

HUMAN RIGHTS AND DISABILITY ‘THE CONFLICTING LAW’

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ABSTRACT

The CRPD provides us with a comprehensive approach to realizing the rights of persons with disabilities. However, there are many binding domestic standards that conflict with the more recent and expansive CRPD standards. This paper examined conflicting law between CRPD and National Law can threaten human rights of disabled people focuses in the implementation of the ratification and the enactment of Law No. 8 of 2016 by the Government of Indonesia. There are some important steps of government positioning to be appreciated, however the ratification of CRPD must be followed with some progresses in the areas of regulation and policy at national level to increasingly issues of disability into the mainstream of national development. The conceptual approach, doctrines is used to study that develop within the jurisprudence to determine that human rights exist to protect disabled rights. The paper proposes the strategy for eliminating barrier or the gap between law and practice to protect rights abuses and neglect by the law. This contribution will focus on those elements of situation which need to be considered in order to properly understand the actual human rights and disability situation. States and rights holders both need an understanding of law in context to maximize the opportunity for human rights of disabilities to be meaningfully realized in the state.

Key Words: Human Rights, Disability, The Conflicting Law

INTRODUCTION

Human rights affect everyone and pervade all aspects of society. No person is excluded from the protective remit of human rights and no state can avoid international responsibility for ensuring at least a minimum standard of human rights within their national law which influence the interpretation and application of the law.¹ In 2006, the United Nations adopted the Convention on the Rights of People with Disabilities (CRPD). As the first treaty of the 21st century, the CRPD is the first comprehensive treaty establishing the right of people with all types of disabilities to equality, dignity, autonomy, and full participation and inclusion in society.² The Republic of Indonesia is a core country, which has the largest population in the Association of Southeast Asian Nations (ASEAN). In recent years, Indonesia achieved political stability and economic growth and plays an important role in the global society. On the other hand, the rapid economic growth also brought a growing income disparity within the nation, and this is a critical issue to be addressed to secure a long-term stability.³ According to the World Health Organization (WHO), it is reported that persons with disabilities comprises about 15% of the total population of Indonesia.⁴ In general, persons with disabilities are likely to live in poverty compared with non-disabled people because they have limited access to education and also the need to incur medical cost related to disability. In order to rectify the income disparity, the Government of Indonesia, therefore needs to take effective measures to improve the situation of persons with disabilities. Indonesia ratified the CRPD on 30 March 2007. The Government finally passing the CRPD into national Law No. 19 of 2011.⁵ Since then as a consequence Indonesia is now bound and obliged to implement the content of the CRPD in all sectors of life. Despite Indonesia has ratified CRPD, however it took several years for Indonesia to have implementing law that refers to the CRPD. Starting from advocacies and draft proposal by Disabled People Organization since 2012, finally in April 2016 the Government passed Law No. 8 of 2016 on persons with disabilities. Some of crucial issues were substantive definitions concerning the government’s role for dealing with issues of Disabilities are cross sectoral by nature. There are many binding domestic standards that conflict with, the more recent and expansive CRPD standards such substantive definition that the Ministry of Social Affairs remained as the focal point. The Ministry of Social Affairs is responsible for social assistance as well as the social welfare of persons with disabilities. It is the focal point in the disability field in instituting the programs of Policy development related to disability, Improvement and implementation of programs related to disability. The Ministry of Social Affairs play a coordinating role between other ministries and agencies in developing/implementing programs related to disability. By contrast the Ministry of Social Affairs position are in the same level as other Ministries at the Government Structures. On the other hand at the National level, Indonesia have three other coordinating ministries, the Coordinating Ministry of Politics, Law and Security, Coordinating Ministry of Maritime Affairs, and Coordinating Ministry of the Economy as relevant stakeholders in public welfare including disability issue.

¹ McConnel, Lee and Smith, Rhona (2018). *Research Methods in Human Rights*, NY:Routledge, p 1

² Kanter, Arlene S. (2015), *The Development of Disability Rights Under International Law*, NY:Routledge, p 1

³ Japan International Cooperation Agency, JICA (2015). *Data Collection Data Collection Survey on Disability and Development in Indonesia Final Report on September 2015*.[On-line]. Available from:http://open_jicareport.jica.go.jp/ Accessed on 30 August 2018

⁴ World Health Organization report 2015 as cited ibid.

