


Legal Reform for the Fulfilment of Disabilities Human Rights

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ABSTRACT. The legal reform requires the fulfillment of disabilities human right is very important as a basis for strengthening the footing, so as to be able to respect, protect and fulfill the human rights of persons with disabilities without discrimination by upholding human value and dignity based on the Pancasila and the 1945 Constitution of the Republic Indonesia. The purpose of this study is to analyze the urgency of reforming human rights law of persons with disabilities and to analyze the model of legal reform to realize the fulfillment of human rights of persons with disabilities. This research method uses a type of normative juridical research by studying the legal literature. The results showed that the urgency of reforming human rights law for persons with disabilities in terms of philosophical, sociological, and juridical aspects. The model of legal reform has embodied the fulfillment of the human rights of persons with disabilities in the harmonization of policies consisting of several aspects of regulatory structuring, aspects of institutional structuring and aspects of legal culture development. So legal reform is able to manifest the human rights of persons with disabilities, in this case as a form of crystallization of noble values and human dignity that are more just, progressive, democratic, prosperous and non-discriminatory.

KEYWORDS. Legal Reform; Human Rights; Disability.

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Introduction

Pancasila is the philosophical basis for the country stated in the fourth paragraph of the 1945 Constitution of the Republic Indonesia's opening. Pancasila as the state philosophy in which connote as outlook of the nation, a national identity, and a national ideology. Pancasila as the ideology of the Indonesian Nation means that the basic values and ideas that exist in the attitudes, behavior, and personality of the Indonesian Nation.

Human rights in Indonesia are sourced and lead to Pancasila. Human rights have a strong guarantee from the nation's philosophy, namely Pancasila. The goal of Pancasila is that the implementation of human rights must pay attention to the lines that have been determined in the provisions of the Pancasila philosophy. For the Indonesian people, implementing human rights does not mean exercising as freely as possible, but must pay attention to the provisions contained in the outlook of life of the Indonesian nation, namely Pancasila.³

Justice in protecting the law and upholding human rights of persons with disabilities is a very important part. That this is an amendment to the

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³ Karlina Supelli Leksono, "Tak Ada Jalan Pendek Menuju Rekonsiliasi," *Jurnal Demokrasi dan HAM* 1, no. 3 (2001): 19.

1945 Constitution of the Republic of Indonesia which mandates the guarantee of human rights for individuals as individuals and citizens. That the guarantee of protection, respect and law enforcement in fulfilling the human rights of persons with disabilities is an obligation of the Indonesian people as a democratic rule of law.

Indonesia as a democratic constitutional state that always upholds the dignity of human beings in all aspects based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. It needs to be understood that the human rights of persons with disabilities are natural basic rights in human beings. These rights are universal, lasting, undivided, non-discrimination equality. Therefore, the human rights of persons with disabilities must be protected, respected, maintained, and must not be ignored, reduced or deprived of by anyone including the state.

Human rights for citizens must get guarantees in the laws and regulations in force in Indonesia, with no exceptions, including persons with disabilities. As stated by Arinanto that the affirmation of the scope of human rights for persons with disabilities is very important, because persons with disabilities are still often ignored, even violated.⁴ Pawestri states that there are discriminatory acts in the form of words and actions, against one of the minority groups that exist, are groups of people with disabilities.⁵

Law Number 4 of 1997 concerning Persons with Disabilities has not been able to provide more operational guarantees in the fulfillment of the persons with disabilities' right in Indonesia. A paradigm that still looks at a person's physical condition. Law Number 4 of 1997 concerning Disabled Persons is no longer relevant in carrying out their duties, both in philosophical, juridical and sociological contexts.⁶

Human rights for persons with disabilities based on idiotic and constitutional grounds have the same rights and obligations of standing before the law and government. So it is necessary to increase participation in respecting, protecting and fulfilling the rights and obligations of persons with disabilities by all levels of society through the rule of law. As Ansori states that law and society are inseparable from one another. The enactment of the

⁴ Satya Arinanto, *Hak Asasi Manusia dan Transisi Politik di Indonesia* (Jakarta: Pusat Studi Hukum Tata Negara FHUI, 2008), 1.

⁵ Aprilina Pawestri, "Hak Penyandang Disabilitas Dalam Perspektif HAM Internasional dan HAM Nasional," *Era Hukum* 2, no. 1 (2017): 164, <https://journal.untar.ac.id/index.php/hukum/article/view/670/536>.

⁶ Fajri Nursyamsi et al., *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas* (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2015), 11, <https://www.pshk.or.id/wp-content/uploads/2016/01/Kerangka-Hukum-Disabilitas-di-Indonesia.pdf>.

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law takes place in a social order called the community. Therefore, the law must be placed as a process framework that continues to experience development (law in the making).⁷

The law must undergo an adaptation process in accordance with their respective times. This is one of the progressive law basic meanings. Law is not a stagnant system and status quo, but it follows in the footsteps of historical development in accordance with the guidance of social change in society.⁸

Based on this, progressive legal changes are needed related to regulations to ensure the respect, protection, and fulfilment of the rights of persons with disabilities in various sectors of life. Changes must be made in synergy and harmony between one policy and another. Therefore, legal reform is needed to realize the fulfilment of human rights of persons with disabilities. Legal reform related to human rights of persons with disabilities, namely the regulation, institutional arrangement, and legal culture development.

Based on the description that has been stated in the background above, this paper examines related to the urgency of reforming human rights law of persons with disabilities and the model of legal reform to realize the fulfilment of human rights of persons with disabilities.

