

## **Employment Arrangement for Person with Disabilities in Indonesia in Post-New Order Era**

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### **Abstract**

*The right to employment of persons with disabilities got better attentions in Indonesia, especially after the fall of the New Order era. This paper discusses the employment arrangement for persons with disabilities in Indonesia in Post-New Order era. It is found that some reforms have been made to accelerate the fulfillment of the right to employment of persons with disabilities. It began with the enactment of Law Number 21 of 2002 on Labour Union and Law Number 13 of 2003 on Employment. In addition, the Government had ratified the Convention on the Rights of Persons with Disabilities through Law Number 19 of 2011. Furthermore, Law Number 8 of 2016 on Person with Disabilities was issued. This law has properly regulated the rights of persons with disabilities, including their employment rights. Nevertheless, this law still requires several comprehensive operational regulations. Law Number 13 of 2003 can be synchronized with Law Number 8 of 2016 since it functions as*

*a guideline for employers and workers in carrying out working relationship*

**Keywords:** *Regulation, employment, persons with disabilities, post-new order*

### **1. Introduction**

The New Order under President Soeharto had run for 32 years. This regime has successfully created political stability and national security after the 1965 political unrest. Political stability and national security were considered as the foundation for sustainable development.<sup>1</sup> Therefore, the New Order regime built a strong dominant government and tried to appear dominantly in national development efforts<sup>2</sup>.

This dominant power could influence the mindset and the condition of society. During the New Order era, there was no enough room for democracy to grow. Freedom of thoughts could not work and the state strictly controlled the mass media and even historical narratives, hence freedom of speech and expressions were annihilated.<sup>3</sup>

<sup>1</sup> Dwi Wahyono Hadi Gayung Kasuma (2012). "New Order Propaganda 1966-1980". Verleden, 1(1): 41

<sup>2</sup> Ibid. 43

<sup>3</sup> Pengaruh Zeitgeist Terhadap Muatan Sejarah di Buku Teks Pelajaran Sejarah SMA Kurikulum 1975-2004 Marlina IJHE 4 (1) (2016) Indonesian Journal of History Education <http://journal.unnes.ac.id/sju/index.php/ijhe> p. 133

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As glorious achievement of the New Order, political stability could build a cornerstone for the success of other sectors, particularly the flow of foreign investment to form macro-economic growth. The effectiveness of New Order political power rooted from at least four primary sources, namely physical and legal repression, economic clientelism, particularistic political discourse that supports authoritarianism, and state corporatism development.<sup>4</sup>

The consolidation of state power occurred very quickly after the establishment of the New Order. Until 1973, workers were tightly regulated through the formation of a labor union approved by the state that was called Serikat Pekerja Seluruh Indonesia (the Indonesian Workers Federation/FBSI). Therefore, the relation between the labor movement and the political parties was controlled as FBSI was only concerned within the social and economic areas. The New Order implemented a segregated system between socio-economic territory and the political sphere in order to minimize the labor movements from the previous era.<sup>5</sup>

The fall of the New Order initiated the reformation in all areas, including the employment sector by providing legal certainty. Reformation is a change or fundamental improvement in inappropriate issues in order to achieve the aspiring goals and to ensure the implementation of the essential principles. The reformation began with the enactment of Law Number 21 of

2000 on Labor Unions. This regulation gave the rights to workers to form or join any association without restrictions. Freedom is every-person rights that had been usurped by the New Order regime.

Furthermore, in 2003, the government issued an employment law formulated in Law Number 13 of 2003. Substantively, this regulation was better than any existing laws since it regulates the rights of both employees and employers. This was understandable since this law articulates the reformation in all sectors including the acknowledgement and fulfillment of labor rights. This regulation also abolished several previous laws including Law Number 14 of 1969 on Employment Principles, Law Number 25 of 1997 on Manpower.<sup>6</sup>

After eight years, together with the strong insistence on awareness of rights of persons with disabilities, the Government ratified the Convention on the Rights of Persons with Disabilities through Law Number 19 of 2011. In addition, five years later, the Government enacted Law Number 8 of 2016 on Persons with Disabilities. The enactment of these two laws is expected to accelerate the fulfillment of the rights of persons with disabilities, especially in relation to employment. This achievement deserves an appreciation since these new laws provide legal basis for fulfillment of the rights of persons with disabilities, especially with regard to employment.