⁵ Indonesia (2011), Law Number 19 concerning Ratification of *Convention of Rights of Persons with Disabilities (CRPD)*

Following the enactment of the Law on National Educational Systems (Law No. 20, 2003), the inclusive education was introduced, promoted, and combined with the prioritized budgetary support from the central government. However, In terms of the physical accessibility to the school facilities, the improvement of the facilities for securing the accessibility has not been carried out in all the schools due to budgetary constraints. In order to conduct the impediment removal in the old campuses, grants are sometimes provided by the government, but there are limits to the budget here also. After the issuance of the 2016 law on people with disabilities, the Indonesian government was given two years to draw up a regulation to provide the legal basis for its implementation. Disability rights activists said the law mandated the issuance of 15 regulations related to education services, legal assistance, employment opportunities and other rights for people with disabilities. Girsang is an Australia Awards awardee the University of Adelaide and the project coordinator of GoLive Indonesia (2016), she observed that Indonesia is still trying to keep up. Can Indonesia celebrate the next month's Disability day on 3 December by presenting actual progress and implementation of the Law? Or this effort, once regarded as a significant movement, still falls short of creating an ideal environment for persons with disabilities.⁶

This paper analyses the CRPD and the development of disability rights focusing on Republic of Indonesia, critically examines the status of the rights of people with disabilities under Indonesian law for disability after the adoption of the CRPD. The doctrinal method of legal research has been described in this paper as the 'core legal research method'. Egan, Suzanne (2018) as Director of the University College Dublin Centre for Human Rights wrote that the doctrinal method emphasizes the concept of 'doctrine' as a source of law that can only be discovered through close analysis of authoritative text intrinsic to the discipline of law.⁷ The research objective to introduce more efficiency and fairness in its decision making since law No. 8 of 2016 has undertaken a "Disability Service Improvement Process", however this law has not been fully implemented. In administering this law over the past few years, Indonesia has faced challenges associated with lengthy decision making processes and difficult disability determinations. In practice this law has to be followed with the establishment of 15 Government Regulations, 2 Presidential decrees, and 1 Ministry of Social Affairs Regulation as referred to the implementation guideline. Among the problems the law that gives mandate to quite a number of implementing regulations at national level and the regulations at agency level are not in line to the president's national law form agenda which aims to minimize the establishment of too many ineffectively implemented and overlapping legislation products that has been a long standing concerns that the law conflict with its own policies. To address the research objective, this paper analyzed data on the decisions made after a case was reported and investigated. We also analyzed these case to identify why the government has not made the necessary adjustments to certain agency level regulations and policies that refer to the CRPD. According to the Indonesia Disability Convention Team Report to the United Nations Committee on The Rights of Persons With Disabilities in 2017 that the government has not taken steps to remove policies inconsistent with the Convention and overlooks discriminative practices against persons with disabilities.⁸ In this case, the state's efforts to eradicate discriminative practices are remains conflict with agency interpretation of law or regulations. Despite the fact that the government stakeholders has stipulated sanctions and prohibitions on discriminatory actions, such information has not been adequately disseminated and no sanction has been effectively implemented.

Indonesia recently celebrated the birth of the country's new disability law with the enactment of Law No. 8 of 2016 on Persons with Disabilities on 18 April 2016.⁹ The Law marks a significant movement, if not historical in shifting national's perspective towards persons with disabilities from social-based to human rights-based approach. The law sees the rights of persons with disabilities as inseparable from the equal rights of all members of the human family. This marked a positive legal step by the government, having ratified the United Nations Convention on the Rights of Persons with Disabilities (CPRD) in 2011. However, many people with disabilities in Indonesia continue to be treated unequally, still live on average, in circumstances a great disadvantage. Effectiveness of disability discrimination laws in Indonesia as in any country is uncertain. The movement for disability rights in Indonesia has been influenced by the movements for civil rights on the basis of race and gender. By contrast, the model of protection is fundamentally different because preferential treatment that is exclusively for members of an historically disadvantaged class is tolerated. Major criticism of the disability Law in Indonesia were that the law operates more as a mechanism for funding services and provides little substance relating to the right and need of people with disability, is not implemented nationally, does not give legal effect to the principles and objectives gazette under it. Is not directed to the full community of people with disabilities but is restricted to a target group based on type and cause of disability, does not provide sufficient redress for complaints people may have about services or adequate administrative review of decisions made under the Law by the Indonesian Government.

The author keenly aware of the complicated relationship between the disability rights movement, the law and the practice, this paper hope to show how the development of disability rights law and important area of legal doctrine has stemmed from the interacted with the development of the large and contentious disability rights movement. This paper will show them that the disability rights movement has a single set of goals or tactics, and how legal controversies have highlighted significant tensions among disabled rights. Method of this paper based on normative juridical research, as Mc Leod wrote, "One of the major concerns of legal method is to identify 'the scope of the courts' power to develop the law. It follows from this that, although the study of constitutional law is a substantial exercise in its own right, the study of legal method must include at least an overview

⁶ Golive Indonesia (2016), Girsang, Gracia. *On Indonesia Disability Law Peacking up the Pace*. Available on <https://goliveindonesia.com/2016/12/16/on-indonesian-disability-law-picking-up-the-pace/> Accessed 20 September 2018

⁷ Op.Cit. McDonnel, et al (2018) p 25

⁸ Indonesia Disability Convention Team (2017). *Implementation of the United Nations Convetion of the Rights of Persons With Disabilities*, Report to the United Nations Committee on The Rights of Persons with Disabilities, 27 March 2017 [Online], available from:<https://tbinternet.ohchr.org/Treaties/CRPD/IDN> (Accessed 20 August 2018), p 10

⁹ Indonesia (2016), Law Number 8 concerning Persons with Disabilities

of the legal basis of the constitution as the foundation of any real understanding".¹⁰ This paper, therefore consider the legal frame work of CRPD and National law and consider various aspects of Indonesian Institutions context and deals with the growing importance of an awareness of the place of human rights within legal method. This paper represent author current thinking on some key questions relating to the interaction between the disability rights movement and the law covers a range of disability discrimination issues. The ideas is to show how our disability rights laws are falling short and how to improve them.