Method

Normative legal research is library law research by examining library materials.⁹ This type of research is a normative juridical study by examining the legal literature related to statutory regulations and legal literature on human rights of persons with disabilities.

Data sources used in research related to legal reforms realize the fulfillment of human rights of persons with disabilities using primary and secondary legal materials. Primary legal material, namely the laws and regulations in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 13 of the of 2003 concerning

⁷ Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017): 148-49, <https://doi.org/10.35586/v4i2.244>.

⁸ Satjipto Rahardjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), 18.

⁹ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo, 2010), 13-14.

Manpower, Law Number 20 of 2003 concerning the National Education System, Law Number 11 of 2009 concerning Social Welfare, Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention on Rights Persons with Disabilities) and Law Number 8 Year 2016 concerning Persons with Disabilities. Whereas secondary legal material in the form of books, journals, and legal papers relating to legal reform embodies the fulfillment of human rights of persons with disabilities.

The qualitative approach is descriptive analytical research that reveals laws and regulations relating to legal theories and the implementation of law in society regarding the object of research.¹⁰ The research approach used in this study is a qualitative approach. Legal facts data obtained from research can provide an explanation with a detailed, systematic, and comprehensive picture of legal reforms that realize the fulfillment of human rights of persons with disabilities.

Interaction model data analysis technique is a component of data reduction, data presentation and conclusion drawing interact with each other.¹¹ This research was conducted by collecting data, reducing data, presenting data and drawing conclusions as being intertwined at the time before, during and after data collection.

The Urgency of Reforming Human Rights Law for Persons with Disabilities

Legal reform related to human rights of persons with disabilities plays an important role as a basis for strengthening the footing, so that it can uphold human value and dignity. Basically, persons with disabilities have the potential to contribute to various dimensions of community and state life.

The reform itself recognized as structuring a new order that is more democratic, efficient and socially just. Reforms contain the main values that form the foundation and expectations of the process of state and society.¹² Legal reform is something absolute to achieve democratic law enforcement and uphold the rights of the people as well as the 1945 Constitution of the Republic of Indonesia, because this policy of legal reform is for

¹⁰ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), 105.

¹¹ Matthew B. Miles and A. Michael Huberman, *Analisis Data Kualitatif* (Jakarta: UI Pres, 2007), 16.

¹² Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," 149-50.

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strengthening law enforcement.¹³ Data on persons with disabilities based on the 2010 population census can be seen at Table 1.

Table. 1 Percentage of Population Age \geq 10 Years Who Have Functional Difficulties Based on 2010 Population Census Data

| No. | Difficulty type | Experiencing Difficulties (In Thousands) | | Percentage (%) |
|-----|---------------------------------|---|--------|-------------------|
| | | A Little | Severe | |
| 1 | Look | 5.313 | 507 | 3,05 |
| 2 | Hear | 5.268 | 456 | 1,58 |
| 3 | Walk or Take the Stairs | 2.432 | 656 | 1,62 |
| 4 | Remembering or Concentration | 2.126 | 616 | 1,44 |
| 5 | Take Care of Self | 1.511 | 533 | 1,07 |

Source: *Central Statistics Agency*.¹⁴

The data above shows that the percentage of the population aged 10 years, the highest type of difficulty is the difficulty in seeing a number of 3.05%. While the lowest type of difficulty is the difficulty to take care of themselves amounting to 1.07%. Then the reform of the human rights law of persons with disabilities becomes urgent to be implemented.

Based on that, there are some aspects of the urgency of reform human rights law with disabilities, namely:

1. Philosophical Aspect

Philosophical aspects related to the urgency of reforming human rights law of persons with disabilities in line with the philosophy of the Indonesian nation, Pancasila. That the existence of Pancasila as a philosophical basis will bring logical consequences, namely the values of Pancasila are used as the basic foundation, the fundamental foundation for the applicable laws and regulations and in the administration of the state. The translation of Pancasila values is transformed into real life forms.

Belief in The One and Only God who gives freedom to persons with disabilities to embrace religion in accordance with their beliefs, without coercion, and adherents of different religions must respect each other and foster harmony between religions. For the guarantee and protection of

¹³ Dwi Shanti Kartika, "Pembentukan Kebijakan Reformasi Hukum," *Majalah Info Singkat Hukum*, 2016, 2, http://berkas.dpr.go.id/puslit/files/info_singkat/Info_Singkat-VIII-19-I-P3DI-Oktober-2016-41.pdf.

¹⁴ Kementerian Kesehatan, "Situasi Penyandang Disabilitas di Indonesia," *Buletin Jendela Data dan Informasi Kesehatan*, 2014, 7, <http://www.pusdatin.kemkes.go.id/resources/download/pusdatin/buletin/buletin-disabilitas.pdf>.

persons with disabilities in embracing their religion and beliefs, they will realize fair recognition of human rights.

Just and civilized humanity values are conscience awareness through attitudes and behavior by paying attention to moral values in the lives of fellow human beings by treating as they should. Containing meaning that must be considered in human relations in realizing just and civilized human values is the recognition of human rights for persons with disabilities. So recognizing that persons with disabilities must be treated in accordance with their dignity and who are creatures of God, having the same degree, equal rights and obligations.

The Unity of Indonesia value is an effort that directs the people's unanimity to foster a sense of nationalism in the country. The value of unity means that there are differences in social life not only related to differences in language, culture, customs, religion and ethnicity but also related to differences in physical, intellectual, mental and or sensory limitations. The difference is made for joint development by involving persons with disabilities with the elements involved in it in the form of mutual cooperation by creating a harmonious, harmonious and balanced life. This is in accordance with the Indonesian motto "*Bhineka Tunggal Ika* (Unity in Diversity)".

