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**Vindicating Substantive Equality in the Right to
Work
of Persons with Disabilities in Indonesia**

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School of Law
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PhD

2019

**Vindicating Substantive Equality
in the Right to Work
of Persons with Disabilities in Indonesia**

This thesis is submitted to the National University of Ireland Galway
in fulfilment of the requirement for the degree of

Doctor of Philosophy

By

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Abstract

Vindicating Substantive Equality in the Right to Work of Persons with Disabilities in Indonesia

This thesis uses a substantive equality framework to analyse disability law and policy on the right to work of persons with disabilities in Indonesia, employing qualitative methods. Substantive equality is essential for the vindication of human rights as it requires positive measures to remove structural barriers. The Convention on the Rights of Persons with Disabilities (CRPD) adopts a human rights model of disability that acknowledges disability as an identity and as part of diversity. The CRPD draws on the substantive equality model to enable persons with disabilities to participate equally in society. As developed by this thesis, and in line with the CRPD, positive measures encompass all necessary measures to achieve substantive equality for persons with disabilities, including 'specific measures' and 'reasonable accommodation' by both state and non-state actors. The right to work is a fundamental right under the CRPD. It is immensely important for persons with disabilities for dignity as well as economic and social reasons. Following its ratification of the CRPD in 2011, Indonesia adopted The Disability Act 2016 (Act Number 8 of 2016 concerning Persons with Disabilities), which amplifies the human rights model in the disability context, including the right to work. The thesis argues that despite the new focus on the human rights model of disability, there is a lack of awareness in Indonesia which contributes to structural barriers. These include both internal and external barriers. Internal barriers emphasize the personal attitudes and behaviour of persons with disabilities and their families. External barriers are environmental factors which prevent persons with disabilities from fully participating in employment. The research finds that central and local government institutions in Indonesia lack coordination and cohesiveness, leading to gaps and variations in implementation. The research suggests ways in which these problems can be addressed.

Declaration

I certify that this thesis is my own work and that I have not used in the course of another degree, either at the National University of Ireland Galway or elsewhere. I also declare that parts of this thesis have been published in the peer reviewed national journals of Indonesia, as follows:

1. Understanding Positive Measures in an Equality Framework on the Ground of Disability. *Jurnal Masyarakat dan Budaya* Vol 18, No 2 (2016)
Publisher: LIPI/Lembaga Ilmu Pengetahuan Indonesia (Indonesia Institute of Science)
2. Meaningful Work and Disability: A Dignity Towards Social Inclusion Indonesian Journal Of Disability Studies (IJDS) Vol 4, No 1 (2017)
Publisher: Pusat Studi dan Layanan Disabilitas/PSLD (Centre of Disability Studies, University of Brawijaya)
3. The Right to Work in Article 27 of the UN Convention on the Rights of Persons with Disabilities: Towards an Inclusive Employment *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan* Vol 9, No 2 (2018): JNH VOL 9 No. 2 November 2018
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Table of Legislation

(Indonesia)

The Constitution 1945 (Undang-undang Negara Republik Indonesia tahun 1945)
Act Number 4 of 1997 concerning Persons with Handicaps(Disability Act 1997)
Act Number 39 of 1999 concerning Human Rights (Human Rights Act 1999)
Act Number 22 of 1999 concerning Local Government Administration 1999
Act Number 2 of 2000 concerning Human Rights Court
Act Number 13 of 2003 concerning Manpower (Indonesia Labour Act 2003)
Act Number 20 of 2003 concerning National Education System
Act Number 22 of 2004 concerning Local Government Administration and its Revision 2004
Act Number 40 of 2004 on the National Social Security System
Act Number 2 of 2004 concerning Industrial Relations Dispute Settlement 2004
Act Number 36 of 2009 concerning Health
Act Number 11 of 2009 concerning Social Welfare
Act Number 12 of 2011 concerning Establishment of Laws and Regulations 2011
Act Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities 2011
Act Number 18 of 2014 concerning Mental Health 2014

Act Number 23 of 2014 concerning Local Government Administration and its Amendments 2014
Act Number 8 of 2016 concerning Persons with Disabilities (Disability Act 2016)
Regulation Number 33 of 2018 as the revision of the Presidential Regulation Number 75 of 2015 concerning the National Action Plan of Human Rights 2015-2019
Government Regulation Number 27 of 2019 concerning Facilitation of Access Tools of Persons with Disabilities on Reading and Using Braille, Book, Audio, and other Facilities.
Government Regulation Number 52 of 2019 concerning Administration of Social Welfare for Persons with Disabilities 2019
Government Regulation Number 70 of 2019 concerning Planning, Organizing, and Evaluating on the Respect, Protection, and Fulfilment of the Rights of Persons with Disabilities 2019
Presidential Regulation 12 of 2013 on Health Insurance
By Law of West Java Provincial Government Number 7 of 2013 concerning the Protection of Persons with Disabilities
By Law of Di Yogyakarta Provincial Government Number 4 of 2012 concerning the Protection and Fulfilment on the Rights of Persons with Disabilities

Other Regulations

Ministerial Manpower Regulation Number KEP-205/MEN/1999 concerning Vocational Training and Placement of Disability Workers
Circulation Letter of Minister of Manpower Number 01.KP.01.15.2002 concerning Placement of Disability Worker in the Companies
Ministerial Social Affairs Regulation Number 108/HUK/2013 concerning the Guidelines on the Awards to Disability Rights Defenders
Ministerial Manpower Regulation Number 8 of 2018 concerning Amendment on Ministerial Regulation of Manpower Number 13 Of 2015 concerning Organisation and Administration of Ministry of Manpower

Ministerial Social Affairs Regulation Number 7 of 2017 concerning Standard on Social Habilitation and Rehabilitation of Persons with Disabilities
Ministerial Social Affairs Regulation Number 21 of 2017 concerning Disability Identity Card
Ministerial Social Affairs Regulation Number 12 of 2018 concerning the Guidelines on the Prevention of Shackling to the Persons with Mental Disability

List of Abbreviations

ADB	Asian Development Bank
APINDO	Asosiasi Pengusaha Indonesia (the Association of Indonesian Employers)
ASEAN	Association of Sout East Asia Nations
Bapel Jamkesmas	Balai Penyelenggara Jaminan Kesehatan (Social and Health Insurance Agency)
BBRSBD	Balai Besar Rehabilitasi Sosial Bina Daksa (the Centre of Social Rehabilitation and Vocational Training for Persons with Physical Disabilities)
BBRSBG	Balai Besar Rehabilitasi Sosial Bina Grahita (the Centre of Social Rehabilitation and Vocational Training for Persons with Intellectual Disabilities)
BBRVBD	Balai Besar Rehabilitasi Vokasional Bina Daksa (the Centre of Social Rehabilitation and Vocational Training for Persons with Physical Disabilities)
Binjut	Bimbingan Lanjut (Continued Assistance).
BLK	Balai Latihan Kerja (Centre of Vocational Training)
BLKPP	Balai Latihan Kerja Dan Pengembangan Produktivitas (Centre for Vocational Training and Productivity Improvement)
BNSP	Badan Nasional Sertifikasi Profesi (the National Professional Certification Agency)
BPJS	Badan Penyelenggara Jaminan Sosial Ketenagakerjaan (National Social Insurance of Labor)
BPS	Badan Pusat Statistik (Statistics Indonesia)
BRSPD	Balai Rehabilitasi Sosial Penyandang Disabilitas (Disability Rehabilitation Vocational Centre)

BUMD	Badan Usaha Milik Daerah (State-owned-Enterprise of Local Government).
BUMDes	Badan Usaha Milik Desa (Village-owned-Enterprise)
BUMN	Badan Usaha Milik Negara (State-owned Enterprise of Central Government)
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
DET	Disability Equality Training
DIY	Daerah Istimewa Yogyakarta (Special Region of Yogyakarta)
DPD	(Dewan Perwakilan Daerah (Regional Representative Council)
DPO	Disabled Persons Organisation
DPR	Dewan Perwakilan Rakyat (House of Representatives)
EU	European Union
FGD	Focus Group Discussions
GDP	Gross Domestic Product

HR	Human Resource
HRD	Human Resource Department
HRP	Human Resource Provider
HUEM	Household Unincorporated Enterprises with at least some Market Production
IBDN	IBDN (Indonesia Business and Disability Network)
ICCPR	International Covenant of Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ILO	International Labour Organization
ICF	International Classification of Functioning
IDD	Intellectual and Developmental Disability
JICA	Japan International Cooperation Agency
JPP	Jaringan Pemberitaan Pemerintah (Government News Release Network)
Komnas HAM	Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)
KSM	Kelompok Swadaya Masyarakat (Community Empowerment Groups)
KUB	Kelompok Usaha Bersama (Joint business group)
La. L. Rev	Louisiana Law Review
LBK	Loka Bina Karya (Disability vocational and rehabilitative training centres)

LPEM-UI	Lembaga Penyelidikan Ekonomi dan Masyarakat (Institute for Economic and Social Research, University of Indonesia)
MDGs	Millennium Development Goals
MDVI	Multiple Disability with Visual Impairment
MoU	Memorandum of Understanding
NAP	National Action Plan
NAPHR	National Action Plan of Human Rights
NGO	Non-Government Organisation
Perda	Peraturan Daerah (Local Act/By Law)
PBK	Praktik Belajar Kerja (Internship).
PKS	Perjanjian Kerja Sama (Letter of Agreement),
PSHK	Pusat Studi Hukum dan Kebijakan (The Indonesian Centre of Law and Policy Studies)
REA	Research Ethics Application
RSBM	Rehabilitasi Sosial Berbasis Masyarakat (Community-Based Rehabilitation and Empowerment Service)
Sakernas	Survey Angkatan Kerja Nasional
SDGs	Sustainable Development Goals
SKK	Standar Kualifikasi Ketrampilan (Certificate of Skill Qualification Standard)

SME	Small to Medium Enterprises
UDHR	Universal Declaration of Human Rights
ULD	Unit Layanan Disabilitas (Disability Service Unit)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNS	Universitas Negeri Sebelas Maret (State University of Sebelas Maret)
UPSK	Unit Pelayanan Sosial Keliling (Mobile Social Service Unit),
UPT	Unit Pelaksana Teknis (Technical Implementation Unit)
WHO	World Health Organisation
YAKUM	Yayasan Kristen Untuk Rehabilitasi Umum (Cristian Foundation for Public Health)

Chapter 1 Introduction

1. Background

Indonesia is home to 21,930,529¹ persons with disabilities, where 11,224,673, or 51.8% of them are of working age.² However, this large number of persons with disabilities has not been followed by a sufficient protection of their rights, including the right to work. It remains a huge challenge for persons with disabilities to enter employment, mostly due to structural barriers. There is promising progress on disability development, such as the attempts of the recent law and policy to engage with the right-based approach, in particular the newest disability Act: Act Number 8 of 2016 concerning Persons with Disabilities (hereafter called as The Disability Act 2016)), following the ratification of the Convention on the Rights of Persons with Disabilities (hereafter called as CRPD) in 2011. Notwithstanding this, in the context of employment, there are still gaps in implementation on the ground, where the employability rate (labour force participation or employment rate) of persons with disabilities is still low compared to non-disabled persons.³ To fill this employment gap, informal/self-employment have been chosen by the vast majority of persons with disabilities. Unfortunately, this choice does not appear easier due to inadequate supports to date. To this end, substantive equality is essential to vindicate the right to work of persons with disabilities, to achieve de facto equality by removing the existing barriers.

This research draws on a substantive equality framework to address the rights of persons with disabilities as a disadvantaged group, with particular

¹Jaringan Pemberitaan Pemerintah/JPP, 'Catatan Pemerintah, Sebanyak 414.212 Penyandang Disabilitas Butuh Kerja.' < <https://jpp.go.id/humaniora/sosial-budaya/319416-catatan-pemerintah-sebanyak-414-222-penyandang-disabilitas-butuh-kerja> > accessed 20 July 2019.

² Ibid.

³ International Labour Organization, *Final Report: Mapping Persons with Disabilities (PWD) in Indonesia Labour Market* (ILO 2017) 14.

reference to access to employment in Indonesia. Substantive equality theory requires the use of positive measures to remove barriers facing disadvantaged groups. It aims to promote participation of disadvantaged groups, thus increasing their social inclusion. By contrast, the formal equality model has failed to achieve real equality for disadvantaged groups. The strong point of the substantive equality model is enhancing de facto equality of different human characteristics (that can lead to disadvantage) by using positive measures to remove barriers. In this way it respects the differences of disadvantaged groups.

Equality and non-discrimination are the key human rights principles underlying the Convention on the Rights of Persons with Disabilities (hereafter called CRPD). The CRPD is the first comprehensive UN treaty which specifically focuses on the human rights of persons with disabilities. The CRPD aims to empower persons with disabilities by enhancing their autonomy. The treaty was designed to vindicate the rights of persons with disabilities in all aspects of life. The general principles of human rights, as mentioned in the Article 3 of the CRPD, include an inherent respect for dignity, non-discrimination, full and effective participation and inclusion, respect for difference as a part of human diversity, equality of opportunity, accessibility, equality between men and women, as well as respect for the evolving capacities of children with disabilities.⁴ The human rights approach also pinpoints the state obligation to respect, protect and fulfill human rights.

Accordingly, a broader sense of substantive equality is well-captured in the Convention. The CRPD also enables positive measures to ensure the effective equality for persons with disabilities. The Preamble mentions 'more intensive support,'⁵ as well as 'necessary protection and assistance.'⁶ Article 2 identifies the importance of 'reasonable accommodation' to ensure enjoyment or the exercise on an equal basis with others of all human rights and fundamental freedoms. In addition, Article 5 (3) notes the state's obligation to take appropriate steps to ensure that reasonable

⁴ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 art 3.

⁵ *ibid* art 1.j.

⁶ *ibid* art 1.x.

accommodation is provided. Article 6 (2) also brings to light appropriate measures in relation to women with disabilities, and article 7 (3) highlights appropriate assistance for children with disabilities. These latter provisions recognise a 'double-discrimination' which may affect women and children with disabilities.

The CRPD outlines the practical steps to achieve de facto equality in diverse areas. It includes 'all necessary measures' in article 10 (the right to life), article 11 (protection and safety in emergency situations); and article 13 (Access to Justice). Further, there are terms of 'all measures,' 'all appropriate measures' (Article 16, 21, 25, and 26), 'effective appropriate measures' (Article 23), 'effective measures' (Article 20), and age appropriate accommodations (Article 13 access to justice). Additionally, Article 14 (2) highlights the provision of reasonable accommodation for those who are deprived of their liberty.

The Convention also provides detailed forms of positive measures in education, as mentioned in Article 21 (enabling access of information through various accessible formats). The need for various accessible formats is also highlighted in Article 24 (3.a-c), 24 (5). Positive measures in relation to the right to health are also pointed out in Article 25.b. With reference to the right to work, Article 27 of the Convention requires the state to take appropriate measures, including through legislation to safeguard and promote the right to work of persons with disabilities (Article 27).

Article 27 of the Convention highlights the importance of work and employment for persons with disabilities. Such employment must be "freely chosen and accepted" in the labour market.⁷ In addition, Article 27 imposes a duty on states to guarantee the implementation of the rights through some appropriate measures. Such measures include the prohibition of discrimination; protection of just and favourable conditions of work (including equal opportunities); ensuring the freedom to exercise labour and trade union rights; enabling effective access to employment; promoting opportunities for career advancement; and promoting opportunities for self-

⁷ *ibid* art 27 (1).

employment.⁸ States should also employ persons with disabilities in the public service as well as in the private sector; promote their work experience to the open labour market; and promote vocational and professional rehabilitation, job retention and return-to-work programmes.⁹ Alongside the previous measures, states parties should ensure that employment does not involve slavery or servitude.¹⁰

In sum, therefore, states must take appropriate steps to vindicate the right to employment of persons with disabilities (including legislation), and adopt appropriate policies and measures, including affirmative action, incentive schemes, and any other measures required.¹¹ The State, as a safeguarding body, also has obligations in relation to monitoring and reporting.¹²

The empirical findings of this research provide an understanding of the importance of substantive equality which contains salient tools of positive measures to redressing the identified barriers hinder persons with disabilities to participate widely in the employment. Analysing those structural barriers, the key strength of this research is in its engagement with cross-categories of the stakeholders encompass the governments, employers, persons with disabilities and their representative organisations, as well as related organisations have been dealt with this particular issue, therefore it could capture the real challenges on each sides thus feeding the recommendation to fill the existing gaps.

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⁸ *ibid* art 27.

⁹ *ibid*.

¹⁰ *ibid* art 27 (2).

¹¹ *ibid* art 27.

¹² *ibid* art 33 and art 35.

organizations have been dealt with this particular issue, therefore it could capture the real challenges on each sides thus feeding the recommendation to fill the existing gaps.

2. Research Questions

This thesis addresses the mainstreaming process of substantive equality in relation to the right to work of persons with disabilities in Indonesia. It examines the statutory development of laws and policies in Indonesia, in particular the implications of the ratification of CRPD by Indonesia in 2011 and the practical implementation on the ground. The challenging circumstances in Indonesia evoke questions related to how the state protects the right to work of persons with disabilities, and which factors influence its functioning and success. These considerations will be explored through the following questions:

- a. How has the ratification of the CRPD by Indonesia impacted on the legal policy framework that advances the right to work of persons with disabilities?
- b. To what extent does the legal policy framework adopted by Indonesia in the context of employment require substantive equality measures to fulfil the right to work of persons with disabilities?
- c. How effective has the employment policy framework adopted by Indonesia in advancing inclusive employment for persons with disabilities?

3. Aim and Objectives of the Research¹³

The full implementation of the CRPD is pivotal to the fulfilment of the rights of persons with disabilities. Following the ratification of CRPD by Indonesia, it should be established a further law to ensure that the provision of CRPD is implemented and has a meaningful effect in practice. To this end, the important milestone is the introduction of new domestic legislation on The

¹³ The aim is the overall driving force of the research and the objectives are the means by which you intend to achieve the aims, See Catherine Dawson, *A Practical Research Methods: A User-Friendly Guide to Mastering Research* (How To Books Ltd 2002) 56.

Disability Act 2016). The implementation of the law and policy should be assessed of how it helps persons with disabilities to achieve de facto equality. Ultimately, the thesis examines the real effects of the policy developments on the lives of persons with disabilities in particular to the right to work.

The aim of this research is to identify, to describe and to analyse the effect of the CRPD and the implementation of national laws and policies on the protection and fulfilment of the right to work of persons with disabilities in Indonesia. To this end, this research examines:

- a) The literature and debates on substantive equality measures to promote the employment of persons with disabilities.
- b) The current position of Indonesia relating to employment barriers preventing persons with disabilities from obtaining inclusive employment.
- c) The types of positive measures provided, and how they fit with the different articulations of discrimination on the employment.
- d) An analysis of the measures adopted and the potential steps that could be taken to enhance the right to work of persons with disabilities in Indonesia.

4. Structure of the Thesis

This thesis will firstly outline the research methodology. The next four chapters (Chapters 3 to 6) will highlight the theoretical framework underlying the thesis. Accordingly, the theoretical framework will be followed by the findings and analysis (Chapters 7-10). Chapter 11 will contain the conclusion and final recommendations.

4.1. Chapter 2 Methodology

This chapter explains the reasons and technicalities of the research, including the research methods employed. It also explores the experience of conducting the field research in Indonesia and outlines practical and other challenges faced by the researcher in the ground.

4.2. Chapter 3 Substantive Equality and Disability

This chapter explains the theoretical equality framework that upholds the equal participation of disadvantaged groups, in particular persons with disabilities, in the society. This chapter argues that substantive equality not only permits, but requires, positive measures to ensure de facto equality. Unlike other grounds of disadvantage, disability has specific features to address. The distinctive characteristic of disability is in its range of types and degree, which should lead to different measures of supports. Since formal equality has failed to overcome the issue of different features posed by persons with disabilities, hence substantive equality emerges as a breakthrough on this issue. Accordingly the use of positive measures is to enable the wide participation of persons with disabilities (as a disadvantaged group), thus building an inclusive society. Substantive equality can therefore be considered as the most appropriate model to address disability in relation and employment.

4.3. Chapter 4 Meaningful Work and Disability

This chapter argues that access to meaningful work is an essential aspect of human dignity. Work is important, not just from the economic point of view, but because it has a deeper meaning related to human dignity. Equal dignity benefits society by building cohesion and social inclusion. Therefore, meaningful work has a significant impact on the ability of persons with disabilities to participate in society. The chapter also argues that limiting the right to work of persons with disabilities (including not providing necessary supports to them) constitutes discrimination.

4.4. Chapter 5 The Right to Work in Article 27 of the UN Convention on the Rights of Persons with Disabilities

This chapter explains the right to work of persons with disabilities as outlined by the CRPD as rooted in human rights. Highlighting human rights, equality

and dignity become the soul of CRPD, in particular to preserving the right to work. This chapter clarifies the core contents of the right to work of Article 27 and its relation to the other articles of the CRPD. It is important to draw the essential substantive equality measures framework for persons with disabilities in the CRPD. The chapter argues that substantive equality measures should cover the full-range of employment, including the pre-employment, during employment, and post-employment stages. Further, self-employment measures should also be addressed in order to give more space to alternative work for persons with disabilities that takes informal economy into account.

4.5. Chapter 6 Indonesia: Disability Law and Policy Framework on the Right to Work

This chapter explains the historical context of the law and policy framework in Indonesia in particular relating to the protection on disability employment. The stigma of 'incapacity' associated with disability definitely led to discrimination. Although the medical model of disability has contributed to a 'charity-based approach,' that currently is still existing, this chapter argues that the CRPD has given a new spirit and hope to the disability movement in Indonesia through its paradigm shifting. The human rights-based approach of the CRPD, as a further development of the social model of disability, has drawn the attention of activists, to fuelling the anti-discrimination campaign and movement. This human rights framework has become a basic reference of the disability movement in Indonesia in advocating the rights of persons with disabilities. The development of law and policy in disability has been marked by the newest law, the Disability Act 2016), after a long battle of disability stakeholders across Indonesia. The Disability Act 2016 finally adopted a human rights-based approach that attempted to align with the CRPD.

This chapter also examines the political structure of Indonesia in shaping such law and policy, in particular relating to disability employment. It highlights the legislative reform process and the transformation of the

medical model into the human rights model of disability that have greatly impacted the major disability development in Indonesia.

4.6. Chapter 7 Disability and Barriers to the Employment

This chapter, based on qualitative findings, examines the implementation of the law and policy framework on the ground of disability employment in Indonesia, with particular reference to the structural barriers experienced by persons with disabilities. Overall, this chapter finds that the barriers can be divided into two major aspects: external and internal barriers. These barriers have indicated the lack of awareness across stakeholders thus leading to a shortfall in the implementation of the recent Disability Act 2016. The chapter argues that accessibility (including the accessibility of information) remains a major challenge to the fulfilment of the rights of persons with disabilities in relation to the right to work. Despite the clear rights-based approach as enshrined in the newest Disability Act, there are some issues on delivering these provisions into practice.

4.7. Chapter 8 Government Institutional Framework

This chapter, based on qualitative analysis, examines the impact of government institutional frameworks on disability issues, particularly in connection to the right to work. This chapter is more focused on the government context in relation to the roles and responsibilities. As noted in Chapter 7, there is a gap of implementation due to lack of awareness/understanding of the key stakeholders. In this institutional context, it leads to a lack of coordination among institutional bodies: among national level institutions (national to national), national institution and the local institution level (national to local), as well as among local level institutions (local to local). This chapter argues that coordination is a substantial challenge faced by the government nowadays, and that 'sectoral-ego' issues inhibit the synergy in driving effective disability policy. To some extent it leads to policy fragmentation and gaps in effectiveness. Furthermore, local government autonomy impacts to a high degree of

variation in disability policy implementation at the local level (depending on the available resources, including the knowledge and awareness of each local government). This generates fractures in implementation on the ground.

4.8. Chapter 9 Specific Measures Framework

Following the approach taken in General Comment No.6 (2018) of CRPD on equality and non-discrimination,¹⁴ this research divides 'positive measures' into two major aspects: 'specific measures' as a means of creating an advantage in favour an underrepresented or marginalized group, and 'reasonable accommodation' as an intrinsic part of substantive equality that should immediately applicable in individual cases. This chapter focuses on the use of 'specific measures' in Indonesia, both in formal (open) employment and the self-employment setting. The aim of positive measures is to achieve de facto equality. To this extent, specific measures, including 'affirmative action measures,' imply preferential treatment to address historical social exclusion. This chapter argues that there is a gap in the implementation of specific measures in Indonesia due to lack of awareness and weak law enforcement. This greatly reduces the effectiveness of these measures, regardless the involvement of non-state actors to help to fill the gap. Further, the specific measures also take self-employment measures into account.

4.9. Chapter 10 Reasonable Accommodation

This chapter focuses on the second aspect of 'specific measures:' reasonable accommodation. Because reasonable accommodation is an individual adjustment, this chapter argues that the type and degree of disability broadly impacts the appropriate type of reasonable accommodation required. Reasonable accommodation is not always costly (as usually presumed by the employers), so it is very important to address such

¹⁴ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No. 6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6.

misperceptions. There are a broad range of reasonable accommodation can be provided which best fit to each individual/situational case. The chapter also argues that psychosocial disability remains the biggest challenge in light of conferring reasonable accommodation due to the strong stigma associated with psychosocial conditions in Indonesia.

4.10. Chapter 11 Conclusions and Recommendations

This chapter summarises the primary conclusions based on the findings and analysis to answer the research questions. It then offers a number of recommendations to promote the right to work of persons with disabilities in Indonesia effectively, and identifies scope for further research in this particular related area.

Chapter 2 Methodology

1. Introduction

The focus of this research is on Indonesia, while the stakeholders involved includes policy makers, 'duty bearers' and 'right holders' of the right to work of persons with disabilities. The research addresses the legal and policy aspects of the right to work in accordance with the human rights norms enshrined in the CRPD.

2. Researcher's Background

I have been working in the National Commission on Human Rights Republic of Indonesia (Komnas HAM) since 2004 as researcher, until I took study leave on September 2015. My PhD is funded by the Government of Indonesia so that I am expected to contribute productively for Indonesia based on the expertise I gain. My role and responsibilities in Komnas HAM includes conducting research and studies on various themes related to human rights. These research and studies aim to produce recommendations to related institutions (mostly government institutions), in particular connection to law and policy, to amplify the implementation of human rights.

3. Outlining Human Rights Approach

My background in human rights law has driven me to look at things from a human rights perspective. Most of my time in Komnas HAM was spent in the Research and Studies Division. I have analysed legislation related to human rights at both national and local level. The themes I have been involved in are on the right to work, rights in work, right to education, right to health, right to housing/security of tenure, etc, which mostly relate to economic, social, and cultural rights. The vulnerable groups I have engaged with includes

women, workers/trade unions, children, indigenous groups and persons with disabilities. I have been involved in the national inquiry on human rights. Disability is one of the subjects I have been working on. I was involved in the initiative on the drafting of the National Disability Act by Komnas HAM, in cooperation with other stakeholders such as government bodies and Disabled Persons Organisations (DPOs). In 2010-2013, our team worked to mainstream the human rights perspective into disability. We adopted the soul of the CRPD (ratified by Indonesia in 2011) to shift the paradigm from 'medicalized' model of disability into a human rights model. The Bill was then submitted to Commission III in the House of Representatives in 2013 to add and strengthen other proposals submitted by DPOs, civil society and other stakeholders. After around three years of discussion and debate in parliament, these initiatives were successfully enacted into a recent The Disability Act 2016. This experience on the human rights field broaden my points of view on the human rights perspective in particular on looking at the disability issue. Accordingly, human rights perspective is essential to highlight the equality as a noble principle of human rights.

4. Empirical Research: Selection of Qualitative Methods

The primary methodology employed by this research is qualitative; hence, it does not require a particular sample size nor generalisable. Qualitative data have been collected from various stakeholders to record their knowledge, understanding and experiences. Due to time and budget limits, a small number of representatives of each target group was selected. Besides analysing the primary data obtained in the field research, this study adopts doctrinal methods. It investigates legislation and related legal documentation to outline the overall context on the statutory analysis of Indonesia law and policy framework.

A qualitative research method was chosen both for the genuine insights it could offer¹ and due to limited resources. A quantitative research is not

¹ Catherine Dawson, *A Practical Research Methods: A User-Friendly Guide to Mastering Research* (How to Books Ltd 2002) 14–15.

suitable because it would have required a very high budget considering the population and geographic spread location of Indonesia. The planning and research design stage involved several decisions and assessments, including proposed data collection that fitted with the overall situation of the research² in order to deliver the research at a given time and allocated budget.³ The key aim was to address the researcher's five major planning concerns, identified by Bickman and Rog⁴: site selection, authorisation, the data collection process, accessibility, and other support needed,⁵ in a manner that aligned with the nature and purpose of the project in Indonesia. In terms of approach, a key choice was between inductive and deductive reasoning. Inductive reasoning (prevalent in qualitative research) proposes a specific observation, followed by a search for a pattern based on the observations or information being studied.⁶ On the other hand, deductive reasoning (as a strong feature of quantitative research) means to answer the social phenomenon by thinking on the known facts, based on experience or knowledge, insights, theoretical approach or principles that can be applied to the phenomenon.⁷

In this research, the qualitative approach suggested a mostly inductive method, with additional use of deductive methods in some instances, such as the use of related conventions and the acts, especially the CRPD in terms of international law, and the Disability Act 2016 in national law from which derived the certain key factors of the research underlying the interview guidelines. Considering Indonesia as a big organization, to some extent this research has also adopted the organizational diagnosis⁸ in particular to capture the analysis of institutional frameworks.

² Leonard Bickman and Debra J. Rog, 'Applied Research Design: A Practical Approach' in Leonard Bickman and Debra J Rog (eds), *The SAGE Handbook of Applied Social Research Methods* (SAGE Publications 2008) 3.

³ Ibid.

⁴ Ibid 27.

⁵ Ibid 27.

⁶ Richard E Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (Sage 1998) 30.

⁷ Ibid.

⁸ Michael I. Harrison, 'Organizational Diagnosis' in Bickman and Rog (n 2) 318.

I have conducted a series of interviews and focus group discussions (FGDs) in delivering the qualitative methods to obtain the primary data. It is important to get the information from the firsthand sources to map the real genuine problems in practice. Additionally, to sharpen the information from the informants there were numbers of site visits that aimed to enrich the information on the ambience and circumstances directly on the ground.

4.1. Locus and Setting

The study took place in Indonesia. Owing to the political structure of Indonesia (outlined in chapter 6), data was gathered at two different levels: the national level and the local/provincial level. I took two purposive samples in the provincial level: West Java Province and Special Region of Yogyakarta (DI Yogyakarta) Province due to time and resources constraints. The process of gaining data by interviews, the focus group discussion, and site visits (quick observation to the stakeholder's places) were conducted in person, with the exception of one interview where the interviewee requested to conduct the interview by phone. The interviews generally took about 30 minutes to 2 hours, while the focus groups were mostly took around 2 to 3 hours. The site visits generally lasted about 1-2.5 hours. The place and time of interviews were chosen to be as convenient as possible to the interviewees, being accessible and affording sufficient privacy to maintain confidentiality, as well as safe for the researcher.

4.2. Method of Analysis

A thematic analysis was adopted to analyse the collected qualitative data. This is employed to identify, analyse, and report patterns (themes) as well as to organize the data set and to interpret the various aspect of research topics.⁹ Boyatzis outlines the process of thematic analysis by firstly noting the perception of patterns in seemingly random information. This can then

⁹ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative research in psychology* 77, 84.

be processed in three major steps: classifying or encoding the pattern, labelling or describing the pattern, and interpreting the pattern.¹⁰

Braun and Clarke highlight the importance of organizing and describing a data set by determining themes and prevalence in a number of ways. The prevalence of the data set will form the themes that captured important elements responding to the research questions. The identified themes were representing patterns of the data.¹¹ Those themes have been set up to find repeated pattern of meaning.¹² This can be done in an inductive way (bottom-up), or in a theoretical or deductive approach (top-down).¹³ An inductive way to shape themes and pattern is data-driven (as it purely comes from the informants or interviewees), whereby the researcher should not bear any of theoretical interest. However, the researcher cannot be fully free of the theoretical and epistemological interests.¹⁴ On the other side, a theoretical or deductive thematic analysis is analyst driven (that is, driven by the pre-existing theoretical framework of the researcher).¹⁵ It is difficult to choose of the 'extreme poles' above, therefore this research sought to negotiate between the two approaches mentioned. The use of thematic analysis employed by the qualitative research method helps to mediate between those two poles, as this method allows the openness and flexibility (including conceptual flexibility) to perceive the pattern.¹⁶

In this research, a thematic analysis is used to capture the pattern of the qualitative information on the implementation of the right to work of persons with disabilities in Indonesia, with specific regard to the current use of positive measures as tools of substantive equality. The data set was analysed using NVivo qualitative data analysis software. The use of NVivo was limited to identify the pattern or themes of the qualitative information collected. The thematic analysis can be relied on observing a person, an interaction, a

¹⁰ Boyatzis (n 6) 3–4.

¹¹ Braun and Clarke (n 9) 79.

¹² Ibid 86.

¹³ Ibid 83.

¹⁴ Ibid 84.

¹⁵ Ibid

¹⁶ Boyatzis (n 6) 8.

group, a situation, and organization or a culture.¹⁷ Despite the commitment to proceed based on a data-driven as in inductive analysis, however, the unavoidable fact is that the theoretical framework of equality shaped the pattern of the research guidelines (including interview guides). Therefore, the flexibility of the thematic analysis makes it more applicable in practice. Notwithstanding the thematic analysis permits to transform the qualitative information into quantitative data¹⁸ this research is not using the quantitative data, hence in this sense, a thematic analysis is employed to capture the pattern/themes on identifying the potential steps to removing barriers.

4.3. Data Collection

The data collection was conducted in July-August 2017 following the granting of Research Ethical Approval (REA). In this research, both primary and secondary data were analysed. With regard to the primary data, this research employed interviews, focus groups and site visits to obtain the direct experience of the informants regarding the right to work of persons with disabilities in Indonesia. The interview arrangements explored the experience of the informants in the delivered form of semi-structured questions. The semi-structured interviews enable the researcher to learn about critical areas which have not been assessed within the 'standardized questionnaires.'¹⁹ The exploration of themes can therefore be optimized. Further, information from interviews and focus groups has been compared and contrasted.²⁰ Informants were drawn from key stakeholder categories: policy makers, 'duty bearers' and 'right holders.' These categories include government ministers, members of parliament, employers and employer associations, DPOs and their representatives, and persons with disabilities (physical, sensory, intellectual and mental/psychosocial disabilities).

¹⁷ *ibid* 4–5.

¹⁸ *ibid* 4.

¹⁹ Michael I. Harrison, 'Organizational Diagnosis' in Bickman and Rog (n 2) 336.

²⁰ Dawson (n 1) 28.