UNDERSTANDING DISABILITY LAW

Overview of disability law according to Mark Weber is understanding the major statutory and constitutional issues relating to disability discrimination, which covers a range of disability issues: (1) constitutional law bearing on disability discrimination; (2) the controversy over who is a person with disability for purposes of federal statutes; (3) employment discrimination rights and remedies; (4) education discrimination, including special education law and higher education for students with disabilities; (5) discrimination I public accommodations; (6) discrimination by federal, state, and local governments; and (7) other topics, including disability discrimination related to housing, transportation, and telecommunication.¹¹ In the face of discrimination rights, this paper brings together a series of questions addressing 'how we are to understand and justify laws prohibiting discrimination'? Both laws that apply in the public sector, providing rights to some form of equal treatment by governments or the republic authorities, and laws that apply in the private sector, providing rights to non-discrimination by private organizations in contexts such as the provision of employment accommodation and education.¹²

Until recently, scholarship related to discrimination has been of three kinds. *First*, there has been an abundance of doctrinal work on discrimination law in particular countries. This work explores the ways these laws operate.¹³ *Second*, philosophical writings on the value of equality.¹⁴ This scholarship does not focus on the laws of a particular country; rather, it asks the general question "why does equality matter, when it does, and what sort of equality matters or what makes discrimination unfair?". Although this questions is clearly relevant to discrimination law, this particular philosophical literature is of limited help to scholars of discrimination law. However we understand it, seems to be one kind of unequal treatment, but there are many others. As it is possible to distribute resources unequally without unfairly discriminating. Philosophical literature treats the question of why equality matters as an inquiry into which system of general principles for the distribution of resources should guide legislatures in the design of particular policies. But usually, when tribunals are discussing anti-discrimination law, their concern is with the interpretation of just one law or decision, not with the system as a whole; their concern is not a purely distributive one but seems to involve something else as well, something that makes a particular distribution unfair in the particular way that amounts to discrimination.¹⁵

Furthermore, philosophers have tended to focus on the distribution of goods that can be privately owned, such as income and real property; and they often assume that question about the just distribution to these goods can be asked independently of question about the just distribution of social and political power.¹⁶ The question now 'Is disability Discrimination Different'? Mark Weber observed related to Forms of Discrimination in connecting on one disability discrimination US statute, section 504 of the Rehabilitation Act of 1973, Justice Thurgood Marshall observed, "Discrimination against the handicapped was perceived by congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference of being neglect". The insight that failure to adjust mental attitudes and environmental conditions need to not have an evil to intent behind it is crucial to understanding the forms of discrimination that persons with disabilities experience. The failure to adapt or make accommodations and the maintenance of rules that apply across the board but harms persons with particular disabilities disproportionately and lack adequate justification constitute much of disability discrimination.¹⁷

According to the Indonesian Disability Convention Team in their 2017 report to the UN Committee on The rights of Persons with Disabilities, the Chief of Indonesian National Police Regulation Number 9 of 2012 on Driver's License prohibited people with hearing loss to get the License. Furthermore, dissemination of information concerning License D (driver's license specific for people with disabilities) has not been evenly distributed to both the enforcement institutions and to persons with disabilities. Despite the fact that the government has already stipulated sanctions and prohibitions on discriminatory actions such information has not been adequately disseminated and no sanction has been effectively implemented, whereas instead the government has tended to let violations happen. Evidence of the person who was rejected by an car insurance company by reason of being unhealthy.¹⁸ Other example if every prospective law student, seeing or blind, must take the same paper and pencil law school admission test, the treatment is in a sense equal, but it discriminates against the persons who needs Braille or a computerized reading system to compete fairly. Similarly if class is held in the same classroom for everyone, but the room is up a step from ground level, a person's using wheelchairs cannot participate.

People with disabilities experience many different barriers in accessing justice, and specifically accessing information about the law their rights, and securing legal representation and advice where needed to advance their interest and barriers caused

¹⁰ McLeod, Ian (1999). *Legal Method*, UK:Macmillan Press LTD, p 5

¹¹ Weber, Marc C.(2012). *Understanding Disability Law*, NJ:Lexisnexis, p v

¹² Hellman, Deborah., Moreau, Sophia (2013). *Philosophical Foundations of Discrimination Law*, UK:Oxford University Press, p 1

¹³ Ibid.