Democracy guided by the inner wisdom in the unanimity arising out of deliberations among representatives value implies that in the Indonesian government through the representative body in setting a policy pursued through deliberation to reach consensus in accordance with humanity by considering the will of the people to achieve national goals. The realization of this value is framed in the value of Pancasila democracy. So people with disabilities as citizens have the same rights and obligations. Therefore, good and responsible ethics in policy making involves the will of persons with disabilities with a high regard for human value and dignity as well as the values of freedom and justice with the aim of developing and building lives that prioritize unity and integrity.

Social Justice for all of Indonesian people values implies realizing a just and prosperous society both inner and spiritual, with that every citizen has obtained what has become his right in accordance with civilized justice. That every citizen must develop a fair attitude towards persons with disabilities by maintaining a balance, harmony, harmony between their rights and obligations.

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2. Sociological Aspect

Sociological aspects related to the urgency of legal reform to realize the fulfillment of persons with disabilities human rights, namely:

- a. Cases of retention of people with mental disorders.
- b. There are educational institutions that refuse to provide educational services for people with disabilities.
- c. Discrimination against persons with disabilities to obtain the right to decent work because they are considered as people who are unable to live productively socially and economically.
- d. Injustice in fulfilling equal rights before the law.¹⁵

3. Juridical Aspects

Juridical aspects related to the urgency of legal reform to realize the fulfillment of persons with disabilities human rights, in this case in terms of legislation. Whereas the statutory regulations used as the legal basis are the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 13 of the Year 2003 concerning Manpower, Act Number 20 of 2003 concerning the National Education System, Act Number 11 of 2009 concerning Social Welfare.

The 1945 Constitution of the Republic of Indonesia regulates human rights in Chapter XA contained in Article 28 A-Article 28 J. There are two types of human rights provisions namely guaranteeing human rights for every citizen and guaranteeing human rights for everyone . That with this classification, persons with disabilities are included in fulfilling human rights guarantees. Special protection for persons with disabilities is specifically regulated in Article 28 H paragraph (2), which states that every person has the right to get special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice. Based on this, the human rights of persons with disabilities are guaranteed constitutionally.

Law Number 39 of 1999 concerning Human Rights is a regulation that guarantees a set of human rights that are inherently natural to the basic rights as a gift from God Almighty that has a universal and lasting

¹⁵ Yossa AP Nainggolan et al., *Kertas Posisi Mendorong Pengesahan "Optional Protocol to the Convention on the Rights of Persons with Disabilities" (OP CRPD) Dalam Rangka Pemenuhan Hak Asasi Manusia Penyandang Disabilitas* (Jakarta: Komisi Nasional Hak Asasi Manusia (Komnas HAM), 2016), 17–18, <https://www.komnasham.go.id/index.php/publikasi/2017/03/03/72/kertas-posisi-komnas-ham-mendorong-pengesahan-op-crpd.html>.

nature. Therefore persons with disabilities must be respected, upheld, recognized, protected, defended, must not be ignored and deprived of by the state, law, government and everyone in order to guarantee human value and dignity.

Legal protection is an important matter of the rule of law. This is considered important in the formation of a country so a law is formed that functions to regulate the behavior of every citizen. Then legal protection is a country's obligation to provide legal protection to every citizen.¹⁶ State protection can be realized in the formation of strict and binding legislation for all Indonesian people.¹⁷

Article 4 of Law Number 39 Year 1999 concerning Human Rights states that the right to life, the right not to be tortured, the right to personal freedom, thoughts and conscience, the right to religion, the right not to be enslaved, the right to be recognized as individuals and equality before law, and the right not to be prosecuted on the basis of a retroactive law is a human right that cannot be reduced under any circumstances and by anyone. Based on this, the state, the government, organizations and everyone carry the mandate that they have the obligation to recognize and protect the human rights of persons with disabilities. So that the human rights of persons with disabilities become the starting point to realize the national goals of the Indonesian people in every social life.

Law Number 26 of 2000 concerning the Human Rights Court is a regulation that protects human rights in the form of law enforcement, legal certainty, provides legal benefits, justice, and a feeling of security against gross violations of human rights. As referred to in Article 1 number 3 of Law Number 26 of 2000 concerning the Human Rights Court which states that a human rights court, hereinafter referred to as a human rights court, is a special court for gross violations of human rights. That what is meant by grave violations here is genocide and crimes against humanity.

Everyone has the right to recognition, guarantees, protection and fair legal certainty, and equal treatment before the law (Equality Before

¹⁶ Anak Agung Istri Ari Atu Dewi, "Aspek Yuridis Perlindungan Hukum dan Pemenuhan Hak Penyandang Disabilitas," *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)* 13, no. 1 (2018): 53, <https://doi.org/10.15294/pandecta.v13i1.13933>.

¹⁷ Brian Septiadi Daud and Nyoman Serikat Putra Jaya, "Penyelesaian Masalah Hak Asasi Manusia Masa Lalu dan Rekonsiliasi Nasional Di Indonesia," *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)* 13, no. 2 (2019): 83, <https://doi.org/10.15294/pandecta.v14i2.21044>.

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the Law).¹⁸ Based on this, persons with disabilities have the right to the same guarantee in equitable protection of the law against gross violations of human rights.

Law Number 13 of 2003 concerning Employment is a regulation that guarantees human rights the basic right of equality in getting a job without discrimination to realize welfare. In this case by developing the quality of labor, increasing protection in accordance with their dignity. Article 4 of Law Number 13 Year 2003 concerning Manpower states that the development of manpower is aimed at:

- a. Empower and utilize the workforce optimally and humanely.
- b. Realizing equal employment opportunities and the provision of labor according to national and regional development needs.
- c. Provide protection to workers in realizing prosperity.
- d. Improving the welfare of the workforce and their families.