The main issue in employment in Indonesia is the high number of unemployment rate. Job seekers who meet

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<sup>4</sup> Keretakan Otoritarianisme Orde Baru Dan Prospek Demokratisasi By: Pratikno JSP Vol. 2, Number 2, November 1998

<sup>5</sup> Muryanto Amin. (2011) "Fragmentation of Labor Movement in Indonesia Post-New Order", *Politeia: Jurnal ilmu politik*. 3 (1) : 47-56

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<sup>6</sup> Hanggoro Prabowo. (2011). "Implementation of Labor Rights in Resolving Industrial Relations Dispute", *Law and Society Dynamics* . 9 (1)

physical health standards still face difficulty in finding jobs moreover those having disabilities.<sup>7</sup> Companies and agencies need employees with optimal performance. Therefore, physical condition becomes an important consideration for business owners in recruiting their employees. However, job seekers are diverse in capacity including diversity relating to physical condition. The diversity of employees should not lead to discrimination, however, discrimination against disable persons still occurs in the employment sector.

The following table provides data on persons with disabilities according to International Labor Organization (ILO), Lembaga Penyelidikan Ekonomi dan Masyarakat - Fakultas Ekonomi dan Bisnis - Universitas Indonesia (LPEM FEB UI), and Survei Angkatan Kerja Nasional - Badan Pusat Statistik (SAKERNAS BPS).

reveal that open unemployment of persons with disabilities is 3.69 percent. The percentage of discouraged workers from person with disabilities is shown through the high rate of inactivity, while high number of disabled people provides an opportunity for companies to recruit workers with disabilities. Inactivity is a condition where someone, purposefully, does not enter the labor market even though the person does not have activities as done by housewives or students. The estimation results show that disability status decreases the probability of entering the employment and getting a job. Persons with hearing and/or speech impairment and hand injuries tend to be more likely to get a job than those who have multiple mobility and disability problems.<sup>8</sup> ILO data show that 15% of world population is disabled, and 85% of them live in developing countries like Indonesia. The disabled are susceptible to

Table 1. Data on Persons with disabilities

ILO	LPEM FEB UI	SAKERNAS BPS
Around 15% of the world population (one billion) is persons with disabilities and about 82% of persons with disabilities: <ul style="list-style-type: none"> <li>✓ are in developing countries</li> <li>✓ live below the poverty line</li> <li>✓ have limited access</li> <li>✓ are vulnerable to poverty</li> </ul>	Indonesia reached 12.15% (30 million people) <ul style="list-style-type: none"> <li>✓ degree of disability: 10.29% moderate &amp; 1.87% severe</li> <li>✓ education: 54.26% at the elementary level and above</li> <li>✓ labor market participation 51.12% and inactivity rate of 20.49%</li> </ul>	BPS National Labor Force Survey (Sakernas) data as of February 2017 <ul style="list-style-type: none"> <li>✓ 21,930,529 persons with disabilities with productive age</li> <li>✓ The workforce of persons with disabilities 11,224,673 people:               <ol style="list-style-type: none"> <li>a. working, 10,810,451 people (96.31 percent)</li> <li>b. open unemployment, 414,222 people (3.69 percent).</li> </ol> </li> </ul>

Source: ILO data, LPEM FEB UI, BPS

The data obtained by LPEM FEB UI show that the number of persons with disabilities inactivity rate reaches up to 20.49%. The data from SAKERNAS BPS

poverty since their access to enter employment is restricted. The illustration given by ILO, LPEM FEB UI, and BPS

<sup>7</sup> Abdul Latief Danu Aji and Tiyas Nur Haryan. (2017) "Diversitas dalam Dunia Kerja: Peluang dan Tantangan bagi Disabilitas". Spirit Publik : Jurnal Administrasi Publik , 12 (2) : 85

<sup>8</sup> Facts to Reach Inclusivity of Persons with Disabilities Analyzed by LPEM FEB UI University of Indonesia <http://www.lpem.org/wp-content/uploads/2016/12/Lembar-fakta-rev5.pdf> downloaded on February 13, 2017 at 16.46 WIB

SAKERNAS that portray the restricted access in various sectors also show that the disabled are indirectly marginalized in the society.