¹⁴ Rawls, John (1999), *A Theory of Justice* (Cambridge, MA:Belknap Pres of Harvard University Press), p 10

¹⁵ Op.Cit. p 2

¹⁶ Anderson, Elizabeth (1999). *What is the Point of Equality?* Cited in Ibid. p 2

¹⁷ Op.Cit. Weber, Mark C.(2012), p 3

¹⁸ Op.Cit., Indonesia Disability Convention Team (2017), p. 11

discrimination against disabled rights.¹⁹ David Wasserman wrote, Is disability discrimination different? According to Stanford Encyclopaedia of Philosophy, that among the least controversial claims that can be made about disability is that it is a complex phenomenon. The physical and mental characteristics classified as impairments, abnormalities, or diseases are, on the other hand, makers for stereotyping, stigmatization, and exclusion; on the other, they are limitations of structure of function that arguably cause disadvantages independently of, or in interaction with social attitudes or practices.²⁰ The question is whether we can have a coherent disability discrimination law? On this broader view of discrimination, many familiar and uncontroversial disease-and accident prevention policies may appear to discriminate against people with disabilities. If we wish to preserve those policies, even in modified form, we must take account of the functional aspect of impairment. We must acknowledge that it is sometimes appropriate to prevent functional limitations, and thereby reduce, often drastically, the number of people with various disabilities. If so, we must distinguish disability discrimination from race and sex discrimination in one important respect.²¹

LEGAL FRAMEWORK OF DISABILITIES IN INDONESIA

Before the enactment of Law No. 4 of 1997 on Persons with Disability, terminology used to label PWDs had been evolving since the early years after the Declaration of Independence in 1945. However, the concept of disability has always centred on a person with functional impairments. During 1995–97 when the Law on People with Disabilities was formulated and enacted, the terminology chosen was ‘Penyandang Cacat’—a term already used in public policy. A term was initially used in Law No. 15 of 1992 on Aviation article 42. In Law No. 4 of 1997 is implemented through Government Regulation No. 43 of 1998 on ‘Efforts and Undertaking in Social Welfare for People with Disability’ (see table 1).²²

Table 1: Evolution Indonesian Legal Framework for Disability before adoption CRPD

DEFINED CATEGORIES	LAW/REGULATION
Human Rights Protection and anti-discrimination	1945 Constitution of Republic Indonesia
With Disabilities	Law No 33 of 1947 on compensation for work related accident & Law No. 4 of 1979 on Children Welfare
Persons who have a physical or mental disability	Law No. 12 of 1954 on Fundamental Principles for Teaching and Learning for All Indonesian Schools
Deaf and Persons who are disturbed or have lost the ability to survive	Law No. 6 of 1974 on principal provisions in social welfare
Abnormalities	Government Regulation No. 72 of 1991 on special education
Children with special needs (special needs children)	Circular Letter of Directorate General of Primary and Secondary Education No. 380/G.06/MN of 2003 on inclusive education
Disability	First used in Law No. 15 of 1992 on aviation; see article 42
Defines persons with disabilities as "persons who bear disabilities to (a) body, (b) mind, or (c) body and mind."	Law No. 4, 1997 on People with Disabilities
People with Disabilities as Persons bearing physical or mental disability/disabilities, and, by the fact, being restricted in motions /activities for his/her daily lives.	The Ministerial Ordinance of Health Law No. 104 in 1999 on Provisions for Medical Rehabilitation
Obliges the nation to build and provide comprehensive and universal systems of social protection aimed at all citizens, including persons with disabilities. 5 social protection modules: (i) benefit of medical support, (ii) compensation for occupational injury, (iii) assistance for the elderly, (iv) pension, and (v) death security are outlined. Definition of the physical disability: functional loss or restriction on the body/limbs. stipulation on “total disability.” That is, the person who cannot control his/her activities according to one’s own will is exempted from payment of health insurance premium	Law No. 40, 2004 on Social Protection System

¹⁹ Flynn, Eilonoir (2015). *Disabled Justice, Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, NY:Routledge, p 49

²⁰ Wasserman, David., Asch, Adrienne., Blustein, Jeffrey, Putma, Daniel (2011). *Disability, Definitions, Models, Experience.*, Standford Encyclopedia of Philosoophy (<http://plato.stanford.edu/entries/disability/>) as cited in Wasserman, David (2013). *Is Disability Discrimination Different?*, Op.Cit. Hellman, Deborah et al, (2013). p 269

²¹ Ibid.

²² Adioetomo, Sri Moertingsih et al. (2014). *Person With Disabilities Indonesia Empirical Facts and Implications for Social Protection Policies*, the Demographic Institute, Faculty of Economics, University of Indonesia September 2014. [On-line] Available from: (<http://www.tnp2k.go.id>) Accessed 25 August 2018

Physical, emotional, mental, intellectual, and/or social abnormalities	Law No. 5, 2009 on Social Welfare
Although there is no direct statement concerning disabilities, this law is important in terms of stipulating regulations on social benefits to be delivered to the poor persons with disabilities	Law No. 13, 2011 on Poor Law

Source: the Demographic Institute, Faculty of Economics, University of Indonesia, 2014 and Japan International Cooperation Agency (JICA) 2015. (Modified)