Work systems that still see physicality as a major factor in work, with the requirements must look attractive, physically and mentally healthy.¹⁹ Then it will close the space for people with disabilities. People with disabilities can be excluded from negative stigma by returning back to the community, and the community is given an understanding of persons with disabilities playing a role in society by looking at their potential and not just their obstacles.²⁰ Workers with disabilities are everyone who has special needs with the ability to carry out work like normal people in general according to the characteristics or qualifications of the job.²¹

Article 67 paragraph (1) of Law Number 13 Year 2003 concerning Manpower states that employers who employ workers with disabilities are required to provide protection in accordance with the type and degree of disability. Based on this, it can be seen that there are guarantees for persons with disabilities related to the rights on the basis of equal opportunities for a job by guaranteeing human value, dignity, and self-

¹⁸ RR. Putri A. Priamsari, "Hukum yang Berkeadilan Bagi Penyandang Disabilitas," *Masalah-Masalah Hukum* 48, no. 2 (2019): 215, <https://doi.org/10.14710/mmh.48.2.2019.215-223>.

¹⁹ Na'ilatul Muinah Audiyah, Fadillah Putra, and Wike, "Grounded Theory for Implementation of Labor Policy Women Disability Research," *Indonesian Journal of Disability Studies (IJDS)* 6, no. 2 (2019): 166, <https://ijds.ub.ac.id/index.php/ijds/article/view/158/112>.

²⁰ Nurul Saadah Andriani, "Kebijakan Responsif Disabilitas: Pengarusutamaan Manajemen Kebijakan di Level Daerah, Nasional dan Internasional," *Palastren* 9, no. 1 (2016): 204, <https://doi.org/10.21043/palastren.v9i1.2056>.

²¹ Istifarroh and Widhi Cahyo Nugroho, "Perlindungan Hak Disabilitas Mendapatkan Pekerjaan di Perusahaan Swasta dan Perusahaan Milik Negara," *Mimbar Keadilan* 12, no. 1 (2019): 23, <https://doi.org/10.30996/mk.v12i1.2164>.

esteem to create a prosperous, just, prosperous, and equitable society, both material and spiritual.

Law Number 20 Year 2003 concerning the National Education System is a regulation that guarantees human rights related to the right to get equal educational opportunities without discrimination. It aims to develop themselves and the skills that exist in him.

Education is an important task for citizens, with the main responsibility of implementing educational activities in the hands of the government.²² That acknowledging the existence of disability rights is a form of protection of the rights of persons with disabilities. Then it is necessary to create a consolidation between people with disabilities, policy makers, and education providers. This consolidation is needed to create equality for persons with disabilities.²³

Article 4 paragraph (1) of Law Number 20 Year 2003 concerning the National Education System, states that education is carried out in a democratic and fair manner and is not discriminatory by upholding human rights, religious values, cultural values, and national pluralism.

Article 5 paragraph (2) of Law Number 20 Year 2003 concerning the National Education System, states that citizens who have physical, emotional, mental, intellectual, and/ or social disabilities are entitled to special education. Based on this the basic right to the opportunity to get education for people with disabilities has been guaranteed fairly without discrimination.

Law Number 11 Year 2009 concerning Social Welfare is a regulation that aims to fulfill human rights in achieving social welfare by providing excellent services, developing planned, directed and sustainable social welfare. Article 1 number 2 of Law Number 11 Year 2009 concerning Social Welfare, states that social administration is a directed, integrated and sustainable effort undertaken by the government, regional government and the community in the form of social services to meet the basic needs of every citizen, which include social rehabilitation, social security, social empowerment, and social protection. As Natalis

²² Ristina Yudhanti, "Kebijakan Hukum Pemenuhan Hak Konstitusional Warga Atas Pendidikan Dasar," *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)* 7, no. 1 (2012): 15, <https://doi.org/10.15294/pandecta.v7i1.2360>.

²³ Jazim Hamidi, "Perlindungan Hukum Terhadap Disabilitas Dalam Memenuhi Hak Mendapatkan Pendidikan dan Pekerjaan," *Jurnal Hukum Ius Quia Iustum* 23, no. 4 (2016): 661, <https://doi.org/10.20885/iustum.vol23.iss4.art7>.

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and Ispriyarso state that each individual has several needs in the form of economic, social, cultural and psychological needs.²⁴

The purpose of social welfare as explained in Article 3 of Law Number 11 Year 2009 concerning Social Welfare, namely:

- a. Improve the level of welfare, quality, and survival.
- b. Restoring social functions in order to independence achievements.
- c. Increasing social resilience of the community in preventing and dealing with social welfare problems.
- d. Improving the ability, care and social responsibility of the business world in organizing social welfare in an institutionalized and sustainable manner.
- e. Increasing the ability and concern of the community in organizing social welfare in an institutionalized and sustainable manner.
- f. Improving the quality of management of the implementation of social welfare.

Based on this, the fulfillment of basic rights for persons with disabilities related to social welfare must be carried out systematically, comprehensively, and professionally by involving the participation of all levels of society and the country so as to realize a decent and dignified life.

Legal Reform Model Realizes the Fulfilment of Human Rights of Persons with Disabilities

The law is a container for the formation of the State of Indonesia that protects human rights. In this case, the creation of a just law that can improve the welfare of persons with disabilities. Law without discrimination in fulfilment of human rights of persons with disabilities.

