rights with those of Malaysia and Australia.

B. RESEARCH METHOD

This research uses normative legal research methods that prioritize secondary data in primary legal materials, secondary legal materials, and tertiary materials to review the issues raised (Ibrahim, 2005). The secondary data was obtained by using the "library study" technique. The approach used is a comparative approach that compares Indonesia, Malaysia, and Australia. The analysis used is a descriptive-qualitative analysis technique to find and obtain the correct conclusion.

C. RESULTS AND DISCUSSION

The Urgency of Disability Rights Regulations in Indonesia: A Comparative Study of Malaysia and Australia

Convention on the Rights of Persons with Disabilities Number A/61/106, which regulates persons with disabilities, was issued by the general assembly of the United Nations (UN) on December 13, 2006 (Sudiatmaka et al., 2020). This Convention was promulgated on December 13, 2006, by the General Assembly of the United Nations with Resolution number 61/106 (Bartlett, 2012). The Convention is open to all countries and signed by UN member countries on March 30, 2007. In agreeing to the agreement, Indonesia sent a delegation from the Ministry of Social Affairs of the Republic of Indonesia. After agreeing to the agreement, Indonesia carried out the ratification process through Law no. 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities, which was carried out on October 18, 2011. In Indonesia, regulations to regulate equal rights to work have been stated in the NRI Constitution Article 27 paragraph 2 that every citizen has the right to obtain equal rights to work and livelihood. Worthy of humanity. There is also a regulation on the right to work in Law Number 39 of 1999 concerning Human Rights (UU HAM), which regulates equality in decent work without any differences.

Policies to ensure equality of employment rights for persons with disabilities are increasingly being intensified by the government in various regulations including, Law Number 13 of 2003 concerning Manpower (Labor Law) as stated in Article 5, which has mandated that every worker has the same rights in obtaining employment opportunities profession (Taniady et al., 2020). If we examine more deeply, the article states that everyone has the right to get a job regardless of differences in ethnicity, religion, gender, and having the same treatment for persons with disabilities. Subsequently, the Indonesian government issued Law no. 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities); it has been mandated that persons with disabilities are entitled to the same rights in obtaining employment. In addition, in the Law on Persons with Disabilities, it has been stated that BUMN must employ at least 2 percent of people with disabilities from the total workforce and requires the role of the private sector to employ at least 1 percent of people with disabilities from the total number of workers.

In its development, policy efforts to guarantee the rights of persons with disabilities to get decent work still feel empty without any action. This is reinforced because only 1% of persons with disabilities work in the formal sector (Kustiani, 2018). If we look again at the Law on Persons with Disabilities, sanctions for companies that do not employ persons with disabilities have not yet been regulated. Efforts to establish the National Human Rights Commission (abbreviated as Komnas HAM) as an institution that upholds human rights do not yet have a particular agency in handling disability. In addition, the provision of special facilities for disability in the workplace is considered to create exclusivism

which is undoubtedly contrary to the intended development system, namely inclusivism or equality (Kustiani, 2019). So it is no wonder unemployment for people with disabilities will undoubtedly increase in the face of the industrial revolution 4.0. As a comparison, the author compares the policies carried out by Malaysia and Australia in handling disability rights as a form of improving the quality of the workforce with disabilities.

Fulfillment of the Rights of Persons with Disabilities in Malaysia

To become a developed country in 2020, Malaysia has pushed many regulations on living space planning for its people. The National Social Welfare Policy issued in 1990 is proof of the Malaysian government's first step in realizing its vision which is intended so that Malaysians have a culture of caring for others, including people with disabilities (Jayasooria, 2000).

Encouraging the creation of equal distribution of work in society, especially people with disabilities, the Malaysian government made several policies including, the establishment of a special education department in 1995 for people with disabilities and increasing special schools and integrated classes for the deaf, blind, and children with learning disabilities such as ordinary children in general (Tan et al., 2019). The purpose of holding this special education is to prepare and provide education to persons with disabilities to get the same rights as other normal children who will benefit their future so that they can be considered in the world of work. The education efforts for persons with disabilities have become fresh fruit in the Malaysian government. In 2018-2019, the age of children 3-21 years in Malaysia under the Disabilities Education Act (IDEA) had reached 7.1 million or 14% in public schools (National Center For Education Statistics, 2020). The following policy, started in 1998 to be precise in the Malaysian city of Bangi, the government established a rehabilitation center and industrial training for persons with disabilities, which was intended to enable persons with disabilities to have skills and competencies before being employed in the industrial sphere (Nursyamsi et al., 2015).

Furthermore, the Malaysian government implements policies to remove barriers to disabilities, including economic, physical, social, and cultural (Nursyamsi et al., 2015). The policy to eliminate barriers for persons with disabilities is called "Basic and Plan for Action for Persons with Disabilities" (Policy and National Plan of Action for Persons with Disabilities), which is a policy and plan that will be taken for persons with disabilities and was inaugurated in November 2007 (Islam, 2015). This policy can be used as a solid foundation for persons with disabilities to participate in community activities. Subsequently, the Malaysian government established The National Council for Persons with Disabilities as a policy for persons with disabilities (Abdul Wahab et al., 2016). In this policy, the Malaysian government embraces industry and the private sector in

the employment sector. The Malaysian government has strengthened the protection of the rights of persons with disabilities through the outline of the Malaysian state policy called the 10th Malaysia Plan (10th Malaysia Plan) 2011-2015. The inauguration is intended to integrate persons with disabilities into society by focusing on development based on disability rights and not on compassion in providing jobs or other things. Efforts are being made to achieve this by increasing access to facilities, training, and education for persons with disabilities (The Economic Planning Unit Prime Minister's Department, 2010).