Political reform during the monetary crisis of 1998 provided a window of opportunity for adopting universal human rights principles as part of Indonesia's domestic laws. Soon after the transition of power from the New Order regime, the newly elected parliament enacted Law No. 39 of 1999 on Human Rights, which lays out the basic principles of further laws and regulations to avoid discrimination in all aspects of people's lives followed by an amendment of the 1945 Constitution to include clauses on human rights clearly state the rights of every citizen to have access, to live, and defend his/ her life and existence; establish a family; have access to basic needs, and obtain an education, employment, health, and social protection. However, no statement clearly and specially includes the rights of people with disabilities on these laws and regulations, however, are seen as outdated and do not reflect the current international concepts of disability, which view disability as a human rights issue and recognises disability as a consequence of people with disabilities interaction with the environment.²³

Affairs concerning disabilities were managed by the Ministry of Social Affairs, is responsible for the welfare of women, the elderly, street children, and social assistance as well as the social welfare of persons with disabilities. It is the focal point in the disability field in instituting the programs (1) Policy development related to disability 40. (2) Improvement and implementation of programs related to disability. (3) Play a coordinating role between other ministries and agencies in developing/implementing programs related to disability. The Ministry of Social Affairs is the focal point for the disability field and is expected to coordinate with other associated ministries such as Ministry of Manpower, Ministry of Health, Ministry of Education and Culture, the State Ministry of National Development Planning (Badan Perencanaan Pembangunan Nasional: BAPPENAS), Ministry of Transportation, Ministry of Public Works and Public Housing, Ministry of Women's Empowerment and Child Protection, Ministry of Law and Human Rights, Ministry of Foreign Affairs. Further institution is the National Coordination Team of the Measure of Social Welfare enhancement is responsible for interagency cooperation, coordination with other ministries and civil society, the private sector, and universities. The purpose of the National Coordination Team is to strengthen the welfare of persons with disabilities. The team was set up under Ministry of Social Affairs in 2004.²⁴

The Law No. 23 of 2014 concerning Roles of the Central and Regional Levels and Interagency Cooperation. The central government is responsible for policy development at the central level. Provincial governments, if such policies at the national level have been issued, are expected to bridge the gap between the central and local governments by issuing separate provincial government rules. The central government, provincial governments, and local governments all have a budget allocated for disability. In other words, a budget is allocated to the provincial and local governments by the central government.²⁵ Allocation amounts are determined by the financial status of the government. If there is no budget for disability issues at the local level, the provincial government provides this budget. If there is no budget at the provincial government level, the central government supports the provincial government. Ultimately, this roles of budgeting more or less successfully achieves this with respect to substitute decision making, but fails miserably to do so in relation to compulsory assistance. It essentially reposes no explicit rights in persons with disabilities, and imposes no explicit obligations on states, in relation to compulsory assistance and that is a matter for very great regret.

In marked contrast to the position the Indonesian Government started from in the negotiations, it was among the first government to sign the CRPD when it open for signature on 30 March 2007. The focus now moved to CRPD implementation, and the UN face an immense challenge to persuade Indonesian governments that the CRPD speaks to them as directly as it does to nations with less evolved disability policy and programs. Since ratification Indonesia has introduced the National Disability Strategy concerning the National Action Plan on Human Rights signed by President Joko Widodo Regulation No. 75 of 2015. The Presidential regulation requires that ministries and regional governments are required to prepare actions on human rights that include the mainstreaming of people with disabilities on annual basis. This regulation ratified through the Presidential Instruction to be implemented.²⁶ In Practice the annual report have not been provided by the local government to the central government. The implementation of rules are in conflict since Indonesia is still governed by a regional autonomy system based on the enactment Law 23 of 2014 concerning Local Government (regional autonomy) is the head of the official elements of the Regional Government led the implementation of government affairs under the authority of the autonomous region. Regional Autonomy is the right, authority, and duties of the autonomous regions to set up and manage their own affairs and interests of local communities in the system of the Republic of Indonesia. The principle of autonomy is the basic principle for the regional administration based Autonomy.²⁷ For example at regional level some provinces are preparing and have passed by laws referring

²³ Ibid.

²⁴ Op.Cit. JICA (2015)

²⁵ Ibid.

²⁶ Presidential Regulation (2015) Number 75 concerning *National Action Plan on Human Rights*, enacted in Jakarta 22 June 2015, promulgated on 23 June 2015, State Gazette No. 144 of 2015.

²⁷ Indonesia (2014). Law No. 23 concerning *Local Government (Regional Autonomy)*, enacted in Jakarta 30 September 2014, Promulgated on 2 October 2014

to the CRPD. Yogyakarta for instance, has passed by law No. 4 of 2012 and the Province of Bali enacted by law No. 9 of 2015 both rules on the rights of people with disabilities.

Moreover, Indonesian journey was still at its beginning until the enactment of Law No. 8 of 2016 which considered as a new chapter commitment from all levels of government aimed at focusing on inclusion and the participation of people with disability on an equal basis with other Indonesian. In contrast due to the enactment of Law No. 23 of 2014 on Regional Autonomy, there are several differences in the process of implementing the new Law No. 8 of 2016 in several regions or provinces to support central governance mechanism that commits to providing people with a disability the opportunity to live fulfilling and active lives. The law negotiation process and realities of policy implementation entailed many complexities, challenges, frustration, and disappointments both within government of Indonesia and the position for disabled to access justice against discrimination.