Reform and democratization are based on strengthening the basic joints of human rights.²⁵ Legal reform is a law in Indonesia carried out within the framework of the idealized state of law. The law has an expressive function which is to express the view of life, cultural values, and values of justice. In addition, the law carries out instrumental functions, namely a means to create

²⁴ Aga Natalis and Budi Ispriyarso, "Politik Hukum Perlindungan Pekerja Migran Perempuan di Indonesia," *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)* 13, no. 2 (2018): 110, <https://doi.org/10.15294/pandecta.v13i2.15784>.

²⁵ Meilanny Budiarti Santoso and Nurliana Cipta Apsari, "Pergeseran Paradigma Dalam Disabilitas," *Intermestic: Journal of International Studies* 1, no. 2 (2017): 167, <https://doi.org/10.24198/intermestic.v1n2.6>.

and maintain order, stability and predictability, a means to preserve cultural values and realize justice, educational facilities as well as community civilization and means of community renewal (encouraging, analyzing and authorizing community change).²⁶ The core of the legal reform policy is the arrangement of regulations, institutional improvement, and the development of a legal culture.²⁷

Based on this, the legal reform model embodies the fulfillment of human rights of persons with disabilities, related to several aspects of regulatory structuring, institutional structuring, legal culture development with the following explanation:

1. Aspect of Structuring Regulation

Aspects of structuring regulations are structuring of regulations related to the fulfillment of the recognition and guarantee of human rights of persons with disabilities. As it is known, which was previously regulated in Law Number 4 of 1997 concerning Disabled Persons. That this law regulates the rights and obligations of persons with disabilities, equality and equal opportunities for persons with disabilities, government and community efforts related to the rights of persons with disabilities, coaching and the role of the community in the welfare of persons with disabilities.

Regulatory reforms that have the aim of realizing quality, simple and orderly laws and regulations. Regulatory reform has the scope of a series of processes that are very dynamic improvements to realize quality legislation both from the process and the results.²⁸

Law Number 4 of 1997 concerning Persons with Disabilities, there are several weaknesses, including the following:

- a. Negative stigma towards persons with disabilities who only see human rights in terms of their physical due to interpreting people with disabilities. As Nursyamsi, et al. state that the meaning of defects in the legislation means negative, which should not be pinned on someone to show their physical condition. So that the meaning of disability is not appropriate to be used to refer to someone, not only

²⁶ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung: Mandar Maju, 2000), 189.

²⁷ Kartika, "Pembentukan Kebijakan Reformasi Hukum," 2.

²⁸ M. Nur Sholikin, "Penataan Kelembagaan untuk Menjalankan Reformasi Regulasi di Indonesia," *Jurnal Hukum & Pasar Modal* 8, no. 15 (2018): 83-84, <https://pshk.or.id/dokumen/5288>.

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is it not relevant to the social approach, but also has a negative meaning.²⁹

- b. Content material which views persons with disabilities as fulfilling their right to compassion. As Law No. 4 of 1997 concerning Disabled Persons explains the government's efforts to fulfill the rights of persons with disabilities through rehabilitation, social assistance, and maintenance of social welfare. Nursyamsi, et al. state that Law Number 4 of 1997 concerning Disabled Persons still considers humans as objects in the fulfillment of their rights, so that the policies compiled are still dominated by compassion (charity based).³⁰
- c. Fulfillment of rights for persons with disabilities has not been fully accommodated in the fulfillment of rights in every sector of life and livelihood. As explained in the explanation of Article 5 of Law Number 4 of 1997 concerning Persons with Disabilities, which states aspects of life and livelihoods including aspects of religion, health, education, social, employment, economy, public services, law, culture, politics, defense and security, sports sports, recreation, and information.

Based on this, there needs to be a regulatory arrangement in the fulfillment of human rights of persons with disabilities, by ratifying the Convention on the Rights of Persons with Disabilities (CRPD), with the establishment of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (CRPD Convention Regarding the Rights of Persons with Disabilities). As well as revoking Law Number 4 of 1997 concerning Disabled People is replaced by Act Number 8 of 2016 concerning Persons with Disabilities.

Law No. 19 of 2011 on ratification of the Convention on the Rights of Persons with Disabilities, there are a number of subject areas as follows:

- a. Opening

The state guarantees human rights of persons with disabilities to the same dignity and values and rights without discrimination.

- b. Purpose

The purpose of this convention is to promote, protect and guarantee the equal rights and fundamental freedoms of all persons with

²⁹ Nursyamsi et al., *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*, 47-48.

³⁰ *Ibid.*, 12.

disabilities, as well as respect for the dignity of persons with disabilities inherent in themselves.

c. Principle

Article 3 of the Convention on the Rights of Persons with Disabilities states that the general principles of this convention are as follows:

- 1). Respect for inherent dignity, individual autonomy including freedom to make choices, and individual independence.
- 2). Non-discrimination.
- 3). Full and effective participation and participation in society.
- 4). Respect for differences and acceptance of persons with disabilities as part of human diversity and humanity.
- 5). Equality of opportunity.
- 6). Accessibility.
- 7). Equality between men and women.
- 8). Respect for the evolving capacity of children with disabilities and respect for the rights of children with disabilities to maintain their identity.

d. General Obligation

The state guarantees and realizes the human rights of persons with disabilities without discrimination in accordance with statutory, administrative, and legal aspects in all aspects of life.