4.4. Informants

The research involved 22 interviews, 6 FGDs, and 9 site visits. The total number of informants was 71 persons. Informants (both at National and Local level) were drawn from 8 categories:

- (1) Government
- (2) Parliament
- (3) Komnas HAM as National Human Right Institution (NHRI)
- (4) Employer/employer's association
- (5) Persons with disabilities, representatives from Disabled Persons Organisations (DPOs), and related Non-government Organisations (NGOs).
- (6) Small to Medium Enterprises (SMEs) run by persons with disabilities
- (7) ILO Indonesia
- (8) Job finder portal for persons with disabilities

This research anonymised the informants, therefore coding is used to represent each informant. As listed above, the coding represents each category the informants come from. However, with reference to the government's institutions as well as parliament, it was clearly stated to outline the institutional role and responsibility on engaging the disability issues.

Table 2.1.
Informants Coding by Categories

No.	Category	Coding	
		Institution	Informants
I. Government (27 Informants)			
1. National Level (Central Government) (CG)			
		Ministry of Social Affairs (S)	CG-S1 CG-S2
		Ministry of Manpower (M)	CG-M1
2. Local/Provincial Level (LG)			
	2.a. West Java (WJ)	Office of Manpower West Java Province	LGWJ-M1
		Office of Social Service West Java Province	LGWJ-S1
			LGWJ-S2
			LGWJ-S3
			LGWJ-S4
			LGWJ-S5
			LGWJ-S6
	2.b. DI Yogyakarta (Special Region of Yogyakarta)	Commission of Disability Special Region of Yogyakarta Province	LGSRY-S1
		BLKPP (Centre for Vocational Training and Productivity Improvement) DIY Province	LGSRY-M1
			LGSRY-M2
		Office of Manpower	LGSRY-M3
		Bapel Jamkesos (Social and Health Insurance Agency)	LGSRY-S3
3. Rehabilitation and Vocational Training Centre (SVC)			
	3.1. Centre of National Level		
	a. BBRSD, Centre for Rehabilitation and Vocational Training for Physical Disability, Cibirong	Head	CG-SVC-Cb1
		Sewing Instructure	CG-SVC-Cb2
		Screen and Offset Printing Instructure	CG-SVC-Cb-3
		IT Instructure	CG-SVC-Cb4
	b. BBRSD Dr. Suharso, Centre of Rehabilitation and Vocational Training for Physical Disability Central Java (head and managers)	Head	CG-SVC-So1
		Staff1	CG-SVC-So2
		Staff2	CG-SVC-So3

	c. BBRSBG Kartini Temanggung, Centre of Rehabilitation and Vocational Training for Intellectual and Mental Disability. Temanggung, Central Java	Manager1	CG-SVC-Tg1
		Manager2	CG-SVC-Tg2
		Manager3	CG-SVC-Tg3
	3.2. Centre of Provincial Level		
	Vocational Training Centre (Provincial level) BRSPD Cimahi, West Java	Head	LG-SVC-Ct1
	Social Service Department of DI Yogyakarta Province (LBK) DI Yogyakarta	Manager1	LG-SVC-Yk1
II. Parliament (Par) (1 informant)			
	Central Parliament (House of Representative)	<i>Commission VIII: religion, social affair and women's empowerment</i>	CG-Par1
III. Komnas HAM (National Human Rights Institution/NHRI) (1 informant)			
		Researcher in charge on the Disability Issue	CG-NHRI1
IV. Enterprises/Association of Employer (Em) (6 informants)			
	Business Association (As)	Member	Em-As1
	Company "X"	Manager1	Em1-Company X
		Manager2	Em2-Company X
	Company "Y"	Director	Em-Company "Y"
	Human Resource Provider Company (HRP)	Founder	Em1-HRP
		Manager	Em2-HRP
V. Disabled Persons Organisations (DPO), NGO, and Persons with Disabilities (29 Informants)			
	DPO1 (Blind)	Representative1	DPO1-Blind1
		Representative2	DPO1-Blind2
	DPO2 (MDVI)	Representative1	DPO2-MDVI1
	DPO3 (Deaf)	Representative1	DPO3-Deaf1
	DPO4 (Intellectual Developmental Disability)	Representative1	DPO4-IDD1
	DPO5 (Deaf)	Representative1	DPO5-Deaf2
		Representative2	DPO5-Deaf2

	DPO6 (Psychosocial Disability)	Representative1	DPO6-PD1
	DPO7	Representative1	DPO7-1
		Representative2	DPO7-2
		Representative3	DPO7-3
		Representative4	DPO7-4
		Representative5	DPO7-5
		Representative6	DPO7-6
		Representative7	DPO7-7
	DPO8	Representative1	DPO8-1
	DPO9	Representative1	DPO9-1
		Representative2	DPO9-2
		Representative3	DPO9-3
	DPO10	Representative1	DPO10-1
	DPO11	Representative1	DPO11-2
		Representative2	DPO11-2
	DPO12	Representative1	DPO12-1
	DPO13	Representative2	DPO13-1
	NGO1	Representative1	NGO1-1
	Persons with Intellectual Developmental Disability (IDD)	Person 1	IDD-1
	Worker (1) with disability in company X	Worker 1	Worker1 Company "X"
	Worker (2) with disability in Company X	Worker 2	Worker2 Company "X"
	Disabled beneficiaries of the Vocational Rehabilitation Centre	Beneficiaries	SVC-Cb1
VI. Small Medium Enterprise (SME) by Persons with Disabilities (4 informants)			
	SME1	Founder1	SME1-1
	SME2	Founder1	SME2-1
	SME3	Founder1	SME3-1
	SME4	Founder1	SME4-1
VII. ILO Indonesia (1 informant)			
	ILO	Programme Manager	ILO-1
VIII. Job Finder Portal for Persons with Disabilities (JFPor) (2 informants)			
	Job Finder Portal	Founder1	JFPor-1
		Founder2	JFPor-2
TOTAL			71 Informants

Overall, the interviews conducted in person was to 22 informants, while the rest (49 informants) were in the six Focus Group Discussion (FGDs) as follows:

Table 2.2.
Focus Group Discussions (FGDs)

FGD	Place (City)	Category	Number of Informants
1	Jakarta	DPOs, NGOs and Human Resource Provider	11
2	Bandung-West Java	DPOs and Persons with Disabilities	12
3	Bandung-West Java	Local Government (Office of Social Affairs, including Rehabilitation and Vocational Centre)	6
4	Yogyakarta (Special Region of Yogyakarta)	Local Governments, DPOs, and SMEs	14
5	Temanggung-Central Java	Service Provider: Rehabilitation and Vocational Centre of BBRSBG (Intellectual Disability)	3
6	Surakarta-Central Java	Service Provider: Rehabilitation and Vocational Centre of BBRSD (Physical Disability)	3
Total			49

Site visits were to four vocational rehabilitation centres,¹ two companies,² and three SMEs run by persons with disabilities in DI Yogyakarta. Legal and Policy Analysis

5. Legal Policy Analysis

The research design incorporates a detailed legal policy and analysis of the Indonesian context. It was essential to outline the social and political context on the current practice. I analyse the statutory legal framework in relation to human rights and specifically on the right to work of persons with disabilities in the various sources of law: the Constitution, related acts, president

¹ BBRVBD Cibinong; BBRSP Cibabat West Java; BBRSD Dr. Suharso, Centre of Rehabilitation and Vocational Training for Physical Disability Central Java; and BBRSBG Temanggung Central Java.

² Company "X" (Bekasi West Java) and Company "Y" (Bandung West Java).

regulation, as well as government regulation. However, there were a number of challenges in delivering the Indonesian context into English. *Firstly*, Indonesia has its own unique social and political structure shaping the context of the right to work and disability. For example, the 'informal' sectors may not really appear in equivalent ways in more developed countries. As discussed in Chapter 6, the informal sector is a significant driver of the Indonesian economy. *Secondly*, when analysing legislation (law/Acts) I found not all the legislation has an official translation in English. Some Acts have an unofficial translation (for example coming from a body such as the ILO, UNESCO, etc), while some cannot be traced at all. In this situation, I tried to translate as best I could to deliver the meaning in the relevant context. *Thirdly*, there are some words from English that have been used or adapted in the disability field in particular in reviewing rights enshrined in the constitution. For example, the use of 'affirmative action' in the decisions of the Constitutional Court on the rights of persons with disabilities generally means a positive or preferential treatment of any kind. The term 'affirmative action' has been understood commonly in this way for a long period of time especially in the human rights field when it deals with the rights of vulnerable groups. These things were challenging to contextualize the specific circumstances of Indonesia to a general theoretical framework of a universal context.

6. The Experience of Conducting Field-Research in Indonesia

Following the research design outlined in my Research Ethics Application (REA), I arranged the technicalities such as identifying the informants and approaching them to being able to participate to my research. I received very helpful assistance from my office: Komnas HAM to link with potential informants, in particular officers of government institutions as well as the employers (companies). It was not easy to interview this group due to common bureaucratic matters. It is especially because I only had around six weeks field-trip to collect the data. To this end, Komnas HAM provided a letter of invitation to the informants and introduced me as researcher in the

institution who would like to interview them. This was a great help in progressing the research.

Further difficulties arose due to cultural factors. Although I already started to contact potential informants far before my field-trip, people in Indonesia are rarely use email as a daily habit. Therefore, when I emailed them, I had to make sure the recipients had received my email and replied. If not, I needed to contact them by other channels of communication such as phone or social media. I already had some contacts with DPOs and experts in the field as I have been engaged in this field for many years.

Obtaining informed consent was a major concern. To this end, I offered possible accommodations (such as a tape recorder to record the informed consent, an easy to read version of informed consent, as well as individually tailored interviews, etc) to enable particular groups to participate, especially those with intellectual disabilities and mental/psychosocial disabilities. It is important to include a range types of disabilities therefore each of them can share their experience in light of inclusive and participatory research. One of their problems is not only that they are likely to be excluded in employment, but that they are also excluded indirectly from the research due to insufficient supports. However, their voices are essential to draw the actual picture of the real situation. The involvement of each group of disabilities would give the benefit of their real presence in the research. This is important because people with disabilities often have decisions made on their behalf, without their input. This is the reason for the slogan of "*nothing about us without us*,"³ widely used by disability movements around the globe, that is going to ensure participation in each stage of life.

When contacting informants, I made sure to explain my research and what I am going to do with it. I also sent them a bundle of information of my research, including an 'easy to read' version. In the event, although some informants could not attend (either in the interview or in the FGDs) due to technicalities, none of them rejected me because of the consents. The other

³ James I Charlton, *Nothing about Us Without Us: Disability Oppression and Empowerment* (University of California Press 1998) 3.

challenge, as noted in Chapter 6, was the geographical location of the research. During my research trip, I visited spread location of four provinces: DKI Jakarta, West Java, Central Java, and the Special Region of Yogyakarta (DI Yogyakarta). These four locations were quite far one another. For example, to get to Yogyakarta from Jakarta (where I was based) required a flight of about one hour.

6.1. The Process of Data Collection

The data collection was divided into two categories: interviews and focus group discussions. The interviews were conducted one to one in a selected convenient place (either in the informant's office/place or another agreed location). Six focus groups were conducted. Focus groups were employed for reasons of efficiency as I could meet several people from a particular category at once. There were positive and negative sides to each data collection method. Focus groups offer multiple perspectives as participants spoke about their own experiences and shared their thoughts to strengthen the ideas they explored. However, the limited time made it difficult to ensure that everyone had an equal chance to talk about the discussion theme. Mostly I started the rounds of discussion referring to certain question, and participants responded to my question one by one. After each participant, sometimes there was an addition from other participant to share particular responses. I tried to shape the discussion to be 'livelier' in a communicative way. If there was information that I needed to follow up in person, I requested an extra time to certain person to explore the particular question in the individual interview after FGD. For example, I enquired further into the experience of a person with an intellectual disability when she applied for a job and experienced humiliation in the interview process. I also asked for more detail from another participant who told the story of how colleagues in her organisation (DPO) suffered illness due to night shift working.

With regard to the individual interview, the positive side of it was that I could explore more of the experience and thoughts of the informants due to individual time (which could be one to three hours), but indeed it took more

time to arrange these interviews in light of time and budget. Therefore, individual interviews were arranged only for those who could not easily attend the FGD setting invitation).

All interviews and FGDs were held in Bahasa (the official language of Indonesia). Accordingly, I had to translate all the interviews and focus group transcriptions into English. This process took considerable time as I am not a professional translator and had to be extra careful in delivering the message of each discussion to capture the substantial meaning and context.

6.2. The Interview and Focus Group Process

Although I have been engaged with the issue of disability for some time, both professionally and personally, the experience of this research thesis gave me a clearer picture of disability in Indonesia. When conducting previous human rights research, I did it with the team, so I had my own part to do and the analysis was then combined with the other findings of the team. But for this research I did it all by myself so I could record all details about what I have been researching. For example, I could capture the real feeling when a participant who uses a wheelchair told me about his irritating experience on attending an SME Exhibition at the invitation of a local government. He had to climb the stairs by crawling up on his bottom when he found he had no access to the event (which was held in the upper floor of a small hotel, with no lift provided). When he complained, one of the officers asked him, with no empathy, why he was attending instead of sending a non-disabled person who had no problem accessing the venue. This kind of story helped me to draw the real picture of the rights of persons with disabilities on the ground.

6.3. Quick Site Visits/Observation.

The field work included a number of site visits to rehabilitation centres and vocational training centres. There, I witnessed directly what kind of services and programmes were provided, and how the beneficiaries enjoy the services. Some of them also demonstrated their skills, such as crafting,

sewing, drawing, making splash batik (a traditional manual printed fabric of Indonesia) and even personal life skills such as washing dishes (particularly persons with intellectual disabilities). I also visited places where persons with disabilities worked on a self-employed basis. These included a honey trader, the producer of souvenirs from stingray fish skin, and the motorbike transportation provided by persons with disabilities. I even used their service to ride a motorbike for about 1.5 hours going around the area in Yogyakarta City to catch on my informants of the research. It was an interesting experience to feel the service they provided. Accordingly, by visiting their places, I could feel the ambience of their workplace and obtained a first-hand sight on their project thus correspond to outline the overall implementation of the right to work in particular to the self-employment measures.

7. Personal Experience on Disability Involvement

I feel very related with the issue of disabilities where the ‘enlightenment’ came from my own family. My mother is blind, and I see how difficult for her to access public services and how important human rights are for her. My mother’s impairment started from elementary school. She could not even complete her elementary school due to her situation. There was a lack of support to continue her school. It took around 15 years until she was completely blind. We, her children, assist her to go everywhere. This situation makes her spending most of her time at home unless we assist her to go out.

Besides my experience with my mother, my husband got a stroke (*haemorrhagic stroke*/bleeding in the left side of his brain) in May 2011, after which he used a wheelchair for a couple of months. After intensive physiotherapy, he was able to put off the wheelchair. He then moved to use crutches to support him walking until the present time. This experience shaped my understanding and drove me to conclude how difficult it is for persons with disabilities to enjoy their rights as well as to access public services

Chapter 3 Substantive Equality and Disability

1. Introduction

This chapter examines the need of positive measures to achieve de facto equality for persons with disabilities, particularly in the employment field. This chapter begins by outlining the important role of equality principles in addressing the issue of injustice and unfairness. It then scrutinizes the ability of different models of equality to achieve a social inclusion. To this end, I argue in favour of a substantive equality model as more corresponding with disadvantaged groups because it successfully cherishes the different characteristics attached to disadvantaged group and assists them in removing barriers. Substantive equality emphasises the removal of barriers through positive measures. This chapter also captures different articulations of positive measures as a means to removing barriers, then limits the use of this specific term of positive measures for the purposes of this research as aligned with the CRPD.

2. Equality: Addressing Injustice and Unfairness

The concept of equality is essentially linked to a particular conceptualization of justice. It assumes that every person in a community should be equally entitled to social goods and advantages without discrimination. Rawls contends that justice can be seen as fairness in the context of the genesis of equality:⁴

Why pursue fairness? Because fairness is an essential component of justice. And homo sapiens is so constituted that unjust treatment offends not just its victims but its bystanders as well. Only in a setting where fairness prevails can we manage to live satisfying lives.⁵

⁴ John Rawls, *A Theory of Justice (orig Edn)* (Harvard University Press) 11.

⁵ Nicholas Rescher, *Fairness: Theory and Practice of Distributive Justice* (Transaction Publishers 2002) 15.

The word 'justice' becomes a social norm. Some additional questions include: 'What is considered just?' 'Justice to whom?' 'What if justice for one individual requires injustice for others?' Answering these questions, Rawls, argues that 'justice' can be overruled to avoid higher injustice.⁶

For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.⁷

In equality theory, substantive equality (that focuses on removing barriers faced by a disadvantaged group) corresponds closely to 'justice' in terms of raising the social participation of the disadvantaged group. In line with what is conceived by Rawls, it is possible to avoid higher injustice to the disadvantaged group. Disadvantaged groups, unlike others, may need more assistance, more facilities, and even more accommodation as a means of removing barriers. This could be seen as an 'injustice' by non-disadvantaged groups as it amounts to preferential treatment or 'discrimination' in favour of disadvantaged groups. Non-disadvantaged groups could therefore perceive this situation as unfair as it would reduce their opportunities. However, like Rawls wrote: "*an injustice is tolerable only when it is necessary to avoid an even greater injustice,*"⁸ means that it is 'tolerable' to confer a preferential treatment to avoid even greater 'injustice' to disadvantaged group. In this situation, giving similar treatment will even cause higher injustice.

Allocating persons with disabilities a favourable treatment that accommodates their needs to participate in social life may sometimes require a higher budget compared with what has been allocated to non-disabled persons. However, an imbalanced budget in itself cannot be regarded as an injustice as such, otherwise the disadvantaged groups cannot participate due

⁶ Rawls (n 4) 3–4.

⁷ *ibid.*

⁸ *ibid.*

to the obstacles they faced.⁹ Rawls highlights that the main object of justice is to distribute fundamental rights and duties, as well as share the advantages.¹⁰ Essentially, ensuring the distribution of advantage equally is the most important aim of justice. In this model, accommodation will enable participation. Thus, Rawls showed that “*justice as fairness society is interpreted as a cooperative venture for mutual advantage.*”¹¹

Equality is commonly construed as ‘being treated similarly.’ History shows how people revolt to address inequality. Such upheaval occurs as a battle against unfairness and in order to fight their social advantages. This awareness rises with a strong sense of social exclusion. Peter Westen explicates equality as an ‘undeniable’ and ‘unchangeable moral truth.’¹² It can be drawn from the common social norms in which equality is the virtue of most civilizations, where people are agreed on the shared moral truth for the sake of their own wellbeing.

In a broader sense, equality of opportunity is endorsed to distribute particular social advantages. It provides an equal chance to all individuals to access particular advantages. Rawls contends that through equality of opportunity no one will be left behind, arguing that meritocratic society as not in line with the principles of justice,¹³ because it is likely disregard for the specific characteristics of disadvantaged group which need a certain accommodation in order to participate in the society.

Justice is an essential part of law. Pound refers to “justice according to law” in supporting individuals.¹⁴ Likewise, Harris asserts that justice is a measure of law’s virtues.¹⁵ Nevertheless, he argues that justice could lead to conflict

⁹ *ibid* 4.

¹⁰ *ibid* 7.

¹¹ *ibid* 83.

¹² Peter Westen, ‘The Empty Idea of Equality’ (1982) 95 *Harvard Law Review* 537-596, 547.

¹³ Rawls (n 4) 106.

¹⁴ J. W. Harris, *Legal Philosophies* (2nd ed., Butterworths 1997) 278.

¹⁵ *ibid* 279.

due to different interests of each parties¹⁶ These ideas play a crucial role in developing an understanding of the role of justice in social arrangements.¹⁷ The concept of social justice, in terms of “allocating all the good things of life,”¹⁸ is aligned with the essence of equality. Substantive equality is an attempt to achieve a just distribution of advantages to each member of society, notably to those disadvantaged groups. It persistently looks at whether the disadvantaged group can access social goods to enable them to participate in society. Equality not only highlights the importance of sharing social goods, but also emphasizes how those social goods will be allocated.

3. Non-discrimination and Model of Equality

The legal foundation of non-discrimination measures can be found in international human rights law outlines the prohibition of discrimination of any kind.¹⁹ Additionally, equality and non-discrimination are interconnected with human dignity.²⁰ In the particular context of disability, a discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of human person.²¹ Accordingly, the notion of discrimination and equality has a complementary relation as equality has been conceptualized to combat discrimination.

3.1. Direct and Indirect Discrimination

Discrimination is commonly divided into direct discrimination and indirect discrimination. Direct discrimination means treating people differently or less favourably than other person because of a particular characteristic.²² Indirect

¹⁶ *ibid.*

¹⁷ *ibid* 280.

¹⁸ *ibid.*

¹⁹ Universal Declaration of Human Rights (Adopted 10 December 1948) UDHR art 1-2.

²⁰ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6' para 4.

²¹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 Preamble (h).

²² Marguerite Bolger, Claire Bruton and Cliona Kimber, *Employment Equality Law* (Thomson Reuters (Round Hall) 2012) 12.

discrimination occurs where a particular group is disadvantaged by an apparent neutral condition or requirement which is harder for them to meet in practice.²³

Indirect discrimination looks therefore to substantive equality rather than formal. It recognises that treating individuals in the same manner...might create inequality because of differences between individuals exhibiting particular protected characteristic.²⁴

Indirect discrimination is sometimes not regarded as discrimination, as it is not seen as a clearly stated and 'open' discrimination. The fact that the certain rules can hinder any protected group to access the certain advantage. A 'no-dog' rule in a café can be an instance of indirect discrimination, where this rule can hinder a blind person from entering the premises.²⁵ Accordingly, imposing certain requirements may affect the ability of members of a particular group to participate. In the context of employment, an example of indirect discrimination might be job requirements such as 'a person who is physically and mentally healthy.'²⁶ In fact this requirement is likely to have a free interpretation where in some cases it is meant by the employers as 'not posing a disability.' This requirement may hinder persons with disabilities from participating in the selection process, as at some extent, they are considered as not qualified 'by definition.'

To this end, it is essential to consider both types of discrimination in order to ensure the participation of disadvantaged groups. Not only direct discrimination needs to be addressed, but the unseen indirect discrimination should also be combatted. As discussed below, a formal model of equality can only deal with direct discrimination (and even then, only in some circumstances), while a substantive model can also address indirect discrimination by requiring the removal of barriers.

²³ *ibid.*

²⁴ *ibid.* See also Forshaw & Pilgerstorfer, 'Direct and Direct Discrimination: Is there something between' (2008) *Industrial Law Journal* 347-364. 351.

²⁵ Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Bloomsbury Publishing 2008) 132.

²⁶ This instance have commonly appeared in Indonesia including in the public sector job opportunity, therefore it was being complaint by disability movement to abolish an indirect discrimination on the job requirements. See.<<https://www.idntimes.com/news/indonesia/aldzah-fatimah-aditya/penyandang-disabilitas-soroti-syarat-sehat-jasmani-dan-rohani-cpns/full>> accessed 13 September 2019

3.2. Formal Equality

Formal equality emerges as the notion of treating people similarly, regardless of who and what they are, as long as they are in similar situations. This model of equality is derived from Aristotle in his famous quote: “*likes should be treated alike and unlikes should be treated unlike proportionally to their unlikeliness*”²⁷ It was then known as ‘the sameness approach,’ ‘the symmetrical approach’ or the ‘formal equality model.’²⁸ Marguerite Bolger argues:

This model of equality is premised on the idea that there are no important and immutable differences between individuals that justify their different treatment. Therefore, all legal and other distinctions based on gender, race, religion and so on should be eliminated.²⁹

Under the symmetrical approach, all individuals, should be treated similarly as long as they are in the similar situation. In fact, there are certain circumstances where individuals are assessed as dissimilarly situated, therefore they can be treated dissimilarly (in most cases, less favourably). In this sense, potential discrimination emerges. The formal equality model does not reflect well the real circumstances in which different characteristics exist, that is, the diversity of human beings. In addition, people may differ in their own characteristics, such as gender, race, disability, and religion. These types of different characteristics should be considered to respect diversity, and it may require particular forms of favourable treatment. For instance, women may require maternity leave, and persons with disabilities might need preferential treatment to accommodate them to employment. The sameness approach would therefore lead to unfairness to those who have particular characteristics. Hence, formal equality is problematic. There should be a different/preferential treatment to the disadvantaged groups, such as disabled persons, enabling their access to gain equal advantages as non-disabled.

²⁷ Bolger et al (n 22) 1–2.

²⁸ Ibid.

²⁹ ibid 2.

A race, for instance, may be unfair to those participants who are not in 'the same situation' to run (e.g. those who have a physical disability compared to non-disabled). The formal equality model assumes that all individuals are equally able to compete and participate, but ignores specific features such as disability. The formal equality model, which is closely linked to a meritocracy approach, is not compatible with the real life where there are many various characteristics of individuals, and many variations in social circumstances. Some people might need a different treatment in response to their particular differences. Meritocracy assumes that everyone should compete in the exact same manner, and that the 'best person will win;' it does not consider differences in people's particular situations.³⁰

Westen argues that equality needs refer to moral standards, or it will be meaningless.³¹ Accordingly, moral likeness is existed in the categories have been defined.³² In light of standard and category, equality always requires an element of comparison: to whom should someone be equal? However, comparison is problematic. From the feminist perspective, MacKinnon highlights that the male is mostly used as the standard to make comparisons.³³ In this regards, Sandra Fredman concludes that formal equality involves at least four sets of problems:³⁴ *First*, when are the two individuals are relevantly alike? In some cases, treating them differently is not considered as discrimination depending on the reasons of the distinction in particular considering a specific and relevant situation.³⁵ *Second*, in the relative principle "two similarly situated people are treated the same,"³⁶ it remains unexplained whether they should be treated equally badly or equally well.³⁷ Third, a comparator becomes a shortfall of formal equality. A comparator is usually associated with the dominant norms (in terms of

³⁰ Neal E Devins and Davison M Douglas, *Redefining Equality* (Oxford University Press 1998) 53.

³¹ Westen (n 12) 547.

³² Devins and Douglas (n 30) 53.

³³ Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 34.

³⁴ Sandra Fredman, *Discrimination Law* (2nd ed., Oxford University Press 2011) 8.

³⁵ *ibid.*

³⁶ *ibid* 9.

³⁷ *ibid* 9.

gender, culture, religion, ethnicity or sexuality).³⁸ *Fourth*, the issue of equality is on the treatment of difference, that means only “likes” will be treated equally. In this sense, the difference (such as specific characteristics) is disregarded.³⁹ These limitations of the drawbacks of equality narrow the ability of formal equality to address the disadvantaged group, particularly in removing the existing barriers.

3.3. Substantive Equality

The inability of the formal equality model to address the wide variety of human characteristics is eventually caught by the substantive equality approach. Substantive equality enhances the social participation of different groups by accepting and accommodating human diversity. The distinctive trait of substantive equality is its emphasis on the positive measures embedded in this model, which aim to achieve de facto equality.

Sandra Fredman identifies four specific aims of substantive equality as:⁴⁰ *“breaking the cycle of disadvantage, promoting respect for the equal dignity, entailing providing positive affirmation and celebrating identity within community, and facilitating full participation in society.”*⁴¹ An explicit commitment to redressing disadvantage, combatting social exclusion and facilitating positive participation all require positive provision.⁴² In brief, these four aims of substantive equality seek to accommodate disadvantaged groups by redressing disadvantages and by employing positive measures to remove barriers.

Nevertheless, the ultimate aim of substantive equality has been contested. According to Fredman, there are two objective types of substantive equality: Equality of opportunity and equality of result.⁴³ Each of these will be

³⁸ *ibid* 11.

³⁹ *ibid* 13.

⁴⁰ Sandra Fredman, ‘Providing Equality: Substantive Equality and the Positive Duty to Provide’ (2005) 21 *South African Journal on Human Rights* 163-190, 167.

⁴¹ *ibid*.

⁴² *ibid*.

⁴³ *ibid*.

discussed below.

3.3.1. Equality of Opportunity

Equality of opportunity focuses on how opportunity will be allocated to the disadvantaged group. It is to ensure that those disadvantaged groups could get access to advantages more easily. It is not only to expand the opportunity, but more importantly it is also to ensure how those disadvantaged groups can access this opportunity equally with others. The disadvantaged groups have historically suffered from discrimination, therefore, to allocate the social goods equally with others needs a duty to provide, called positive duties.⁴⁴ For example in the context of education, merit is usually based on performance. However, persons with disabilities are excluded from education due to failure to accommodate different needs, therefore they can never compete on an equal basis. Positive duties can provide, for examples, education and training, accessibility measures, and other accommodation measures.⁴⁵ Without such measures, persons with disabilities will not able to compete with non-disabled counterparts. Accordingly, access to participation has to be provided.

According to Jacobs,⁴⁶ the debates about how equality of opportunity addresses real equality is mostly centred on two arguments. *First*, it is argued that formal equality often nullifies real opportunities for persons who differ in characteristics (such as gender, class, and race). *Second*, arguments are made regarding too much influence of “*morally natural contingencies of birth and talent*.”⁴⁷ By allowing this such irrelevant contingencies, equality of opportunity is considered to enlarge natural inequalities⁴⁸ In addition, Jacobs argues that the principle of merit could not be referred to this model of equality of opportunity.⁴⁹ This principle of merit, in some ways, means an

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Lesley A Jacobs, *Pursuing Equal Opportunities: The Theory and Practice of Egalitarian Justice* (Cambridge University Press 2003) 11.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.* 9.

similar treatment to all people, while in fact it might not fit with a certain individuals due to specific situation.

Equality of opportunity is generally aligned with substantive equality. It aims to ensure that all individuals, particularly members of disadvantaged groups, are able to participate in society without barriers. Positive measures are therefore imposed as a way of removing barriers to enable the disadvantaged groups to participate equally.

In the context of employment, persons with disabilities experienced historical discrimination. Therefore, a supplementary opportunity has to be created to allow more chances for them to enter the workforce. Positive measures here can play an important role in achieving this goal. For instance, offering an opportunity to blind persons through providing a braille text in the selection process would raise an opportunity for them to compete.

3.3.2. Equality of Result

Unlike equality of opportunity, which emphasizes procedural fairness to disadvantaged groups, 'equality of result' focuses on the fairer distribution of benefits. In a very imbalanced society where there is likely a large gap in the proportion of the disadvantaged group which able to participate, the equality of result approach will be worth considering. The objective of equality of result is ensure a certain proportionality in the distribution of social goods that has to be achieved in society. This is to confirm the participation of those particular disadvantaged groups. A quota system can be the best example in explaining this notion of equality of result. The quota system defines the proportion for certain disadvantaged groups. Women representatives in parliament can be intensified by applying a quota system in a political election. In Indonesia, for instance, a quota system entails 30% of women participating in an election. Each party should provide at least 30% female candidature in the parliamentary election. This enables women to be voted for in the election, hence increasing their opportunity to sit in parliament. It

aims at gender representation in parliament in light of an equality of results measures for women as a disadvantaged group in the politics context.

Both equality of opportunity and equality of result require positive provisions. To some extents, equality of result might be seen as increasing the loss of other parties, as their opportunities are reduced. Fredman noted that “*real change entails enlarging the cake,*”⁵⁰ that the positive provisions here are devoted to providing ‘reserved seats’ for the disadvantaged groups. Explaining the equality of result, a certain portion of participation is created to ensure to meet the desired result of proportionality, whilst the equality of opportunity is aimed to guarantee an open opportunity that enables the disadvantaged groups to attend. In brief, equality of result focuses on ‘the outcome’ to be met, while equality of opportunity emphasizes on fairness of ‘the process.’ Both enable the participation of disadvantaged groups. Considering the thin wall between two notions of equality of opportunity and opportunity of result, Strauss concluded that these two notions basically reside on the same foundation which aims to ensure the participation of disadvantaged groups.⁵¹ Thus, according to him, it is not essential to distinguish between these two notions as it is potentially misleading.⁵²

4. Positive Measures as an Instrument of Substantive Equality

As discussed above, substantive equality aims to accommodate disadvantaged groups by redressing disadvantages. It also requires the state to provide positive measures to promote equality⁵³ in order to enhance participation of disadvantaged groups. Accordingly, participation and inclusion in the allocation of social goods are the main concerns of the substantive equality model. Hence, positive measures are considered as the

⁵⁰ *ibid.*

⁵¹ Strauss in Devins and Douglas (n 30) 63.

⁵² *ibid.*

⁵³ Fredman, ‘Providing Equality’ (n 40) 163.

tools that ensure de facto equality in practice. Likewise, Fredman highlights the needs of positive measures to attain equality of opportunity.⁵⁴

To achieve genuine equality of opportunity requires positive measures to ensure that all persons from all sections of society have a genuine equal chance of satisfying the criteria to access to a particular social goods.⁵⁵

This section covers the scope of positive measures that can contain favourable treatment considering the specific characteristics and needs of disadvantaged groups.

4.1. Reasonable Accommodation

Reasonable Accommodation is a recognition of the concept of 'difference' in the model of discrimination, where individuals who are different in characteristics may not be treated similarly, because treating them similarly will cause an unfairness that might induce discrimination.⁵⁶ For example, with reference to a paper-based examination in a selection process for job vacancies, a company should provide accessible formats including (but not limited to) a Braille version of the examination to accommodate those who have certain visual impairments. The symmetrical approach in this case cannot be applied because it means that visually impaired persons are excluded. Reasonable accommodation or adjustment is needed to provide an individual service to a person with disabilities to enable her or him to participate, considering his or her individual needs. Reasonable adjustment or accommodation duties acknowledge the barriers that some people face as a result of their impairment (such as a physical, sensory, intellectual or psychosocial impairment or a particular religious belief) and it requires a duty bearer to address that disadvantage.⁵⁷

In addition, even though both the accessibility duty and the reasonable

⁵⁴ *ibid* 167.

⁵⁵ *Ibid*.

⁵⁶ Lisa Waddington and Mark Bell, 'Exploring the Boundaries of Positive Action under EU Law: A Search for Conceptual Clarity' (2011) 48 *Common market law review* 1503-1526, 1517.

⁵⁷ Lawson (n 25) 1.

accommodation duty both aim to achieve de facto equality, they are distinct concepts. According to CRPD General Comment No.6 (2018) on Equality and Non-discrimination, the implementation of the accessibility duty relates to groups and can be implemented gradually but unconditionally,⁵⁸ while reasonable accommodation duty applies to individuals, immediately, and might be limited by disproportionality.⁵⁹

The term of reasonable accommodation was first introduced in the United States in the context of religion,⁶⁰ where the formal equality, as a 'sameness' approach, was challenging for certain disadvantaged groups.⁶¹ It was subsequently applied to other grounds of disadvantage, including disability. At first, this notion addressed the unfair treatment of disadvantaged groups. Further development of this 'reasonable accommodation' concept focussed more on addressing barriers faced by certain disadvantaged group that might require particular treatment or adjustment to enable the disadvantaged groups to participate. Hence, the duty to accommodate is to redress inequalities in society. The historical exclusion experienced by persons with disabilities has traditionally resulted by the nature of society to exclude certain characteristics without regard to take account on this diversity. The barriers have mostly created by society excluding people with disabilities. The social model of disability was then attempted to address this inequality by removing the barriers experienced by disadvantaged groups.