In Indonesia, the right of every citizen to obtain job and a decent life is regulated in the constitution. The arrangement is stated in Article 27 of the 1945 Constitution. Furthermore, Article 28D paragraph (2) states that all citizens have the right to work and to receive compensation as well as fair and proper treatment in working relations. Thus, this right is also legally applied to persons with disabilities. However, it was not considered necessary in the New Order era. Therefore, the employment arrangements for persons with disabilities in Post-New Order era will be discussed in this paper.

## **2. Employment Arrangement for Persons with Disability in Indonesia**

### **2.1. Arrangements in the New Order Era**

Politically, the bargaining position of workers was debilitated by the system created by the ruling regime. Economically, workers could not enjoy the income of their hard work to the fullest since the compensation was far from sufficient to support a decent life as mandated by the constitution. Workers income was barely adequate for survival.

The New Order ruled from 1966 to 1998. In that era, everything was directed by the political elements for the benefits of the government only. Limitation was made in many sectors such as law or legislation, economy or business, and freedom of information. The massacre and destruction of communist party in 1965 which was signified the beginning of the New Order era had permanently changed the political

constellation resulting in the fake labor organizations.<sup>9</sup> In dealing with ravaged financial condition inherited from the previous era, the government tightly controlled the economy wheel to increase economic growth.

As the symbol of the New Order, President Soeharto implemented a defensive modernization strategy. In this context, the authorities regulate all fields and control labor unions to pursue an ideal economic growth. Political control over employees was intended to eliminate the influence of the labor movement in the political arena. The main features of labor-employer-state relations in that era were the strict control over the labor union and the continuous denial of the working class social force<sup>10</sup>. As a result, Indonesian Labor Organization (SPSI) was formed from the national to regional levels by the government. Initially, SPSI was built to accommodate workers aspirations. However, it tended to grow as a governmental agent that controlled workers across the country politically and economically. SPSI was also considered as a government asset in holding power by driving workers to support the ruling political party.

The firm state control over the labor union also utilized military force. The aggressive approach in the employment field grew stronger as Admiral Soedomo was appointed as the Minister of Manpower. State pressure upon labor movement lead to the murder of Marsinah, a labor activist in East Java. This case had never been investigated seriously and remains mysterious until today. However, the rumor said that the military was involved. Aside

<sup>9</sup> <http://www.imamanter.blogspot.com>. Op Cit., p. 4-5

<sup>10</sup> Ibid. p. 5

from being a tool of military control, Admiral Soedomo had also been a major actor in business since 1968.

At the end of the New Order era, the Indonesian Workers Federation created labor network driven by Non-Governmental Organizations (LSM) to refuse militarism and refuse the Law Number 25 of 1997 on Manpower. Actions against militarism carried out by non-governmental organizations played an essential role in building networks and mobilizing labors. Movement of the non-governmental labor union was entirely separated from the Indonesian Worker Union as an institution. Twelve members of network named Commission for Employment Law Reformation (KPHP) systematically and substantially rejected the Law Number 25 of 1997 on Manpower. This action was carried out simultaneously with the release of a book containing experts opinions related to the reason for dismissing Law Number 25 of 1997. In the view of KPHP, Law Number 25 of 1997 on Manpower had not included fundamental labor rights such as a guarantee of employment, freedom of union and strike, establishment of a labor dispute settlement institution.<sup>11</sup>

The arrangement of persons with disabilities was still regulated in Law Number 4 of 1997. In this regulation, persons with disability are considered as a social welfare problem. Moreover, the rights given to disabled are more likely a charity instead of a legal stand. The institutionalization of the rights of persons with disabilities

was generally formulated in a perfunctory atmosphere. As a result, it was still very problematic to apply the regulation as the substance of the provision was indeed not operational. The rule was also overlapped with other regulations resulting in a legal vacuum which were deliberately ignored by various parties in the designed process.<sup>12</sup>

Article 16 to 22 in Law Number 4 of 1997 contained obvious pretensions about the existence of the social approach aspects. In this case, most orientations of the program services to persons with disabilities according to legal regulations were directed at the principal tasks and functions of the Ministry of Social Affairs. Thus, the law implicitly regulated that the Ministry of Social Affairs was responsible for fostering the welfare of person with disabilities. It was further emphasized in the Government Regulation (PP) Number 43 of 1998 on Efforts to Improve Persons with Disabilities Social Welfare.