e. Rights of Person with Disabilities

Human rights of persons with disabilities, namely the right to equality and non-discrimination, the right of persons with disabilities of women and children who are vulnerable to discrimination, the right to accessibility, the right to life, the right to protection from situations at risk and human emergencies, the right of equality of recognition before the law, the right to access justice, the right to freedom and security, the right to freedom from torture or cruel and inhuman or degrading treatment, the right to freedom from exploitation, violence and abuse, the right to protect integrity, the right to freedom of movement and citizenship, the right to life independently and to be involved in society, the right to guarantee personal mobility, the right to freedom of expression and opinion and access to information, the right to respect for privacy, the right to respect for home and family, the right to education, the right to health, the right to habilitation and rehabilitation, the right to work and employment, right of standard of living da n proper social

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protection, the right to participation in political and public life, the right to participate in cultural, recreational, entertainment and sports activities.

f. Implementation and National Supervision

States parties must appoint one or more government institutions to deal with the problems of persons with disabilities and be responsible for the implementation of this convention, and establish coordination mechanisms at the government level to facilitate related actions.

g. Committee on the Rights of Persons with Disabilities and State Party Reports

The State Party is obliged to make a report on the implementation of this Convention 2 (two) years after the Convention enters into force, and subsequent reports no later than every 4 (four) years or at any time if requested by the Committee on the Rights of Persons with disabilities. The Committee also conducts international cooperation and coordinates other United Nations bodies.

The establishment of the Convention on the Rights of Persons with Disabilities is a global effort to respect and protect human rights for minority groups with disabilities. International conventions as an international framework for States parties to provide protection and fulfillment of human rights for persons with disabilities in global, regional and national contexts.³¹

Based on that, the existence of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities is a regulation that guarantees human rights for persons with disabilities on several matters, namely:

- a. Ensure national and international protection for persons with disabilities from the fulfillment of human rights in all sectors of life.
- b. Guarantee the development of personality of persons with disabilities in accordance with their talents and interests.
- c. Ensure equal rights and human rights obligations for persons with disabilities.
- d. Guaranteeing respect for the human value and dignity of persons with disabilities.

Law Number 8 of 2016 concerning Disabled Persons revokes Law Number 4 of 1997 concerning Persons with Disabilities, because the old

³¹ Ambar Retnosih Widyantini, "Paradigma Human Rights Based Dalam Kerangka Hukum Penyandang Disabilitas," *Kesejahteraan Sosial* 2, no. 2 (2015): 174, <https://doi.org/10.31326/jks.v2i02.156>.

law is incompatible with the development of life in society and not in accordance with the perspective to fulfill the human rights of persons with disabilities based on the Pancasila and the 1945 Constitution of the Republic of Indonesia.

Article 1 number 1 of Law Number 8 Year 2016 concerning Persons with Disabilities states that a person with disability is any person who experiences physical, intellectual, mental, and / or sensory limitations for a long period of time who interact with the environment may experience obstacles and difficulties in participating full and effective with other citizens based on equal rights. Based on this understanding can eliminate the negative stigma by the community so as to bring respect for the dignity of persons with disabilities.

The principles of implementation and fulfillment of human rights have been regulated as contained in Article 2 of Law Number 8 of 2016 concerning Persons with Disabilities, namely respect for dignity, individual autonomy, without discrimination, full participation, human diversity and humanity, equality of opportunity, equality, accessibility, the evolving capacity and identity of children, inclusive, special treatment and more protection. Based on this, the existence of a principle which is a basic source or norm for the implementation and fulfillment of the human rights of persons with disabilities so that there is full guarantee of the dignity of persons with disabilities that must be respected, get special treatment and more protection without discrimination.

Article 3 of Law Number 8 of 2016 concerning Persons with Disabilities states that the implementation and fulfillment of the rights of persons with disabilities has the objectives of which are:

- a. To realize the respect, promotion, protection and fulfillment of human rights and the basic freedoms of persons with disabilities in full and equal.
- b. Ensure respect, promotion, protection and fulfillment of rights as dignity inherent in persons with disabilities.
- c. Realizing the standard of living of people with disabilities that are more qualified, fair, physically and physically prosperous, independent, and dignified.
- d. Protect persons with disabilities from neglect and exploitation, harassment and all discriminatory acts, as well as human rights violations.

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- e. Ensuring the implementation of efforts to respect, promote, protect, and fulfill the rights of persons with disabilities to develop themselves and to utilize all abilities in accordance with their talents and interests to enjoy, participate and contribute optimally, safely, freely and with dignity in all aspects of national, state, and life and social.

Based on this, Law No. 8 of 2016 concerning Persons with Disabilities regulates the implementation and fulfillment of the human rights of persons with disabilities to realize a more just, dignified life and to fulfill the physical and spiritual welfare. So there is no discriminatory action for the fulfillment of their rights.

Article 5 paragraph (1) of Law Number 8 Year 2016 concerning Persons with Disabilities, regulates the rights of persons with disabilities, namely the right to life, the right to be free from stigma, the right to privacy, the right to justice and legal protection, the right to education, the right to work, entrepreneurship and cooperatives, health rights, political rights, religious rights, sports rights, cultural and tourism rights, social welfare rights, accessibility rights, public service rights, disaster protection rights, habilitation and rehabilitation rights, concession rights, data collection rights, the right to live independently and be involved in society, the right to expression, communication and obtaining information, the right to migrate and citizenship, the right to be free from acts of discrimination, neglect, torture, and exploitation.

Article 5 paragraph (2) of Law Number 8 Year 2016 concerning Persons with Disabilities, regulates the rights of women with disabilities, such as:

- a. The right to reproductive health.
- b. The right to accept or reject the use of contraceptives.
- c. The right to protection is more than multiple discrimination.
- d. The right to get more protection from acts of violence, including violence and sexual exploitation.