The policies implemented by the Malaysian state in protecting employment rights for people with disabilities, starting from providing education and training and making a legal umbrella that can protect disability rights, have made very significant progress. According to the Malaysian Department, Norani Hashim, 581 people with disabilities have been absorbed in the public sector, and 17,000 workers have been absorbed in the private sector (Narayanan, 2018). The Malaysian government is committed to disbursing an allowance of RM 300.00 for persons with disabilities who have a monthly income of less than RM 1,200.00 (Narayanan, 2018)

Fulfillment of the Rights of Persons with Disabilities in Australia

To Apart from Malaysia, there is an Australian country capable of overcoming employment problems for people with disabilities. Australia is a country that has been dubbed the "gold standard" in protecting the rights of persons with disabilities through the policies it implements (Alvan Yap, 2013). The term gold standard for Australia is a country with the best policies in protecting the rights of people with disabilities, as evidenced by the Disability Discrimination Act in 1992 (Hamilton, 2000). In addition, there are several regulations that Australia has implemented to support the success of employment problems for persons with disabilities, including the establishment of the Australian Human Rights Protection Commission. There is also a special commission for the protection of people with disabilities. This protection commission is based on the Australia Human Rights Commission Act 1986. Subsequently, the Australian government established regulations that help people with disabilities to receive disability services so that they can be involved in the realm of work and participate in community activities. This regulation is called the Disability Services Act, which was created in 1986 (Nursyamsi et al., 2015).

The Australian government also made the Fair Work Act 2009, intended as a legal umbrella in increasing productivity for people with disabilities in work to create fair employment rules. In addition, to fulfill disability rights, the Australian government established the Disability Standards for Education 2005 regulation, which aims to remove the barrier between ordinary people and people with disabilities to create equal rights for people with disabilities, especially in the realm

of education and training. This regulation aims to enable persons with disabilities to participate in economic activities through education and training. Furthermore, the government also established a long-term regulation called the National Disability Strategy (abbreviated as NDS) intended to improve the quality of life of persons with disabilities (Nurhayati, 2020). This regulation is intended to increase companies' demand for human resources, especially for people with disabilities to find work. NDS policy has progressed with establishing 13,700 persons with disabilities in the company through the Ministry of Manpower through the Wage Connect initiative (Nurinayah, 2018). Moreover, the Australian government finally invested more than \$3 billion over four years to open up employment access for people with disabilities (Nurinayah, 2018).

The making of regulations in the form of legal umbrellas and policies for persons with disabilities in Australia has accommodated the employment rights of persons with disabilities in the country. The term for Australia as a country that is very concerned about the rights of its citizens, especially with disabilities, is not limited to a designation without evidence. As many, 13,000 people with disabilities in Australia have worked for companies, which is the maximum point in its regulations. On the other hand, based on the Australian Bureau of Statistics, most people with disabilities are 85% working in the private sector.

This is getting clearer; having a good application of regulations on disability rights in employment will undoubtedly improve the quality of the performance of persons with disabilities. With this comparison, it can be concluded that Indonesia's implementation of disability rights regulations on employment is far behind Malaysia and Australia. In addition, the policy to maintain the law on disability rights in order to keep it running is still lacking to be carried out.

Lack of strategic steps from the government in encouraging the empowerment of persons with disabilities, the authors have the following suggestions: First, there is a need for regulatory reformulation, especially in the Disability Law and the Manpower Act. Second, the authors suggest the need for sanctions for companies that do not employ persons with disabilities. Third, there needs to be an increase in the employment participation of persons with disabilities as regulated in the Disability Law, from which SOEs had to employ at least 2 percent and the private sector at least 1 percent, turned into SOEs that had to employ at least 5 percent and the private sector at least 3 percent. This is based on the increasing number of unemployed persons with disabilities, but on the other hand, their quality is no less competitive with non-disabled people. Fourth, suggesting that the government needs to establish a unique agency that deals with persons with disabilities. fifth, the need for the development of a Disability Service Unit as a provider of services and facilities for persons with disabilities in each region to fulfill independence and inclusive infrastructure development.

D. CONCLUSION

With the issuance of the Law on Persons with Disabilities as a form of legal umbrella for fulfilling rights for persons with disabilities, one of which regulates the right to obtain work, it is still not optimal. In addition, efforts to face the challenge of shifting human labor to technology in the industrial revolution 4.0 with the quality of human resources for persons with disabilities are too low, especially the government's seriousness in making job training for people with disabilities still seems stuttering. In addition, the government has not yet set out in detail the technical rules for the recruitment of workers with disabilities. Regulations regarding sanctions for business entities and government entities that do not employ persons with disabilities have not yet been regulated in the Law on Persons with Disabilities or the Manpower Law. The Law on Persons with Disabilities and the Law on Manpower are still unable to accommodate the unique needs of persons with disabilities, such as technology devices with Braille letters, hearing aids, and others as tools for doing work.

The fulfillment of the rights of persons with disabilities can be carried out if they can get a decent, healthy, independent life and get a job. The government's regulatory efforts have not had a significant positive impact on persons with disabilities. Until now, people with disabilities are oppressed for their human rights, and their standard of living has been reduced. Therefore, the government needs to address this problem seriously. Efforts to reformulate regulations and fulfill the rights of persons with disabilities need to be carried out. So that with a solid legal umbrella and the fulfillment of the rights of persons with disabilities, it will undoubtedly improve the quality of performance of persons with disabilities and be able to compete globally in facing the challenges of the current digital revolution.

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