THE CONFLICTING BETWEEN LAW AND PRACTICE

During the period of the CRPD development, Forrest and Heidi, as the President and Executive Director of People with disability Australia observed that the CRPD is overall and fundamentally, a remarkably positive text, but it is not a perfect text. From our point of view, there were wins and losses in the negotiations. Some of which may not ultimately matter much, others, of which may end up mattering a great deal. We only have the capacity to reflect on a few of them here. From the outset we took the view that the Convention ought to recognize the multiple and gradated forms of discrimination and disadvantage experience by particular population groups, and that it ought to impose a specific state obligation to address this disadvantage.²⁸ The effective and purposes of Law No. 8 of 2016 on People with Disabilities in line with the overall spirit of CRPD: to promote, to protect, and to guarantee the equal rights and freedoms that are fundamental to all people with disabilities, as well as to respect the dignity of people with disabilities as an inseparable part (inherent dignity).

Furthermore, the obligation of the state to implement the rights set forth in the Law No. 8 of 2016 through various adjustments to laws, regulations and administration of each provinces (local government) within territory Republic of Indonesia, including amendments to legislation, habits and discriminatory practices against people with disabilities, both women and children and ensuring participation of people with disabilities in all aspects of life such as education, health, work, politics, sports, arts and culture, as well as the use of technology, information and communication. However the government, of course, despite they claim to be an old philosopher, prefers to listen to their own rather than the disabled citizens, has recently published their own thoughts regulations in order to enforce the implementation of Law No. 8 of 2016 on People with Disabilities. Byrne at Monash University (2003) argued that the general quality of life experienced by Indonesians is poor. Most people with disabilities in Indonesia go without government welfare, specialised medical treatment and assistive technology. The term 'disability' covers a range of physical, intellectual, and psychiatric conditions which may range from mild to severe.²⁹

As part of monitoring the implementation of Law No. 8 of 2016, on August 2017 Ninety-five National groups organization on disability rights across Indonesia have rejected the government to issue the proposed government regulation on people with disabilities. Thus in the negotiations of monitoring the implementation of Law No. 8 of 2016, the NGO's are questioning the government's commitment to protecting the rights of people with disabilities, since the proposed government regulation will increase negative impact at the national level in order to prevent the occurrence of all forms of exploitation, violence and abuse, opportunities for disabled.³⁰ Reflecting to the CRPD that such a national implementation framework Article 34 (b) "State Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by the independent National Group Organization for Disability". In line with the overall spirit of CRPD that the negotiation process, the necessity of non-governmental representation matured in to an acceptable fact.³¹

After the enactment of Law No. 8 of 2016 on people with disabilities, the government promises to provide fully comprehensive and fully enforceable civil rights legislation and promises to change permanently the climate of opinion towards disabled people by tackling the problems of their failure on disability discrimination. Ultimately the government was given two years to make the conceptualization regulations of disability, means that the whole thrust of the CRPD as the basic fundamental of Law No. 8 of 2016 is on the removal of these barriers to equality, participation, opportunities rather than on the prevention and treatment of impairment, that is a very good thing indeed. As part of the legal basis for its implementation the original law No. 8 of 2016 mandated the issuance of 15 Government Regulations related to education services, legal assistance, employment opportunities and other rights for people with disabilities.

In marked contrast the government later reduced the number of conceptualization regulations to 'seven'. Ultimately there only one regulation issued by the Social Affairs Ministry as the Principal of National Institutions on people with disabilities. On the one hand other institutions might be reluctant to implement such mechanism of rules that designating solely by the Ministry of Social Affairs, such as for instance the rights to adequate access for education might remain unfulfilled, as this function under the Ministry of Culture and Education and Ministry of Research, Technology and Higher Education³² Importantly, the framework

²⁸ Forrest, Heidi et al, *Voices Down Under; An Australian Perspective* (Ed.) Sabatello, Maya. Schulze, Marianne (2014), *Human Rights & Disability Advocacy*, Philadelphia:University of Pennsylvania Press, p 204

²⁹ Byrne, Janene (2003). Monash University, *Disability in Indonesia*. Available from (<http://www.insideindonesia.org/disability-in-indonesia>) Accessed 15 July 2018

³⁰ The Jakarta Post (2017). *NGOs question govt's commitment to disability rights law*, [On-line]. Available from: (<http://www.thejakartapost.com/.../ngos-question-govts-commitment-to-disability-rights-law>) Accessed 20 August 2018