Article 5 paragraph (3) of Law Number 8 Year 2016 concerning Persons with Disabilities, regulates the rights of children with disabilities, i.e.:

- a. The right to special protection from discrimination, neglect, harassment, exploitation, and sexual violence and crime.
- b. The right to obtain care and care for a family or substitute family for optimal growth and development.

- c. Rights are protected by their interests in decision making.
- d. The right to treat children humanely in accordance with the dignity and rights of children.
- e. Right to fulfill special needs.

Based on this, Law No. 8 of 2016 concerning Persons with Disabilities has accommodated the human rights of persons with disabilities from all aspects of life and livelihood. As it is known that the fulfillment and protection of human rights of persons with disabilities are placed as human beings who have dignity, respect and dignity and non-discrimination. So that people with disabilities are able to contribute in realizing national development in Indonesia.

The implementation of respect, protection and fulfillment of human rights of persons with disabilities is an obligation for the government and regional governments as described in Article 27 paragraph (1) of Law Number 8 Year 2016 concerning Persons with Disabilities, which states that the government and regional governments are obliged to carry out planning, implementation, and evaluation of the implementation of respect, protection and fulfillment of the rights of persons with disabilities.

Based on this, the government and regional governments in carrying out obligations towards respecting, protecting and fulfilling the human rights of persons with disabilities to the right to justice and legal protection, the right to education, the right to work, the right to health, political rights, religious rights, sports rights, cultural rights and tourism, social welfare rights, infrastructure rights, building rights, road rights, park rights, acceptance rights, public service rights, disaster protection rights, habilitation and rehabilitation rights, concession rights, data collection rights, information and communication rights, women's rights and children, the right to protection from acts of discrimination, neglect, torture and exploitation. The government and regional governments work together and coordinate with each other in realizing human rights of persons with disabilities.

Article 129 Paragraph (1) of Law Number 8 Year 2016 concerning Persons with Disabilities, states that the government has established a coordinating mechanism at the national level in the context of carrying out respect, protection and fulfillment of the rights of persons with disabilities. And Article 130 Paragraph (1) of Law Number 8 Year 2016 concerning Persons with Disabilities, states that local governments

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establish coordinating mechanisms at the provincial and district / city levels in the context of carrying out respect, protection and fulfillment of the rights of persons with disabilities in accordance with their authority.

Based on this, it can be seen that coordination related to human rights of persons with disabilities is divided into coordination at the national level and at the regional level. Coordination at the national level is a form of coordination carried out by ministries and non-ministerial government agencies related to the holding, guaranteeing and synchronization of policies, programs and budgets in realizing the respect, fulfillment and protection of human rights of persons with disabilities with justice. Whereas regional level coordination is a form of coordination between provincial level government and district / city level government related to organizing, guaranteeing and synchronizing policies, programs and budgets in realizing, fulfilling and protecting the human rights of persons with disabilities with justice.

2. Institutional Structuring Aspect

Institutional Structuring Aspects in realizing the fulfillment of human rights of persons with disabilities, namely the need for the formation of a national disability commission as regulated in Article 131 of Law Number 8 of 2016 concerning Persons with Disabilities, which states that in the context of implementing the respect, protection and fulfillment of the rights of persons with disabilities a national commission is formed disability as an independent non-structural institution.

Article 133 of Law Number 8 Year 2016 concerning Persons with Disabilities, which states in carrying out their duties the national disability commission, carries out the following functions:

- a. Compilation of plans for the activities of the national disability commission in an effort to carry out respect, protection and fulfillment of the rights of persons with disabilities.
- b. Monitoring and evaluating the implementation of respect, protection and fulfillment of the rights of persons with disabilities.
- c. Advocating for the implementation of respect, protection and fulfillment of the rights of persons with disabilities.
- d. The implementation of cooperation in handling persons with disabilities with related stakeholders.

Based on this, the national disability commission has functions related to the preparation of plans, monitoring evaluation, advocacy and

cooperation to carry out respect, protection and fulfillment of human rights of persons with disabilities based on Pancasila and the 1945 Constitution of the Republic of Indonesia. National disability commission in carrying out these functions prioritize service aspects and involve persons with disabilities

3. The Development Aspect of Public Power

The Development Aspect of Public Power is a policy that directs people's behavior and habits towards fair and democratic legal awareness by upholding the human rights of persons with disabilities based on the Pancasila and the 1945 Constitution of the Republic of Indonesia.

The law made is highly determined by the legal culture in the form of values, views and attitudes of the community concerned.³² The struggle for human rights is essentially part of the demands of history and culture, including Indonesia.³³

The development of a legal culture strategy is needed as a guide / reference in order to increase public legal awareness in order to know and realize their rights and obligations, and to be able to behave in accordance with the law and respect human rights.³⁴

Strategies in the development of a legal culture of human rights for persons with disabilities, are carried out in several ways:

- a. Developing a civilizing law aimed at all levels of society to form attitudes towards a full understanding of law. So that there are no violations of the human rights of persons with disabilities.
- b. Increase legal awareness of the importance of respecting and upholding the human rights of persons with disabilities as human beings who have dignity and who need to get legal protection.
- c. Increasing synergy and coordination between the central and regional governments in policy making by involving the aspirations of the community to increase respect, protection and fulfillment of human rights of persons with disabilities.

³² Iman Pasu Marganda Hadiarto Purba, "Penguatan Budaya Hukum Masyarakat untuk Menghasilkan Kewarganegaraan Transformatif," *Jurnal Civics: Media Kajian Kewarganegaraan* 14, no. 2 (2017): 149, <https://doi.org/10.21831/civics.v14i2.16050>.