Issues on disabilities indeed were not only a concern of social welfare but also a matter of rights protection aspects in all fields. The regulation for persons with disabilities required a paradigm shift from social-based to rights-based models. Law Number 4 of 1997 and Government Regulation (PP) Number 43 of 1998 needed to be directed to a rights-based model since they existed merely as charity-based.<sup>13</sup> In charity-based model, persons with disability were not treated as a legal subject that is fully granted with their rights.

<sup>11</sup> Iskandar Tedjasukmana, *The Political Character of The Indonesian Trade Union Movement*. Monograph Series, in Mersen Sinaga, *Pengadilan Perburuhan di Indonesia (Tinjauan Hukum Kritis atas Undang-Undang PPHI)*, p. 19. Penerbit Yogyakarta: Perhimpunan Solidaritas Buruh.

<sup>12</sup> Saharuddin Daming (2016) "Value of Persons with Disabilities Strengthening Comparison in Lex Posterior and Lege Priori" *Human Rights Journal* XIII :57

<sup>13</sup> *Ibid.* p. 77

Instead, they were considered as persons who suffer from a social welfare problem. This position did not guarantee their legal rights. The rights given to them was merely a social charity, not an obligation for the government to fulfill. Therefore, a new regulation that put the persons with disability as a legal subject whose rights are respected by law was critically needed.

## **2.2. Employment Arrangement for Persons with Disabilities in Post-New Order Era**

### **2.2.1. Government of President BJ. Habibie**

B.J. Habibie stood as president succeeding the former President Soeharto. Generally, people considered the Soeharto regime had violated the rights of people including freedom of speech and controlled the workers freedom. B.J.Habibie accommodated people demands for human right by issuing Law Number 39 of 1999 on Human Rights.

The human rights enforcement in this period marked by the enactment of the Law Number 39 of 1999 on Human Rights. In this regulation, persons with disabilities were categorized as vulnerable groups of people entitled to receive more treatment and protection utilizing their specialties. Article 38 of Law Number 39 of 1999 on Human Rights stated that every citizen, according to his talents, skills, and abilities was entitled to a decent job.

Legally, the right to get a job was guaranteed by law for all citizens, including persons with disability. However, the Law on Human Rights is a very general law. The right to get a job was not yet well-applied in that time. Moreover, the East Timor referendum had overwhelmed Habibie government to focus more on foreign affairs.

It resulted in the lack of attention on employment and fair treatment towards persons with disability.

### **2.2.2. Government of President Abdurrahman Wahid**

In this era, employment regulation was approved through Law Number 21 of 2000 on Labor Unions. This law does not directly address the issue of with employment for persons with disabilities. However, the birth of this law was considered very democratic and vital to protect workers freedom in expressing their aspirations.

### **2.2.3. Government of President Megawati Soekarno Putri**

During Megawati era, Law Number 13 of 2003 on Labor was issued. This law acted as a foundation for the labor world in Indonesia. The birth of this law was succeeded by the publication of operating regulations that act as a medium between workers and employers. The outsourcing system that was very detrimental to the workers was legalized by this law.

The weakness of the democracy movement which was supported by non-governmental organizations as well as intellectuals became increasingly visible after 6 years of the reformation era. Since 1998, there had been no social or structural adjustment measurement. Pressures came from international institutions that enforced neoliberalism policy packages. As a result, Law Number 13 of 2003 on Employment embraced liberal paradigm. The role of state in protecting workers was increasingly eroded by the unfair concept of relations between workers and employers. The example of this case was outsourcing system

that was considered as a new form of slavery. The existence of the third party, between the workers and the company, had dominantly determined the workers' rights. In some cases, it was seen as selling worker service with insufficiently low wage.

Moreover, Law Number 2 of 2004 on the Industrial Relations Court, which brought a new era of canalization of labor/industrial disputes was approved. This law diminished the role of the state and eliminated the public nature of labor law.<sup>14</sup> The domination of the State in resolving labor dispute was less dominant in the meantime the parties agreed on appointing representative from workers and employers as the members and professional judge as the chief of panel of judges. The grant of worker organizations rights to defend workers in the dispute in court illustrates the power to regulate private aspects in the law discussed.

Employment arrangements for persons with disabilities in Law Number 13 of 2003 were stipulated in Article 5 and 28. Article 5 of Law Number 13 of 2003 arranges that every worker owns an equal opportunity to obtain employment without discrimination. Article 28 of Law Number 13 of 2003 states that employers must employ at least 1 (one) person with a disability who meets the job requirements and qualifications for the company within 100 (one hundred) workers. The percentage set by the government to employ persons with disabilities in a company is considerably small, only one person per 100 workers or merely 1 percent.