³¹ Op.Cit. Sabatello, Maya. et al (2014). p 214-215

³² Op.Cit. The Jakarta Post (2017)

of Indonesian government decision to issue only one regulation under the Ministry of Social Affairs is contradictions to the principle status given by the original law No. 8 of 2016 which mandated the issuance of 15 regulations. The government institutions decision to issue one regulations instead of 15 to enforce law No 8 of 2016 have prompted accusations that the government has betrayed the disability right movement and has created "The Law of Contradiction and The Conflicting Law" of the disability rights movement. Specifically CPRD Article 33 stressed that "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanism, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human right.³³ Moreover, the problem raised that the Law No. 8 of 2016 set forth by involving several differences private sector such as University, Hospital and Employment other parties involved have not fully understand or more worse they are unsure that all facilities and programme designed to serve the 'need' of persons with disabilities. They are unsure that the spirit of disabled law is to promote, to protect, and to guarantee the equal rights and freedoms are fundamental to all people with disabilities, as well as to respect the dignity of people with disabilities as an inseparable part (inherent dignity). Although most governmental and NGO groups concerned and focus primarily on reform existing national legislations to promote good governance, sustainable development for disabled rights in an era of globalization raises more far-reaching questions. Mertus and Helsing (2006) observed in the fields of human rights and in the conflict cycle, they exploring the links between Rights, Law and Peacebuilding asked that *how are such basic goals as peace, stability, justice and the rule of law prioritized and how should they be sequenced?* They both argued that the relationship between human rights and conflict is dynamic, complex, and powerful. Yet, despite its importance, both examines of this relationship has long been fragmentary, chiefly because three different schools of thought human rights, conflict resolution and international law have offered three different and often contradictory perspectives.³⁴

While the denial of human rights can thus engender and intensity conflict, the government inability or unwillingness to protect basic human rights and provide mechanisms for disabilities may prompt groups to use force in pressing their demands for such rights, resulting in human rights abuse or violent conflict between the law and government as the policymaking. In practice almost three years later, the Law No. 8/2016 have not worked out as disability rights people hoped. The Bullying story experienced by a Disabled Student in July 2018 at Gunadarma University. Director of the Indonesian Disabled Movement gave a legal notice to all civitas academic of Gunadarma University, Depok, after a group of students of the Faculty of Computer Science bullied a student with a disability. It (bullying) is not appropriate, and it is worse when such inappropriate act is committed before the public. A lecturer of the university admitted that bullying has been frequently committed to students with disabilities when they enter college. However, it has been exposed to the public just recently. In practice persons without disabilities should taking care of people with disabilities, instead of bullying them, the university should have imposed social sanctions to this group of students.³⁵ The family of a 19-year-old student at a private university Gunadarma, whose bullying was captured in a recent video that went viral, has demanded that the university take action against the perpetrators. The victimized student is autistic. The student's (victim) father, Mansur said that he would file a police report if Gunadarma University failed to take measures against those involved in the bullying incident. The victim's parent said that the bullying had been taking place for around a year, since their son enrolled at the Information and Technology Department at Gunadarma University in Depok, West Java. Their son had opened up to his family about the problem since the video went viral. They added that "He's mocked, taunted and his bag and laptop were taken away from him, the perpetrators had even knocked over his son's motorcycle in the campus parking lot".

After every day newspapers and broadcasters convey stories about violent conflict to autism (disabled) student in the Gunadarma campus, and the 14-second video shows a student in a black shirt tugging on the young man's backpack and laughing while other students laugh and clap their hands in the man's face. They also threw trash at him. No one came to his defence, finally the campus administration has investigated the bullying incident, including soliciting information from the three perpetrators, identified are classmates of their victim. Two of the perpetrators have met with their victim to apologize, but the victim's family said that Gunadarma administrators needed to take action against them. Gunadarma deputy rector said that the university needed time to gather more information before deciding on any punishment against students involved in the incident.³⁶ Despite, the rights of persons with disabilities have been stipulated in Law Number 8 of 2016 on People with Disabilities, moreover the university is supposed to publicize (the rights) and work together with the community of people with disabilities. As part of the civitas academic, college students should actually uphold human values and morality. In contrast a group of students have committed such discrimination as publicly exposed in a 14-second video. "Nobody prevented the incident. This condition shows a social perspective that undermines people with disabilities." Ironically, when people with disabilities try to defend themselves, they instead become a victim of bullying and insult. According to Foucault (1971), who substituted the Enlightenment's narrative of progress and emancipation as a means of understanding law and legal processes, for an analysis based on the arrangement of power relations, he argued that, " humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where the rule of law finally replaces warfare, humanity installs each of its violence's in a system of rules and thus proceeds from domination to domination".³⁷

³³ Op.Cit. Sabatello, Maya. et al (2014). p 216

³⁴ Mertus, Julie A., Helsing, Jeffrey W. (2006). *Human Rights and Conflict*, Washington D.C.:US Institute Of Peace Press, p.xiii

³⁵ Tempo.Co (2018). *Kasus Bullying Mahasiswa Difabel Gunadarma Bakal Disomasi*. Available from:

<https://nasional.tempo.co/read/892515/kasus-bullying-mahasiswa-difabel-gunadarma-bakal-disomasi> (Accessed on 15 August 2018)