Reasonable accommodation in the context of disability includes adjustments to systems of work, education, service provision and so on to implement equality of opportunity.⁶² Reasonable accommodation is best articulated in positive instead of negative terms. The requirement to take positive steps brings the concept of reasonable accommodation into the realm of positive

⁵⁸ UN Committee on the Rights of Persons with Disabilities 'General Comment of CRPD No.6 on Equality and Non-Discrimination" (26 April 2018) UN Doc CRPD/C/GC/6' (n 14) para 41.

⁵⁹ *ibid.*

⁶⁰ Olivia Smith, *Disability Discrimination Law* (Thomson Reuters Round Hall 2010) 214.

⁶¹ *ibid.*

⁶² *ibid.* 217.

measures⁶³ which imposes a positive legal obligation.⁶⁴ Lawson notes that reasonable adjustment (or accommodation) has to be put in place by a duty-bearer to ensure the participation of the person with a disability.⁶⁵ As an individual approach, reasonable accommodation in the disability context is characterized as the duty to provide a necessary and appropriate modification or adjustment required by the particular case (individual approach) to ensure the enjoyment of such rights of the person in question.⁶⁶ The key elements of the duty to provide reasonable accommodation consist of identifying barriers to participation and their removal which involves dialogue with the particular person with a disability, assessing the feasibility and the relevance of such accommodation, assessing whether the provision of the accommodation amounts to a disproportionate and undue burden on the duty bearer. It is interesting that due to the dynamics of the barriers encountered by persons with disabilities, the reasonable accommodation as an ‘individualized reactive duty’⁶⁷ is supposed to serve a various adjustments depending on which is the most effective accommodation required by a person with a disability. In this sense, it does not mean the similar types of disability would need the exact accommodation.⁶⁸ Instead, it can differ based on dialogue involves a person in question.

4.2. Positive Action

Positive action, as the implementation of substantive equality measures, is mostly defined as the provision of a preferential treatment. Waddington and Bell outline positive action according to the European Union (EU) legal

⁶³ Lawson (n 25) 187.

⁶⁴ UN Committee on the Rights of Persons with Disabilities ‘General Comment of CRPD No.6 on Equality and Non-Discrimination’ (26 April 2018) UN Doc CRPD/C/GC/6’ (n 14) para 25.

⁶⁵ Lawson (n 25) 1.

⁶⁶ UN Committee on the Rights of Persons with Disabilities ‘General Comment of CRPD No.6 on Equality and Non-Discrimination’ (26 April 2018) UN Doc CRPD/C/GC/6’ (n 14) para 25.

⁶⁷ *ibid* para 23(b).

⁶⁸ Shivaun Quinlivan, ‘Reasonable Accommodation: An Integral Part of the Right to Education for Persons with Disabilities’ In G. De Beco, S. Quinlivan, & J. Lord (Eds.), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press 2019) 176.

definition as relating to the distribution of benefits to the disadvantaged group, in light of protected grounds of discrimination.⁶⁹ They also see it as conformable with overall implementation of equality⁷⁰; “*facilitative than mandatory*”⁷¹; and open (flexible).⁷²

Waddington and Bell also mention McCrudden’s typology of positive action which should include preferential treatment to some extent, such as considering any grounds of disadvantage, for example, in recruitment decisions.

Positive action should include practices where merit is redefined as including the protected characteristic such as deeming it relevant to take into account ethnicity in police recruitment on the basis that the police service would function better with greater representation of ethnic minority communities.⁷³

Barnes also views positive action as the improvement of the distribution of benefit or dis-benefit of a disadvantaged group.⁷⁴ The proportionality principle underlies positive action, so that the more a group goes through severe disadvantage, the more positive action has to be served.⁷⁵ All these adjustments of positive action is paramount to ensure “*full equality in practice.*”⁷⁶

Although reasonable accommodation is often associated with the forms of positive action as mentioned above,⁷⁷ Lawson highlights that reasonable accommodation is basically different in features.⁷⁸ Hence, she simply suggests that reasonable accommodation can be categorised as a requirement of non-discrimination rather than as a form of positive action.⁷⁹ The differences between the two concepts can be summarized in the

⁶⁹ Waddington and Bell (n 56) 1522.

⁷⁰ *ibid* 1505.

⁷¹ *ibid* 1506.

⁷² *ibid*.

⁷³ *ibid* 1509.

⁷⁴ Lizzie Barnes, ‘Equality Law and Experimentation: The Positive Action Challenge’ (2009) 68 *The Cambridge Law Journal* 623-654, 623.

⁷⁵ Waddington and Bell (n 56) 1514.

⁷⁶ *ibid* 1515.

⁷⁷ Anna Lawson and Caroline Gooding, *Disability Rights in Europe: From Theory to Practice* (Hart 2005) 220.

⁷⁸ Lawson (n 25) 224.

⁷⁹ *ibid*.

following table:

Table 3.1
Summary of Lawson's Conceptualisations of Reasonable Accommodation and Positive Action: ⁸⁰

No.	Reasonable Accommodation	Positive Action
1	Response to individual needs of disadvantaged group	Measure is taken at organisational level to address the needs of disadvantaged groups rather than accommodating a particular individual
2	Usually on-going in nature	Time limited in nature
3	Disadvantage is caused by an aspect of organisation's criteria, provisions, practice or physical features	The nature of the disadvantage is caused by general societal factors
4	Obligatory	Not obligatory

4.3. Positive Duties

The third aspect of positive measures is what experts call as ‘the positive duty.’ Like reasonable accommodation and positive action, as mentioned above, positive duties offer a strong means to embrace de facto equality by providing favourable treatment to disadvantaged groups. O’Cinneide describes a positive duty as a proactive mainstreaming approach of an organization, based on a legal requirement to promote equality, and involving all elements of the work attitudes of employees, employers, and service users. ⁸¹ Such duties are considered as “*the next generation of equality legislation.*” ⁸² A positive duty is not only to treat individuals fairly (by developing the parameters of social practices), but it also to implement

⁸⁰ *ibid* 224–225.

⁸¹ Colm O’Cinneide, ‘A New Generation of Equality Legislation? Positive Duties and Disability Rights’ in Lawson and Gooding (n 78) 219.

⁸² *ibid*.

policies in order to promote substantive equality.⁸³ A positive duty thus aims to address social disadvantages. O’Cinneide considers positive duties as a further extension of principles of reasonable adjustment.⁸⁴ Reasonable accommodation and positive duty are form of positive action, but the positive duties deal with the policy development and practices while it is not applied to reasonable accommodation.⁸⁵ Because of the importance of eradicating discrimination, O’Cinneide sees not only public sector duties but also private sector duties are necessary to ensure the fair distribution of advantages to disadvantaged groups.⁸⁶ In brief, according to O’Cinneide as highlighted above,⁸⁷ *“positive duties are a form of positive action; they require a full range of policies and practices; are anticipatory in effect; and complement reasonable accommodation.”*⁸⁸

As form of positive action, O’Cinneide outlines positive duties has to be delivered with a broad range of policies and practices (as implementation of the certain rule/policies) in the organisation level, and should prevent a discriminatory treatment which may appear in the organisation.⁸⁹ The discrimination that might affect the disadvantaged groups in diminishing participation in the organisation can be reduced by involving them in the policy making process. Disadvantaged groups can express their voices in the organisation to set up a policy that will impact both internally (members of organisation) and externally. The latter can be illustrated by the example of the selection process in recruitment that impacts externally to the organisation.

Accordingly, there are some features as summarised from Waddington and Bell,⁹⁰ which could be used to distinguish positive duties from positive action:

- a. Aim to incorporate the promotion of equality into decision making and delivery;
- b. Promote the participation of affected communities) in the policy making process as it is seeking to improve governance rather than conferring

⁸³ *ibid* 220.

⁸⁴ *ibid*.

⁸⁵ *ibid*.

⁸⁶ *ibid* 239.

⁸⁷ *ibid* 220.

⁸⁸ *ibid*.

⁸⁹ *ibid*.

⁹⁰ Waddington and Bell (n 56) 1521.

- as specific benefit;
- c. Ensure discriminatory elements of existing or proposed policy are identified and dismantled, or otherwise mitigated (removing or avoiding discrimination does not necessarily imply the taking of positive action).⁹¹

These three features of positive duties are not automatically considered as positive action if there is no 'direct intention' to confer a specific benefit on disadvantaged groups. Positive action requires pre-condition proceeded by positive duties as written: "*If positive duties are designed to deliver concrete improvements in equality outcomes, then taking positive action might be an indispensable means of reaching these objectives.*"⁹² Both concepts are means to achieve de facto equality. However, Bell and Waddington suggest the difference of the two concepts as more a matter of linguistic semantic.⁹³

4.4. Reverse Discrimination/Affirmative Action

This notion of reverse discrimination or affirmative action are basically posing the idea of benefitting disadvantaged group. In line with the notions of positive action, positive duties, and reasonable accommodation, the reverse discrimination and/or affirmative action were mainly redressing historical disadvantage.

The notion of reverse discrimination can be misunderstood as a contradicting notion to the concept of non-discrimination law. However, reverse discrimination is basically intended to have the same meaning with the notion of 'affirmative action' to benefit disadvantaged groups.

The term affirmative action has been used since the early 60s when President Kennedy employed it in Executive Order #10925 to describe public policy intended to overcome the present effect of past racial discrimination (Bruce E Williams, 1984). Also known as "preferential treatment" or "reverse discrimination," affirmative action is based on arrangements whereby the law sanctions special measures or differences in treatment that, when certain conditions exist, depart from the principles of formal equality.⁹⁴

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ Natan Lerner, *Group Rights and Discrimination in International Law* (MNijhoff 1991) 163.

Fredman argues that whether there is a breach of the principle of non-discrimination depends on whether we use the formal equality or substantive model of equality.⁹⁵ Under formal equality, a reverse discrimination can be categorized as an infringement of equality.⁹⁶ However, from the perspective of substantive equality, reverse discrimination is primarily envisaged as redressing disadvantage. As its aim of conferring advantages on disadvantaged groups, reverse discrimination confers an equal opportunity in order to achieve de facto equality, therefore 'reverse discrimination' or 'affirmative action' is legitimate.

Fredman denotes that there are three aims of affirmative action:⁹⁷

- (a) Removal of barriers and redressing past disadvantage;
- (b) Representation and perspective of previously excluded groups;
- (c) Creation of role models and fostering diversity.⁹⁸

These three aims of affirmative action are analogous with the overall concept of substantive equality in redressing the disadvantages of disadvantaged groups. Affirmative action can be seen as a tool for achieving substantive equality, as Fredman states that the aim of substantive equality is to entail 'positive affirmation.'⁹⁹ In addition, affirmative action will magnify the participation of disadvantaged groups in social life through removing barriers. This concept of affirmation is constituted as cherishing diversity that in fact exists in society.

4.5. 'Specific Measures' according to General Comments of CRPD No.6 (2018) on Equality and Non-discrimination

In the context of disability, as will be discussed further in Chapter 5, obligations on positive measures are a key concern of the UN Convention on the Rights of Persons with Disabilities (CRPD). This highlights the positive obligation of the state to provide equal and effective legal protection for

⁹⁵ Fredman, *Discrimination Law* (n 34) 232–236.

⁹⁶ *ibid.*

⁹⁷ *ibid* 259–260.

⁹⁸ *ibid* 167.

⁹⁹ Fredman, 'Providing Equality' (n 40) 167.

persons with disabilities from discrimination.¹⁰⁰ CRPD General Comment No. 6 (2018) on Equality and Non-discrimination outlines the model for positive measures under the Convention. There are two major aspects to this: reasonable accommodation and specific measures. Despite their similar aim of achieving de facto equality, the General Comment states that reasonable accommodation is a non-discrimination duty, while specific measures imply a preferential treatment to address historic and/or systematic exclusion.¹⁰¹

According to the General Comments, reasonable accommodation is an '*ex nunc duty*' which must be provided from the moment where a person with a disability requires access to non-accessible situation or environment.¹⁰² The duty of reasonable accommodation can be divided into two parts: the first part imposes a positive legal obligation to provide a necessary modification or adjustment in a certain case to ensure a person with disability can exercise his/her rights (individually accommodated). The second part is that those reasonable accommodations do not impose disproportionate or undue burden on the duty bearer.¹⁰³

Examples of reasonable accommodation include making existing facilities and information accessible to individual with disability; modifying equipment; re-organizing activities; re-scheduling work; adjusting curricula, learning materials and teaching strategies; adjusting medical procedures; or enabling access to support personnel without disproportionate or undue burden.¹⁰⁴

Specific measures (as a form of favourable treatment) cannot be regarded as discrimination because they contain positive affirmative measures to reach de facto equality.¹⁰⁵ Such measures are an attempt to confer certain advantages to disadvantaged groups due to underrepresentation. Examples of specific measures include outreach and support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, quota systems, advancement and empowerment measures, as well as respite care and technological aids.¹⁰⁶

¹⁰⁰ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6' para 22.

¹⁰¹ *ibid* para 25c.

¹⁰² *ibid* para 23b.

¹⁰³ *ibid* para 25.

¹⁰⁴ *ibid* para 23.

¹⁰⁵ *ibid* para 28.

¹⁰⁶ *ibid* para 28.

5. Substantive Equality on the Ground of Disability

It is clear that the formal equality model does not sufficiently support real equality for disadvantaged groups. However, the substantive equality model addresses de facto equality and rectifies the unfair distribution of benefits to disadvantaged groups. In this way the substantive model of equality offers to capture a panoramic view of the different characteristics of human beings who have equal rights to participate in society. It also highlights that different characteristics should be cherished.

The paradigm of disability has gone through significant changes from the previous medical approach (where disability is seen as pathological) to the social model of disability. The medical disability approach views disability as a medical problem and does not recognise the environmental barriers which may lead to social oppression. Conversely, the social model moves the paradigm of disabled persons from being problematized on individual deficit into an interaction with societal and cultural aspect of the society to impact on their meaningful lives.¹⁰⁷ It offers a new hope to enhance the participation of persons with disabilities in society rather than perceiving them as only ‘a medical problem’ to be fixed.

As have been discussed earlier, the social model of disability as a counter to the medical/individual model of disability, has a strong feature of “*social and cultural involvement*”¹⁰⁸ to enable the participation of persons with disabilities. In some senses, a substantive quality model also highlights social factors to remove barriers of disadvantaged group by allocating disadvantage of social goods. To this end, there is a close connection between the social model of disability and the substantive equality model as both aim for the participation

¹⁰⁷ Rannveig Traustadóttir, ‘Disability studies, the Social Model and Legal Development’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities* (Martinus Nijhoff 2009) 3–4.

¹⁰⁸ *ibid.*

and social inclusion of the disadvantaged group.

Rannveig Traustadottir outlined some of the characteristics of social model of disability as:

“(1) Focus on the social context and environment, (2) Emphasis on the relationship between the individual and society, (3) Emphasis on social barriers, (4) Views discrimination, exclusion and prejudice as the problem, (5) ending discrimination, segregation and removing barriers is the answer.”¹⁰⁹

These characteristics are in line with the notion of substantive equality. Both substantive equality and the social model of disability suggest the importance of providing positive measures as a means of removing barriers to enable persons with disabilities to participate equally in the society. Formal equality and the medical model, on the other hand, locate the problem on the individual. Fredman notes that formal equality model legitimizes the similar treatment of all people regardless of their situation, while substantive equality considers their specific situation of vulnerability as members of disadvantaged groups.¹¹⁰ Substantive equality aims to provide positive duties in terms of state obligation, which are firmly related to anti-poverty and social exclusion policies.¹¹¹ Hence, according to Fredman, the substantive equality model is more likely resemble the principles of the welfare state, which intend to redress disadvantage.¹¹² The specific feature of substantive equality model is a duty to provide positive measures/provision, both in the equality of opportunity and equality of result.¹¹³ Historically, persons with disabilities had to fight for their right to participate in the society and have suffered greatly from discrimination. Under the old paradigms, they are seen as a ‘social problem,’ ‘impaired,’ thus labelled as ‘incapable,’ which unavoidably leads to exclusion and stigmatisation. In a situation where the values are defined by the dominant norms (usually established by non-disabled persons), positive measures must be set up. This is the essential point where the substantive equality model works. To this end, it can be concluded that

¹⁰⁹ *ibid* 8.

¹¹⁰ Fredman, ‘Providing Equality’ (n 40) 170.

¹¹¹ *ibid* 168.

¹¹² *ibid* 170.

¹¹³ *ibid* 167.

the substantive equality model is more appropriate to overcome challenges in practice because it enables the disadvantaged groups to access equality through various tools of positive measures. The nature of substantive equality is redressing social and structural disadvantages to enhance participation in light of social inclusion.

Persons with disabilities experience both direct and indirect discrimination. In the context of employment, employers mostly conceive disability as 'incapability.' Persons with disabilities are commonly stigmatized as 'not able' to work. This results in a misleading attitude to neglect persons with disabilities instead. As consequences, it might lead to a serious discrimination against persons with disability. It can occur at any stage of employment purposes. If persons with disabilities are provided with necessary accommodation, they would equally participate in the recruitment series which by enable them to compete fairly with non-disabled counterparts. In this sense, the substantive equality measures assist to remove barriers faced by persons with disabilities thus enlarge the participation in the society.

To sum up, in the employment context, the notion of substantive equality has very significant impact for persons with disabilities as disadvantaged group. In addition, the salient feature of substantive equality requires positive measures to provide. *First* is the needs of greater awareness raising among stakeholders, both public and private sectors. *Second* the policy making process should include the interest of persons with disabilities, commonly called as 'disability mainstreaming.' *Third*, suitable positive measures that are best applied to each case should be adopted, for example providing an accessible means of selection process that enabling persons with disabilities to participate. Further, in the sense of equality of result, a certain quota provision can be set for persons with disabilities to acquire a proportion of participation.

6. Conclusion

This chapter has outlined the key models of equality: formal and substantive equality. It has argued that, compared to formal equality, substantive equality is more suitable to address the needs of disadvantaged group, in particular disability. The formal equality model is largely focused on the sameness approach, without considering special characteristics, yet in fact human beings pose many different characteristics, including disability. This particular situation might need more favourable treatment to enable disabled people to participate equally. The formal equality model cannot deal with this specific situation, while the substantive equality model can. Besides addressing indirect discrimination (as often faced by persons with disabilities), substantive equality has also a strong feature to provide positive measures to accommodate individuals or disadvantaged groups, including persons with disabilities. It aims to ensure the equal participation of disadvantaged groups in society.

Having read the literature on the aspects of positive measures/positive provision as outlined by different prominent experts, the common thread seems to be that everybody agrees with reasonable accommodation is dealing with individuals. In addition, the general consensus of positive action seems to be conferring benefits in a general sense on the disadvantaged group. Positive duties mostly deal with the decision-making process and policy in engaging with the communities. Nonetheless, it is apparent that there are some conflicting views, in particular in relation to 'positive action and 'positive duties', which are not easy to reconcile. The different interpretation of the eminent experts as discussed in this chapter have enriched the fruitful discussion on the aspects of positive measures as the salient feature of a substantive equality framework.

Therefore, in interpreting positive measures in this thesis, I refer to all necessary measures or positive steps to assist persons with disabilities, as a disadvantaged group, to exercise their right to participate in society. To

this end, I largely limit the scope of discussion of positive measures to the framework highlighted by General Comment of CRPD No.6 (2018) on Equality and Discrimination. This outlines two aspects of positive measures: reasonable accommodation (at the individual level) and specific measures (encompassing the allocation of benefit/resources, including the quota system). As the key focus of the thesis is on the implementation of the CRPD in Indonesia, in the context of employment rights for persons with disabilities, it is appropriate to draw on the interpretation of substantive equality and positive measures taken by the CRPD.

Chapter 4 Meaningful Work and Disability

1. Introduction

This chapter examines the significance of meaningful work for persons with disabilities. It highlights the importance of work of persons with disabilities as a means to exit poverty as well as to uphold dignity. The chapter argues that enhancing the right to work for persons with disabilities is not only important in the economic sense, but more importantly it marks a manifestation of human dignity. Further, this chapter also clarifies the importance of the state's responsibility (state's obligation) to protect the right to work. This will be amplified further in the next chapter (Chapter 5) which will focus on Article 27 of the CRPD.

This chapter firstly outlines the definition of persons with disabilities, followed by discussion of interlinking disability and poverty. It then outlines the principles underlying the right to work which include equality, individual freedom, social inclusion and state responsibility. The chapter will also touch on the importance of the right to work which largely takes dignity into account. At the end, the chapter pinpoints the barriers and challenges facing persons with disabilities with regard to obtaining meaningful work.

2. Definition of Persons with Disabilities

Previous development of a disability framework has widely focused on physical attributes and bodily function. A slight progress on the disability development appeared whereby a medical definition of disability¹ covering an impairment (function limitation) also acknowledged that this limitation hinders persons with disabilities from participating in society. Accordingly,

¹ Ian Hacking, 'Between Michel Foucault and Erving Goffman: Between Discourse in the Abstract and Face-to-Face Interaction: Economy and Society: Vol 33, No 3' (2011) 288–289.

the World Health Organization's International Classification of Functioning, Disability and Health (ICF) visualized disability as:

An umbrella term for impairments, activity limitations, and participation restrictions. ICF also lists environmental factors that interact with all these components.²

Although this view is still affected by the previous medical model of disability in particular body functioning, it also touches on a broader sense of external circumstances that directly impact on the participation of persons with disabilities in society. To some extent, this acknowledges environmental factors, therefore it combines the medical and social models of disability (see Chapter 3) in perceiving disability as a combination of internal and external issues.

In the CRPD as a recent primary international legal instrument on disability, the term of disability itself is not clearly defined. The CRPD mentions a 'range' of disability by using the word 'include:'

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.³

Meanwhile, it is explained in the preamble of the CRPD that "*disability is an evolving concept.*"⁴ Defining disability in restricted terms would exclude further forms of disability which might appear in the future. The CRPD thus provides room for further forms of disability to emerge. However, this 'open definition' can also be interpreted differently in the various situations, posing both positive and negative impacts. On one hand, it can be positive in terms of responses of the further extended meaning of disability in the future development. On the other hand, it can be regarded as a negative effect in terms of data collection, because the 'unclear definition' can lead to different calculations. This happens in some countries in calculating the numbers of persons of disability. The result can vary from one data set to another. Some

² World Health Organization, 'Towards a Common Language for Functioning, Disability and Health: ICF (the International Classification of Functioning, Disability and Health)' (2002) WHO/EIP/GPE/CAS/01.3' (World Health Organization 2002) 2.

³ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 art 1.

⁴ *ibid* preamble (e).

organizations, and even government bodies, hold their own measures and definitions of disability. The various criteria impact on the counting of persons with disabilities. At the end, this data will govern the policy making arrangements which impact on certain group and individuals with disabilities, for instance it targets who will receive benefits (e.g. social protection, education, health, reasonable accommodation in employment). In this sense, a miscalculation might result in an exclusion of certain types of disabilities.

3. Disability and Poverty

The World Health Organisation (WHO) has estimated disability as prevalent in 15.3% of the world population.⁵ Additionally, in recent years, some countries have attempted to conduct a census of disability in their national contexts. However, there are some questions in relation to the appropriateness of the measurements used.⁶ Bias might appear when, for instance, disability estimation are based on the self-reporting method, as people may feel ashamed, or otherwise fear of the consequences when revealing disability of their family member. In addition, the unavailability of a clear definition of persons with disabilities to some extent affect the data gathering in the census being held.

With respect to poverty, in general, poverty is mostly defined in 'relative' or 'absolute' terms. These two terms should refer to the accessibility of a livelihood in social and economic meaning. Instead, these two concepts are broadly construed merely in relation to income and consumption⁷ which to some extent disregard other social factors such as dignity which is immensely essential in defining poverty. According to the Universal Declaration of Human Rights (UDHR) 1948, everyone has the right to an

⁵ World Health Organization and World Bank, 'World Report on Disability (2011)' (World Health Organization 2011) 29.

⁶ *ibid* 19.

⁷ UNESCO, 'Poverty' (*United Nations Educational, Scientific and Cultural Organization*) <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/poverty/>> accessed 18 September 2019.

adequate standard of living for the health and well-being of the individual and of one's family, including food, clothing, housing and medical care. This standard of living has been set up to prevent poverty. Moreover, the UDHR highlights that everyone is entitled to those rights and freedoms⁸ to live in dignity. Under the International Covenant of Economic, Social and Cultural Rights (ICESCR) 1966, a state party must "*recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continued improvement of living conditions.*"⁹ The right to achieve a basic standard of living can be considered as "*freedom from severe poverty.*"¹⁰ Additionally, severe poverty can be categorized as a human rights violation.¹¹ Although it is still debatable, poverty has been classified as a violation of human rights in a moral sense.¹² Meanwhile, poverty can also be seen as '*indicator of injustice.*'¹³

Poverty and disability are linked to each other. Poverty may increase the risk of disability¹⁴ due to lack of access to other human rights (e.g., healthcare), which might lead to disability. Poor health conditions are key reasons why people eventually get their disability. According to the studies by the WHO and the World Bank, disability prevalence is mostly higher in places with poor health services (due to poverty) than in places where an improved health service is provided.¹⁵

Disability can also lead to poverty. The latter is very familiar: because of disability, people are likely to be discriminated in accessing their rights, for example in relation to accessing their right to education, which subsequently

⁸ *ibid* 22.

⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) ICESCR 1966 art 11 (1).

¹⁰ Thomas Pogge, 'Severe Poverty as a Human Rights Violation,' in Thomas Winfried Menko Pogge and UNESCO, *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (1st pub., United Nations Educational, Scientific, and Cultural Organization; Oxford; New York 2007) 11.

¹¹ *ibid*.

¹² Tom Campbell, 'Poverty as a violation of human rights: Inhumanity or Injustice?' in *ibid* 55.

¹³ Regina Kreide, 'Neglected Injustice: Poverty as a Violation of Social Autonomy,' in *ibid* 156.

¹⁴ World Health Organization and World Bank (eds), *World Report on Disability* (World Health Organization 2011) 10.

¹⁵ *ibid*.

affects to access the right to work. Therefore, they are more likely to be unemployed.¹⁶ These inaccessible rights will inevitably impact persons with disability in relation to economic issues, which forces them into poverty. The CRPD aims to end poverty through a sustainable development. The next global development partnership to eradicate poverty and transform economies through sustainable development ensure all disadvantaged groups are included. All universal goals and national targets to end poverty guarantee the particular rights should be inclusive and accessible for persons with disabilities.¹⁷

Previously, the WHO Report on Disability 2011 highlighted disability as a development issue, because of its bidirectional link to poverty: “*disability may increase the risk of poverty, and poverty may increase the risk of disability.*”¹⁸ Growing empirical evidence from across the world indicates that persons with disabilities and their families are more likely to experience economic and social disadvantages than non-disabled.¹⁹ Therefore, protecting the right to work of persons with disabilities not only impacts their livelihood but also would significantly improve national economies. Their cumulative income will impact positively on the Gross Domestic Product (GDP) of the country.²⁰

4. The principles underlying the right to work

The work for persons with disabilities is as important as the work of their non-disabled persons. It provides them with a living that fulfil their basic needs to live independently. It also enhances dignity social inclusion. However, to date work is problematic for persons with disabilities due to predominant norms that undermine capacity of persons with disabilities thus shape certain cultural barriers to employment.²¹ Einat Albin identifies four principles

¹⁶ *ibid.*

¹⁷ CRPD 2006 art 32.

¹⁸ World Health Organization and World Bank (n 14).

¹⁹ *ibid.*

²⁰ Handicap International, *Good Practices for the Economic Inclusion of People with Disabilities in Developing Countries* (Handicap International 2006) 17.

²¹ Rannveig Traustadóttir, 'Work, Disability, and Social Inclusion: The Promise and Problematics of EU Disability Policy' in Marjorie L DeVault (ed), *People at Work: Life, Power, and Social Inclusion in the New Economy* (NYU Press 2008) 89.

underlying the right to work of persons with disabilities which are drawn from Nussbaum's theory. These are structural-institutional equality, individual freedom, inclusion, and State responsibility.²² These principles are elaborated in the sections below.

4.1. The Structural-Institutional Equality Principle

This perspective departs from Fredman's insight that merit can lead to discrimination²³ when considering it as a tool for an individual to fit the job, rather than the job being adjusted to a particular worker's situation.²⁴ The latter means appropriate adjustment has to be provided in accommodating different situations faced by the workers which is in line with the values of equality²⁵ in removing barriers of disadvantaged groups. Merit as such endangers the goals of an inclusive society. Some adjustments in light of substantive equality should be made to confer equal opportunity of persons with disabilities as disadvantaged group. Thus, there should be a conducive social structures and cultures that enable persons with disabilities to participate in the society to the fullest.²⁶ For this reason, all relevant actors should play a part in taking measures for restructuring social institutions.²⁷

This principle requires acknowledging social structures and cultures as creating and shaping people's ability to participate meaningfully in the work domain and their possibilities on achieving adequate labour conditions. Emphasis is placed on asymmetrical structures of powers, privileges and disadvantages. The structural-institutional equality principle also acknowledges the particular attention that should be given to job requirements, merit, and the perception of productivity.²⁸

²² Einat Albin, 'Universalising the Rights to Work of Persons with Disabilities: An Equality and Dignity Based Approach' in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Bloomsbury Publishing 2015) 75.

²³ Sandra Fredman, Disability Equality and the Existing Paradigm, in Anna Lawson and Caroline Gooding, *Disability Rights in Europe: From Theory to Practice* (Hart 2005) 204.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Albin in Mantouvalou (n 22) 75.

²⁷ It is by all means to restructure the social institutions, resulting in proactive structural change, while acknowledging the social contextual causes of inequality. *ibid.*

²⁸ *ibid.*

4.2. Principles of Individual Freedom

The principle of 'individual freedom' is drawn from Amartya Sen who perceived that promoting capabilities is a means of furthering freedom.²⁹

According to this approach, persons are entitled to the set of capabilities regardless of any criteria, such as productivity or participation in the workforce, in order to provide them with basic freedom. As both critical disability studies and Nussbaum stress, this understanding is not based on withdrawing to the medical model. Its aim is to provide a basis of capabilities that will enable a person to fully participate in society, without denying, at the same time, the provision of care and other forms of social support in order to achieve capabilities. In very rare cases, as Nussbaum suggests, such an understanding will merely enable functioning. This idea furthers one's dignity.³⁰

This perception believes that one's capabilities can be broadly amplified by providing a proper support to enable a person to fully participate in the society. For example, blind persons cannot be assessed as 'not having capabilities to work formally' unless some adjustments (such as braille supports) have been provided that enable them to participate.

4.3. Social Inclusion

According to Nussbaum, the right to work requires the involvement of the state to develop capabilities of each individual to participate in work.³¹ Nussbaum proposed this view of inclusion in light of humanity. It highlights the robust state's role to promote a development of capabilities (and to promoting the equality of persons with disabilities) as mentioned previously in the structural-institutional landscape.³² Inclusion in the view of Nussbaum highlights the state's role to provide equality in changing the structural-institutional framework.³³ Nussbaum highlights inclusion regardless of the realization of capabilities, contributions, productivity and functioning, but to include persons with disabilities simply as equality promotion.³⁴ Social

²⁹ Amartya Sen, *Development as Freedom* (Oxford University Press 1999) 87.

³⁰ Albin in Mantouvalou (n 22) 76.

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

inclusion is thus an attribute of the goal of equality and non-discrimination. Benefitting the disadvantaged group through social inclusion is a major goal. Social inclusion is recognized as “*a modern sociological concept with ancient roots*”³⁵ that links both notions of ‘privilege’ and ‘disadvantage’ among groups in the society including a broader community such as nations.³⁶

Accordingly, a situation where an individual cannot fully participate in society due to reasons beyond his/her control is called social exclusion.³⁷ Social inclusion should construct a society in which differences are respected in light of social diversity.³⁸ Social inclusion is also discussed in the context of politics and democracy as O’Halloran argues it is part in developing “*a practical and effective measures towards a fairer society.*”³⁹ Enhancing social inclusion is pivotal to promoting independent living for persons with disabilities. In terms of work, social inclusion is valuing persons with disabilities as inseparable parts of the society, therefore, the enjoyment of the right to work is an important means to achieve equality and dignity.

One of the most significant current challenges faced by persons with disabilities lies in accessibility. Accessibility can be viewed as “*the right to participate equally in ways that are not constrained by physical or mental limitations.*”⁴⁰ Most importantly, participating equally in the society is not only necessary to achieve economic advantage but to align with the principle of justice.⁴¹ Albin states:

Inclusion exists due to one’s humanity and is completed with the realization of capabilities, contributions, productivity and functioning; rather, it exists despite them. Hence regarding the right to work, inclusion within society does not necessarily require that ultimately a person will be part of the labour market; it only requires that the state invests in enabling the development of capabilities so that a person can, if he or she desires, be fully engaged in work.⁴²

³⁵ Kerry O’Halloran, *Charity Law and Social Inclusion* (Routledge 2006) 37–38.

³⁶ *ibid.*

³⁷ *ibid.* 40–41.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ Paul T Jaeger and Cynthia Ann Bowman, *Understanding Disability: Inclusion, Access, Diversity, and Civil Rights* (Greenwood Publishing Group 2005) 63.

⁴¹ Hugh Collins, ‘Discrimination, Equality and Social Inclusion,’ in Kathy Daly Griffith, ‘Restorative Justice and Responsive Regulation’ (2003) 36 *Australian and New Zealand Journal of Criminology* 109.

⁴² Albin in Mantouvalou (n 22) 76.

Nussbaum's perspective of inclusion draws attention to the state's obligation to enable the development of capabilities, so that persons with disabilities can fully participate in the society. In this account, state obligation plays a very crucial role to enable capabilities development of individuals in the society. Through this state obligation of development, a state can promote a capability of individuals to overcome exclusion in employment by removing any existing barriers.

Employment is a substantial line towards social inclusion.⁴³ There is an strong indication which links unemployment to a social isolation, loss of confidence, lowered self-esteem, poor mental and physical health, and an increased risk of suicide and premature death.⁴⁴ Meaningful employment offers many incentives,⁴⁵ in particular for persons with disabilities to aim living independently. For disadvantaged groups in the society, work is ultimately characterized by inequality and exclusion⁴⁶ where persons with disabilities have more limited access to the labour market.⁴⁷ Sadly, in the capitalist welfare state, for example, the lack of inclusion of persons with disabilities in employment is taken for granted.⁴⁸ Stigma leads to social barriers encountered by persons with disabilities to entering the labour force.⁴⁹ Dominant social norms lead to social determination,⁵⁰ and allows employers define their own criteria to recruit employees, which in most cases are not disabled-friendly.⁵¹ To some extent it is also relate to the liability in light of discrimination law posed by employers to which areas they should

⁴³ Helena Rose, Anna Daiches and Jo Potier, 'Meaning of Social Inclusion to Young People Not in Employment, Education or Training' (2012) 22 *Journal of Community & Applied Social Psychology* 256-268, 257.