#### **2.2.4. Government of President Susilo Bambang Yudhoyono**

The right to employment of persons with disabilities was not considered necessary in this period. The employment policy in this era used a flexible worker system to create a flexible labor market. This system was pursued by revising the regulations in accordance with the concept of employment flexibility since it was ever protective towards workers that it burdened the employers. The example for this was the discourse of revising Law Number 13 of 2003 on Manpower. However, this effort was rejected, and revisions were cancelled. With regard to the issue of persons with disabilities, Law Number 11 of 2009 on Social Welfare was issued. This law emphasized that persons with disabilities were part of the society that are humanly infeasible and categorized as a social problem.

#### **2.2.5. Government of President Joko Widodo**

The era of Joko Widodo carried nine program priority agenda called Nawa Cita. This Programs show the priority of step to bring Indonesia to be politically and economically independent and having its own cultural identity.<sup>15</sup> One of these nine programs is to increase people productivity and competitiveness in the international market. Another program is to realize economic independence by driving strategic sectors of the domestic economy. Both programs are closely related to employment policies. In its implementation, it is translated into the existence of labor-intensive projects and vocational education. The consideration is that the

<sup>14</sup> Alghiffari Aqsa, Head of Society Law Resources Development LBH Jakarta for Labor Training on August 24, 2013 in Karawang

<sup>15</sup>

<http://nasional.kompas.com/read/2014/05/21/0754454/.Nawa.Cita.9.Agenda.Prioritas.Jokowi-JK>, accessed on Tuesday, August 22, 2017 at 19.15 WIB

industrial sector needs extensive labor and that the vocational education model can produce competent workforce. In addition, entrepreneurship and preparation to labor market are also encouraged. Creative industry is also developed to realize these aspirations.

During Joko Widodo era, two regulations were issued to deal with persons with disabilities, namely Law Number 19 of 2011 on Ratification of the Convention of Rights of Persons with Disabilities and Law Number 8 of 2016 on Persons with Disabilities. According to Article 1 of the Law Number 8 of 2016, persons with disabilities are those who have physical, intellectual, mental, or sensory limitations in the long term that affect their abilities in making social interaction.

In Article 27 of Law Number 19 of 2011, it is stated that States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:

- a. Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- b. Protect the rights of persons with disabilities, on an equal basis with others, to just

and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

- c. Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- d. Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e. Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- g. Employ persons with disabilities in the public sector;
- h. Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- i. Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- j. Promote the acquisition by persons with disabilities of work experience in the open labour market;
- k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

State parties must also ensure that persons with disabilities are not in an enslaved condition or treated as a servant.



Persons with disabilities must be protected, on an equal basis with others from forced or compulsory labor.

The law on persons with disabilities does not regulate the classification of persons with disabilities but governs the variety of persons with disabilities. In Article 4 of Law Number 8 of 2016, it is stated that the variety of persons with disabilities covers:

- a. Persons with physical disabilities are persons with disrupted movement functions including amputation, paralysis or stiffness, cerebral palsy (CP), due to stroke, due to leprosy, and undersized people;
- b. Persons with intellectual disabilities are persons with disrupted thinking function due to the below-average level of intelligence including slow learning, chronic disability and down syndrome;
- c. Persons with mental disabilities are persons with disrupted thought, emotional and behavioral functions, including:
  - 1) psychosocial, for instance, schizophrenia, bipolar, depression, anxiety, and personality disorders;
  - 2) developmental disability that affects the ability of social interactions including autism and hyperactivity.
- d. Persons with sensory disability are persons with disruption on one of the five sensory functions, including sight disability, hearing impairment, and/or speech disability.

The variety of disabilities can be single or multiple sustained in the long period determined by medical personnel.<sup>16</sup> Persons with multiple disabilities are persons who have two or more different types of disabilities including speech, sight, or hearing disability while the long terms

disability is defined as at least 6 (six) months long and/or permanent.