³³ Ristina Yudhanti, Saru Arifin, and Fauziah Rismadini, "The Protection to Victims of Violence Based on Gender as a Fulfillment of the Constitutional Rights in the Perspective of Human Rights in Boyolali's District, Indonesia," *Journal of Indonesian Legal Studies* 2, no. 1 (2017): 16.

³⁴ Jawardi, "Strategi Pengembangan Budaya Hukum (Strategy of Law Culture Development)," *Jurnal Penelitian Hukum De Jure* 16, no. 1 (2016): 78, <https://doi.org/10.30641/dejure.2016.v16.77-93>.

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- d. Utilizing communication media both electronic media, print media, on-line media in supporting the dissemination of legal understanding related to human rights of people with disabilities.

The model of legal reform embodies the fulfillment of the human rights of persons with disabilities, which is as follows:

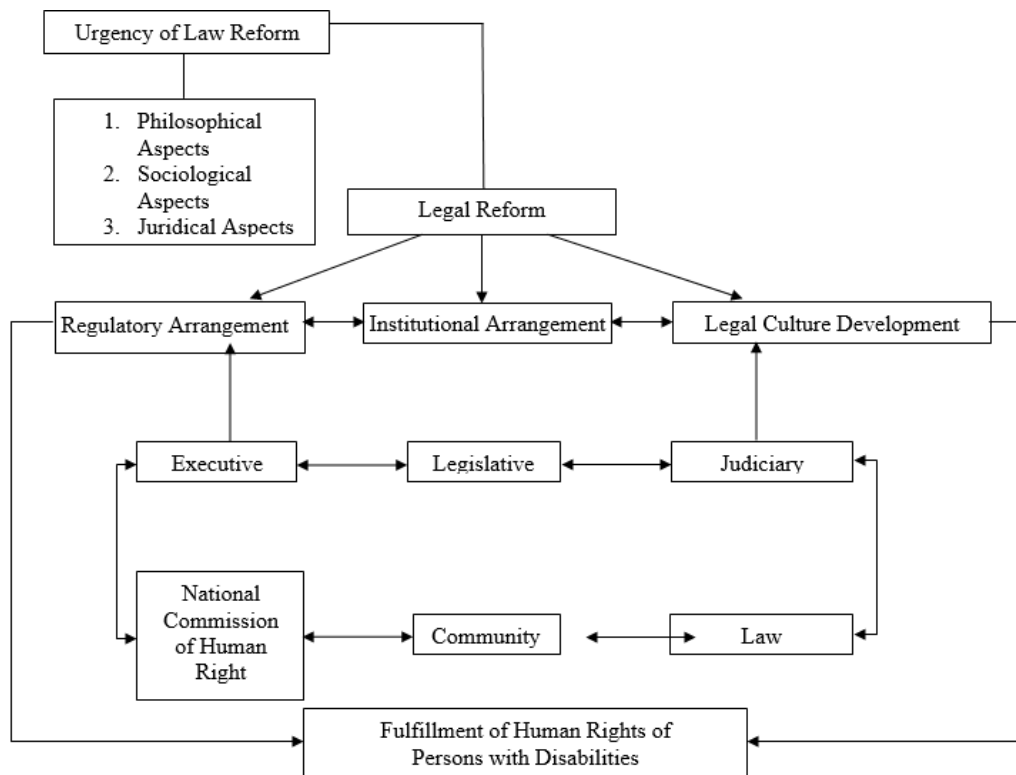


Figure 1. Model of Legal Reform on Human Rights of Persons with Disabilities

The urgency of reforming human rights law of persons with disabilities as a basis for implementing legal reform. In this case, legal reform covers aspects of regulatory structuring, institutional structuring and legal culture development. The synergy relationship between the executive branch, the legislative body, the judiciary, the National Commission on Human Rights, the community and law enforcement in this case is to establish policy harmonization of all aspects in the reform of human rights law of persons with disabilities.

Based on this, the existence of legal reform model is the basis of legal values for the life of a more progressive and democratic society and state. Therefore, legal reform is a manifestation of the human rights of persons with disabilities, which in this case is a form of crystallization of human values

and dignity of people that is more just, progressive, democratic, prosperous and non-discriminatory.

Conclusion

The urgency of reforming human rights law for persons with disabilities, which consists of philosophical aspects, namely Pancasila, sociological aspects, namely cases of retention, discrimination for persons with disabilities to obtain the right to education and decent work, and injustice in fulfilling equal rights before the law, aspects Juridical namely the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 13 of 2003 concerning Labor, Law Number 20 of 2003 concerning the National Education System and Law Number 11 of 2009 concerning Social Welfare. The legal reform model embodies the fulfillment of the human rights of persons with disabilities. In this case there needs to be an important role in the synergy relationship between the executive, legislative, judiciary, National Commission of Human Rights, community and law enforcement agencies. So that it will form a harmonization of the law reform policy which consists of several aspects of regulatory arrangement namely ratifying the Convention on the Rights of Persons with Disabilities (CRPD), with the establishment of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Rights of Persons with Disabilities) and revoking Law Number 4 of 1997 concerning Disabled People is replaced by Law Number 8 of 2016 concerning Persons with Disabilities, the institutional structuring aspect of the need to establish a national disability commission as an independent non-structural institution, an aspect of cultural development law is a policy that directs people's behavior and habits towards fair and democratic legal awareness by upholding the human rights of persons with disabilities based on the Pancasila and the 1945 Constitution of the Republic of Indonesia. Then legal reform is able to manifest human rights of persons with disabilities, in this case as a form of crystallization of human values and dignity that are more just, progressive, democratic, prosperous and non-discriminatory.

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