⁴⁴ *ibid.*

⁴⁵ See also Rosemary Lysaght and others, 'Inclusion Through Work and Productivity for Persons with Intellectual and Developmental Disabilities' (2017) 30 *Journal of Applied Research in Intellectual Disabilities* 922-935, 922.

⁴⁶ Traustadóttir in DeVault (n 21) 75.

⁴⁷ Eduardo Daniel Joly and María Pía Venturiello, 'Persons with Disabilities: Entitled to Beg, Not to Work. The Argentine Case' (2013) 39 *Critical Sociology* 325-347.

⁴⁸ Traustadóttir in DeVault (n 21) 75.

⁴⁹ *ibid.* 89.

⁵⁰ Jaeger and Bowman (n 40) 6.

⁵¹ *ibid.*

responsible to.⁵² In some cases, persons with disabilities tend to be excluded since they cannot meet the criteria set by employers, for example: being 'physically and mentally healthy' (as will be discussed further in Chapter 6). This criterion is commonly being interpreted as 'possessing no disability.' In this regard, the dominant norms are likely underlying the perception of disability thus have no place in employment.

The ideas permeating the labour force in respect of persons with disabilities mean that they must strive against dominant norms, stereotype and prejudice, while their capability is disregarded and they are perceived as 'lacking capacity.' The barriers might be different for each types of disability,⁵³ yet the effect remains the same: limiting and disabling them from participating in the labour force.

Among the greatest barriers faced by adults with disabilities is the lack of opportunities for fulfilling career trajectories consistent with their full capacity.⁵⁴

Persons with disabilities are in the vulnerable situation which to some extent make them to experience discrimination, marginalization, and segregation.⁵⁵ To this end, there is a connected link between employment rate and disability.⁵⁶ Research indicates that persons with disabilities are in a vulnerable situation, as they are more affected by unemployment than non-disabled.⁵⁷ This circumstance should encourage law and policies assigned to promote employment for persons with disabilities in order to achieve the real equality. The acknowledgment of diversity (noting disability as social diversity) requires collective action.⁵⁸

⁵² Lucy-Ann Buckley, 'Vicarious Liability and Employment Discrimination' (1997) 26 *Industrial Law Journal* 158-166, 159.

⁵³ Lisa Waddington, Gerard Quinn and Eilionóir Flynn, *European Yearbook of Disability Law* (Intersentia Limited 2014) 11.

⁵⁴ Jody Heymann, Michael Ashley Stein and Moreno (Moreno Ruiz de Elvira) Moreno (eds), *Disability and Equity at Work* (Oxford University Press 2013) 1.

⁵⁵ Shivaun Quinlivan, 'The United Nations Convention on the Rights of Persons with Disabilities: an Introduction' (2012) 13(1) *ERA Forum* 71-85, 73.

⁵⁶ *ibid.*

⁵⁷ Traustadóttir in DeVault (n 21) 81.

⁵⁸ Martin Cano, Maria del Carmen and Yolanda Maria de la Fuente Robles, 'Social Work and Accessibility of Persons with Disabilities in Mexico: Hidden Barriers' (2018) 45 *J. Soc. & Soc. Welfare*, 212.

Providing decent work for persons with disabilities to some extent can reduce the social benefit budget for unemployment. However, most employers may not perceive it as their own interest,⁵⁹ because it seems to be perceived as not directly impact to their business. Accordingly, a shared vision between state and business entities is needed.

4.4. State Responsibility

As seen in the landscape of structural-institutional equality principles above, state responsibility remains crucial. Nussbaum highlights the role of the state in promoting citizen's capabilities to exercise right to work in light of state responsibility.⁶⁰ Nussbaum acknowledges the role of the state in enhancing equality for persons with disabilities, arguing that "*historical disadvantages... pose a broader duty on the state with the aim of achieving equality.*"⁶¹ The importance of the right to work of persons with disabilities, as mentioned above, should require more emphasis on removing barriers due to discrimination in order to address historical disadvantages.

5. Work as a Tool of Personal Development

Human beings need to develop their full potential capacity to participate fully in society.⁶² The importance of people to equally participate and to live in the society can be described as "*a people centred approach*"⁶³ that propose to have an ownership of the community:

The aim is to build a stronger, more participative, more cohesive community which will be 'safe' for people and offer them emotional and spiritual security. They must gain experiences of feeling good and being listened to, of self-worth and dignity, and seeing things happen that benefit people.⁶⁴

⁵⁹ Traustadóttir in DeVault (n 21) 90.

⁶⁰ Albin in Mantouvalou (n 22) 76.

⁶¹ *ibid.*

⁶² David Vernon Donnison and Combat Poverty Agency, *Urban Poverty, the Economy, and Public Policy: Options for Ireland in the 1990s: A Report* (Combat Poverty Agency 1991) 77.

⁶³ *ibid* 75–81.

⁶⁴ *ibid* 76.

Human development aims to grow people as a society as well as individuals. The phrase “a pyramid as a symbol of human development”⁶⁵ describes the relationship between individuals and society, and also describes the degree of contribution of each individual in society.⁶⁶ Building a solid pyramid is not an easy task due to its requirements of time and patience.⁶⁷ This pyramid is not built offhand, but requires plentiful energy of each individual who is able to contribute consistently. The bottom layer of a pyramid will be more solid because it is pressed by the layers above it. The better development we wish, the more we should build each element to be stronger, thus each of which can contribute to the best of their capacity.

6. Dignity, Work, and Disability

Historically, the original Latin term of ‘*dignitas hominis*’ (dignity of man) referred to “worthiness, the outer aspect of a person’s social role which evokes respect, and embodies the charisma and the esteem presiding in office, rank or personality,”⁶⁸ which was formed by Panaetus of Rhodes and Marcus Tullius Cicero in Rome in the second/first century BCE.⁶⁹ This term was later used by the Renaissance Philosophers along with jurists and politicians to support the idea of natural law in the 16th and 17th centuries. It subsequently inspired the American and French declaration of human rights.⁷⁰ A credo of the French revolution, the ‘*Declaration des droits de l’homme et du citoyen*’ permeated as a model to most of the revolutionary movements all over the world.⁷¹ It is also believed that the UDHR 1948 was

⁶⁵ Juerg Rohrer, *ABC of Awareness: Personal Development as the Meaning of Life* (Book Series: Time for Change 2007) 21.

⁶⁶ *ibid* 22.

⁶⁷ *ibid*.

⁶⁸ Hubert Cancik, ‘Dignity of Man’ and ‘Persona’ in Stoic Anthropology: Some Remarks on Cicero, *De Officiis* I 105-107, in David Kretzmer and Eckart Klein, *The Concept of Human Dignity in Human Rights Discourse* (London 2002) 19.

⁶⁹ *ibid*.

⁷⁰ *ibid*.

⁷¹ Yehoshua Arieli, On the Necessary and Sufficient Conditions for the Emergence of the Doctrine of the Dignity of Man and His Rights, in *ibid* 5.

eventually inspired by the idea of dignity of the previous '*dignitas hominis*' as it spread into the revolutionary movements in the 18th century.⁷²

Klaus Dicke argues that the legitimizing function of human dignity is critical in nature rather than merely as stated in the Declaration, a transcendental norm. The types of human rights stated in the UDHR are very limited, but 'dignity' far exceeds the list of these rights.⁷³ Respecting dignity signifies respect the autonomy of individuals.⁷⁴ It also signifies treating human beings in a decent way, respectfully, and not degrading their humanity.⁷⁵ It is ensuring their rights are fully protected.

Human dignity appears to stand as an absolute value, being the actualization of certain basic political and moral values such as liberty, self-determination and equality, while being the paramount value, which in its inalienability and inviolability is at the source of an extended value system that has the capacity to project an assembly of constitutional values.⁷⁶

From the Preamble of the UDHR we can draw the essential concept of dignity of human being, which was clearly explained in terms of protected equal rights, as the following:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, *Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind [...] whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.⁷⁷

The UDHR 1948 refers to 'dignity' in five places: twice in the preamble, once in Art. 1, and twice in the context of social and economic rights in article 22 and 23 (3).⁷⁸ These provisions highlight the importance of dignity as an essential basic of human rights. Human dignity is considered as a major principle underlying the concept of equality.⁷⁹ As mentioned by Fredman, that the fundamental values of dignity and respect for individuals has

⁷² Klaus Dicke, The Founding Function of Human Dignity in the Universal Declaration of Human Rights, in *ibid* 112.

⁷³ *ibid* 118.

⁷⁴ Arthur Chaskalson, Human Dignity as A Constitutional Value, in *ibid* 134–135.

⁷⁵ *ibid*.

⁷⁶ David N. Weisstub, Honor, Dignity and the Framing of Multiculturalist Values, in *ibid* 263.

⁷⁷ UDHR 1948 preamble

⁷⁸ Klaus Dicke in Kretzmer and Klein (n 67) 114.

⁷⁹ Sandra Fredman, *Discrimination Law* (2nd ed., Oxford University Press 2011) 227.

underlined the notion of equality.⁸⁰ Réaume states that dignity is simply built in every individual, and as an attribute *'inherently possessed'* by every human being, no one can take it away from any person.⁸¹ Réaume perceives dignity as signifying worthiness, where to treat human being with respect in the basis of equality⁸² is the major focus of attention. Dignity, in light of equality, is inherently given on born of a human being equally regardless any status or position in the society.⁸³ In addition, the right to equality is essential to determine respect for human dignity.⁸⁴ In fact, the virtues of self-respect and self-worth are well-recognised in the notion of dignity as an intrinsic value. As Iacobucci J. points out in *Law v Canada*,⁸⁵ human dignity is aligned with self-respect and self-worth, regardless of the needs, capacities and merits of each individual.⁸⁶ Iacobucci J. highlights that the law should treat individuals fairly, regardless of any status or position in the society, because treating them unfairly will marginalize or to devalue an individual or a group is against human dignity.⁸⁷

Work has considerable meaning in life. Following the most significant current discussion on human dignity, work is not only economically required, but also socially needed. Wiggins has pointed out the relation of work and happiness: work will transfer potential energy to pursue happiness.⁸⁸ Mantouvalou draws on Aristotle to suggest a link between human happiness, virtue, and ergon.⁸⁹ The value of work is related to dignity. In this sense, the right to work implies *"material and non-material benefits"*,⁹⁰ encompassing the economic meaning as well as dignity purposes.⁹¹ A key current focus of inclusion is on dignity. Disadvantaged groups, in particular persons with disabilities, are an

⁸⁰ *ibid* 230.

⁸¹ Denise G Réaume, 'Discrimination and Dignity' (2002) 63 *La. L. Rev.* 645-698, 676.

⁸² *ibid* 675.

⁸³ *ibid* 667.

⁸⁴ Charilaos Nikolaidis, *The Right to Equality in European Human Rights Law* (Routledge Ltd 2015) 34.

⁸⁵ *Law v Canada* [1999] 1 SCR 497 at [53]

⁸⁶ Réaume (n 81) 667.

⁸⁷ *Law v Canada* (n 85) 83.

⁸⁸ David Wiggins, Work, its Moral Meaning or Import, in Virginia Mantouvalou, *The Right to Work: Legal and Philosophical Perspectives* (Bloomsbury Publishing 2015) 11–12.

⁸⁹ Virginia Mantouvalou, *Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015) 5.

⁹⁰ *ibid*.

⁹¹ *ibid*.

integral part of the society, and should be equally entitled to dignity.⁹² Access to employment is not only an economic issue, but it is also a key attribute of human dignity.⁹³ Thus, 'being accepted' and 'being included' are the common needs of every human being, particularly persons with disabilities who were often historically excluded. The traditional view of disability, which is individualized and medicalized leads to economic disadvantage.⁹⁴ The marginal status of persons with disabilities results from inequality and social exclusion,⁹⁵ therefore places persons with disabilities in a peripheral social area. In the employment context, social pressure (i.e. the marginalization of persons with disabilities) makes it difficult for persons with disabilities to access work.⁹⁶ To this end, dignity provides a basic endowment to disadvantaged groups to be included and accepted in society. In short, dignity advances equality in the society.

7. Disability and Meaningful Work: Barriers and Challenges

One of the crucial emerging problems in vindicating the right to work of disabled persons is accessibility. To some extent inaccessibility can be considered as discrimination.⁹⁷ In the context of employment, for instance, General Comment No.18 of ICESCR on the right to work⁹⁸ outlines the accessibility as comprises in three dimensions:

1. Non-discrimination measures in access to and maintenance of employment
2. Physical accessibility
3. The right to seek, obtain and impart information on the means of gaining access to employment.⁹⁹

The implementation of the accessibility in practice is still challenging such as public transport. In the employment context, persons with disabilities face several barriers in particular on career trajectories aligned with their full

⁹² Jaeger and Bowman (n 40) xi.

⁹³ *ibid.*

⁹⁴ Traustadóttir in DeVault (n 21) 90.

⁹⁵ *ibid.*

⁹⁶ *ibid* 81.

⁹⁷ Jaeger and Bowman (n 40) 63.

⁹⁸ UN Committee of Economic, Social and Cultural Rights ' General Comment No. 18 of ICESCR on the Right to Work' (24 November 2005) UN Doc E/C.12/GC/18.

⁹⁹ *ibid.*

capacity.¹⁰⁰ This raises an issue of insecure livelihood which is against the needs of a dignified life and social inclusion. Disability is an integral part of society. Both disabled and non-disabled persons need each other: “*non-disabled people are a necessary and desirable part of most disabled people’s lives,*” as acknowledged by Shakespeare.¹⁰¹ Non-disabled people in many ways can play an important role to support and enable persons with disability to participate.¹⁰² O’Reilly highlights the inability of a huge numbers of the world population of disabled persons to get decent work. Hence, the temporary solution is to receive a social benefit (as long as it exists) or engage in “*low value-added work in the informal economy*”.¹⁰³ As a result of discrimination, persons with disabilities are more likely to be unemployed.¹⁰⁴

The literature identifies a range of barriers affecting the ability of persons with disabilities to access employment as follows:

First, different types of disability may impact differently on accessing the rights. Disabled people might face barriers due to their particular types of disability.¹⁰⁵ Mental health issues may affect people differently compared with other physical disabilities in accessing such rights. A blind person or a deaf person may face difficulty to obtain the right to education in an ordinary education system. The ordinary schools very rarely provide the services and facility to blind and deaf persons, thus usually they have been referred to special schools. In this sense, inclusive education is currently still challenging. In addition, the degree of disability also impacts on accessing the rights. A severe disability is likely to make it more difficult to access rights than a mild disability. In this kind of situation of inaccessible rights, the risk of exposure to poverty is reasonably high.

¹⁰⁰ Heymann et al, in Heymann and others (n 54) 1.

¹⁰¹ Tom Shakespeare, *Disability Rights and Wrongs* (Routledge 2006) 186–187.

¹⁰² *ibid* 196.

¹⁰³ Arthur O’Reilly, *The Right to Decent Work of Persons with Disabilities* (Rev ed, International Labour Office 2007) vii.

¹⁰⁴ Traustadóttir in DeVault (n 21) 89.

¹⁰⁵ Waddington et al (n 53) 11.

Second, the category of disability is extremely broad, heterogenous and changeable. Only 9% have their disability since they were born.¹⁰⁶ To be disabled or non-disabled can change over time due to some reasons such as accident or degenerative illness. To this end, Traustadóttir claims “*The boundary between disabled people and non-disabled people is permeable in a way that gender boundaries or ethnic boundaries usually are not.*”¹⁰⁷ Unlike gender and race, which tend to settle in numbers, disability can increase and decrease at all times. The impact of disability on each individual is different whether they obtain since born or develop it only later in life (for example, education may not have been affected). However, adjustment to the new situation requires understanding and supportive environment. In many cases, the disability caused by accident can lead to a work termination which eventually give rise to unemployment. In this sense, a disability may lead to poverty.

Third, following the explanation as highlighted by ‘second’ point above, there is another issue which comes from the employer side. At some cases, the employers prefer to recruit only certain types of disability due to various reason most of which about the inaccessibility of workplace or potential reasonable accommodation that should be done. The term of ‘cream skimming’¹⁰⁸ refers to the selection of particular types of disability only (e.g. physical disability rather than intellectual or psychosocial disability), and/or ‘degree’ of disability (mild disability are likely preferred than those ‘severe’ disability).¹⁰⁹ Therefore, by selecting this certain types and degree of disability, the employers can satisfy their quota recruitment target with less effort to provide certain types of accommodation.¹¹⁰ This practice have actually been identified by the previous studies in some different places.¹¹¹

The potential for cream skimming, based on individual characteristics other than disability, has been recognised in a number of studies of mainstream programmes. Anderson *et al.* (1993) and Heckman *et al.* (1996) have examined the Job Training and Partnership Act (JTPA) in the US. While the

¹⁰⁶ Traustadóttir in DeVault (n 21) 82.

¹⁰⁷ Shakespeare (n 101) 186–187.

¹⁰⁸ Per Skedinger and Barbro Widerstedt, ‘Cream Skimming in Employment Programmes for the Disabled? Evidence from Sweden’ (2007) 28 *International Journal of Manpower* 694-714, 695.

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

first study finds that there is some cream-skimming (in Tennessee), the second establishes evidence of “bottom fishing”, or reverse cream skimming (in Texas), i.e. selection of the least able. Heckman *et al.* (2002) conclude that the associated efficiency loss of creaming in the JTPA is likely to be small. In contrast, a study of seven Aid to Families with Dependent Children (AFDC) programmes in the US, by Bell and Orr (2002), obtains the result that cream skimming is of some importance.¹¹²

Fourth, there is limited access for persons with disabilities to enter labour market. Also, another challenge in organizing the work to fit with the situation of certain disability.¹¹³ There are some entry barriers to employment, such as misleading and stigmatic stereotypes due to cultural prejudices or following a medical approach of disability, as being presumed as ‘below-standard,’ high cost (due to certain accommodation). This marginal status of persons with disabilities is reproduced by a social and traditional view of society¹¹⁴ that eventually impacts on accessing rights. Moreover, there is common stigma on disability as ‘not able’ thus need help (see Chapter 3). To this extent, disability is mostly defined by the non-disabled majority,¹¹⁵ producing a stigma of ‘incapability’ derived from the medical model.¹¹⁶

Five, the reproduced stigma as discussed above can impact to the lack of confidence of persons with disabilities. To some extent, living in these certain stigmas in long period of time have inevitably resulted a low self-esteem and lack of confidence among persons with disabilities. As a consequence, this low self-confidence of persons with disabilities impact to their employment purposes (such as less competitiveness in employment).

Addressing these barriers, the social model of disability is designed to focus on societal barriers¹¹⁷ in order to encounter environmental challenge to date. Sufficient support measures for persons with disabilities in exercising the right to work would greatly reduce the burden of their family members in

¹¹² Ibid.

¹¹³ Traustadóttir in DeVault (n 21) 89.

¹¹⁴ Rannveig Traustadóttir, ‘Disability studies, the Social Model and Legal Development’ in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities* (Martinus Nijhoff 2009) 5.

¹¹⁵ Jaeger and Bowman (n 40) 6.

¹¹⁶ Shakespeare (n 101) 198.

¹¹⁷ Anna Lawson, *Disability and Equality Law in Britain* (Hart Pub 2008) 11.

supporting their life, and more importantly, it would uphold their equality and dignity.

8. Conclusion

Persons with disabilities are commonly excluded from employment. It can be drawn from the data that poverty and disability are linked to one another: poverty can affect disability (e.g. poor health care), and disability can result in poverty. The right to work of persons with disability is essential to reduce the poverty gap. In addition, work is not only important economically, but also it is part of dignity of the human being. The work is significant to build personal development of how persons with disabilities (as disadvantaged group) to contribute to the society in light of social inclusion. To this end, CRPD outlines the need to end poverty through sustainable development that is inclusive and accessible to persons with disabilities, as will be discussed in the next chapter.

This chapter has also argued that the barriers to entering the labour force have been impacted by the stigma and prejudice against disability, where disabled people are perceived as 'incapable' or 'not productive' and 'high cost labour.' To some extent, this is attributable to the medical model of disability. Accordingly, this certain stigma inevitably contributes to a lack of confidence and low self-esteem that creating another barrier to entering the labour force.

Chapter 5 The Right to Work in Article 27 of the UN-Convention on the Rights of Persons with Disabilities

1. Introduction

As pinpointed in the previous chapter on the importance of work in economic and social advantage, it is not surprising that the right to work received early protection in the human rights framework. Since the Universal Declaration of Human Rights (UDHR) in 1948,¹ the right to work has been embedded in the human rights framework. In this sense, the right to work is a denotative device of economic, social and cultural rights. In the general context of human rights, the right to work has been largely guaranteed by many of the international human rights instruments in particular International Covenant on Economic, Social and Cultural Rights (ICESCR). It is a foundation of protection of the right to work internationally. However, in the context of disability, the UN Convention on the Rights of Persons with Disabilities (CRPD) generates a specific protection of the overall rights to persons with disabilities including the right to work. Therefore, this chapter is going to specifically look at the CRPD that considered as '*lex specialis*' of disability among general human rights frameworks.

With respect to the right to work, Article 27 of CRPD encompasses the whole cycle of employment, including self-employment. The right to work enshrined in the Article 27 of the CRPD addresses the right to work specifically for persons with disabilities. This chapter examines the key elements of Article 27 in conjunction with other articles of the CRPD, as well as other provisions of the human rights framework. The purpose of this chapter is to enhance an understanding of the conceptual model of the human rights-based approach enshrined in article 27 of CRPD and its bearing on inclusive employment for persons with disabilities.

¹ Universal Declaration of Human Rights (Adopted 10 December 1948) art 23 (3).

This chapter begins with outlining the right to work linked with other human rights treaties. It then analyses the key contents of Article 27 CRPD, including the application of positive measures. This chapter argues that Article 27 CRPD draws on substantive equality to underpin the provision of positive measures to achieve de facto equality in employment.

2. Moving Forwards to Human Rights Model of Disability

The 'medical' or 'individual' understanding of disability is considered as '*individual-oriented approach*'² which emphasizes that the person should adapt to the environment.³ It attempts to align with the environment by correcting disability through rehabilitation so that persons with disabilities could function 'normally' in society.⁴ This model drew the criticism of disability activists, particularly in Britain in the 1970s, because even though it aimed to broaden the participation of disabled people in the society, it was perceived by the activists as ignoring a critical dimension of the experience of being disabled.⁵ To sum up, most criticism of the medical model of disability is putting the problem on the individual as such.⁶ Besides, this model perceives the root of the problem as located in the bodily inability impacted by a functional limitation or psychological losses following disability.⁷ In order to combat this perception, a social model was designed to locate the problem in the environment that produces societal barriers to persons with disabilities, which inevitably hinders them from participating in society.⁸ Also, the concept of the 'social model' was introduced as a breakthrough of historical exclusion.⁹

² Anna Lawson, *Disability and Equality Law in Britain* (2008) 11.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ Mike Oliver, 'The Individual and Social Models of Disability' (Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians, 23 July 1990) 3

⁸ Lawson (n 2) 11.

⁹ *ibid.*

The premise of a social construct is that the label of disability has been socially constructed by the dominant norms ('abled-bodied') of the society.¹⁰ This domination has been reflected in direct or indirect exclusion as these dominant norms have generally not been much concerned with disability needs.¹¹ As a consequence, this misleading of 'social construct' might ignore specific characteristics of disadvantaged groups against inherent dignity.¹²

An expanded development of the disability model touches on the human rights-based approach. The medical model considers a particular individual and their 'medical traits',¹³ while a social model deals mostly with 'a deeper social attitude'.¹⁴ The human rights model of disability was subsequently developed to enrich the social model of disability by incorporating the 'state obligation' and 'human dignity' in this particular approach. The fundamental values of dignity, autonomy, equality, and solidarity outline basic freedoms that developed by human rights.¹⁵ The human rights approach has also emphasized the duty of the state to ensure equality of opportunity.¹⁶

As the impact of social exclusion, persons with disabilities were not visible in many societies.¹⁷ The invisibility of persons with disabilities stood against the celebration of the diversity of human being.¹⁸ In these circumstances, the human rights approach is a 'visibility project of disability'¹⁹ which attempts to uphold equality towards social inclusion to make persons with disabilities 'visible' in all life spheres.

¹⁰ Gerard Quinn and Theresia Degener, 'The moral authority for change: human rights values and the worldwide process of disability reform,' in Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations Office of the High Commissioner for Human Rights, 2002) 10.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.* 13.

¹⁶ *ibid.*

¹⁷ *ibid.* 15.

¹⁸ *ibid.*

¹⁹ *ibid.* 17.

The human rights perspective is focused on dignity as an important value of disability.²⁰ Perceiving persons with disabilities as objects instead of subjects has created a huge historical exclusion.²¹ It also resulted in a lack of protection for persons with disabilities, in particular in the legal sense,²² because they were traditionally seen merely as a problem, not as the holders of rights.²³

3. The Background and History of CRPD

The making of CRPD has inevitably connected to the continued development of human rights. CRPD has revealed a clear position of disability as a human rights issue.²⁴ United Nations has released seven core human rights conventions post-world war II.²⁵ All of these conventions conceptualized human rights that imposing a legal obligation, whereby disability should also apply.²⁶ Even though disability ground is supposed to be covered by these conventions, in fact, that they are not automatically implemented in practice.²⁷ One of the main challenges is the specific barriers encountered by persons with disabilities which cannot fall under the general human rights obligation, where they are not tailored to address this specific situation in disability ground.²⁸ As consequences, it remains the gap of protection of persons with disabilities. Hence, considering this situation, there were some excellent initiatives specifically intended to address disability as a focus of

²⁰ *ibid* 19.

²¹ *ibid*.

²² *ibid*.

²³ *ibid*.

²⁴ Michael Ashley Stein and Janet E. Lord, 'Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities' in Gerard Quinn and Oddný Mjöll Arnardóttir, *The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009) 18.

²⁵ The International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW),

²⁶ Stein and Lord (n 24) 18-19.

²⁷ *ibid*.

²⁸ *ibid*.

action, such as the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993. Unfortunately, unlike those treaties, these initiatives have a significant drawback of a legally binding trait.²⁹

Accordingly, these snowball initiatives kept moving and become more significant. It was an attempt to reshaping the strong protection of persons with disabilities by employing human rights-based approach into account. It was an Ad Hoc Committee set up by the General Assembly In December 2001 to design a proposal of the human rights-based instrument. In 16th January 2004, the preliminary draft has been issued. It was a significant contribution to further negotiations. After long debates and extensive negotiations, finally, on 25th August 2006, the Ad Hoc Committee adopted the CRPD.³⁰

The social model of disability was largely used as a frame of reference in shaping the human rights model of disability.³¹ The human rights model of disability can be considered as a further development of the social model of disability. The CRPD employs human rights instrument on the specific context of disability in order to promote an inclusive society, including inclusive employment.³² The CRPD has adopted the social model of disability, as disability is not merely related to the medical condition or impairment, but deals with societal barriers that hinder participation.³³ Disability thus involves the impairment of the individual (medical condition) and attitudinal and environmental barriers.³⁴ Accordingly, as the social model has not sufficiently led a stronger form of implementation on the ground, CRPD has subsequently adopted human rights model as a further

²⁹ *ibid* 22.

³⁰ *ibid* 22-23.

³¹ Eilionóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Ashgate 2015) 7

³² Arthur O'Reilly, *The Right to Decent Work of Persons with Disabilities* (Rev ed, International Labour Office 2007) 121

³³ Eilionóir Flynn, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities* (Cambridge University Press, 2011) 18.

³⁴ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 preamble (e).

development of social model of disability by putting dignity, equality and state obligation into account.

As mentioned in General Comment No. 6 of 2018, the CRPD has extensively adopted the 'substantive equality' approach in combatting both direct and indirect discrimination. In doing so, the state, as duty bearer, needs to implement a reasonable accommodation obligation ensuring that persons with disabilities receive individual adjustments in order to ensure participation. According to the CRPD, formal equality is not adequate in providing full protection to persons with disabilities, due to various individual needs for accommodation.³⁵

The CRPD is rooted in international human rights law. The history of CRPD development has appeared as adopting the existing norms of human rights instead of creating new rights under international law.³⁶ However, there is a new approach of the CRPD where it involves an advanced clarification of the existing human rights and relates it specifically into the disability context.

4. The Right to Work in Article 27 CRPD: towards an Inclusive Employment

When the two main conventions, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), were established in 1966,³⁷ there was no specific recognition of persons with disabilities as a particular disadvantaged group. Persons with disabilities were grouped in a generic designation of 'other status' in relation to the prohibition of discrimination in Article 2 of ICCPR³⁸ and ICESCR.³⁹ The limited application of the previous human rights

³⁵ Arlene S Kanter, *The Development of Disability Rights Under International Law* (Routledge 2014) 3.

³⁶ *ibid* 5.

³⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, enter into force 23 March 1976) ICCPR 1966.

³⁸ *ibid* art 2(1).

³⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) ICESCR art 2(2).

treaties requires specific instrument concerning disability. Persons with disabilities were continuing to face barriers to participation and their human rights were often violated.⁴⁰

With regard to the right to work, Article 27 enunciates the reasonable accommodation in employment, to ensure physical, mental, and social accessibility.⁴¹ The aim of reasonable accommodation is to develop a work environment that meets the specific needs and requirements of persons with disabilities.⁴² This is regarded as a form of positive measures in relation to the right to work, to meet a job-related need instead of a personal need (such as wheelchair, stick, crutches, walking supports, etc).⁴³ Reasonable accommodation is to ensure a barrier-free environment by removing disadvantages.⁴⁴

The CRPD also recognises a quota system as a form of positive measure. However, the degree of proportionality or percentage is not clearly defined. Article 27 states that this system is intended for inclusive employment that strives to promote a broader involvement of persons with disabilities. It is aimed at ensuring the full participation of persons with disabilities both in the private and public sectors. The appropriate steps that need to be taken include the duty to “*employ persons with disabilities in the public sector*”⁴⁵ and “*to promote in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.*”⁴⁶ Affirmative action is required to secure the participation of persons with disabilities and a quota system have been referred by specific measures is ensure the proportion of participation. Some countries have included quota requirements in domestic laws that endeavour to ensure proportionality of participation of persons with disabilities. Others already implemented quotas long before the CRPD was adopted. For instance,

⁴⁰ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 preamble (k).

⁴¹ *ibid* art 27 (1.k).

⁴² Olivia Smith, *Disability Discrimination Law* (Thomson Reuters Round Hall 2010) 217.

⁴³ *ibid* 231.

⁴⁴ Lawson (n 2) 1.

⁴⁵ CRPD 2006 art 27 (1.g).

⁴⁶ *ibid* art 27 (1.h)

disabled veterans were the group who mostly benefited from quota systems applied post world war II in some countries in Europe, Asia, Africa, the Middle East and Latin America.⁴⁷

With reference to the implementation of the CRPD on quotas and reasonable accommodation, the CRPD Committee has emphasised the need to monitor and to apply sanction for non-compliance with disability quotas in the private and public sectors, as well as monitoring the implementation of reasonable accommodation.⁴⁸

Article 27 is considered as the latest human rights instrument adopted regarding the right to work.⁴⁹ As based on labour theories and human rights framework, Article 27 has largely referred to dignity and equality in coping with social context of disadvantages.⁵⁰ Moreover, according to Albin, Article 27 “offer[s] a new theoretical direction that deals more adequately with the social context and with personal constraints,” since personal constraints are often the cause of rejection in the open labour market.⁵¹ This is seemingly impacted by the medical model of disability that perceives disability as a medical/personal problem. Therefore, society tends to disable persons with disabilities due to the ‘problem’ they pose, as what is called ‘*able-bodied in mind*,’⁵² which has caused a greater lack of participation in the society.

⁴⁷ Sunwoo LEE and Sookyung LEE, ‘Comparing Employment Quota Systems for Disabled People Between Korea and Japan’ (2016) 10 *Asian Journal of Human Services* 83-92, 84.

⁴⁸ UN Committee on the Rights of Persons with Disabilities Concluding Observations on the Initial Report of Luxembourg” (10 October 2017) UN Doc CRPD/C/LUX/CO/1’ para 47.

⁴⁹ Einat Albin, ‘Universalising the Rights to Work of Persons with Disabilities: An Equality and Dignity Based Approach’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Bloomsbury Publishing 2015) 62.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Gerard Quinn and Theresia Degener, ‘The moral authority for change: human rights values and the worldwide process of disability reform,’ in Gerard Quinn and Theresia Degener, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations (United Nations Office of the High Commissioner for Human Rights) 2002) 15.

5. Cross-cutting Articles of the CRPD Linked to Article 27

Article 27 is closely related to other articles in the CRPD. Together, they offer a comprehensive understanding of the right to work of persons with disabilities.

5.1. In Relation with Article 2 (Definitions)

There are five key definitions in Article 2: communication, language, discrimination on the basis of disability, reasonable accommodation and universal design. Article 27 provides the right to work for persons with disabilities, including the provision of positive measures. Positive measures require certain undertaking to remove barriers of persons with disabilities to enable them participating in employment. The definitions mentioned above in article 2 are strengthening these requirements. Communication includes any type of language or communication, including the display of text, braille, tactile communication, large print, accessible multimedia as well as written, audio, plain language, human-reader and augmentative and alternative modes, means and format of communication, and other accessible information and communication technology.⁵³ Additionally, languages include spoken and signed languages and other forms of non-spoken languages.⁵⁴ These are in line with the spirit to provide full supports to any types of disabilities, particularly in accessing information in a proper and decent way. Information is the key to open the door of opportunity, including access to employment, therefore the ability to access information is important to persons with disabilities. By this supports, persons with disabilities, regardless of the barriers they face, can easily access information, so that they would no longer be left behind.

Another salient feature of Article 2 is encouraging universal design. Because universal design is set to apply to all people, including persons with disabilities, it often eliminates the needs of further adjustment.

⁵³ CRPD 2006 art 2.

⁵⁴ *ibid* art 2.

“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.⁵⁵

Discrimination on the basis of disability is defined in Article 2 as:

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.⁵⁶

Reasonable accommodation in Article 2 means “*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities enjoy and exercise all human rights and fundamental freedoms.*”⁵⁷

Based on this article, a reasonable accommodation contains three elements:⁵⁸

- (1) Appropriate modification and adjustments not imposing a disproportionate or undue burden;
- (2) Made on case by case basis; and
- (3) Ensuring enjoyment of human rights and fundamental freedoms.⁵⁹

Even though there is a distinction between reasonable accommodation and accessibility duties, the fact is that accessibility is a pre-condition to exercise the right to work (see Chapter 3). Therefore, there is a connection of ‘accessibility’ as stated in Article 9 of the CRPD. Communication, language, prohibition of discrimination on the basis of disability, reasonable accommodation, and universal design are all means of accessibility to all rights, including the right to work. General Comment No. 2 (2014) of CRPD explains the key requirements of accessibility to employment that should cover physical accessibility in the workplace as well as access to get to the workplace with any necessary support services.⁶⁰ To this end, all information pertaining to work and communication processes, including the

⁵⁵ CRPD 2006 art 2.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

entire work process, must be accessible within the bound forms, modes and formats for persons with disabilities.⁶¹ Hence refusal of workplace adaptation constitutes as discrimination on the basis of disability.⁶²

5.2. In relation with Article 3 (General Principles)

There are eight general principles mentioned in Article 3: respect for inherent dignity and individual autonomy, including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for their right to preserve their identities. Besides guiding the States Parties and stakeholders to interpret the substantive rights and obligations in the CRPD, these principles are also relevant for assessing the compatibility of national laws with the objectives of the CRPD.⁶³

Human dignity is an existing and determinant norm of human rights, that has been primarily taken into account by the CRPD. Additionally, there is a new concept of individual autonomy in the CRPD.⁶⁴ Even though it has been discussed earlier in the human rights frameworks in a broader sense, the CRPD emphasizes individual autonomy in relation to persons with disabilities, due to their experience of being historically excluded.