Based on Article 5 of Law Number 13 of 2003, every workforce has equal opportunity without any discrimination to obtain job. This provision is applicable for all categories of workforce including persons with disabilities. Furthermore, Article 11 of Law Number 8 of 2016 regulates the right to work, entrepreneurship, and cooperatives for persons with disabilities. These rights include:

- a. Getting a job provided by the government, local government, or private sector without discrimination;
- b. Getting the same salary in the same type of work and responsibility;
- c. Obtaining decent accommodation at work;
- d. Not being dismissed for reasons of disability;
- e. Getting the readmission program (a series of procedures for handling work accident cases and work-related illnesses through health services, rehabilitation, and training so that workers can return to work);
- f. Receiving a fair, proportional, and dignified work placement.

Regarding employment opportunities for persons with disabilities, Article 53 of Law Number 8 of 2016 stipulates that the government, regional government, state-owned enterprises, and regionally-owned enterprises must employ at least 2% (two percent) of persons with disabilities from the number of employees or workers. Private companies must employ at least one percent (1%) of persons with disabilities from the number of employees or workers.

Article 54 of Law Number 8 of 2016 stipulates that the government and regional

<sup>16</sup> See Article 4 (2) of the Law Number 8 of 2016.

government have to provide incentives for private companies that employ persons with disabilities. Furthermore, Article 139 of Law Number 8 of 2017 stipulates that central government and local government can give awards to legal entities and state institutions that employ persons with disabilities.

However, the above mentioned provisions do not regulate the quota of persons with disabilities to be recruited. Multi interpretations has taken place on this matter. They do not clearly force companies to hire persons with disabilities as their workers. This vague regulation will potentially repeat the same mistakes that the previous regulations had done. Employers tend to fulfill the quota by rehiring internal employees who were disabled after experiencing work accidents. It will close the opportunity for the disabled to get a job as regulated in Law Number 8 of 2016.

The ratification made during the reign of Joko Widodo has changed the paradigm in fulfilling the rights of persons with disabilities from the charity-based to the right-based. At least, it institutionalizes 33 rights inherent to every person with disabilities. The attachment of Law Number 19 of 2011 and Law Number 8 of 2016 certainly bring about an obligation for everyone to respect, protect, and fulfill the rights of persons with disabilities. It is the consequence of the right-based law adopted by *Lex Posterior*, which needs to be holistic, integral and multisectoral.<sup>17</sup>

### 2.3. Pro-Disabled Labor Law in Indonesia

In Indonesia, employment regulations are both civil and public in nature. It is civil

since it regulates the relationship between individuals, in this case between employees and employers. The agreement between both parties is called work agreement. It is also public because the government to some extent make intervention on labor issues. This can be seen among others from the existence of criminal sanctions in employment legislations.<sup>18</sup>

M.G. Levenbach states that employment law deals with living conditions that are directly related to work relations that includes:

- a. Set of rules (both written and unwritten);
- b. A related event/occasion;
- c. Someone working for someone else;
- d. Wages/salary.

Based on the above element, it is clear that the substance of employment relations only concern on regulations that conform the legal relationship of a person called a worker to another person called an employer (civil). It does not concern with issues other than the working relationship. This concept depends on the understanding of workers based on the legislation. It follows the Continental European Law that views law identical with the legislation. In addition to the unwritten law, it is difficult to find its codification.

The enactment of Law Number 19 of 2011 and Law Number 8 of 2016 replaced Law Number 4 of 1997 and Government Regulation (PP) Number 43 of 1998 along with their shortcomings. Law Number 4 of 1997 brought about the charity-based paradigm. The nature of charity-based was indicated in the provision of social assistance and rehabilitation. The obligation to fulfill the rights of persons with

<sup>17</sup> Saharuddin Daming. (2016). "Value of Persons with Disabilities Strengthening Comparison in *Lex Posterior* and *Lex Priori*". *Human Rights Journal*, XIII: 78

<sup>18</sup> Zainal Asikin et al., *Dasar-Dasar Hukum Perburuhan*, (Jakarta: March 2010). 8<sup>th</sup> Edition, p. 5-7

disabilities was handled by only one agency that was Ministry of Social Affairs.

Law Number 4 of 1997 and Government Regulation (PP) Number 43 of 1998 perceived persons with disabilities as objects with deficiencies or abnormalities both physically and mentally. This deficiency caused persons with disabilities unable to carry out an activity properly. Thus rehabilitation is needed to reach perfection. Such a view has marginalized persons with disabilities.