³⁶ The Jakarta Post (2017), *Family of bullied Gunadarma student calls for tough action*. Available from <https://www.thejakartapost.com/news/2017/07/19/family-of-bullied-gunadarma-student-calls-for-administrative-action.html> Accessed on 28 August 2018

³⁷ Foucault, Michael (1971). *Neitzsche, Genealogy and History in Hommage a Jean Hyppolite*, Paris:Presses Universitaires de France, p.151

When it comes to responding to bullying (or any incident, really), schools administrators and law enforcement officers play different yet complementing roles. Usually law enforcement is only pulled into the discussion when an incident appears to rise to the level of a violation of criminal law. Assaults or serious substantiated threats of violence would be the most common examples where the police should be brought in. Law enforcement can also assist in investigating incidents. They often have more training in interviewing and evidence collection, and would be able to evaluate the evidence to determine if a crime has been committed. That said, schools should be careful when including law enforcement officers in an interview because it changes the dynamic considerably. Having an officer stand over the shoulder of the principal while he or she is asking the student about school behaviours is intimidating under any circumstance, but especially so if the officer is not one who is regularly seen in the school. There is new concern about school violence against disabilities. U.S Department of Justice observed (2007) that police have assumed greater responsibility for helping school officials ensure students' safety. As pressure increases to place officers in schools, police agencies must decide how best to contribute to student safety. Will police presence on campuses most enhance safety? If police cannot or should not be on every campus, can they make other contributions to student safety?³⁸ Despite that Indonesia has enacted the law No. 8 of 2016 on Disabilities to promote and prevent disabilities rights, by contrast the Indonesian Police seems have no awareness about the Gunadarma incident as well as the Ministry of Research, Technology and Higher Education and the Ministry of Social Affairs as the agency who have the function and the responsibility set forth in the Law No. 8 of 2016 in handling such cases. Louis Henkin observed that "one can say that the behaviour of nations, generally, is not inconsistent with law or obligations. That has at least the negative significance".³⁹

Moreover, Oliver (2009) was the first professor of disability studies in the United Kingdom wrote, "that there are three main planks to the government's radical programme of welfare reform in respect of disabled people: health, social care and benefits. The language used in official documents reflects the central concerns that disabled people and other groups have used in putting concerns that disabled people and other groups have used in putting forward their own welfare agendas; rights and entitlements, independent, choice and placing users at the centre of services. While this indicates that government has listened to our concerns, suspicion remains that controlling expenditure is at the heart of the reforms".⁴⁰

CONCLUSION

The Assignment, the function and the responsibility set forth in the Law No. 8 of 2016 through various adjustments to administration of thirty differences institutions/ministries includes Ministry of Social Welfare. Moreover, nine article of the Law No. 8 of 2016 set forth by involving several differences private sector such as University, Hospital and Employment. Despite that the principle responsibility governed by both central and local government since Indonesia is still governed by regional autonomy system based on the Law 23 of 2014, however the main responsibility in implementing the disabled law are not only the Ministry of Social Welfare, others twenty nine differences Ministries as well as private sectors shall take part of full responsibility to enforce the implementation of disabled law.

The problem raised that other parties involved have not fully understand or more worse they are unsure that all facilities and programme designed to serve the 'need' of persons with disabilities. They are unsure that the spirit of disabled law is to promote, to protect, and to guarantee the equal rights and freedoms are fundamental to all people with disabilities, as well as to respect the dignity of people with disabilities as an inseparable part (inherent dignity). This is the gap between law and practice that caused "the contradiction and conflicting law" for disabled people to access justice against discrimination. More than two years after the enactment of disabled law 2016, only one regulation passed under the ministry of social welfare, others six regulation remains uncertain waiting for other parties contribution (includes twenty nine ministries and private sectors) to prevent the rights of disabled people and to promote their welfare. As a result, discriminatory practices, stigma, stereotyping and exploitation of disabled people continue.

The impression that Indonesian government commonly violate the norms and undertakings may be due not only to incomplete observation, but also to erroneous a prior-assumptions about how nations behave. In particular, of the lack of executive sanctions against the violator. The assumption seems that Indonesian government will not observe these obligations, unless they are compelled by external authority and power. As recommendation the State need to take action increasing awareness to all parties set forth in the disabled law, conduct socialization to reduce stigma, put discriminatory practices under control and mobilizing the National Group Organization for disability as reflecting to the CRPD that such a national implementation framework Article 34 (b) "State Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by the independent National Group Organization for Disability". In line with the overall spirit of CRPD that the negotiation process, the necessity of non-governmental representation matured in to an acceptable fact.

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³⁸ US Department of Justice (2009), *Bullying in School* by Rana Sampson San Diego Police Consultant. Available from <http://digitalcommons.unl.edu/usjusticemats/6/>

³⁹ Henkin, Louis ((1968), *How Nations Behave Law and Foreign Policy Second Edition*, NY:Columbia University Press, p 48

⁴⁰ Oliver, Michael (2009), *Understanding Disability from Theory to Practice Second Edition*, NY:Palgrave Macmillan, p 131

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