Non-discrimination is one critical principle of human rights. It concerns on the lack of opportunity as one of the major issues in disability ground. In this sense, Article 2 of CRPD points out discrimination based on disability as well as to emphasize the state obligation to eliminate this kind of discrimination (Article 4). The CRPD is also concerned with the lack of participation of persons with disabilities, hence it endorses a series of positive steps towards

⁶¹ UN Committee on the Rights of Persons with Disabilities 'General Comments of CRPD No. 2 on Accessibility' (22 May 2014) CRPD/C/GC/2' para 41.

⁶² *ibid.*

⁶³ Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 120.

⁶⁴ *ibid.* 123.

social inclusion which mostly focuses on the state obligation to respect and fulfil the rights for persons with disabilities. As first introduced by the social model of disability, human diversity should be cherished and respected, as disability is inevitably part of this diversity.⁶⁵

As mentioned earlier in Chapter 3 of this thesis, equality of opportunity is part of substantive equality, that aims to ensure the participation of persons with disabilities. Accordingly, the salient features of substantive equality, such as reasonable accommodation, have to be taken into account.

The accessibility principle as enshrined in the CRPD is also an advanced concept within the human rights treaty. Accessibility is characterized as the removal of barriers, including physical and non-physical barriers that are hindering persons with disabilities from enjoying their rights.⁶⁶ The CRPD itself highlights the importance of accessibility by acknowledging it as a key principle to ensure the full enjoyment of all the fundamental rights enshrined in the Convention. Further, para v of the Preamble of the CRPD defines accessibility in a broader sense, as covering the physical, social, economic and cultural environment.

Equality between men and women with disabilities is also taken into consideration by the CRPD. Persons with disabilities have experienced multiple or aggravated forms of discrimination as recognized by the CRPD (Preamble, para p). Further, as disabled women have traditionally suffered from multiple-discrimination, the Convention requires the adoption of special measures to achieve de facto equality for disabled women.

With reference to the rights of children with disabilities, the CRPD has intertwined with Convention on the Rights of the Child (CRC) to recognize “the full enjoyment of all human rights and fundamental freedom on an equal

⁶⁵ *ibid* 128.

⁶⁶ *ibid* 130.

basis with other children”⁶⁷. It imposes all necessary measures taken by states in order to uphold “the best interest of the child.”⁶⁸

5.3. In relation with Article 5 (Equality and Non-discrimination)

Article 5 of the CRPD notes the obligations of the States Parties on non-discrimination and equality as the fundamental principles of human rights law. It is closely interconnected with dignity as cornerstones of human rights.⁶⁹ Equality and non-discrimination as well as dignity emerge to characterize human rights, underlying the development of the disability model. Accordingly, the human rights model of disability outlines the State’s obligation to protect and fulfil the rights. In the human rights perspective, persons with disabilities are recognized as rights holders. By contrast, under the medical model of disability, persons with disabilities are merely seen as persons with impairments, whereby a less favourable treatment and exclusion are legitimized,⁷⁰ allowing a restriction and denial of rights on the basis of impairment.⁷¹ The CRPD acknowledges a substantive equality model rather than a formal model by signifying equalization of opportunities as a general principle under Article 4. Formal equality is designed to oppose direct discrimination through the adoption of a symmetrical approach: treating persons in a similar situation similarly.⁷² On the other hand, to embrace the different features of human beings, substantive equality addresses structural and indirect discrimination.⁷³

⁶⁷ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 preamble (r).

⁶⁸ *ibid* art 7 (2).

⁶⁹ UN Committee on the Rights of Persons with Disabilities 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) General Comment No.6 CRPD UN Doc CRPD/C/GC/6' para 4.

⁷⁰ *ibid* para 8.

⁷¹ *ibid* para 8.

⁷² *ibid* para 10.

⁷³ *ibid* para 10.

The substantive model of equality adhered throughout the CRPD⁷⁴ contains:

- (a) a fair redistributive dimension to address socio-economic disadvantages;
- (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality;
- (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and
- (d) an accommodating dimension to make space for difference as a matter of human dignity. The Convention is based on inclusive equality.”⁷⁵

Reasonable accommodation, in Article 5 (3) of the CRPD, is a key aspect of the duty of non-discrimination in the context of disability.⁷⁶ Under Article 2, the duty to provide reasonable accommodation consist of two parts: *Firstly*, there is an obligation to provide a modification or adjustment in a particular case; *Secondly*, the required accommodation must not impose a disproportionate or undue burden on the duty bearer.⁷⁷ The General Comment No. 6 (2018) of CRPD on Equality and Discrimination explains that reasonable accommodation might include providing facilities and information; modifying equipment; reorganizing activities; rescheduling work; adjusting curricula learning materials and teaching strategies; adjusting medical procedures; or enabling access to support personnel, which are arranged to ensure accessibility of persons with disabilities without disproportionate or undue burden.⁷⁸ Reasonable accommodation must be provided at a time persons with disabilities require access to a non-accessible situation or environment.⁷⁹ The duty to provide reasonable accommodation is on an individualized case basis whenever requested.⁸⁰

Besides reasonable accommodation, Article 5 refers to ‘specific measures’ that should not be regarded as discrimination as they aim to accelerate or achieve de facto equality.⁸¹ These are considered as positive or affirmative measures by the General Comment on Article 5.⁸² Similar measures are mentioned in other treaties, such as Article 4 of the Convention on the

⁷⁴ *ibid* para 11.

⁷⁵ *ibid* para 11.

⁷⁶ *ibid* para 23.

⁷⁷ *ibid* para 25.

⁷⁸ *ibid* para 23.

⁷⁹ *ibid* para 24b.

⁸⁰ *ibid*.

⁸¹ CRPD 2006 art 5(4).

⁸² *ibid* para 28.

Elimination of All Forms of Discrimination against Women (CEDAW) and Article 1 subsection 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), both of which entail certain advantages of marginalized groups. The CRPD also adopts specific measures to achieve real equality. The specific measures are usually temporary in nature, but in some circumstances they can also be permanent.⁸³ This mostly depends on the need for dealing with particular structural barriers in society⁸⁴ (see Chapter 3).

Equality and non-discrimination duties aim to prevent any discrimination on the ground of disability in work and employment.⁸⁵ The General Comment on Article 5 outlines some steps that should be taken to ensure reasonable accommodation and achieve or accelerate de facto equality.⁸⁶ There are some new highlights which are specifically mentioned by the General Comment in terms of state obligations. These include facilitating the transition away from segregated work environments to an open labour market and to ensuring the applicability of rights to those settings;⁸⁷ promoting the right of supported employment;⁸⁸ and paying persons with disabilities no less than the relevant minimum wage and ensuring they should still be entitled to a disability allowance when they just start to work.⁸⁹ However, even though General Comment No.6 (2018) of CRPD also elaborates the equality and non-discrimination provisions of Article 27, it does not sufficiently explain the detailed interpretation of the given provisions.⁹⁰

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ *ibid* para 67.

⁸⁶ *ibid* .

⁸⁷ *ibid* para 67a.

⁸⁸ *ibid* para 67b.

⁸⁹ *ibid* para 67c.

⁹⁰ 'General Comment No.6 CRPD 2018 para 67a-j.

5.4. In relation with Article 6 (Women with Disabilities)

The general principles of the CRPD recognize equality between men and women,⁹¹ and that multiple discrimination is more likely borne by women and girls with disabilities during their lives. Article 6 focuses on intersectional discrimination which might be encountered by women with disabilities due to their multidimensional layers of identities, statuses and life circumstances.⁹² It emphasizes a binding non-discrimination and equality provision for women with disabilities and the promotion of equality of opportunity and equality of result.⁹³ Hence all appropriate measures to ensure the full development, advancement and empowerment of women should be taken in order to guarantee equal enjoyment of all human rights and fundamental freedoms.⁹⁴ Such measures can be “*legislative, educational, administrative, cultural, political, linguistic or other in nature.*”⁹⁵ Targeted measures should be set up with respect to “*disaggregated data collection, consultation, policymaking, the enforceability of non-discrimination policies and the provision of effective remedies.*”⁹⁶

‘Multiple discrimination,’ as interpreted by General Comment of CRPD No. 3 (2016), refers to a situation in which a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated.⁹⁷ ‘Intersectional discrimination’ refers to a situation where several grounds interact each other at the same time in such a way as to be inseparable.⁹⁸ Grounds that may interact include age, disability, ethnic, indigenous group, national or social origin, gender identity, political or other opinion, race, refugee, migrant or asylum seeker status, religion, sex and sexual orientation.⁹⁹

⁹¹ CRPD 2006 art 5(4).

⁹² UN Committee of the Rights of Persons with Disabilities ‘General Comment of CRPD No. 3 on Women and Girls with Disabilities’ (25 November 2016) General Comment No.3 CRPD UN Doc CRPD/C/GC/3 para 16.

⁹³ *ibid* para 9.

⁹⁴ CRPD 2006 art 6(2).

⁹⁵ General Comment of CRPD No.3 (2016) para 20.

⁹⁶ *ibid* para 16.

⁹⁷ *ibid* para 4c.

⁹⁸ *ibid* para 4c.

⁹⁹ *ibid* para 4c.

With regard to the right to work, women with disabilities might have certain hindrances to access employment besides the barriers experienced by persons with disabilities in general. General Comment of CRPD No. 3 (2016) mentions specific barriers for women with disabilities in employment, “including sexual harassment, unequal pay, lack of access to redress of discriminatory attitudes dismissing claims, as well as physical, information and communications barriers.”¹⁰⁰

5.5. In relation with Article 8 (Awareness-raising)

Article 8 of the CRPD touches the critical cornerstone that imposes a state obligation to raise awareness on disability in society, in all spheres of life. This awareness should contain equality principles in the disability ground. Comprehensive information on disability would benefit the shape of a rights-based approach in legislation and other law and policymaking processes. These processes of law and policymaking should be taken with careful consideration because it will impact to the life of persons with disabilities ahead. Hence, it is important to spread out a massive awareness-raising to all related stakeholders so that they would understand better on the equality principle as should be reflected in the law and policy.

One of the challenges of Article 8 of the CRPD is the fact that disability consists of heterogeneous groups which experience different barriers. Notwithstanding this, the CRPD is an excellent legal tool that requires the knowledge to promote human rights effectively.¹⁰¹ Removing attitudinal barriers at all levels of society has been profoundly highlighted by Article 8 of the CRPD in order to aim for a paradigm shifting towards a right-based approach, as encouraged by the CRPD.

¹⁰⁰ *ibid* para 58, and see A/HRC/20/5 and Corr.1, para 40, and A/67/227, para 67.

¹⁰¹ Barbara Phillips, Nicole Emmenegger, Bruno Trezzini and Mary Keogh, ‘Raising Awareness about Awareness: Insights from the Feminist Movement on Interpreting Article 8 of the CRPD’ in Charles O’Mahony and Gerard Quinn (eds), *Disability, Law and Policy: An Analysis of the UN Convention* (Clarus Press 2017) 43.

The social model of disability perceives societal barriers as the key disabling factor that hinders the participation of persons with disabilities. The awareness-raising action should be broadened to enable society at large to understand disability better, in terms of a right-based approach.¹⁰² The lack of awareness of family members generally results from negative attitudes towards persons with disabilities, and the same applies to the rest of society. Awareness requires gaining ‘understanding’ and ‘acceptance’ towards an inclusive society, as a means of cherishing the diversity of human beings.¹⁰³ Awareness-raising should encapsulate a positive image of persons with disabilities and their positive contribution to society, for social inclusion purposes.¹⁰⁴ Para 1 (b) of Article 8 touches on “the stereotypes, prejudice and harmful practices” that have to be tackled through awareness-raising. It is acknowledged that the types and degree of disability contribute to the different barriers faced by certain persons with disabilities. Particular groups of disabilities are likely to face difficulties and be misunderstood by society in terms of their needs, like those with ‘invisible disabilities’ such as sensory and psychosocial impairments.¹⁰⁵

Stigma and prejudice regarding a disability may result in ‘harmful practices’, as warned by para 1 (b) of Article 8. Shaping the necessary measures as ‘immediate, effective and appropriate measures,’ Article 8 of the CRPD requires ‘initiating’ and ‘maintaining effective public awareness campaign’ measures that contain ‘nurturing receptiveness’; ‘promoting positive perceptions’ as well as ‘promoting recognition in the workplace and labour market.’¹⁰⁶ Specifically in the employment context, Article 8 of the CRPD has largely recognized promotion of the skills, merits and abilities of persons with disabilities, while touching the core factor of participation in the employment as ‘contributions to the workplace and the labour market.’¹⁰⁷ In the context of employment, besides raising the awareness to persons with disabilities, it is equally important to develop awareness by employers to encourage them to

¹⁰² Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (n 63) 217.

¹⁰³ *ibid* 220.

¹⁰⁴ *ibid* 217.

¹⁰⁵ *ibid* 218.

¹⁰⁶ *ibid* 219.

¹⁰⁷ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 art 8 (2.a.iii).

adopt necessary measures in employment, including in the recruitment process.

Article 8 can be regarded as a wake-up call for society at large, to the related stakeholders to be more well-informed on disability so as to avoid unnecessary misunderstandings that might harm persons with disabilities and hinder them from participating in society.

5.6. In relation with Article 17 (Protecting the integrity of the person)

Article 17 of the CRPD requires protecting the integrity of a person, including 'physical and mental integrity on an equal basis with others.' Article 17 mentions personal integrity within the equality framework. According to the CRPD Committee, Article 17 highlights the need for informed consent in decision-making to avoid medical or other involuntary treatment, including forced sterilisation and forced abortion.¹⁰⁸ It also related to Article 12 on the legal capacity framework.

Article 17 outlines the recognition of the integrity of individuals with disabilities in relation to making their own decisions and choices and avoiding coercive and involuntary treatment or interventions, in particular in the psychosocial context.¹⁰⁹ It is essential to respect the inherent dignity of persons with disabilities. Gerard Quinn describes Article 17 reaffirming the essence of human rights norms as a tailored protector of a person.¹¹⁰

¹⁰⁸ Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (n 63) 328-329.

¹⁰⁹ *ibid* 329

¹¹⁰ *ibid* 329-330.

5.7. In relation with Article 19 (Living independently and being included in the community)

With regard to independent living of persons with disabilities in relation to their right to work, General Comment of CRPD No. 5 (2017)¹¹¹ elaborates how living independently is applied in Article 27. It points out that the existence of individualized support services, including personal assistance, is a pre-condition of an effective enjoyment of the right to work.¹¹² Persons with disabilities should also become persons in charge of disability-specific support services, as employers, managers or trainers.¹¹³ This also touches the issue of employment in segregated settings, whereby implementing Article 19 (living independently) can help to phase out sheltered employment.¹¹⁴

5.8. Interlinked with Sustainable Development Goals (SDGs)

Article 27 of CRPD can also relate to the recent development of the Sustainable Development Goals (SDGs) on disability and employment. SDGs were launched by the United Nations in 2015 as a continuation of the previous Millennium Development Goals (MDGs) that ended in that year. The time horizon for the SDGs is 15 years: from 2015 to 2030. Three dimensions of sustainability addressed by the SDGs (environmental, economic and social) are in line with the United Nations global development agenda beyond 2015.¹¹⁵ The Preamble of CRPD emphasizes the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development.¹¹⁶

¹¹¹ UN Committee of the Rights of Persons with Disabilities 'General Comment of CRPD No. 5 on Living Independently and Being Included in the Community' (27 October 2017) General Comment No.5 CRPD UN Doc CRPD/C/GC/5'.

¹¹² *ibid* para 91.

¹¹³ *ibid*.

¹¹⁴ *ibid*.

¹¹⁵ UN The 2030 Agenda for Sustainable Development SDGs UN Doc A/Res/70/1'

¹¹⁶ CRPD 2006 preamble (g).

With regard to the relationship between disability and SDGs, disability is acknowledged as relevant in relation to education, growth and employment, inequality, accessibility of human settlements, as well as data monitoring of the SDGs.¹¹⁷ At least five goals reflect the fulfilment of disability rights, as described in Goal 4 (inclusive and equitable quality of education), Goal 8 (promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), Goal 10 (promoting social, economic and political inclusion for all), Goal 11 (inclusive human settlement, safe and sustainable, and Goal 17 (strengthening data collection and monitoring),¹¹⁸ all of which are necessary to achieve an inclusive society.

As mentioned above, the issue of employment is also touched by SDGs, i.e. achieving full and productive employment and decent work for all women and men, including for persons with disabilities, and equal pay of work of equal value.¹¹⁹ In this sense, equality is perceived as a means to achieve an inclusive society. Meanwhile, Article 27 of CRPD can also be linked to the achievement of Sustainable Development Goals (SDGs). Referring to the CRPD Committee's concluding observation to Ethiopia (2016),¹²⁰ Article 27 can help to achieve target 8.5 of the Sustainable Development Goals:

By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.¹²¹

Likewise, in concluding observations to Latvia¹²² and Luxembourg,¹²³ the Committee recommends the State Parties to pay attention on the link between Article 27 and Sustainable development Goals, in particular Goal 8.5.

¹¹⁷ SDGs (n 108)

¹¹⁸ *ibid*

¹¹⁹ *ibid* goal 8.

¹²⁰ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observation of the Committee on the Rights of Persons with Disabilities for Latvia' (310 October 2017) UN Doc CRPD/C/LVA/CO/1' 8.

¹²¹ *ibid* goal 8.

¹²² *ibid* target 8.5

¹²³ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Luxembourg' (10 October 2017) UN Doc CRPD/C/LUX/CO/1' (n 265) 10.

6. Core Elements of Article 27

Beside the connection to other provisions as mentioned above, there are some basic elements of Article 27 that are aimed to build a robust protection of the right to work of persons with disabilities:

6.1. Dignity Underlying the Right to Work

The purpose of the CRPD is to ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities as well as to promote respect for their inherent dignity.¹²⁴ In addition, it centers on the general principles of inherent dignity, autonomy and independence;¹²⁵ and full and effective participation and inclusion in society.¹²⁶ Article 27 of the Convention highlights the importance of work and employment for persons with disabilities which includes the opportunity to have a “*freely chosen and accepted job*”¹²⁷ in a labour market, by which they can gain their independent living. In addition, Article 27 requires States to guarantee the implementation of the rights through appropriate measures. Some of the measures can be summarised as follows: prohibit discrimination; protect just and favourable conditions of work, including equal opportunity; ensure the exercise of labour and trade union rights; enable effective access to employment; promote opportunity for career advancement; promote opportunities for self-employment; employ disabled persons in the public service as well as in the private sector; promote their work experience in the open labour market; promote vocational and professional rehabilitation, job retention and return-to-work programmes.¹²⁸ Alongside these previous measures, the State Parties should ensure employment without slavery or in servitude.¹²⁹

¹²⁴ CRPD 2006 art 1.

¹²⁵ *ibid* art 3(a).

¹²⁶ *ibid* art 3 c.

¹²⁷ *ibid* art 27.

¹²⁸ *ibid*.

¹²⁹ *ibid* art 27 (2).

To guide states in implementing their duties, the article outlines appropriate steps (including legislation), policy and measures, including affirmative action, incentives, and other required measures.¹³⁰ The state as safeguarding body has a mandate to conduct the services with results to be monitored and reported.¹³¹ Therefore, the method of monitoring such services must also be set out. Referring to Article 33 of the Convention, a monitoring process requires “*the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.*”¹³² The monitoring process requires the involvement of civil society, in particular persons with disabilities and their representatives.¹³³ Article 33 requires an inclusive monitoring process where the involvement of persons with disabilities are fully taken into account. Incorporating persons with disabilities in the monitoring process can ensure the needs of each group of persons with disabilities is well adopted (most likely based on the type of disability, as each of them encounters different barriers). The disability movements around the world present the slogan of: “*nothing about us without us*”¹³⁴ as an empowerment of their voice in all concerns relating to their needs, including the important process of monitoring where they can review to what extent protections are being provided. It also confirms that Article 27 is based on the best interests of persons with disabilities thus ensuring full enjoyment of the right to work.

6.2. Prohibition of Discrimination in All Forms: Inclusive Employment Setting

The main point of the CRPD as a human rights instrument is based on these principles of human rights: equality and non-discrimination. The CRPD stipulates that a denial of reasonable accommodation is a form of discrimination.¹³⁵ Equality and non-discrimination lie as the fundamental

¹³⁰ *ibid* art 27.

¹³¹ *ibid* art 33 and 35.

¹³² *ibid* art. 33 (1).

¹³³ *ibid* art. 33 (3).

¹³⁴ James I Charlton, *Nothing about Us Without Us: Disability Oppression and Empowerment* (University of California Press 1998) 3.

¹³⁵ CRPD 2006 art 2.

human rights principles underlying the core of all human rights instruments. This aligns with the previous explanation of the Committee on Economic, Social and Cultural Rights in General stating that “*segregation and isolation achieved through the imposition of social barriers*” counts as discrimination.¹³⁶

With regard to segregation of persons with disabilities in the employment area, the CRPD Committee suggests to lowering the numbers of person with disabilities in segregated settings, including sheltered workshops. Based on the Luxembourg initial report, the Committee recommends to transfer of those currently employed in sheltered workshops into the open labour market.¹³⁷ In its initial report of Austria, the CRPD Committee notes its concern regarding approximately 19,000 Austrians who work in sheltered workshops outside the open labour market and receive very little pay.¹³⁸ Furthermore, the Committee recommends enhancing programmes designed to employ persons with disabilities in the open labour market as well as narrowing the payment gender gap.¹³⁹ In the concluding observation to Latvia, the Committee recommends ensuring support for the employment of all persons with disabilities in the open labour market in an inclusive employment setting on an equal basis with others.¹⁴⁰

¹³⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment of ICESCR No. 5 on Persons with Disabilities' (9 December 1994) General Comment No.5 ICESCR UN Doc E/1995/22'.

¹³⁷ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Luxembourg' (10 October 2017) UN Doc CRPD/C/LUX/CO/1' 10.

¹³⁸ UN Committee on the Rights of Persosn with Disabilities, 'Concluding Observations of the Committee on the Rights of Persons with Disabilities for Austria (13 September 2013) UN Doc CRPD/C/AUT/CO/1' 7.

¹³⁹ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observation on the Initial Report of Austria, Adopted by the Committee at Its Tenth Session, 2-13 September 2013' 7 <http://www.ohchr.org/Documents/HRBodies/CRPD/10thSession/CRPD-C-AUT-CO-1_en.doc> accessed 31 December 2017.

¹⁴⁰ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observation of the Committee on the Rights of Persons with Disabilities for Latvia' (310 October 2017) UN Doc CRPD/C/LVA/CO/1' 9.

6.3. Positive Measures Provision

A broader sense of substantive equality has been outlined in the CRPD, requires positive measures to ensure effective equality for persons with disabilities. The Preamble of the CRPD mentions “more intensive support” (j), as well as the necessary protection and assistance (x). Article 2 also emphasises reasonable accommodation to ensure enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with others.

The CRPD adopts a concept of substantive equality in defining equality. It outlines positive measures as a primary tool to achieve equality.¹⁴¹ The CRPD mostly adopts the term reasonable accommodation as a form of positive measures duties. Some of the provisions of the CRPD highlight the state’s obligation to “take measures” as well as to “provide reasonable accommodation,”¹⁴² which means that formal equality is inadequate in the context of disability.¹⁴³ Reasonable accommodation, determined as necessary and appropriate modification and adjustment (with reference to “disproportionate or undue burden”), is aimed to ensure the enjoyment of the rights of persons with disabilities individually, in a case by case basis.¹⁴⁴

In addition, Article 5 (3) notes the state’s obligation to take appropriate steps to ensure that reasonable accommodation is provided. This indicates that reasonable accommodation is an important aspect to equalizing disabled persons with non-disabled. In a similar vein, Article 6 (2) brings to light appropriate measures in particular for women with disabilities, and Article 7 (3) points out the need for appropriate assistance for children with disabilities. These arrangements are made due to potential double-discrimination which might happen to women and children with disabilities as reflected in the current practice.

¹⁴¹ United Nation Development Group, 'Including the Rights of Persons with Disabilities in United Nations Programming at Country Level: A Guidance Note for United Nations Country Teams and Implementing Partners' (2011), 16.

¹⁴² CRPD 2006 art 5 and 11.

¹⁴³ Kanter (n 35) 3.

¹⁴⁴ See definition of ‘Reasonable Accommodation’ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006) CRPD 2006 art 2.

6.4. Reasonable Accommodation: an Effective Adjustment

Reasonable accommodation in Article 27 strengthens the implementation of de-facto equality (substantive equality framework) in addressing structural discrimination experienced by persons with disabilities through positive measures. As reflected in the Article 2, reasonable accommodation aims to ensure that persons with disabilities get full enjoyment of all human rights and fundamental freedoms on an equal basis with others, including the right to work. As discussed in Chapter 3, reasonable accommodation comprises of three basic elements: necessary and appropriate modification and adjustments; not imposing a disproportionate or undue burden; where needed in a particular case.¹⁴⁵

Reasonable accommodation deals with individual adjustment that is assessed on a case by case basis, it needs an immediate action thus it cannot be delayed in its fulfilment. The CRPD Committee have clarified that the progressive realization principle does not apply to reasonable accommodation.¹⁴⁶ Denial of reasonable accommodation constitutes as discrimination, therefore it requires an immediate application.¹⁴⁷ The notion of reasonable accommodation in the employment context is quite challenging. Since reasonable accommodation is a case by case, a 'tailor-made' approach following the need of individuals is required, the adjustment is not always 'physical' in nature. For persons with a psychosocial or intellectual and developmental disability (IDD), the adjustment could also include 'time flexibility,' such as to give them a certain 'time break' during the working hours.

Other forms of reasonable accommodation could include assistive technology, adaptation of the work environment, flexible working hours,

¹⁴⁵ *ibid* art 2.

¹⁴⁶ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations of the Committee on the Rights of Persons with Disabilities for Spain' (19-23 September 2011) UN Doc CRPD/C/ESP/CO/1' para 44.

¹⁴⁷ *ibid*.

induction and training,¹⁴⁸ and other possible actions which have a burden of cost or may have no cost at all. These arrangements are to provide a friendly disability environment to each individual with disability. The aim is to remove barriers, so that disabled people can work decently and productively. Necessary and appropriate modification under Article 27 requires effectiveness in the adjustment, as suggested by the word 'appropriate' in the Article 27.¹⁴⁹ Coping with various types and degree of disability inevitably requires a personal approach best suited for each individual. This can be done by generating a constructive dialogue¹⁵⁰ to build a mutual understanding and to respect an inherent dignity of persons with disabilities.

The duty of reasonable accommodation in the employment context aims to provide equal employment opportunities to persons with disabilities. Hence it needs an adjustment to the environment to accommodate individuals with various types, ranges and degrees of disability.¹⁵¹ The US Equal Employment Opportunity Commission (US EEOC) has defined reasonable accommodation in the context of employment as follows:

It is best understood as a means by which barriers to the equal employment opportunity of an individual with disabilities are removed or alleviated. These barriers may, for example, be a physical or structural obstacle that inhibits or prevent the access of an individual with a disability to job sites, facilities or equipment. Or they may be a rigid work schedule that permits no flexibility as to when work is performed or when breaks may be taken or inflexible job procedures that unduly limit the models of communication that are used on the job or in the way particular tasks are accomplished.¹⁵²

According to the US EEOC, reasonable accommodation is provided for job-related rather than personal needs of an individual with disability.¹⁵³

¹⁴⁸ Association for Higher Education Access & Disability (AHEAD), 'Reasonable Accommodations at Work' <<https://ahead.ie/employer-accommodations>> accessed 30 December 2019.

¹⁴⁹ Delia Ferri and Anna Lawson, *Reasonable Accommodation for Disabled People in Employment Contexts a Legal Analysis of EU Member States, Iceland, Liechtenstein and Norway*. (Publications Office of the European Union 2016) 49.

¹⁵⁰ *ibid.*

¹⁵¹ Smith (n 42) 216–217.

¹⁵² *ibid* 217.

¹⁵³ *ibid* 231.

Reasonable accommodation in the context of self-employment is a new notion which has not been discussed further in the CRPD or general comments.¹⁵⁴ Despite the importance of self-employment measures, reasonable accommodation needs to be clearly defined in line with the full protection of persons with disabilities who choose to be involved in self-employment purposes. The general comment of Article 5 outlines reasonable accommodation that covers 'making existing facilities and information accessible'¹⁵⁵ which can be used in the context of self-employment. Unlike open employment, where the employer is the responsible body to provide reasonable accommodation, making a facility accessible has been envisaged to be upheld by service providers. For instance, when dealing with banking facilities, the bank is a responsible service provider to deal with reasonable accommodation for persons with disabilities. The service provider of vocational training for self-employment purpose is the responsible body to provide reasonable accommodation for the person with disabilities who wish to join.

6.5. Full range of Protection on the Employment Cycle

Article 27 provides a specific protection on the right to work of persons with disabilities that emphasizes positive measures duties. It covers a full range of protection pre-work, during work, and post work. This is to ensure a greater opportunity to open labour market participation thus should be fully supported. Article 27 highlights the prohibition on discrimination,¹⁵⁶ the requirement to ensure reasonable accommodation in the workplace,¹⁵⁷ and widening the opportunity of persons with disabilities to engage with both public and private sectors through appropriate policies and measures.¹⁵⁸ These will be discussed below in relation to each stage of work-cycle (pre, during-employment, and post-employment).

¹⁵⁴ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No.6 on Equality and Non-discrimination (26 April 2018) General Comment No.6 CRPD Un Doc CRPD/C/GC/6'

¹⁵⁵ *ibid* para 23.

¹⁵⁶ CRPD 2006 art 27.

¹⁵⁷ *ibid* article 27 (1.i)

¹⁵⁸ *ibid* article 27 (1.g) and (1.h)

6.5.1. Pre-employment

The appropriate steps to be taken are *firstly*, enabling an effective access to general technical and vocational guidance programmes, placement services, vocational and continuing training.¹⁵⁹ These can also be organised in the 'during-employment cycle,' where training related to career development may be required. *Secondly*, "*promoting employment opportunities and career advancement in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment,*"¹⁶⁰ all of which provide supports to those who are willing to enter the labour force.

Accordingly, in the initial report for Tunisia, the CRPD Committee recommends affirmative action measures to ensure the participation of employed women and men with disabilities.¹⁶¹ The Committee also notes the need for diversity in employment and vocational training opportunities.¹⁶² Such diverse measures should increase the possibility for persons with disabilities to be engaged in job opportunities, hence increasing their employability rate in the open labour market as well as self-employment opportunities.

6.5.2. During Employment

Persons with disabilities who are currently involved in the labour market are entitled "*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.*"¹⁶³ Accordingly, the right to work guarantees persons with disabilities can freely and equally exercise their labour and trade union

¹⁵⁹ *ibid* art 27 (1.d).

¹⁶⁰ *ibid* art 27 (1.e) .

¹⁶¹ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations of the Committee on the Rights of Persons with Disabilities for Tunisia (13 May 2011) UN Doc CRPD/C/TUN/CO/1' 6.

¹⁶² *ibid*.

¹⁶³ CRPD 2006 2006 art 27 (1.b).

rights.¹⁶⁴ These arrangements must be conducted in an equality basis. The protection of this cycle of employment engages with a generic normative right in work that is applies to all workers. Article 27 accentuates the specific focus on persons with disabilities and to avoid discrimination (both direct and indirect) in relation to the right to work. Moreover, 'safe and healthy' conditions are also important for persons with disabilities to be fully protected. If reasonable accommodation is not properly provided for certain individuals with disabilities, they could possibly suffer from severe conditions of health due to their particular vulnerability which can be worse than non-disabled workers in a similar case.

6.5.3. Post-employment

This phase covers the post-employment cycle in the event of persons with disabilities terminate their employment. The aim is to "*promote acquisition by persons with disabilities of work experience in the open labour market*"¹⁶⁵ and to "*promote vocational and professional rehabilitation, job retention and return to work programmes for persons with disabilities.*"¹⁶⁶ The post-employment protection of persons with disabilities also dismantles discrimination against persons with disabilities. Persons with disabilities are entitled to all rights arising from termination of employment on an equal basis with others. Subsequently, the 'return to work programme' is also encouraged by the State authority in order to prevent them from remaining unemployed.

These three classifications of employment cycle are not rigid as such, but rather permeable at each stage. The important message is on the full protection of the entire cycle of employment of the work of persons with disabilities. They cannot be disregarded, ignored and discriminated due to their disability.

¹⁶⁴ *ibid* art 27 (1.c).

¹⁶⁵ *ibid* art 27(1.j).

¹⁶⁶ *ibid* art 27 (1.k) .

7. Self-Employment Support

The Convention also recognizes that many disabled persons in developing countries for some reasons prefer a self-employment micro business as their first option, or in some cases as the only option they have. States Parties are called on to promote such opportunities.¹⁶⁷ Self-employment is another trajectory to uphold independent living for persons with disabilities. Beside the main point to respect the right to self-determination of persons with disabilities, this also responds to the fact that their employability rate in the open labour market is still low.¹⁶⁸ Therefore both promotion of open employment and self-employment are highly necessary. To this end, Article 27 highlights the necessity of supporting self-employment for persons with disabilities. As mentioned in the heading of Article 27, the realization of the right to work shall be safeguarded and promoted, which means that all aspects of the right to work, including access to self-employment, have to be covered. The article states it aims to “*promote employment opportunities for self-employment, entrepreneurship, the development of cooperative and starting one’s own business,*”¹⁶⁹ creating a variety of choices for persons with disabilities in exercising their right to work.

Aligned with the heading of the article, this provision also emphasises the role of the state in supporting self-employment. Thus, the state must establish actions and steps to provide necessary supports to carry out business development. As specified in Article 27 (1) that States shall take appropriate steps, including through legislation, to protect this right. In addition, related steps for self-employment must also be granted, such as vocational training, grants, access to credit or business loans as well as access to banking services (this can be in a form of microcredit scheme etc), marketing support, and all possible supports to effectively grow a business, including positive steps to provide an opportunity to serve particular

¹⁶⁷O’Reilly (n 32) 60.

¹⁶⁸ Helen McQuillan Brothers of Charity Claire, ‘Self-Employment Options for People with Disabilities: Good Practice Review’ (2012) 7 .

¹⁶⁹ CRPD 2006 art 27 (1.f).

product/services. This concept also aims to support independent living for persons with disabilities.