The two mentioned regulations were in contradiction to Article 28H paragraph (2) of the 1945 Constitution that regulates that every person has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice. They were also not in line with Article 28I paragraph (2) of the 1945 Constitution which stipulates that every person has the right to be free from discriminative treatment on any basis and has the right to receive protection against such unfair treatment.

On the other hand, Law Number 19 of 2011 and Law Number 8 of 2016 place persons with disabilities as legal subjects and give them the rights to be treated equally, just like other citizens who are not disabled. As the primary (special) law for persons with disabilities, their implementation must be prioritized over other general regulations.<sup>19</sup> The paradigm used in Law Number 19 of 2011 and Law Number 8 of 2016 has also been in line with the Constitution that command to fulfill the rights of the citizens equally.

The government must make various steps to implement Law Number 8 of

2016. Operational rules need to be drafted immediately, and various ministries and institutions from multiple sectors need to be directed to form the corresponding regulations for each authority. Law Number 8 of 2016 mandates the government to issue 15 operational rules consisting of 12 Government Regulation (PP), two Presidential Decrees (*Perpres*) and one Regulation of the Minister of Social Affairs (*Permensos*). However, the National Development Planning Agency (*Bappenas*) has simplified them into nine operational rules consisting of seven Government Regulations, one Presidential Decrees and one Regulation of the Minister of Social Affairs.

Law Number 19 of 2011 and Law Number 8 of 2016 have arranged employment issues thoroughly and in details. State-Owned Enterprises (*BUMN*) must employ persons with disabilities at least two percent of the total number of workers. While private companies must employ persons with disabilities of at least one percent of their employees. The amount of salary given by employers to persons with disabilities must also be of equal value to workers who are not disabled with the same type of work and responsibility. Incentives for private companies that have carried out their obligations to persons with disabilities can also be given. The procedures for granting incentives are regulated through the Government Regulation (PP). The types of incentives can be in the form of easier process of business licensing, provision of capital, and perhaps even the relief of the value of tax payments.

Associated with Law Number 13 of 2003, the provisions in Law Number 19 of 2011 and Law Number 8 of 2018 are more

<sup>19</sup> See Articles 2 and 3 of Law Number 8 of 2016

complete with regard to the right to employment for persons with disabilities. The right to employment for persons with disabilities in Law Number 13 of 2003 is limited only to general matters. It is also more liberal because it was formed and ratified when the euphoria of reformation and freedom was arising. Law Number 8 of 2018 is more transparent and more extensive in regulating the employment rights of persons with disabilities.

In fact, through the Ministry of Manpower and Transmigration the government has been guiding and empowering workers with disabilities through entrepreneurship technical training. This activity was carried out in order to increase the expansion of employment opportunities for both individuals and joint business groups (KUB). The form of activities for coaching and empowerment are embroidery, machinery, sewing, and entrepreneurial technical training that are carried out by strengthening and enhancing joint business groups (KUB) and the target groups. In addition, a special job fair for persons with disabilities and a consultation meeting for placement of persons with disabilities are also being held there.<sup>20</sup>

However, in order to fulfill the right to employment for persons with disabilities in the formal sector, each ministry must participate in establishing relevant regulations. These regulations may address several issues such as accessibility, wages and incentives given to private companies that employ persons with disabilities. In addition, it is also necessary to implement regulations that provide administrative sanctions for employers who do not provide

adequate accommodation and facilities that are easily accessible to workers with disabilities. The sanctions can be in the form of written warnings, termination of operational activities, suspension of business license, and revocation of business licenses. These regulations must be clear to avoid confusion in their implementation. The same action applies to the implementation of sanctions to those who violate the regulations.

### 3. Conclusion and Suggestion

#### 3.1. Conclusion

Employment arrangements for persons with disabilities in Post-New Order era is found in Law Number 8 of 2016 on Persons with Disabilities. This law has been in line with the provision of the 1945 Constitution. There has been another law relating to the employment issues before it, namely Law Number 13 of 2003 on Employment. Being formed in euphoria of reformation, Law Number 13 of 2003 seems to be liberal. Thus, there is a need to synchronize Law Number 13 of 2003 and Law Number 8 of 2016.

#### 3.2. Suggestion

- a. Law Number 8 of 2016 needs to be applied immediately;
- b. Synchronization between Law Number 13 of 2003 and Law Number 8 of 2016 needs to be taken.

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