According to the initial report of Luxembourg, the Committee also pays attention to providing vocational and professional training, and incentives for self-employment, in particular for women with disabilities.¹⁷⁰ This shows how self-employment is essential alongside the substantive equality duties to support persons with disabilities in employment.

8. Conclusion

To comprehensively understand Article 27 of CRPD, there are some provisions in the CRPD that are closely related to the right to work. Therefore, a line between Article 27 and those related provisions has been drawn as a continuum, such as the definition of terminology related to the right work (reasonable accommodation, accessibility, discrimination) that is inherent with the whole spirit of Article 27. Other key provisions relate to equality and discrimination (which draw on the substantive equality framework), and the specific discussion on women with disabilities and living independently in the community. Therefore Article 27 should be understood comprehensively in relation with other provisions. Besides relating Article 27 to other related provisions in the CRPD and other human rights treaties, this chapter has drawn on the recent framework of Sustainable Development Goals (SDGs) specifically on disability and employment. SDGs have encouraged the spirit of the CRPD (in particular Article 27) by setting goals that are essential for an inclusive society, including in the context of employment.

Article 27 aims to build a robust protection of the right to work of persons with disabilities by upholding dignity and incorporating principles of substantive equality. It considers both open employment measures and self-employment measures. These aspects will be further considered in the discussion of the

¹⁷⁰ UN Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Luxembourg' (10 October 2017) UN Doc CRPD/C/LUX/CO/1' (n 265) 10.

thesis findings in Indonesia, particularly on the specific measures framework (Chapter 9) and reasonable accommodation (Chapter 10).

Chapter 6 Indonesia: Disability Law and Policy Framework on the Right to Work

1. Introduction

This chapter outlines the statutory framework of the law and policy on disability and the right to work in Indonesia. As highlighted in Chapter 4, persons with disabilities are less likely to be employed. This chapter examines the specific situation of Indonesia and how the law and policy framework deal with the right to work. The chapter argues that Indonesia has made significant advances in developing its legal framework drawing on a human rights-based approach. However, certain issues remain challenging, mainly in relation to awareness among stakeholders, including state actors. This chapter highlights the issue of coordination among institutions, the disparity of the local governments (particularly in terms of available resources), and the variation and fracturing of the legal framework at the ground level.

The chapter will proceed by outlining the Indonesian context of employment and general human rights involvements. It will then acknowledge the very significant engagement in the informal economy/self-employment, as well as open employment. This will be followed by the development of legal frameworks, particularly on the rights of persons with disabilities. The chapter will examine the sharing of authority between central government and local governments, which leads to variations in legal frameworks at the local level.

2. Indonesia at a Glance

Indonesia is an archipelago which covers 17,504 islands,¹ some of which are uninhabited (more than 7,000).² The dimension of territory from east to west is about 3,200 miles (5,100 km), and from North to South about 1,100 miles (1,800 km). This makes Indonesia the largest country in Southeast Asia³ with an area estimated by Statistics Indonesia (*Badan Pusat Statistik/BPS*) of 1,913,578.68 sq.km.⁴ Indonesia shares its borders with countries such as Malaysia in the northern part of Borneo, and Papua New Guinea in the centre of New-Guinea.⁵ Some of the biggest islands of Indonesia include Sumatera, Kalimantan (Borneo), Papua, Sulawesi (Celebes), Java, and Maluku (the Mollucas), which cover almost three quarters of the area of Indonesia.⁶

According to Statistics Indonesia, the population of Indonesia in 2016 was 258.7 million.⁷ It was reported that since the National Census of 2010 the population of Indonesia had increased by 21.06 million.⁸ Interestingly, more than half of the population lives in Java Island, even though the territory is no more than 10% of the total area of Indonesia. In Java island an average of 135 people lives within 1 square kilometre.⁹ This indicates the imbalance of population density in Indonesia. Java, where the capital city is located, is the most populated island across Indonesia. Jakarta, as the capital city with a total population of 10.37 million people in 2017,¹⁰ has the highest population density, being inhabited by 150 people per square kilometre on average.¹¹

¹ Statistics Indonesia, *Statistik Indonesia dalam Infografis 2017 (Statistical Yearbook of Indonesia in Infographics 2017)* (Badan Pusat Statistik/BPS 2017) 2.

² Asvi Warman Adam and others, 'Indonesia' (www.britannica.com, 18 September 2019) <<https://www.britannica.com/place/Indonesia/media/1/286480/208499>> accessed 27 August 2019.

³ *ibid.*

⁴ Statistics Indonesia, *Statistical Yearbook of Indonesia in Infographics 2017* (n 1) 2.

⁵ Adam and others (n 2).

⁶ *ibid.*

⁷ Statistics Indonesia, *Statistical Yearbook of Indonesia in Infographics 2017* (n 1) 24.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ Katadata, 'Databoks: Berapa Jumlah Penduduk Jakarta?' (24 January 2018) <<https://databoks.katadata.co.id/datapublish/2018/01/24/berapa-jumlah-penduduk-jakarta>> accessed 24 September 2019.

¹¹ Statistics Indonesia, *Statistical Yearbook of Indonesia in Infographics 2017* (n 1) 25.

Indonesia is a unitary state in the form of a republic. It is based on the rule of law. The form of government is a multi-party republic with two legislative houses: the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*) and the House of Representatives (*Dewan Perwakilan Rakyat/DPR*).¹² The Regional Representative Council has a representative of each province (equivalent to a 'senator'). Indonesia currently consists of 34 Provinces, 416 Regencies, 98 Cities, 7,145 Subdistricts, and 82,395 Villages.¹³

The basic ideology of Indonesia is 'Pancasila' (the five philosophical basic of ideology), with the famous slogan of '*Bhinneka Tunggal Ika*' which means 'unity in diversity.' Adopted from the Sanskrit language (one of the ancient roots among the languages that contributed to form the official language of Indonesia, called "Bahasa Indonesia"), Pancasila is pronounced as '*Pancha-seela*.' '*Panca*' means 'Five,' while '*Sila*' means 'principles.' The 5 principles of Pancasila strongly uphold the principles of equality and diversity, including the ultimate protection of disadvantaged groups such as persons with disabilities. Two of the five inseparable principles enshrined in Pancasila¹⁴ are directly related to the discussion of the right to work of persons with disabilities: "just and civilised humanity" (second principle) and "social justice for the entire people of Indonesia" (fifth principle).

3. Employment of Persons with Disabilities in Indonesia

According to BPS, in 2016, there were 189.1 million people in the working age population, with 66% of the population economically active in the labour force.¹⁵ BPS reported the overall open unemployment rate as 5.61% of the labour force in 2016.¹⁶ The open unemployment rate was slightly reduced

¹² Adam and others (n 2).

¹³ Statistics Indonesia, *Statistical Yearbook of Indonesia in Infographics 2017* (n 1) 12.

¹⁴ Embassy of the Republic of Indonesia in Bucharest, Romania, 'The Republic of Indonesia: Pancasila the State Philosophy' <<http://www.indonesia.ro/republic.htm#pancasila>> accessed 25 September 2019.

¹⁵ Statistics Indonesia, *Statistical Yearbook of Indonesia in Infographics 2017* (n 1) 25

¹⁶ Ibid 26.

the year after that, reaching 5.50% in August 2017,¹⁷ then continuing to slightly decrease to 5.34% in August 2018.¹⁸

The ILO and the Institute for Economic and Social Research, University of Indonesia (LPEM-UI), carried out a study on mapping persons with disabilities in Indonesia Labour Market (2017).¹⁹ According to the study, overall participation of persons with disabilities is way lower than non-disabled persons.²⁰ Non-disabled persons have a participation rate of 70.40 percent²¹ while only 56.72% of persons with disabilities can enter the workforce.²²

As an alternative to formal employment, there is a growing acceptance of the 'informal economy' which connects to informal employment (usually in the form of self-employment measures). However, there is a lack of definition in the international context because it is not widely used.²³ As a consequence, the specific characteristics of the informal sector appear in Indonesia cannot easily be compared to other countries.²⁴ Nevertheless, the informal economy emerges as a promising power that has continuously contributed as an important source of employment of more than 50% of the global non-agricultural employment (Charmes 2000).²⁵ The informal economy mostly produces goods and services to lower-income groups in most developing countries (Chen 2007).²⁶ In Indonesia, the informal sector provides no less than 5 million jobs.²⁷

¹⁷ Statistics Indonesia, *Tingkat Pengangguran Terbuka (TPT) Sebesar 5,50 Persen* (August 2017) <<https://www.bps.go.id/pressrelease/2017/11/06/1377/agustus-2017--tingkat-pengangguran-terbuka--tpt--sebesar-5-50-persen.html>> accessed 25 September 2019.

¹⁸ Statistics Indonesia, *Tingkat Pengangguran Terbuka (TPT) Sebesar 5,34 Persen* (August 2018) <<https://www.bps.go.id/pressrelease/2018/11/05/1485/agustus-2018--tingkat-pengangguran-terbuka--tpt--sebesar-5-34-persen.html>> accessed 25 September 2019.

¹⁹ International Labour Organization, *Final Report: Mapping Persons with Disabilities (PWD) in Indonesia Labour Market* (International Labour Organization 2017)

²⁰ Ibid 14.

²¹ Ibid.

²² Ibid.

²³ Statistics Indonesia (BPS) and Asian Development Bank, *The Informal Sector and Informal Employment in Indonesia: Country Report 2010* (Badan Pusat Statistik/BPS 2010) 2.

²⁴ Ibid

²⁵ Ibid 30.

²⁶ Ibid

²⁷ Ibid

The measurement of the informal economy statistics has been served by the regular national labour force survey (*Sakernas*), based on employment status and occupational variables.²⁸ A pilot survey was held by Asian Development Bank (ADB) and BPS in two provinces in Indonesia: DI Yogyakarta and Banten. According to the survey, the informal sector contributed to 37.30% of the total GDP (Gross Domestic Product) of DI Yogyakarta, while in Banten, it contributed to 26.60% of the total GDP.²⁹ This survey found the informal sector mostly appears as “Household Unincorporated Enterprises with at least some Market Production (HUEM),” which in the Indonesian context is classified as an informal enterprise.³⁰

With reference to job status, the ILO reviewed the *Sakernas* data, finding that persons with disabilities most likely are working in the informal sector rather than in the formal sector.³¹ Non-disabled persons are more likely to be involved in the formal employment (50.73%) rather than working in informal employment (49.27%).³² Conversely, in the case of disability, 64.93% of persons with mild disabilities are involved in informal employment and only 35.07% are in formal employment. This number sharply increases in the case of severe disability, where 75.80% are working in informal employment and only 24.20% are working in formal employment.³³ In this sense, they have full freedom to choose the best option for themselves. However, the state should ensure accessibility to both formal and informal employment for persons with disabilities.

In developing countries, micro-businesses/micro-enterprises are mostly part of the informal sector/economy³⁴ while only minority engage with the formal

²⁸ *ibid* 2.

²⁹ Statistics Indonesia and Asian Development Bank, *The Informal Sector and Informal Employment in Indonesia: Country Report 2011*, (Asian Development Bank and BPS-Statistics Indonesia 2011) 30.

³⁰ *ibid* 34.

³¹ ILO, Final Report (n 21) 16.

³² *Ibid*.

³³ *ibid*

³⁴ Virginie Vial and Julien Hanoteau, ‘Returns to Micro-Entrepreneurship in an Emerging Economy: A Quantile Study of Entrepreneurial Indonesian Households’ Welfare’ (2015) 74 *World Development* 142-157, 143.

sector.³⁵ Micro-businesses are commonly run in a form of self-employment that represents a complementary source of livelihood performed by individual or households.³⁶ It has been suggested that the two main goals in running a micro-business for self-employment purposes are to increase consumption and to cope with vulnerability.³⁷ It has been found by previous empirical studies for the Philippines (Moser, 1998), Bolivia, India, Indonesia, and South Africa (Tipple, 2005) that households running home-based enterprises, reflecting the vast majority of micro-enterprises in developing countries, have a higher income than those that do not.³⁸

According to the World Bank, Indonesia was reported to have 50.7% self-employment compared to total employment.³⁹ The World Bank flagged the big potential of self-employment for impacting the national economy of Indonesia. In 2018, the World Bank highlighted Indonesia's place of 16th in the GDP world ranking.⁴⁰ However, for the current 2019 fiscal year, it remains categorised as a 'lower middle income economy' (\$996 - \$3,895), along with another 46 countries in the world.⁴¹ Within this category, Indonesia is considered as a developing country that generates a fairly high rate of informal economy. Long before this picture, Tambunan (2007) found that approximately 90% of Indonesian firms were micro-enterprises that employed around half of the workforce. Those micro-enterprises are in household-based ownership and run in the informal sector (Rigg, 2003),⁴² most of which employs low-end technology.⁴³ Micro-entrepreneurship has grown remarkably over time and offers big opportunities for jobs in low-

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid.* 144.

³⁸ *ibid.*

³⁹ The World Bank, *Self-Employed, Total (% of Total Employment) (Modeled ILO Estimate)* (The World Bank April 2019) <<https://data.worldbank.org/indicator/sl.emp.self.zs>> accessed 25 September 2019.

⁴⁰ Knoema.com, 'World GDP Ranking 2018' <<https://knoema.com/nwnfkne/world-gdp-ranking-2018-gdp-by-country-data-and-charts>> accessed 4 April 2019.

⁴¹ The World Bank, *World Bank Country and Lending Groups* <<https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>> accessed 4 April 2019.

⁴² Vial and Hanoteau (n 36) 145.

⁴³ *ibid.*

income countries⁴⁴ and generates the majority of the workforce.⁴⁵ In some international institutions the growing acceptance of this type of micro-business leads to Business Development Programmes (BPDs) that target them as important parties to engage with, such introducing micro-credit initiatives.⁴⁶

Considering the real benefit of the micro-business arrangements to self-employment, it is important to support such micro-business programmes because it would potentially impact greatly on economic welfare stability in the long run.⁴⁷ Micro-business/entrepreneurship as domain of self-employment is typically run by the poorest, hence this economic activity will beneficially leverage welfare distribution⁴⁸ and can be viewed as an attempt to alleviate poverty and economic vulnerability.

4. The Social Context of Disability Law and Policy

Political Structure and Its Implications

The political system and democracy of Indonesia recognize the sovereignty of the people, according to the Constitution.⁴⁹ It applies a framework called a 'presidential representative democratic republic' where the President is the head of state and head of government at the same time.⁵⁰ Indonesia has adopted a multi-party system. With reference to the legal system, Indonesia has a civil law system/continental law (following previous Dutch colonialization). Its legal principles represent a combination of customary law and the Roman-Dutch law.

As a unitary state, Indonesia governmental system consists of the 'central government' and 'local governments.' Article 18 of the Constitution outlines

⁴⁴ *ibid* 142.

⁴⁵ *ibid* 143.

⁴⁶ *ibid* 142.

⁴⁷ *ibid* 143.

⁴⁸ *ibid*.

⁴⁹ The Constitution of the Republic of Indonesia 1945 s 1, sub-s 2.

⁵⁰ Worldatlas, 'What Type of Government Does Indonesia Have?' (WorldAtlas) <<https://www.worldatlas.com/articles/what-type-of-government-does-indonesia-have.html>> accessed 25 September 2019.

the regional authority where the local governments shall be divided into provinces and those provinces shall be divided into regencies (*kabupaten*) and municipalities (*kota*).¹ Each local government has its own authority regulated 'by law'/local law (*peraturan daerah*).⁵¹ The authority of the local government is highlighted under the principles of regional autonomy and the duty of assistance (*tugas perbantuan*).⁵² Led by the governor (provincial level), regent (regency) and mayor (municipalities), the regional authorities exercise wide ranging autonomy except in subjects specified by law as the domain of central government.⁵³ Each local government, apart from subjects specified by central government, governs their own territory within the available resources.⁵⁴ In some cases this results in varied prioritizing of programmes and strategies, due to resource constraints. With reference to disability policy, there are regional variations in achievement and implementation of the rights of persons with disabilities. Apart from regional autonomy, the protection of disability rights is highly impacted by differences in awareness, priority, and available resources of each region.

4.1. Legislative Reform Process

The Indonesian Centre of Law and Policies Studies (PSHK) captured at least 114 legislation related to persons with disabilities at both national and local levels.⁵⁵ Act Number 4 of 1997 concerning Persons with Handicaps (hereafter called the Disability Act 1997) was enacted far before the ratification of the CRPD, as were other existing laws, some of which were still using the old paradigm of the medical model of disability. To this end, the disability movements, along with other related stakeholders, campaigned very rigorously for human rights mainstreaming into the disability ground.

With regard to employment measures, the Disability Act 1997, mentioned that every person with a disability is entitled to work in order to attain

⁵¹ The Constitution 1945 s 18 sub-s 1.

⁵² *ibid* s 18 sub-s 2.

⁵³ *ibid* 1945 s 18 sub-s 1.

⁵⁴ *ibid* s 18 sub-s 5.

⁵⁵ Fajri Nursyamsi and others, *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas* (Pusat Studi Hukum dan Kebijakan Indonesia (PSHK) 2015) 24.

wellbeing, which work should fit to the type and degree of impairment, education, and capability.⁵⁶ To some extent, the equality of opportunity to avail of work was partly taken into account.⁵⁷ The promising provision of this law was on mandating public and private enterprises to provide work, to provide equality of opportunity for persons with disabilities aligned with the type and degree of disability as well as their capability.⁵⁸ This provision was profoundly amplified by the explanatory note that every enterprise, both public and private, had to open the opportunity for qualified disabled workers (who meet certain qualification requirements) by employing at least one person with a disability in every hundred workers.⁵⁹ In respect to enterprises using high-technology, they should hire persons with disabilities even if the number of workers are less than a hundred.⁶⁰ However, this strong affirmation of the quota in Article 14 only appears in the 'explanatory notes' instead of the body of the act itself. This caused debates on how legally binding the mandate was. There was also no sanction applied for violating the provision. Despite its shortcomings, this Act is considered as the first to impose a quota system in disability employment measures in Indonesia. Unfortunately, the provision on the one percent quota has never been fulfilled, and the Disability Act 1997 was subsequently repealed by new legislation the Disability Act 2016. To some extent, the Disability Act 1997 can be said as toothless,⁶¹ where many of the provisions (including the quota provision) have not been well-implemented.

Other drawbacks of the Disability Act 1997 related to the adoption of the medical model of disability, which is prone to problematising individuals with disabilities. The terminology used by this Act in Bahasa (the official language of Indonesia) is '*penyandang cacat*', which can be translated into English as more or less 'handicapped persons' or 'persons with impairments.' Unfortunately the term '*cacat*' can be described as 'invalid' according to the KBBI (the Big Dictionary of Bahasa Indonesia), which means 'deficiency' or

⁵⁶ Act Number 4 of 1997 concerning Persons with Handicaps s 6 sub-s 2.

⁵⁷ Ibid s 13.

⁵⁸ Ibid s 6 sub-s 2.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Nursyamsi and others (n 57) 10-13.

being of poor quality or imperfect.⁶² The description of ‘cacat’ or ‘invalid’ as a word most of the time has been associated with the deterioration or disreputation of anything and anyone attached to it. Accordingly, the Disability Act 1997 categorised persons with disabilities as ‘individuals with defects’, as mentioned in the definition in Article 1: “*Disabled persons are person with physical and/or mental deficiency so that they cannot ordinarily do their social function*”⁶³ and can be classified as physically disabled, mentally disabled, or both physically and mentally disabled.⁶⁴ Looking at these terms, they seem adopted from the medical model approach, where disability was defined as based on anomalies or abnormalities.⁶⁵

Another criticism of to the Disability 1997 Act was on the placement of the Ministry of Social Affairs as leading the sector. This limited the responsibility and the budget arrangement to this particular ministry. To this extent, disability was not necessarily treated as a ‘cross-cutting issue’. Relying on the Ministry of Social Affairs for all issues related disability resulted in a minimum of responsibility for other ministries. In fact, disability is a broad topic dealing with several fields of rights, ranging from civil and political rights to economic, social and cultural rights. Preserving disability as only ‘a social problem’ eventually created other complication. Further, less-comprehensive view of disability created a serious issue on inaccessibility of rights because the particular ministries were not focused on disability, as disability issues were supposed to be attached to the Ministry of Social Affairs. For example, the right to education, the right to work and the right to health come under respective ministries and cannot be carried out appropriately by the Ministry of Social Affairs, while ironically, on the other side, the liable ministries pay only a little attention to disability as it is presumed to be assigned to the Ministry of Social Affairs.

⁶² Kamus Besar Bahasa Indonesia (KBBI) Online, ‘Arti Kata Cacat,’ <<https://kbbi.web.id/cacat>> accessed 5 June 2018.

⁶³ Act Number 4 of 1997 concerning Persons with Handicaps, s 1 sub-s 1

⁶⁴ *ibid.*

⁶⁵ Irwanto and Slamet Thohari, ‘Understanding CRPD Implementation in Indonesia,’ in Derrick L. Cogburn editor and Tina Kempin Reuter editor, *Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN* (Lexington Books 2017) 91.

After the CRPD was adopted internationally, there were reasonably high demands to ratify the CRPD by disability movements and civil society in Indonesia. The proposal finally succeeded in 2011, with the ratification of the CRPD by the government of Indonesia.⁶⁶ As Indonesia is a monist state,⁶⁷ the ratification meant that the provisions of the CRPD were automatically incorporated into national law. The human rights paradigm underlying the rights of persons with disabilities, acknowledged by the convention, became recognised in the national law. Equality and dignity are the central focus of the human rights-based approach. After ratification, there was a very strong campaign by the disability movements, along with related stakeholders, for the establishment of a new law to replace the previous Disability Act 1997 as it needed to be updated to comply with the CRPD. The ratification itself did not sufficiently confer protection because it did not contain sanctions for the violation of the protected rights.

4.2. Key Stakeholders and Policy Actors

Indonesia has partly adopted a trias politica framework where the executive, legislature and judiciary have their own authoritative roles. There is an adaptation of trias politica that does not focus on the 'separation of power' but rather a 'division/sharing of power.' Parliament/the House of Representatives, in terms of legislative duties, possesses an authoritative role in the law making process that is shared also with the executive authority. In this sense, an act is the law product formed by the House of Representatives (*Dewan Perwakilan Rakyat/DPR*) and President (executive). With regard to specific propositions, the Regional Representative Council (*Dewan Perwakilan Daerah/DPD*) also has duties of involvement. There are specific propositions that are part of the responsibility of the DPD including subjects in relation to local autonomy; central and local government relations; establishment, division, and merger of the regions;

⁶⁶ Act Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities.

⁶⁷ Eddy Pratomo and R Benny Riyanto, 'The Legal Status of Treaty/International Agreement and Ratification in the Indonesian Practice Within the Framework of the Development of the National Legal System' (2018) 21 *Journal of Legal, Ethical and Regulatory Issues*.

natural resources of the regions; and other related financial arrangements of the region (such as budget allocation from central government etc).⁶⁸ With reference to the authority and mechanism, the DPR has inherent authority to establish laws (legislative duties),⁶⁹ along with budgeting and oversight functions.⁷⁰ Each bill shall be discussed by DPR and the President to reach a joint approval.⁷¹ In the event that a bill fails to obtain joint approval, it shall not be reintroduced within the same DPR term of sessions.⁷² The President signs a jointly approved bill to become law,⁷³ if the President fails to sign a jointly approved bill within 30 days following such approval, that bill shall legally become a law and must be promulgated⁷⁴ As a consequence of the division/sharing of power, President has the right to establish government regulations in lieu of laws;⁷⁵ these must obtain the approval of DPR during its next session⁷⁶ otherwise they will be revoked.⁷⁷

With regard to the implementation of the law and policy on disability at the executive level, as mentioned earlier, the Ministry of Social Affairs has long been the leading institution on disability. In relation to the right to work, the Ministry of Manpower is the responsible ministry. Specifically in the issue of disability, the Ministry of Manpower has been engaging with the placement of persons with disabilities in the workforce. However, vocational training is mostly in the responsibility of the Ministry of Social Affairs, which as rehabilitation and vocational training centres for persons with disabilities. These two segregated duties sometimes downgrade the focus of the Ministry of Manpower on dealing with disability issues, as the Ministry of Social Affairs has been expected to be the most responsible ministry to address disability issues. This role division is discussed further in Chapter 8.

⁶⁸ Dewan Perwakilan Rakyat Republik Indonesia, 'Pembuatan Undang-undang' <<http://www.dpr.go.id/tentang/pembuatan-uu>> accessed 13 January 2019

⁶⁹ The Constitution 1945 s 20 sub-s 1.

⁷⁰ *ibid.*

⁷¹ *ibid* s 20 sub-s 1..

⁷² *ibid* sub s-3.

⁷³ *ibid* sub s-5.

⁷⁴ *ibid.*

⁷⁵ *ibid* s 20 sub-s 1.

⁷⁶ *ibid* sub-s.2.

⁷⁷ *ibid* sub-s 3.

Additionally, it is important to capture the involvement of the National Human Rights Institution (NHRI) to highlight the mainstreaming of the human rights based approach in disability development. In the last two decades, the National Commission on Human Rights (Komnas HAM) has been closely involved with the issue of the rights of persons with disabilities as a disadvantaged group. This is in accordance with its mandate to develop conducive situations on the implementation of human rights as well as improving protection and upholding human rights in light of people's whole human development and abilities in every aspect of life.⁷⁸

To achieve these aims, Komnas HAM is equipped with functions to conduct studies, research, dissemination, monitoring, and mediation on human rights.⁷⁹ In respect of study and research, Komnas HAM has a duty and authority, *inter alia*, to study and research international human rights instruments to recommend possible accession and ratification⁸⁰ and to study and research legislation concerning human rights in order to recommend the establishment, amendment, and repeal of particular legislation.⁸¹ Carrying out this authority, Komnas HAM makes proposals to the government and legislative body.

Civil society has been actively involved in the disability movements along with related stakeholders, including Komnas HAM. These set the goal of enhancing disability law and policy, taking a human rights approach. Multiple tracks were taken. Komnas HAM took as one of its trajectories the mandate to protect 'vulnerable groups,' including people with disabilities. The mandate of Komnas HAM includes research and studies, inquiry and monitoring, mediation, and dissemination of the protection of the rights of persons with disabilities.

During 2010 to 2012, Komnas HAM initiated the academic draft of the proposed-amendment of the previous Law (Act Number 4 of 1997 concerning Persons with Handicaps). According to the law, if the proposal

⁷⁸ Act Number 39 of 1999 Concerning Human Rights, s 75.

⁷⁹ *ibid* s 76 sub-s 1.

⁸⁰ *ibid* s 89 sub-s 1.

⁸¹ *Ibid* s 89 sub-s 1.b.

contains more than 50% changes to the substance of the previous law, a new law must be proposed instead of an amendment.⁸² Based on this academic draft, Komnas HAM, along with related stakeholders, Government and DPOs, submitted a Bill concerning the Rights of Persons with Disabilities to Parliament in 2013.⁸³ This bill was not the only draft submitted, as there were other bills submitted by DPOs to parliament also. All the drafts and recommendations of stakeholders were taken into account by Parliament. After a long battle and discussion, the recent law was finally enacted in 2016: the Disability Act 2016.

5. Law and Policy Development on the Right to Work of Persons with Disabilities

The major domestic sources of law, arranged hierarchically, are as follows:⁸⁴

- a. The Constitution 1945;
- b. The People's Consultative Assembly (Majelis Permusyawaratan Rakyat/MPR) Decree;
- c. Law (*Act/Undang-undang*), or government regulation in lieu of law;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation;
- g. Regency/Municipality Regulation.

The hierarchy of seven sources of law as mentioned above means that a lower level law cannot prevail over a higher-level law. With regard to disability policy, there are some provisions regarding disability rights in particular sources of law, starting from the Constitution as regards general human rights and the protection disadvantaged groups.

⁸² Yossa AP Nainggolan and others, *Rekam Jejak Kontribusi Komnas HAM Dalam Pembentukan Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas* (Komnas HAM) 2016) 4.

⁸³ *ibid* 4–5.

⁸⁴ Act Number 12 of 2011 concerning the Establishment of Laws and Regulations 2011.

5.1. The Protection of General Human Rights in the Constitution

The Constitution of the Republic of Indonesia was first adopted on 18 August 1945, a day after the declaration of independence from the Japanese colonialization during world war II (3.5 years: 1942-1945). Before being colonized by Japan, Indonesia was colonised under the Dutch for about 3.5 centuries (from 1592 to 1942, where on 8 March 1942 Dutch unconditionally surrendered to Japan following the Pacific War and the Japanese took over the Dutch colonial territory of "Netherlands-Indie.")⁸⁵ The lengthy period of colonialization under the Dutch shaped the legal structure in Indonesia, including its adoption of a continental/civil law system.

The new reformation era started in 1998 following the fall of the former authoritarian President Soeharto, who had governed for 32 years. The regime's end was marked by the dramatic resignation of President Soeharto on 21 May 1998, after a series of massive demonstrations and protests nationwide. The succession was then designated a new stage of 'reformation,' aiming to reform the economic, social and political system, including the development of the legal system that had been criticised as very centralised. The reform period was designated as the beginning of the new period of Indonesian political history. The reformation aimed to rectify an interrupted democratisation which had been impacted by the authoritarian power of the Soeharto regime. The new period of reformation then became an era of reformed legal and political structure, that welcomed an open democracy on board. The amendment of the Constitution marked the reformation in the legal framework, as an overwhelming demand of the people.

Following the reformation, the Constitution has been amended for four times during period of 1999-2002: in October 1999, August 2000, November 2001, and August 2002. In the second amendment, Human rights were incorporated in the Constitution as settled in the Article 28 (A to J) some of

⁸⁵ Hendri F Isnaeni, 'Dalih Belanda Enggan Menyerah' (*Historia - Majalah Sejarah Populer Pertama di Indonesia*) <<https://historia.id/politik/articles/dalih-belanda-enggan-menyerah-DBNGD>> accessed 31 December 2018.

which stipulated the protection of the right to work among other things (Article 28D (2) and 28E (1)). This amendment marked the development of human rights law in Indonesia. Article 28H (2) of the Constitution 1945 amendment was stated: “**Each person** has the right to facilities and special treatment to get the same opportunities and advantages in order to reach equality and justice.”⁸⁶ The meaning of ‘each person’ as stated in the constitution was interpreted by Constitutional Court in a Decision of Constitutional Court Number of Decision MK Number 10-17-23/PUU-VII/2009; Decision of MK Number 143/PUU-VII/2009; dan Decision of MK Number 16/PUU-VIII/2010.⁸⁷ The Constitutional Court decided:

“Constitutional rights in the scope of article 28H (2) UUD 1945 is constitutional guarantee which is called as ‘affirmative action.’ It is applied to those who are marginalized, left behind, experience exclusion, limitation, discrimination, and also those who experience discrepancies in the participation in politics and overall public life impacted by continued structural barriers by society (discrimination) either formal or non-formal, both in public and private service. The support is called as affirmative action.”⁸⁸

With reference to the marginalisation, exclusion, and discrimination that has been experienced by disadvantaged groups, affirmative action is needed, not to ‘differentiate’ them but rather to confer their constitutional rights.⁸⁹ In this sense, positive measures should be put in place to achieve de facto equality for disadvantaged groups, including on disability ground.

5.2. Law on Autonomy and Decentralization

Addressing the issue of ‘centralisation’ in the past, the transition of the law was then formulated in the amendments of The Constitution.⁹⁰ One of the biggest issues raised was the ‘centralisation’ of most resources. Therefore this needed to be re-structured into an extensive autonomy of the region/local level (decentralisation principles). The basis of this transition was formulated in the amendments of The Constitution⁹¹ as well as Act

⁸⁶ The Constitution 1945 art 28H (2).

⁸⁷ Nursyamsi and others (n 57) 23.

⁸⁸ *ibid.* (author’s translation)

⁸⁹ *ibid.*

⁹⁰ The Constitution 1945 s 18, s 18A, s 18B.

⁹¹ The Constitution 1945 art 18, 18 A, 18B..

Number 22 of 1999 concerning Local Government.⁹² This Act was replaced twice (2004⁹³ and 2014⁹⁴) after the first enactment in 1999,⁹⁵ in order to justify the dynamics of the administrative arrangement as well as the relationship between central and local government authority.

The autonomy framework outlines the major context of the disability development policy in the local level. Besides the certain obligatory affairs assigned by the central government, the local government has full authority to form the legal and political structure in their own territory, based on available resources and priorities. This results in local variations in the legal policy of disability development in practice.

5.3. Incorporating International Human Rights Instruments into National Law

Since 1984, Indonesia has ratified some of the core international human rights instruments and their monitoring, started from CEDAW/the Convention on the Elimination of All Forms of Discrimination against Women (1984), CRC/the Convention on the Rights of the Child (1990), CERD/ the Convention on the Elimination of All Forms of Racial Discrimination(1999), CAT/the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1998), ICCPR/ the International Covenant on Civil and Political Rights and ICESCR/the International Covenant on Economic, social and Cultural Rights (2006), CRPD/the Convention on the Rights of Persons with Disabilities (2011), CMW/the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2012), CRC OP-AC/the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2012), and CRC OP-SC/the Optional Protocol to the Convention on the Rights of

⁹² Act Number 22 of 1999 concerning Local Government Administration 1999.

⁹³ Act Number 22 of 2004 concerning Local Government Administration and its Amendments 2004.

⁹⁴ Act Number 23 of 2014 concerning Local Government Administration and its Amendments 2014.

⁹⁵ Act Number 22 of 1999 concerning Local Government Administration.

the Child, on the sale of children, child prostitution and child pornography (2012).⁹⁶

As noted previously, Indonesia adopts a monist system,⁹⁷ so the ratification of the above-mentioned instruments has incorporated international human rights law into domestic law. There is a fairly significant indirect impact on the protection of the rights of persons with disabilities, particularly in intersectional context. To some extent, a human rights-based approach has been employed in shaping the paradigm to perceive disability. Subsequently, the ratification of the CRPD in 2011⁹⁸ directly addressed the particular rights of persons with disabilities as the milestone of disability law and policy framework of Indonesia.

5.4. The Right to Work of Persons with Disabilities in the General Labour Law

There are three major labour laws of Indonesia: Act Number 21 of 2000 on Trade Unions, Act Number 13 of 2003 on Manpower (in line with Constitutional Court Decision Number 012/PUU-I/2003), and Act Number 2 of 2004 on Industrial Relations Disputes Settlement. Correspondingly, specific reference to the right to work of persons with disabilities is contained in the Manpower Act Number 13 of 2003 as mentioned in articles 19 and 67 of the Act. In addition, this Act touches on the important notion of equal opportunities for persons with disabilities in particular as mentioned in Chapter 3 of the Act under the heading of 'Equal Opportunities.'⁹⁹ This chapter outlines the duty of non-discrimination to persons with disabilities in employment. Article 5 of this Act also highlights the equal opportunity to get a job without discrimination. With reference to this equal opportunity, the explanatory notes clarify:

⁹⁶ United Nations Human Rights Office of High Commissioner, 'UN Treaty Body' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx> accessed 25 September 2019.

⁹⁷ Pratomo and Riyanto, (n 69).

⁹⁸ Act Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities 2011.

⁹⁹ Act Number 13 of 2003 concerning Manpower (Indonesia Labour Act 2003) 2003 Chapter 3 'Equal Opportunities.'

Every person who is available for a job shall have the same right and opportunity to find a decent job and to earn a decent living without being discriminated against on grounds of sex, ethnicity, race, religion, political orientation, in accordance with the person's interest and capability, including the provision of equal treatment to the disabled. (ILO translation of Act Number 13 of 2003).¹⁰⁰

The explanatory notes on Article 14 of Act Number 13 of 2003 concerning Manpower describes non-discriminatory treatment as including an equal salary for a similar job.¹⁰¹ It highlights a non-discrimination duty. Disability is clearly stated as one ground of protection against discrimination, as mentioned in the explanatory notes on Article 5.¹⁰² Article 19 of the Act outlines the importance of job vocational training, which should consider the severity and ability of each type of disability.¹⁰³ This provision is re-affirmed in Article 67 of the Act, which highlights the obligation of employers who employ disabled workers to provide protection to the workers in accordance with the type and severity of their disability.¹⁰⁴ This is supposed to mean that they provide accessibility to workers with disabilities, including individual reasonable accommodation whenever required.¹⁰⁵

Another protection on the ground of disability according to this Act is the prohibition of termination by reason of permanent disability due to a work accident or any occupational disease contracted during employment, where the period of recovery cannot be medically ascertained by the physician.¹⁰⁶ Further, workers who get their disability as a result of a work accident or any illness that hinders them from continuing to work after 12 consecutive months can request the termination of employment from the employer. In this case the worker is entitled to receive twice the rate of severance pay and the reward pay specified in Article 156.¹⁰⁷ Following this request, the workers would get significantly increased severance pay based on the length of

¹⁰⁰ Act Number 13 Year 2003 Concerning Manpower 2003 s 5.

¹⁰¹ Ibid Explanatory Notes on s 14.

¹⁰² Ibid Explanatory Notes on s 5.

¹⁰³ Ibid s 19.

¹⁰⁴ Ibid s 67 sub-s 1

¹⁰⁵ Ibid Explanatory Notes on s 67 sub-s 1.

¹⁰⁶ Ibid s 153 sub-s 1.j.

¹⁰⁷ Ibid s 172.

employment.¹⁰⁸

On the one hand, Act Number 13 of 2003 concerning Manpower touches on disability, though in some respects (significantly, prior to ratification of the CRPD), it is notable that the perspective behind some of its provisions on disability is still based on the medical model. For instance, in the case of a work accident that causes disability to a particular worker, as well as other illnesses causing disability, there is a 'privilege' for those workers to apply for an employment termination and to receive a certain amount of money following that request. Yet, not all types and degrees of disability really need to quit work. Many can return to work normally if they receive appropriate accommodations. At this stage, therefore, employers should consider accommodating persons with disabilities by removing barriers, as highlighted by the social model of disability.

5.5. The right to work in Act Number 39 of 1999 Concerning Human Rights

'Human rights' as a legal term was introduced in Indonesia following the establishment of the National Human Rights Institution (NHRI) in 1993, mandated by Presidential Decree Number 50 of 1993 concerning the National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia/Komnas HAM). Six years after the establishment of the NHRI, or one year after the political succession in Indonesia in 1998, Act Number 39 of 1999 concerning Human Rights (hereafter called The Human Rights Act 1999) was enacted. A year later, in 2000, another major human rights reference was also adopted as national law. This was Act number 26 of 2000 concerning the Human Rights Court. This law was attributed to the gross violation of human rights, including the violation in the past (Soeharto regime). By this law, the potential gross violation of human rights as well all the alleged past gross violations of human rights can be proceeded to the Human Rights Court.

¹⁰⁸ *ibid* s 156.

Human Rights Act 1999 enshrined the protection of disability rights under the 'vulnerability rights' framework.¹⁰⁹ Persons with disabilities are therefore entitled to preferential treatments in relation to their specific needs.¹¹⁰ Preferential treatment here is to acknowledge the vulnerability as a result of disability disadvantage, hence assistance should be provided in order to remove barriers to each type of disability in order to equally participate in society. Article 41 subsection (2) of this Act stated: "*The disabled, elderly, pregnant women and children have a right to special facilities and treatment.*"¹¹¹ The aim of the special facilities and special treatment is not to discriminate but rather to confer a preferential treatment as the state obligation. Accordingly, the human rights law stipulates disability (both physical and mental) as subject to "*special care, education, training and assistance*" at the expense of the State.¹¹² The required preferential treatment was aimed to ensuring equal participation in society and "*...ensuring an existence of worthy of human dignity, and building self-confidence and capacity to participate in the life of nation, state, and society.*"¹¹³ The vulnerability concept seems to reference the medical model of disability, where a problem is perceived as attached to the disability instead of an insufficiently supportive environment/society. However, notwithstanding this, the protection of rights enshrined in The Human Rights Act 1999 was the first to mark the human rights perspective on disability that emphasizes the underlying dignity and equal participation of persons with disabilities in society.

With respect to the right to work, the Human Rights Act 1999 highlights the right to equal opportunities of getting employment for all citizens. It also includes the right to free choice of employment, the right to just conditions of work, the right to equal pay for equal work, the right to equal work conditions, and the right to fair and adequate remuneration for oneself and one's family, ensuring an existence worthy of human dignity.¹¹⁴ This provision is applied

¹⁰⁹ Act Number 39 of 1999 concerning Human Rights 1999 s 5 sub-s 3.

¹¹⁰ *ibid* s 41 and s 42.

¹¹¹ *ibid* s 41 sub-s 2

¹¹² *Ibid*.

¹¹³ *Ibid* s 42.

¹¹⁴ *Ibid* s 38.

equally to persons with disabilities. This is important as this provision acknowledges work as not only economically important but also as important for human dignity (see Chapter 4). However, Article 38 subsection 1 underlines the right to work as befits a human being in line with his or her ability and capacity. Though 'capacity' and 'ability' are not explained (the explanatory note mentions these as 'sufficiently clear'), this can be problematic in interpretation. With reference to disability ground, the misleading interpretation on this article could happen due to stigma and stereotyping led by dominant norms of society, in particular with regard to assessing 'capacity' and 'ability'. This could potentially undermine persons with disabilities as to have less capacity and ability (see Chapters 3 and 4).

5.6. Act Number 8 of 2016 Concerning Persons with Disabilities

Following the ratification of the CRPD in 2011 by the Government of Indonesia,¹¹⁵ The Disability Act 2016 was enacted. This law largely refers to the CRPD, to contextualize it to the Indonesian situation, and also imposes sanctions for the violation of certain rights. With regard to the right to work, the law comprehends an inseparable equal right to participate in society, including the equal opportunity in relation to employment. This provision not only highlights equal opportunities to enter open employment but pays a strong attention to the access of entrepreneurship and cooperative.¹¹⁶ The Disability Act 2016 outlines major protections on the right to work for persons with disabilities, particularly with regard to positive measures for persons with disabilities. The Act covers the right to work in both formal and informal employment/self-employment, including cooperative arrangements for persons with disabilities.¹¹⁷ Furthermore, the Disability Unit Service that is mandatory for each local government¹¹⁸ is also aimed to ensure practical

¹¹⁵ Act Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities 2011.

¹¹⁶ Act Number 8 of 2016 concerning Persons with Disabilities 2016.

¹¹⁷ *ibid* s 5 and s 11.

¹¹⁸ *ibid* s 55 sub-s 1.

arrangements for the protection on the right to work, as well as to link persons with disabilities to employment, including assistance to work at any stage.¹¹⁹

With regard to the positive measures relating to the right to work, Articles 45-60 of The Disability Act 2016 highlight non-discrimination duties, reasonable accommodation, the disability quota, the disability unit service and positive measures to support self-employment.¹²⁰ Non-discrimination duties elaborate the right to work in the entire employment cycle, which encompasses pre-employment, during employment, and post-employment measures (e.g. ensuring implementation of a proper and lawful severance pay, as well as a return to employment afterwards). This is to ensure employment sustainability for persons with disabilities. Reasonable accommodation is also required as a positive measure to ensure that every person with a disability will be individually facilitated in enjoying their right to work (see also Chapter 5).¹²¹

With reference to the employment quota (as a form of positive measures, mentioned above), this recent Act clearly includes in Article 53 a compulsory provision to fulfil 2% of employment in the public sector and 1% employment in the private sector.¹²² This quota basically is not brand new provision, considering the previous Disability Act 1997 included a '1% quota.'¹²³ However, as noted above, the Disability Act 1997 placed this essential provision in the explanatory notes instead of in the body of the Act (as an article), raising a public debate on whether it was binding or not, so that quota was never fulfilled.

Learning from the unsuccessful quota provision of the Disability 1997 Act, and to trigger the implementation of the employment quota, The Disability Act 2016 applies incentive measures to companies that employ persons with disabilities,¹²⁴ subject to further technical provision to be ruled in a

¹¹⁹ Ibid s 55 sub-s 2.

¹²⁰ See Ibid s 45-60.

¹²¹ See Ibid s 11.c, s 46, s 47, and s 48.

¹²² Ibid s 53.

¹²³ Act Number 4 of 1997 concerning Persons with Handicaps 1997 Explanatory Notes on s 14.

¹²⁴ Act Number 8 of 2016 concerning Persons with Disabilities 2016 s 54 sub-s 1.

Government Regulation,¹²⁵ Presidential Regulation, and Ministerial Regulation. However, the process of the Regulation has not yet been completed by 14 October 2019, or 3.5 years after the enactment of the Disability Act 2016, there are only two (out of 8) Government Regulations and one of ministerial regulation have been enacted. It is Government Regulation Number 52 of 2019 concerning Administration of Social Welfare for Persons with Disabilities 2019 (31 July 2019)¹²⁶ and Government Regulation Number 70 of 2019 concerning Planning, Organizing, and Evaluating on the Respect, Protection, and Fulfilment of the Rights of Persons with Disabilities (4 October 2019). This delay makes the implementation of the incentive provision as well as other provisions remain uncertain.

As mentioned above, the Disability Act 2016 also outlines the importance of advancing informal employment by upholding self-employment measures for persons with disabilities.¹²⁷ The act covers the protection of the right to work, entrepreneurship, and cooperative.¹²⁸ The positive measures on self-employment include the provision of technical supports, including training/vocational, marketing, capital access, as well as the procurement by the government of goods and services. This provision acknowledges the importance of the informal economy in terms of self-employment in Indonesia (see part 3: Employment of Persons with Disabilities).

Sanctions on the violation of the right to work are also applied in order to protect persons with disabilities. The criminal sanction is a maximum of two years in jail and a fine of maximum IDR200,000,000 (two hundred million Indonesian Rupiah/approximately equal to USD14,285).¹²⁹ According to the Disability Act 2016, the sanction is in the form of criminal sanction or fine but there is no provision on remedies and compensation for persons with disabilities whose rights are violated.

¹²⁵ Ibid s 54 sub-s 2.

¹²⁶ Government Regulation Number 52 of 2019 concerning Administration of Social Welfare for Persons with Disabilities 2019.

¹²⁷ Act Number 8 of 2016 concerning Persons with Disabilities s 56-60.

¹²⁸ Ibid s 143.b.

¹²⁹ Ibid s 145.

With reference to industrial relations, there is another specific law that outlines the industrial relations between employers and employee in terms of dispute settlement. Act Number 2 of 2004 concerning Industrial Relations Disputes Settlement (see Part 5.4. the right to work in general labour law) involves bipartite negotiation between employer and employee (usually a Union Trade as representative of the employee). There is then a conciliation/mediation process assisted by the Government (the Office of Manpower in the local government area where the company is located) called a 'tripartite.' In the event of no agreement being reached during the mediation process above, the dispute can proceed to the Industrial Relations Court. According to the Act, the Industrial Relations Court (*Pengadilan Hubungan Industrial*) has authority to assess cases of rights disputes, interest disputes (conflict of interest), work termination (*Pemutusan Hubungan Kerja*), and trade union disputes.¹³⁰ Hence, disputes on the disability ground within the industrial relations context can be settled under this jurisdiction.

However, the right to work protection not only consists of the 'during employment' and 'post-employment' stages, but also begins with the 'pre-employment' stage. Disputes in the pre-employment stage (such as in the recruitment process) are not under the Industrial Relations Court jurisdiction. In this sense, there is a gap on the dispute resolution mechanism in particular on the process before the employment, because this jurisdiction only deals with industrial relation (contractual based) as such. Therefore, Articles 143 and 145 of the Disability Act 2016, attempt to covering the violation of the right to work also in pre-employment, defines the violator as: "***whosoever hinders and prohibits persons with disabilities from getting their particular rights,***"¹³¹ which means that under this Act, every violation in every stage of employment can be resolved.¹³²

¹³⁰ Act Number 2 of 2004 concerning Industrial Relations Dispute Settlement 2004 s 56.

¹³¹ Act Number 8 of 2016 concerning Persons with Disabilities s 143.

¹³² *Ibid* s 55.

5.7. Presidential Regulation Number 75 of 2015 on the National Action Plan of Human Rights (NAPHR) 2015-2019

As mentioned in the previous part of this chapter, a Presidential Regulation/Decree ranks in fifth place of the hierarchy of the law. The National Action Plan has been outlined in the form of a Presidential Regulation, hence it has been placed into a stronger form of law that is expected to be more executable on the ground. The National Action Plan is a roadmap for disability development as it has practical goals and achievement measures.

The current NAPHR that incorporated Persons with Disabilities NAP of 2015-2019 refers to the evaluation of the previous NAPs. This acknowledged the lack of coordination among implementing government institutions, as well as the ineffective monitoring, evaluation and reporting mechanism of NAPHR 2011-2014 and NAP Persons with Disabilities 2004-2013.¹³³ This is crucial to avoid similar issues happen recurring. However, there are still strong institutional gaps. For this reason, effective coordination is the key proposition that must be addressed. To this end, the NAPHR 2015-2019 was aimed at strengthening coordination among all the implementing institutions and seeking to improve the mechanisms for monitoring, evaluating and reporting.¹³⁴ The objective of the NAPHR is enhancing the efforts made by the Government to advance human rights for all people, based on Pancasila (the five-fold philosophy or basic principle of the nation) and the 1945 Constitution of the Republic of Indonesia.

To strengthen coordination, there is a revision in the current NAPHR, dated 10 April 2018. The President of the Republic of Indonesia signed Presidential Regulation Number 33 of 2018 as the revision of the previous Presidential Regulation Number 75 of 2015 concerning the National Action Plan of

¹³³ Presidential Regulation of the Republic of Indonesia Number 75 of 2015 on National Action Plan on Human Rights 2015-2019 annex 9-10.

¹³⁴ *ibid* 10.

Human Rights 2015-2019.¹³⁵ The NAPHR contains the targets, strategy, focus, and action priorities on human rights, as well as the institutions in charge. The 2018 revision emphasizes the structure of the secretariat of the NAPHR, adding the Ministry of Foreign Affairs beside the existing institutions of the Ministry of Law and Human Rights, the Ministry of Social Affairs, the Ministry of Home Affairs, and the Ministry of National Development Planning.¹³⁶ The members of the secretariat are responsible for coordinating, monitoring and evaluating the implementation of the NAP by government institutions, including local governments. The secretariat is coordinated by the Ministry of Law and Human Rights. The NAPHR involves all government institutions, including local governments, each of which is responsible to achieve certain targets within the scope of their respective field and duties.

With reference to the right to work, the NAPHR 2015-2019, under the heading of Strategy 5: Applying Human Rights Norms and Standards, outlines issues in the right to welfare, which include a lack of facilities and infrastructure to support adequate public living standards, high poverty and unemployment rates, and lack of access to social security for persons with disabilities and other vulnerable groups. To some extent it adopts welfare approach on to the right to work by undertaking to increase provision of facilities and infrastructure, increase access to employment and entrepreneurship, improve public social security protection programmes, and manage regular and temporary social assistance, both at national and local level.¹³⁷

The NAPHR of 2015-2019 was the continuation of previous the NAPHR of 2011-2014, which expired. Previously, there were two separate National Action Plans: the NAP of Persons with Disabilities and the NAP of Human Rights (NAPHR). The current NAPHR (2015-2019) incorporated the NAP of Persons with Disabilities. This was recommended by DPOs and activists

¹³⁵ Presidential Regulation of Republic of Indonesia Number 33 of 2018 concerning the Amendments of Presidential Regulation Number 75 of 2015 concerning National Action Plan on Human Rights 2015-2019.

¹³⁶ *ibid.*

¹³⁷ *ibid* annex 18.

after reviewing the ineffectiveness of the previous NAP.¹³⁸ Weak coordination and an impractical mechanism for monitoring, evaluation and reporting were considered the main reasons for this ineffectiveness.¹³⁹ Reviewing the unsuccessful previous NAP for Persons of Disability, the disability movements lobbied the government to incorporate the rights of persons with disabilities into the NAPHR as a means to increase attention and get more supports.¹⁴⁰ Accordingly, they also proposed a presidential regulation form of legal authority conceiving a specific structure and mechanism for implementation, as well as monitoring and evaluation with measurable objectives and indicators.¹⁴¹ The NAPHR was believed to be stronger in terms of institutional framework and legal basis, as well monitoring, therefore it can be more relied upon. More importantly, by incorporating the NAP of Disability into NAPHR, it underlined the human rights perspective in looking at disability as part of a comprehensive approach on the protection of human rights.

6. Conclusion

Employment of persons with disabilities in Indonesia remains challenging. According to the data, persons with disabilities are prone to be unemployed compared with their non-disabled counterparts. The reason behind this particular situation lies mostly in the structural barriers faced by persons with disabilities (discussed further in Chapter 7). To this extent, this chapter has outlined the series of legislation adopted in Indonesia to protect the right to work of persons with disabilities.

This chapter has argued that the social context of disability law and policy has been impacted by the political structure, including the legislative reform process as well as the key policy actors. The right to work of persons with disabilities has been developing over time. The Constitution, as the highest source of law, has enshrined the protection of human rights. Further, the

¹³⁸ Irwanto and Slamet Thohari (n 65) 104.

¹³⁹ Ibid.

¹⁴⁰ ibid 104.

¹⁴¹ Ibid.

legislation on the general labour law has also introduced equal opportunities and equal treatment of persons with disabilities in relation to the right to work. The latest development of the general disability protection, the Disability Act 2016, has been greatly impacted by the ratification of CRPD. This draws on the human rights perspective to promote the rights of persons with disabilities, including the right to work. The Disability Act 2016 amplifies the existing protection enshrined in previous laws. However, despite the recent advancement of the legal framework development on disability, this chapter has argued that the use of the medical model is still applied to some extent, particularly in the disparity of awareness among stakeholders, including key state actors (decision makers). This point is further developed in Chapter 8.

In relation to local government, an autonomy principle (under the decentralization framework) plays an important role underlying the formation of legal and political structure in the local government context. This chapter argues that the available resources and priorities of each local government lead to local variations in the disability law and policy of each local government, hence leading to a fracture of implementation. This argument is developed further in Chapter 8.

This chapter also acknowledged an interesting approach to informal employment/self-employment that is specifically adopted by Indonesia alongside the formal employment purpose. Data show that self-employment has been chosen by the vast majority of persons with disabilities to exercise their right to work. To this extent, as captured by the recent Disability Act 2016 and aligned with the CRPD, self-employment has also been taken into account in this research. Some positive measures to protect this specific purpose of self-employment will be discussed in Chapter 10.

Chapter 7 Disability and Barriers to Employment

1. Introduction

This chapter outlines the barriers to the implementation of the right to work in the employment context of disability in Indonesia. It clarifies several aspects of the particular barriers identified by participants who represented various stakeholders in interviews and focus groups. I argue that in the Indonesian context, there is a mixture of external and internal barriers that can affect persons with disabilities in participating effectively in employment. As outlined in Chapter 4, persons with disabilities have commonly faced various barriers to employment such as stigmatic stereotypes, cultural prejudices following a medical approach of disability, labels of incapacity, and also a benefit-cost analysis from the side of employers which viewed disability as a cost burden. This chapter demonstrates that the barriers in the Indonesian context are largely similar with the broader literature. However, there is a specific internal barrier that is particularly apparent in Indonesia. This internal barrier comes from persons with disabilities themselves as well as their 'inner circle,' particularly their family members. It is also impacted by the cultural factors. However, both external and internal factors are considered as interconnected because the internal factors in some sense are affected by the external environment. This chapter also analyses attitudinal challenges in relation to the employment of persons with disabilities in Indonesia which need to be addressed by positive measures in light of substantive equality framework. Accordingly, this also captures the barriers on the involvement of persons with disabilities in informal employment (in particular self-employment purpose).

To draw an overall picture of the barriers on the employment of persons with disabilities in Indonesia, let us start with the following anecdote, based on the interview. This informant told her story with respect to the challenge to the right to work of persons with disabilities, which is typical of barriers elsewhere in Indonesia in slightly different degree and form.

Story 1 on Barriers:

“A few years back, I and four colleagues applied for a job in one of the restaurants in Bandung, West Java, where we lived. This was based on information from a Disabled Persons Organisation (DPO) about a job opportunity for persons with intellectual disabilities like us. Then, five of us (all persons with intellectual disabilities) were happy to attend the interview they held. The interviewer questioned us whether we could read and write. Most of us cannot write and read well (like they expected). The interviewer then told us: “How come you cannot write and read, while even animals can be trained to read and write.” We just felt so down at that moment. It was really mocking us, we felt so embarrassed being verbally abused like that. They should have known our situation beforehand because they asked our DPO to recruit persons with intellectual disabilities, that was why we applied for the job vacancy. According to the information we got, they offered the opportunity to arrange and clean plates, cutlery, and so on. But the fact they did not try our skill to do that, rather testing us on reading and writing ability, that ended up with dissatisfaction. They could not tolerate our situation. At the end, none of us was being offered a place.”

(IDD-1, person with Intellectual Developmental Disability)¹

This story shows the central importance of decent work for persons with disabilities and how they need optimum protection in enjoying their right to work. Positive measures are important to guarantee such protection and remove the particular barriers they have been facing to date. Identifying barriers is important step to feed a further action to removing these such barriers. This will draw a significant impact on the enjoyment of the right to work of persons with disabilities.

This research considers two major barriers faced by persons with disabilities in accessing the right to work. *First*, internal barriers: these come from the person with disabilities themselves as well as their families (due to surrounding factors such as family ties). This shapes the culture and mentality in perceiving (and treating) disability. *Second*, there are general external barriers: these come from the environment and society, including government and employers.

¹ Interview with IDD-1, Person with Intellectual Disability (Bandung, 3 August 2017).

In this sense, there are variety of issues examined by the informants of this research, most of which demonstrate the serious barriers that hinder the enjoyment of the right to work of persons with disabilities.

2. Internal Barriers

2.1. Mental Dependency, Family Ties and Personal Confidence

Given most persons with disabilities come from a lower income background,² LGWJ-M1 identified a challenge of a mentality of dependency. Most persons with disabilities have been living very closely in a highly protective family relationship. In some cases, their family often limits them being in touch with the community. To some extent, this is also impacted by factor of a social pressure where having persons with disability is seen as something embarrassing, so that parents/family members tend to hide persons with disabilities. For example, LGWJ-M1 mentioned a case where a family kept their disabled child at home, or even in a bedroom.³ In fact, it appears from this research that family members as the inner circle of persons with disabilities often have no disability awareness. Some of them are attempt to isolate their family members with disability as a way to 'protect' them instead. CG-S1 also mentioned some cases on this 'over-protective family.' One of the examples he mentioned is in Kebumen Regency Central Java where he found a family who had two family members with physical disabilities (leg problems). These two teenager sisters were isolated from the outside world, not even with sufficient sunlight, which eventually worsened their illness.⁴ In addition, the overprotective care of persons with disabilities in some senses

² Interview with LGWJ-M1 Office of Manpower West Java Province (Bandung, August 2017). See also chapter 6 referring to *Sakernas* (National Labour Survey) 2016, where the employment rate of persons with disabilities in Indonesia is only 46.7%, thus highlighting the relatively high unemployment rate that leads them to be exposed to poverty.

³ Interview with LGWJ-M1 Office of Manpower West Java Province (Bandung, August 2017)

⁴ Interview with CG-S1 Ministry of Social Affairs (Jakarta, 24 July 2017).

has lowered their self-esteem,⁵ leading to low confidence in their ability to live independently within the community.

In the context of employment, persons with disabilities should show their ability to work and should be able to be inclusively involved in the work environment. The mentality of low confidence might be overcome by equally participating in the community as the internal factor to define a successful inclusion in the employment.

For persons with disabilities, a strong confidence in the workplace is very important. Unfortunately, in many cases persons with disabilities have shown the lack of confidence.⁶ It is one of the examples raised by a participant of this research, CG-S1, who mentioned how the low confidence of persons with disabilities transforms into discomfort in the workplace. He highlighted his experience with one of the beneficiaries of vocational training from Palembang (South Sumatera Province), who worked in a company where he was the only disabled person. He was uncomfortable with his colleagues whom he felt staring at him all the time, particularly in the few first days of work. CG-S1 suggested him to be relaxed and try to smile at everyone so that they would feel respected, and might 'accept' him eventually. As CG-S1 highlighted, it is just a matter of adjustment. In the end, this approach was quite successful, and the disabled person was finally able to feel comfortable within his workplace. At this point, to develop a mentality of confidence is a pathway to reach equal participation.⁷

The involvement of persons with disabilities in the labour force and their inclusive participation in the employment and social-economic field have been proven to raise their self-esteem in society.

"I've been working for 15 years here in Company "X." I feel so thankful as I can get a livelihood for my family. I am happy because I am not **appearing** as dependent to others. I am proud of being part of this company, where I

⁵ Susilo Andi Darma, 'Law Enforcement of Right of Equality in Work for People with Disability: Evidence from Sleman, Indonesia' (2016) 3(2) *Rechtsidee* 97-114, 102.

⁶ Interview with CG-S1 Ministry of Social Affairs (Jakarta, 24 July 2017).

⁷ *ibid.*

could contribute to the world, as the product of this company is recognised internationally.”⁸ (Worker with disability).

In this case, to be involved in a job that serves society with products and services might enhance the self-esteem of persons with disabilities as well as raising social participation. This situation to some extent increases their personal satisfaction and enables them to be more confident in their ability to be involved in and contribute positively to society. At the same time it could enhance public perceptions of disability due to their ultimate social contribution. This highlights the importance of work not only as an economic means but also for human dignity (see Chapter 4).

JFPor-1, on the side of a job finder/ provider (kerjabilitas.com), was happy to hear many testimonials from persons with disabilities who are availing work, earning money and helping their family.

“They are now being accepted ‘ordinarily’ in society, engaging with social media, going to the mall, shopping, and so on. The family are proud of her/him, as a long time ago they used to be hesitant even to go out nearby. But recently, the situation is changed. It is so touching though.”⁹

In this sense, working has helped to raise self-confidence and self-determination for persons with disabilities.

2.2. Turnover of Workers with Disabilities

From the employer point of view, Em2-Company ‘X,’ admitted that one of the constraints on disability labour is the turnover. He attributed this to the fact that most of the beneficiaries of vocational training centres come from provinces across Indonesia. They have internships in the company, but after they complete the programme, most of them go back to their home bases. Even if they are successfully recruited for employment after the internship

⁸ Interview with Worker1-Company “X”, A worker with physical disability (Bekasi, 15 August 2017).

⁹ Interview with JFPor-2 from A disability job finder portal (Yogyakarta, 22 August 2017).

programme, most of them do not work much longer. After earning a sufficient amount of money they usually return to their home-village.¹⁰

The lack of confidence has also affected attitudes to working. The finding of a relatively high rate of turnover of disabled workers is confirmed by the data of the Vocational Rehabilitation Centre.¹¹ The vocational training centres have sought to address this by empowering the beneficiaries to be confident in various situations they might face in employment.¹²

There is most likely a combination of internal and external factors in this regard. One of the examples mentioned by DPO7-1 (DPO informant) was the case of Bank X that hired blind persons to work as telemarketing staff. However, the fact that they have to work 8 hours using headsets made the workers feel uncomfortable. Eventually many of them resigned, even though the salary was reasonably decent.¹³ On the one hand, this shows the lack of awareness on the side of employers to accommodate the needs of persons with disabilities. On the other hand, it also indicates a lack of confidence of persons with disabilities in expressing their needs on a basic reasonable accommodation relating to their job. This shows the need for communicative approach to bridge both parties. This needs two ways approach of assertive communication in order to seek a win-win solution (see Chapter 5 and 10).

3. External Barriers

This research identified a number of external barriers faced by persons with disabilities in Indonesia. These are factors coming from the outside environment that eventually limit the ability of persons with disabilities to exercise the right to work.

¹⁰ Interview with Em2-Company "X" (Bekasi, 15 August 2017).

¹¹ Interview with CG-SVC-Cb1, BBRVBD, (Cibinong, 21 July 2017).

¹² *ibid.*

¹³ FGD: DPO7-1 (Bandung, 3 August 2017).

3.1. Accessibility of Employment

As mentioned in chapter 1, the accessibility duty is not directly considered as a positive measure within the scope of this research. However, the accessibility duty places an obligation to ensure that public facilities are accessible to everyone, including persons with disabilities.¹⁴ Therefore it is an essential aspect which to some extent impacts the implementation of positive measures to achieve substantive equality. The accessibility duty lies on both the government and employer sides. The accessibility of public space goes to the government responsibility, while for private premises such as workplaces it falls under the employer responsibility. CG-SVC-Tg3 maintains that accessibility is the main requirement for persons with disabilities to be included in every field of life, including employment.¹⁵ Most of the participants in this research pointed out that accessibility remains a great barrier faced by persons with disabilities¹⁶ in particular in relation to the right to work.

According to General Comment Number 18 on the right to work of ICESCR,¹⁷ accessibility comprises three dimensions:

1. Non-discrimination measures in access to and maintenance of employment
2. Physical accessibility
- 3 The right to seek, obtain and impart information on the means of gaining access to employment.

As it is clear from this General Comment,¹⁸ physical accessibility is only one out of three dimensions to address. Unfortunately, the term 'accessibility' in most cases is only understood as 'physical accessibility.' Therefore, it is

¹⁴ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6' para 24 (a).

¹⁵ Interview with CG-SVC-Tg3, BBRISBG (Surakarta, 22 August 2017)

¹⁶ FGD: DPO7-1 (23 August 2017); FGD: LGSRY-S1 (DI Yogyakarta, August 2017); Interview with CG-SVC-So1 BBRISBD (Surakarta, 21 August 2017).

¹⁷ UN Committee of Economic, Social and Cultural Rights, 'General Comment No. 18 of ICESCR on the Right to Work' (24 November 2005) UN Doc E/C.12/GC/18' para 12 b.

¹⁸ Ibid.

important to outline the other two dimensions to give a whole picture of the accessibility duty.

3.1.1. Non-discrimination Measures Access to Employment

DPO7-1 concludes that the problem experienced by persons with disabilities is very common on the accessibility to workplace (physical accessibility) that is not 'disabled friendly'.¹⁹ This was felt by the vast majority of the informants with disabilities. Even though the law and policy has outlined non-discrimination measures, the problem is that not all those non-discrimination provisions have been implemented yet

3.1.2. Physical Accessibility

Physical inaccessibility remains a great barrier to the mobility of persons with disabilities. Inappropriate access to public space hinders persons with disability to do their activities equally with non-disabled persons, including difficulty in accessing the workplace (that also covers to and from the workplace).

“Based on the advocacy we had, I found that the most critical issue was in the accessibility in terms of ‘physical accessibility’ (mobility) in light of the lack of supports for a disabled-friendly workplace.”²⁰

As mentioned above, inaccessibility creates a barrier in entering the workforce. As consequence, there are less persons with disabilities who are working, and fewer of them are working in the formal sector (See Chapter 6). LGSRY-S1 regretted some constraints, including inaccessibility in relation to reaching the workplace. The difficulty of accessibility to reaching the workplace and also the inaccessibility of the workplace itself are important examples of insufficient supports for persons with disabilities.²¹ This is why it is significant to put the duty of accessibility also on the employer side, to

¹⁹ FGD: DPO7-1 (Bandung, 3 August 2017)

²⁰ FGD: LGSRY-S1 (DI Yogyakarta, 23 August 2017).

²¹ *ibid.*

avoid the gap with the duty of accessibility to provide access to public space by the government.²²

“It remains unclear who will be responsible to fulfil accessibility in workplaces. Indeed, an access of mobility in a workplace should be borne by the employer. The fact is there is a huge shortfall of enterprises that failed to provide well-accessible workplaces.” LGSRY-S1 explained.

Furthermore, with reference to the formal/open employment context, the lack of physical accessibility in the workplace is often marked as the reason to reject persons with disabilities in the recruitment process.

“There are lots of excuses of the employers to refuse persons with disabilities in recruitment, most of the cases are due to their inaccessible workplace, hence they were worrying that it would cause an accident for persons with disabilities, instead.”²³

With reference to accessibility in the workplace, CG-M1²⁴ from the government perspective touched on the important efforts to gradually provide an accessible workplace. He argued that it is better to keep walking in the dark within a limited light rather than waiting for the uncertain bright light to come. According to him, there must be some short-term solution to address inaccessibility in the workplace. He mentioned, for example those with physical disabilities can work on the ground floor instead of the upper floor. To this end, an appropriate reasonable accommodation can be a moderate short-term solution to the existing inaccessibility. One time he spoke to a manager of a leading national bank company that has been recruiting persons with disabilities to work in its call centre. Despite the workplace not being fully accessible for persons with disabilities (in particular no ramps provided), the company still employed persons with disabilities whose type of disability fit with the workplace situation. There were indeed some adjustments to the workplace, but it was not necessary to delay recruiting persons with disabilities.

“Placing persons with disabilities on the first floor makes it easier for them to access, even though it is not ideal, but it can be a short term solution while waiting for the next step to provide a fully accessible workplace.”²⁵

²² *ibid.*

²³ FGD: DPO8-1 (Bandung, 3 August 2017).

²⁴ Interview with CG-M1 (Jakarta, 9 August 2017).

²⁵ *ibid.*

CG-SVC-So1, head of BBRSD Solo, has acknowledged that most company buildings are not accessible for every types of disability. This applies not only for the 'mainstream' disability access like a wheelchair entryway, but also for other access needs, such as for the deaf.

“With specific reference to the deaf, they need the building equipped with colour signs indicating a certain situation, for example red light referring danger. Likewise, a particular sign indicates start, break, and end of work hour.”²⁶

Em1-Company “X” from Company “X”²⁷ also admitted that not all facilities in their company workplace are well-accessible. He was aware that it is their responsibility to improve it progressively.²⁸

Not only in the private premises owned by employers, most of the public spaces have not been accessible for persons with disabilities. CG-SVC-Tg2 from the Vocational Rehabilitation Centre for Persons with Intellectual Disability of BBRSD Temanggung²⁹ admitted the lack of accessibility of local government public services, in particular the buildings, such as the local government residency. For instance, she mentioned the stairs were not provided with handrails, making them difficult to access (e.g. for persons with an intellectual disability that in some cases poses a partial paralysis).³⁰

“We realize that the recent accessibility does not sufficiently cover the needs of persons with disabilities. We do hope through the newest law of disability (2016) accessibility would be no longer a discussion but a reality for all types of disability.”³¹

Recently the government of Indonesia has paid much attention to the development of infrastructure, reducing poverty, and lowering unemployment. The duty of accessibility should be incorporated in this development.³²

²⁶ Interview with CG-SVC-So1 BBRSD (Surakarta, 21 August 2017).

²⁷ Interview with Em1-Company “X” (Bekasi, 15 August 2017).

²⁸ *ibid.*

²⁹ Interview with CG-SVC-Tg2, BBRSD (Temanggung, 22 August 2017).

³⁰ *ibid.*

³¹ *ibid.*

³² Interview with CG-S2 (Jakarta, 17 July 2017).

3.1.3. Accessibility of Employment Information

Despite the current borderless world of information, the lack of accessibility of information is still experienced by persons with disabilities. Access to employment information should be widely opened for persons with disabilities so they can avail of employment. Previously persons with disabilities could not participate because information could not be well-accessed. Disability is also determined by the environment: will it enable persons with disabilities to participate, or, on the contrary, 'disabling' persons with disabilities through stigma and inaccessibility. This gap should create a niche for the organization to enlarge access to information in order to open a wide participation of persons with disabilities.

3.2. Education and Skills: a Barrier to Entering the Labour Force

Inaccessibility of education for persons with disabilities inevitably impacts on employment. The requirement of a particular educational background is requested by most employments in Indonesia, in particular in the formal employment setting, as noted in chapter 6. The lack of appropriate education to some extent leads to another major problem of unemployment. Inclusive education still cannot be easily accessed (in terms of availability) while special schools have also insufficiently reached most places in the country, in particular the remote areas. The service is mostly located in the cities where the majority are private schools. In this sense, it raises the issue of availability and affordability.

According to the experience of the service providers of vocational training, persons with disabilities are likely to be coming from low income families.³³ It is found in some cases that their parents also have intellectual disabilities and low levels of education or have never been engaged with education at any level.³⁴ CG-SVC-Tg1 from the Vocational Rehabilitation Centre of

³³ Interview with CG-SVC-Tg1, BBR SBG (Temanggung, 22 August 2017).

³⁴ Ibid.

BBRSBG Temanggung stated that, based on the experience of the centre, 95% of the beneficiaries of the centre come from poor families with a low educational background. This was also asserted by CG-SVC-Cb1 from Vocational Rehabilitation Centre of BBRVBD Cibinong, who explained that one of the requirements for recruiting persons with intellectual disabilities to be trained in the centre is low income family.

This finding on the lack of education is confirmed by the data of Indonesian Statistics, in 2017, the number of school-aged children with disabilities (so called 'children with special needs') reached 1.6 million, where only approximately 18% availed of education.³⁵ The data show around 115,000 children with special needs enjoyed special schools, while 299,000 attended a regular inclusive school.³⁶ The data indicate that only 414,000 (25.88%) children with disabilities can afford formal education (either a special school or an inclusive regular school), whilst 74.12% of children cannot afford formal education. In this sense, the growth of special schools and inclusive education is far behind the population of children with disabilities.

The lack of special schools and inclusive schools remains a big challenge. Furthermore, enlarging the numbers of inclusive schools is troublesome, even though inclusive schools can be the best option to include children with disabilities in securing their right to education. When children with disabilities try to register for any regular school, in most of cases they are rejected due to inaccessible facilities. Most persons with Down Syndrome, for example, suffer from being rejected by regular schools. *"I have a colleague who has even experienced 9 (nine) times of rejection to register his down syndrome child at the primary school,"* CG-S1 remembered.³⁷ After struggling to find a school, finally he got accepted in one private school in Bogor, West Java. This shows that it is not easy to include children with disabilities in regular schools due to stigma and inaccessible facilities.

³⁵ Kemendikbud, 'Sekolah Inklusi dan Pembangunan SLB Dukung Pendidikan Inklusi' (Kementerian Pendidikan dan Kebudayaan, 1 February 2017) <<https://www.kemdikbud.go.id/main/blog/2017/02/sekolah-inklusi-dan-pembangunan-slb-dukung-pendidikan-inklusi>> accessed on 22 August 2018.

³⁶ Ibid.

³⁷ Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

From the government perspective, CG-S1 admitted there is currently a big gap in the skill and competence of persons with disabilities. He considered this is resulted from an inaccessible education. On the one side, there are very limited schools available, while on the other side there is a lack of awareness of the family members of persons with disabilities. In some cases those family members are overprotective, for example, due to fear of being objects of bullying at school.³⁸

Education is the essential factor that will subsequently connect persons with disabilities to access the workforce.³⁹ CG-S1 was also aware that the lack of education has resulted in an employment access shortage.

“There is a lack of education of persons with disabilities. Moreover, the numbers of inclusive education here is very far deficient.”⁴⁰

Unfortunately, there is a contradiction between skill/competence and education requirements when entering the workforce. Even though they are involved in vocational training to improve their skill, a formal education certificate is generally still become the main requirement to meet job requirements. In fact, most of persons with disabilities only hold lower secondary school certificates (junior high school), primary school, or even have never gone to school. In some limited cases they can proceed to senior high school (upper secondary school) and it is very rarely that they can further their study to the university.

“Albeit they have been trained to have skills and competence, in most cases they struggle with the job requirement that usually sets the minimum education requirement as senior high school. All we need is to adjust the gap to reach the job requirement of education.”⁴¹

According to CG-M1, although they only require a certificate of completion of Senior High School, it is still hard to find.⁴²

³⁸ Ibid.

³⁹ FGD: DPO8-1 (Bandung, 3 August 2017).

⁴⁰ Indepth Interview CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

⁴¹ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

⁴² Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017)

3.3. Specific Barriers of Supply-Demand in Relation to Disabled Workers

Notwithstanding the quota system that encourages workers with disabilities into the workforce, there is another issue of supply and demand. The demand is created by the disability employment quota. However, the 'supply' of disabled workers is still far too low to meet the demand. There are various reasons for this, in particular education and skill requirements, as well as other related requirements such as age. Compared to non-disabled persons, persons with disabilities are less likely to participate in education. As mentioned in the previous section, access to education is not easy, therefore it limits the ability of persons with disabilities to reach high levels of education. In this complication, finding those who have a university degree (graduate), especially in a specific subject, is very tough.⁴³ In some cases there is an interruption that results in a delay in completing studies due to disability (such as a psychosocial disability).⁴⁴ Therefore in this case, to satisfy an age limit for completing the study is difficult.

CG-M1 from the Ministry of Manpower⁴⁵ examined the problem of the employment shortage due to the gap of supply in the disability labour market.

"I visited a company that provides cable and electricity devices in East Java Province in the last few days. They have 4000 workers, of which 22 are persons with disabilities. We discussed about the quota. It is in a contradictory situation where the law requires 1% of persons with disabilities, but the fact is difficult to reach. The manager said to me that they wish to add more persons with disabilities, as many as possible, but he requested the government to help them to fulfil it by providing those persons who meet the qualification and fit in the required skill. He said, 'he will definitely accept them, as many as the government would be able to provide.'⁴⁶

A similar concern has also represented by Em1-Company "X", from management Company "X", that justify their problem in the supply of disability labour.⁴⁷ Em1-Company "X" figured out the lack of supply of certain skills in persons with disabilities affected the placement in their company:

⁴³ FGD: NGO1-1, (Jakarta, 1 August 2017).

⁴⁴ FGD: DPO6 (Jakarta, 1 August 2017).

⁴⁵ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

⁴⁶ *ibid.*

⁴⁷ Interview with Em1-Company "X", Management Company "X" (Bekasi, 15 August 2017).

“The gap of demand and supply of persons with disabilities in the vocational training centre is because the skills are not fully matching with our needs here in the company. As here, there are many job offers in electronics while the supply from the centre is limited on this subject.”⁴⁸

With reference to the gap between demand and supply in the labour force, in particular of persons with disabilities, ILO-1, from ILO Indonesia, argued that there is a high demand for workers with disabilities from the national and multinational companies (as some of them were asking him and showing their high interest in recruiting persons with disabilities). But it is difficult to get the highly skilled labour.⁴⁹

3.4. Lack of Data

Another challenge on disability issues is on the lack of data. Data play a role in feeding the particular positive measures in employment. Data are the first step to getting the real picture. The data on persons with disabilities in Indonesia are mostly generated by BPS (Statistics Indonesia, the official statistics agency), that captures the overall situation on types of disability in each province and in municipalities and cities in Indonesia. It shows some progress on disability acknowledgement that the recent national intercensal census held by BPS has already referred to the Washington Group to count disability aspect in numbers.⁵⁰ Even though it does not sufficiently cover disability as the data were not very detailed (due to lack of budget), at least there is preliminary information on the numbers of persons with disabilities in general.⁵¹ However, there is still a lack of data on the specific issue of the employment of persons with disabilities.

Many participants of this research pointed out the lack of disability data in relation to the labour force. DPO7-1 maintained that the lack of data led to misleading government action as the data are a major source underlying the decision making process.⁵² Therefore, where data are sufficiently provided,

⁴⁸ *ibid.*

⁴⁹ Interview with ILO-1 ILO, (Jakarta, 8 August 2017 by phone).

⁵⁰ Interview with CG-S2, Ministry of Social Affairs, (Jakarta, 17 July 2017)

⁵¹ *ibid.*

⁵² FGD: DPO7-1 (Bandung, 3 August 2017).

it will be a lot easier to settle certain actions, especially with regard to improving human resources. DPO-7 regretted that up to the present time there is no sufficient data on the disability labour force.⁵³ CG-Par1, a Parliament Member, also affirmed that she could not obtain data on the numbers of disabled persons who work in both the public and private sectors.⁵⁴

Other insights come from DPO8-1, who noted the initiative of local government to generate data. She got the information from a staff member of the Manpower Office of Bandung City, that this local government planned to have disability based online data in order to harmonise the programmes that would be arranged by Bandung City government soon.⁵⁵ But again, this initiative is on a local government basis, which means variation. It is depend on the goodwill and priorities of local governments, as well as the available resources.

Not only highlighted by persons with disabilities, in the eyes of employers, data is also very important to develop. Em-This1 claimed that data are an essential material to analyse the potential market and labour force of persons with disabilities then to link them to the employment world.⁵⁶ This importance of data was confirmed by DPO representative MDV11, who found there are outdated data even in the government level.⁵⁷

“I am also concerned about the availability of an updated database of persons with disabilities. As most of the recent data is unfortunately not giving us the precise information, hence it has to be checked and rechecked over time for updates. We often find the data does not fit with the factual situation on the ground. In addition to the duty of the government to assist persons with disabilities’ entrepreneurship by supporting their promotion and marketing so the business can be developed, it seems it will be hard to implement as I wonder how can the government afford us right on target if the database is not really there?”⁵⁸

⁵³ *ibid.*

⁵⁴ Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

⁵⁵ FGD: DPO8-1 (Bandung, 3 August 2017).

⁵⁶ FGD: Em-This1 (Jakarta, 1 August 2017).

⁵⁷ FGD: DPO2-MDV11, MDVI, (Jakarta, 1 August 2017).

⁵⁸ *ibid.*

3.5. Attitudinal Barriers

3.5.1. Stigma and Stereotypes

Barriers to entering the workforce also come from social stigma and labelling, including by employers. Overall stereotypes of persons disabilities such as unable to work, less productive, more demanding on facilities, etc, are still challenging. There is a good improvement in that stigma is recently far diminished compared to the old era of the 'charity-based approach.' Despite this improvement, according to DPO6-PD1, (a psychosocial disability activist), an intense stigma on particular group of psychosocial disability is still strong.⁵⁹

Nowadays, society is less labelling of physical and sensory disability where it is no longer treated as an 'illness' as such. One of the common job requirements usually mentioned is being 'physically and mentally healthy.' The current interpretation of this requirement is relatively improved by not defining persons with disabilities as 'unhealthy.' Unfortunately, this understanding seems only successful in interpreting 'physically healthy,' while defining 'mentally healthy' is still a big challenge. The authority that issues the recommendation of 'physically healthy' is a general practitioner, while the recommendation of 'mentally healthy' is issued under the authority of a psychiatrist.⁶⁰

"This is our core problem, ever since we were diagnosed with certain psychosocial problems, the psychiatrist would likely not recommend us as 'mentally healthy' in their assessment result."⁶¹

The barriers facing persons with mental health issues go beyond stigma and labelling.⁶² As an instance, there is pre-employment job testing practice, namely the 'psychotest' (psychometric employment test).⁶³ In certain job

⁵⁹ FGD: DPO6-PD1 Psychosocial Disability (Jakarta, 1 August 2017).

⁶⁰ *ibid.*

⁶¹ *Ibid.*

⁶² For detail discussion of this issue, see Aisling de Paor and Charles O'Mahony, 'The need to protect employees with genetic predisposition to mental illness? The UN Convention on the Rights of Persons with Disabilities and the case of regulation' (2016) 45(4) *Industrial Law Journal*, 525-555.

⁶³ Edward Mallett, 'The Complete Guide to Psychometric Test (2019 Edition)' <<https://practicereasoningtests.com/psychometric-tests/>> accessed 7 March 2019.

offers, this test has commonly been part of the test series. Most of the middle-higher level positions are very likely employ this kind of test. The goal of this test is to indicate the suitability of the role offered with the individual characteristic of each candidate. However, in the meantime, it can also capture the indication of mental health issues, which can potentially be the reason of rejection. There are a few persons with psychosocial disability who, by luck, passed the test, but most of them were failed.

“Therefore in our group, the requirement of the psychotest more or less can be said as horrible. This test is mostly required to the tier middle-upper position. Yes, we are disappointed, that even Komnas HAM, as national human rights institution, set this type of test on their recruitment process.⁶⁴

DPO6-PD1 mentioned one case relating to the pre-employment test. It related to her colleague (X), who is a researcher in one of the leading universities in Indonesia. It was a job opportunity he was interested in: a permanent lectureship at the university he had been working at for a long time. Applying for this position, each candidate had to meet the requirement of being ‘mentally healthy’ through a recommendation issued by a psychiatrist. This was the root of the problem, where for him it was not an easy situation. Engaging with the psychiatrist to some extent would be in vain, while to fake the recommendation was also not a good idea. This man finally gave up the opportunity and preferred to hide his disability instead of openly declaring it due to possibility of discrimination.⁶⁵

A second case handled by DPO6-PD1 and her DPO was the case of a midwife. This midwife was fired due to her mental health problems. The DPO tried to link to the Ministry of Health, in particular to a director whom they knew so well thus they could approach him personally. It was successfully mediated and ended up with re-hiring the midwife.⁶⁶ In this case, again, a non-judicial approach (as an alternative dispute resolution) has seemingly proved more effective. But this only happens to those who have access to the organisation that could access and approach the policy maker.

⁶⁴ FGD: DPO6-PD1 Psychosocial Disability (Jakarta, 1 August 2017).

⁶⁵ Ibid.

⁶⁶ Ibid.

These two cases marked such a dilemma for persons with psychosocial disabilities to engage with professional employment opportunities. There is a provision in the law, according to Act Number 18 of 2014 concerning Mental Health, that in order to combat stigma and discrimination, promotive measures on promoting awareness should be put in place.⁶⁷ In this sense, the situation of mental health should not be the reason for rejection in any employment circumstances. But in fact, anyone who would challenge rejection by any organisation or company due to their mental health condition, has to go to court. This is a thing that people mostly avoid from, because people are aware that it might be very costly and time consuming.⁶⁸ Notwithstanding the law giving rights to every citizen on the access to justice, in practice the process will be too long and costly. In this sense, it can be considered as not being worth proceeding in terms of efficiency and effectiveness. Hence the law and policy should be strengthened in light of law enforcement, where each provision as enshrined in the policy framework should be automatically implemented with no reserve.

As illustrated above, persons with psychosocial disability can suffer from stigma in the workplace. Even those persons with psychosocial disabilities who are already working, they mostly prefer to hide their disabilities as much as possible, to make sure no one knows about their situation, otherwise it might lead to discrimination. The risk of being determined as having a psychosocial disability is labelling from the work environment, including the employer. According to DPO6-PD1, the label of having a poor performance of work, being less productive, less able, etc, can even lead to dismissal.⁶⁹ The dismissal might not be said overtly on the mental health issue, but might be attributed to other reasons, such as productivity or attitude, to disguise the real reason.⁷⁰

The social stigma is quite strong, thus in most cases can hinder persons with disabilities from being equally accepted in society. In the context of employment, the 'incapability' stereotype has challenged the competence of

⁶⁷ Act Number 18 of 2014 concerning Mental Health 2014 s 8 sub-s (7b).

⁶⁸ FGD: DPO6-PD1 Psychosocial Disability (Jakarta, 1 August 2017).

⁶⁹ *ibid.*

⁷⁰ *Ibid.*

persons with disabilities to participate in the workforce at the first place. Accordingly, employers mostly focus on cost-benefit accounts. Reasonable accommodation, as a positive measure to support persons with disabilities, is assumed as 'high cost,' while 'productivity' is presumed to be lower than non-disabled persons. This stereotype makes most employers reluctant to recruit persons with disabilities.

3.5.2. Compounded by Labelling

a. Language and terminology: 'Normal-abnormal'

Discrimination also happens due to the application of language. In respect of terminology, the use of 'abnormal' as representing persons with disabilities, is misleading. Traditionally, the use of 'normal' to represent 'non-disabled' and 'abnormal' for 'persons with disabilities' has been used as a euphemism for the word '*cacat*' (invalid/impaired) to represent persons with disabilities. However, the use of 'abnormal' leads to another consequence. DPO9-1, a DPO activist, considered that the words of 'normal-abnormal' even leads to discrimination.

"I have been involved in disability movements for 36 years. I promised to contribute to advocating for persons with disabilities. I am not comfortable with the term of 'normal' to mean non-disabled, that implies we are 'abnormal' on that point of view. I prefer to say 'disabled' and 'non-disabled' instead."⁷¹

The fact that 'normal' is used for non-disabled persons implies 'abnormality' on the part of persons with disabilities. Moreover, the implication behind the use of this term can lead to amplification of the 'abnormality' of persons with disabilities which means leading back to medical model of disabilities

b. Terminology '*Cacat*' (Impaired)

Given the terminology will reflect strong underlying meaning, the use of '*cacat*' (meaning 'invalid/impaired') has received massive criticism among persons

⁷¹ FGD: DPO9-1 (Bandung, 3 August 2017).

with disabilities. 'Cacat' has long been an official term in legal documents, including the Disability Act 1997. To engage with this issue, the National Commission on Human Rights (Komnas HAM), along with the Ministry of Social Affairs and other stakeholders, initiated a discussion on the terminology of '*penyandang cacat*' (which means 'invalid' or persons with impairment) compared with '*penyandang disabilitas*' (persons with disabilities). The discussion was held in 2007 and also included related stakeholders, as well as the language experts.⁷² It was eventually decided to employ the terminology of '*penyandang disabilitas*' as the official terminology. Despite the official language, in other regions in Indonesia such as in DI Yogyakarta, disability activists still retain another terminology of 'difabled' or '*difabel*' (abbreviated from differently-abled people).⁷³ This term has been used due to reason of more respectful in meaning.⁷⁴ However, this different terminology using is seen as a dynamic in the disability development in Indonesia.⁷⁵

This milestones has marked further engagement of Komnas HAM to being actively involved in disability issues, including in the CRPD ratification process and later in drafting the bill of the Disability Act to submit to the Parliament in 2013.⁷⁶ The shifting terminology was set up prior to the ratification (2011) and far before the Disability Act 2016. The terms of '*penyandang disabilitas*' brings the idea of removing barriers, Therefore it is used to replace the word '*cacat*' (invalid/impaired) which in *Bahasa Indonesia* (the official language of Indonesia), most likely points a negative meaning and association. The terminology 'persons with disabilities' (*penyandang disabilitas*) has subsequently been adopted in any official law and policy documents, including the Disability Act 2016. However, until recently, there is still a use

⁷² Interview with CG-NHRI1, from Komnas HAM (Jakarta, 11 August 2017).

⁷³ Suharto et al, 'Disability Terminology and the Emergence of 'Diffability' in Indonesia' (2016) 31(5) *Disability and Society* 693-712, 697.

⁷⁴ Slamet Thohari, 'Promoting "Difabel"', *Promoting Social Model of Disability in Indonesia, Study of Disability Movement in Yogyakarta* (2019) 3(1) *Jurnal Kajian Ruang Sosial-Budaya*, 79-99, 80.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

of *'penyandang cacat'* in particular at the grass-roots level, hence the word *'penyandang disabilitas'* needs to be disseminated wider across Indonesia.

3.5.3. Harassment and Abusive Acts

Attitudinal barriers towards disability have also impacted on how society treats persons with disabilities. The awareness of disability is still a big challenge to date. Even in the general context, crime can happen to anyone, but with reference to vulnerability posed by disability, the chance to be exposed to crime (as victims) can be more likely to happen. This research found evidence of the harassment of persons with disabilities in the context of the right to work. DPO1-Blind1 from the Indonesia Blind People Association⁷⁷ referred to some cases about blind people who work as massage therapists. In East Java, some of the blind women experienced rape and harassment when they worked. A similar case also happened in Tanjung Priok, North Jakarta. *"This is really sad picture of protection for persons with disabilities like us."*⁷⁸ These cases could lead to psychological terror, especially for women with disabilities, making them afraid to go out alone and thus impacting on their participation in work. Similarly, 'over-protective' treatment (as another barrier) from their family would apply more.

3.5.4. Lack of Awareness

Awareness raising is indeed a long process to shape a paradigm that should be followed by the action. A big effort should be put in place to spread out, to socialize, to disseminate not only the provisions itself but more importantly the core understanding of the human rights approach to disability ground. With respect to the implementation of the right to work, there are a few companies that are well-aligned with the provision enshrined in the recent Disability Act: 2016. They have a strong engagement with disability issues for years. Company "X" is one of these few. According to their understanding,

⁷⁷ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

⁷⁸ Ibid.

employing persons with disabilities is more to give opportunity to persons with disabilities instead of giving aid (charity).⁷⁹

With regard to awareness, all stakeholders should be included. The government is supposed to lead for this purpose. In fact, this is still a big challenge. Even most government officers are still not aware of the right to work of persons with disabilities. Awareness raising for society is important to address, as it will impact on how to treat persons with disabilities. Some horrific cases have emerged as impacted by the lack of awareness on disability, for example in relation to shackling. The case of shackling is quite prevalent across Indonesia (particularly of those with mental health issues).

⁸⁰

Another interesting story demonstrating the lack of awareness was stated by CG-Par1, a Parliament Member, where she told of her experience during her monitoring duty as a parliament member:

“One time we did monitoring in Bandung, West Java. We visited public services to monitor their accessibility for persons with disabilities. In one main bus station we met the new head of the bus station who was just being appointed. He said in our conversation that the bus station has not been equipped with a guiding track. Then, when we were just about to leave, I noticed that there were guiding blocks there...unfortunately it was lying underneath a street trader booth. It was mostly covered by the trader’s booth so that we could not see it clearly.”⁸¹

From her story, lack of awareness is not only apparent in the street traders having no idea of the function of the guiding block, but it also from the government side, that has not been monitoring the function and purpose of the equipment they have built. The facility of a guiding block is important for providing accessibility to blind persons. Hence, in the context of employment, they can easily mobile to and from the workplace.

⁷⁹ Interview with Em1-Company “X” (Bekasi, 15 August 2017).

⁸⁰ Human Rights Watch, ‘Living in Hell: Abuses against People with Pshychosocial disabilities in Indonesia’ (2006)

⁸¹ Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

3.6. Access to Justice (in the case of employment)

Barriers to the access to justice in the general sense faced by people in Indonesia have hugely impacted on the ground of disability. Moreover, within a situation of vulnerability, limited access to the courts and the complexity of the judicial process make persons with disabilities reluctant to take further legal actions. Many participants of this research highlighted difficulties in accessing justice. Awareness raising should also be taken into account here. NGO1-1 argues that if society is well-informed, people will not be afraid to file a lawsuit, including cases on industrial relations related to disability.⁸² In fact this is not happening.⁸³

3.7. Cases of the Occurrence of Disability due to Accident

There are several cases of disability caused by work accidents, as identified by participants of this research. These common cases turned non-disabled persons into disabled persons, due to accidents. Some of them suffered physical disabilities, having sight problems (including blindness), and other types of disability. In that situation, employers were usually confused about what to do. In the confusion, in most of the cases the employees were offered early retirement (for example, for public servants). In some cases, they were moved to other departments or divisions that were sometimes not related to their expertise or skill. In the worst cases they were asked to resign due to the assumption that would no longer be a 'productive worker.'⁸⁴ It is very important for employers to handle these such cases with respect, not to dismiss them. DPO9-1 suggested that where people were moved to other divisions, the company should support them with vocational rehabilitation training so that they would have confidence to do the new job they were not used to doing.⁸⁵ Securing the job in their situation is vital, in line with their dignity.

⁸² FGD: NGO1-1 (Jakarta, 1 August 2017).

⁸³ *ibid.*

⁸⁴ FGD: DPO9-1, DPO7-1, DPO8-1 (Bandung, 3 August 2017)

⁸⁵ *ibid.*

There is a strong provision on the right to work enshrined in the recent Disability Act 2016. However, according to NGO-LPS-1, who is actively involved in disability advocacy, no cases of disability disputes on the right to work have been brought to court so far.⁸⁶ It is very important to challenge such cases so they can become a precedent for potential similar cases in the future.⁸⁷ Since no cases related to the right to work (found by this research) were going to court, mediation (non-judicial channel) has usually been taken into account. To some cases, they agreed to end the case with a 'win-win' solution.' Some others have no follow up at all. This discussion relates to the technical barriers faced by persons with disabilities. In Indonesia, filing a case for court requires much effort and support, including financially, as the process is generally long and exhausting. With reference to industrial relations connected to the issue of the right to work of persons with disabilities, most cases were agreed in bipartite (employer and persons with disabilities) or tripartite (bipartite plus being mediated by the government: an inspector from the Office of Manpower in certain local governments where the company is located). However, some cases were just left by the persons with disabilities who decided not to proceed further. The absence of industrial disputes related to disability was confirmed by LGWJ-M1 from the Office of Manpower West Java Province. He claimed that there were no cases reported on industrial relation disputes in relation to persons with disabilities. According to him, the cases mostly come from Indonesian workers who work abroad, not necessarily workers with disabilities.⁸⁸

Highlighting the importance of disability employment disputes, DPO1-Blind1 and NGO1-1- PSHK emphasized the lack of attention paid to these. So far most cases of disability employment dispute appeared only when blown up by the mainstream media or even social media. The employers or related authorities will try to approach the persons with disabilities so that they will negotiate in an alternative dispute resolution channel. It usually ends up with re-employment or compensation but only in the event of 'social pressure' in

⁸⁶ FGD: NGO1-1 (Jakarta, 1 August 2017).

⁸⁷ *ibid.*

⁸⁸ Interview with LGWJ-M1 Office of Manpower West Java Province, (Bandung, 2 August 2017).

such cases. Nonetheless, we need more improvisation in a legal sense that in the long run would benefit persons with disabilities.

Another example of an abortive case of employment was raised by DPO9-1 as one of the cases she advocated: an employment dispute between a person with a disability and the company he was working for. He had an accident during work that made him disabled (the leg being amputated, hence he became physically disabled). After six months he was dismissed due to this disability. DPO9-1 went to the company to query this. At the time the Human Resource Department (HRD) manager explained the dismissal was due to having no suitable place for disability. DPO9-1 argued that a leg will not limit the person's job too much, as he could do computer or other activities by hand. She also referred to the law protecting the rights of persons with disabilities. As the process would take quite long time and he felt too exhausted to continue, he decided to opt out of the judicial process as he got the insurance from BPJS (National Labour Insurance). He now continues his life by running a small shop at his house.⁸⁹

DPO10-1, from the DPO perspective, mentioned that a few years ago, he and his DPO had the experience of advocating a case related to the employment of persons with disabilities. This was before the enactment of the Act number 8 of 2016 concerning Persons with Disabilities. The case was in one of the Ministries that annulled the civil servant candidature of a person with a physical disability, even though he had already successfully passed a series of tests and paperwork. He was asked to 'voluntarily' resign from the position offered. The DPO approached him to discuss the steps to file a case in court. He opted out to bring it to court but then accepted an offer of compensation.⁹⁰

Another issue, besides the reluctance to file the case because of the longer process, is the lack of assistance in providing reasonable accommodation in court. CG-S2 from the Ministry of Social Affairs mentioned that she was very concerned with support for persons in court, which barely provided reasonable

⁸⁹ FGD: DPO9-1 (Bandung, 3 August 2017).

⁹⁰ FGD: DPO10-1 (DI Yogyakarta, 23 August 2017).

accommodation such as sign language interpreters.⁹¹ Compounding the long process of the court, as mentioned earlier, the lack of reasonable accommodation makes it harder for persons with disabilities to access the right to justice (see above section 3.6. Access to Justice).

3.8. Individual Complaints

Despite the excellent provisions of the new Disability Act 2016, in particular the consultation mechanism, many disabled participants wanted a designated body to address individual complaints. At present, they have no idea where to consult or complain on the cases of employment dispute. They assert that it has to be clear to whom or to which institution to complain in case employment issues arise. DPO7-3 emphasized the significance of a channel to enable the service of individual complaints on employment issues due to disability, so that persons with disabilities know where to go.⁹²

4. Specific Barriers to Self-Employment

Beside the various barriers mentioned above, this section will highlight the barriers specifically arising in relation to self-employment.

4.1. Physical Accessibility

Physical accessibility, including transportation, is a significant issue in relation to self-employment,⁹³ despite flexibility in working time and place. In fact, transportation access is still problematic for persons with disabilities in general. With reference to the public transport, the disparity in local government implementation on accessibility is quite high, depending on the resources available as well as political will. In these circumstances, persons

⁹¹ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

⁹² FGD: DPO7-3 (Bandung, 3 August 2017).

⁹³ FGD: SME-SRY-A (Yogyakarta, 23 August 2017).

with disabilities are hindered from working. Since the vast majority of persons with disabilities are engaged in self-employment, adequate supports should be provided.

4.2. Access to Banking

Another issue that impacts particularly in the informal employment/self-employment context is the accessibility of banking.⁹⁴ Access to banking is important in order to grow the business, including access to bank loans and credit. Most micro-enterprises are self-financing,⁹⁵ using other types of credit such as trade credits, overdrafts, and informal loans channel (Bigsten at al.,2003).⁹⁶ Informality often hinders them in relation to access to formal financial sources, such as banks. One of the requirements of the bank loan is the collateral.⁹⁷ The lack of collateral of micro-enterprises is one of the reasons for difficulty in accessing bank loans, compared with formal enterprise counterparts.⁹⁸ Supports that enable micro-enterprises to grow are therefore required. These include supports in terms of finance as well as other supports such as access to education (and training) and business networks.⁹⁹

Inaccessibility of formal sources of business finance is a barrier to developing the business itself. DPO11-2 admitted that access to banking is very important to financing the business to grow further.¹⁰⁰ Banking accessibility is still a major issue to micro-enterprises to date. In the context of disability the difficulty is even greater because of the vulnerability of persons with disabilities themselves. As with other micro-enterprises, the impediment is

⁹⁴ FGD: DPO7-2 (Bandung, 3 August 2017); Interview with CG-Par1 (Jakarta, 18 July 2017).

⁹⁵ Virginie Vial and Julien Hanoteau, 'Returns to Micro-Entrepreneurship in an Emerging Economy: A Quantile Study of Entrepreneurial Indonesian Households Welfare' (2015) 74 *World Development* 142-157, 145.

⁹⁶ Simeon Nichter and Lara Goldmark, 'Small Firm Growth in Developing Countries' (2009) 37 *World Development* 1453-1646, 1457.

⁹⁷ Erma Defiana Putriyanti, 'Legal Status of Credit Bank Guarantee in Indonesia's Legal Guarantee' (2017) 1(2) *Sriwijaya Law Review* 128-141, 128.

⁹⁸ *ibid.*

⁹⁹ Vial and Hanoteau (n 400) 154.

¹⁰⁰ FGD: DPO11-2 (Yogyakarta, 23 August 2017)

mostly on the needs of collateral arrangements. However, the situation of vulnerability of persons with disabilities, due to stigma and stereotyping (as discussed above) make it more difficult for them to access bank loans. The worst situation is in the case of persons with multiple disabilities, such as MDVI, where they cannot communicate directly with other people. Most persons in this category need translation by their family members to communicate.¹⁰¹ The micro-enterprises that involve them cannot easily reach a progressive improvement in terms of business one of which due to lack of access to formal financing channels.¹⁰²

4.3. Access to Promotion and Marketing Supports

An effective marketing strategy is essential for all types and sizes of business enterprises, including micro-enterprises. In a broader sense, marketing strategy comprises of numerous aspects aiming to market services to the right audience.¹⁰³ Planning and designing the product and services as well as targeting the market accurately should become a part of the basic knowledge and skill of self-employment actors. Unfortunately, the knowledge of micro-enterprises, in particular persons with disabilities who run such micro-businesses, is still a challenge. Marketing is the success keyword of each business. Accordingly, an initial research to assess market behaviour is also important. It is better to figure out the market first then produce a product and services, instead of producing a product that is not marketable. The challenge of disability products is currently on marketing. DPO6-PD1 marked the needs of product-differentiation, as unfortunately most of the time persons with disabilities produce very similar products such as handicrafts, but in fact these are not easy to sell.¹⁰⁴

¹⁰¹ Interview with CG-SVC-Tg2 BBRSBG Kartini (Temanggung, 22 August 2017).

¹⁰² *ibid.*

¹⁰³ Financier Worldwide, 'The Importance of an Effective Marketing Strategy,' June 2015 <<https://www.financierworldwide.com/the-importance-of-an-effective-marketing-strategy#.XKerltcgXnY>> accessed 5 April 2019.

¹⁰⁴ FGD: DPO6-PD1 Psychosocial Disability (Jakarta, 1 August 2017).

Other barriers of marketing strategy relate to product design, promotion and technicalities e.g. packaging. DPO6-PD1 drew one example of self-employment run by persons with disabilities in Jember, East Java. There were 10 home industries held by a group of persons with disabilities. However, this good initiative was not equipped with an effective marketing strategy. In fact, most of the product is made without attractive packaging, making less people interested in it. The packaging is basically giving an additional value for the product. In this sense, government supports would be beneficial to develop the business.

Promotion is also a salient feature of an effective marketing strategy, comprising of introducing the product as well as delivering the recognition of its brand to the market. There are various channels for promotion, both online and offline, should be acknowledged by micro-business persons with disabilities whenever penetrate the market. However, there is a gap of knowledge and supports to do this promotion. One of the stories came from SME4-1 (with wheelchair) who runs an SME in Yogyakarta that focuses on producing handicrafts made from stingray fish skin. In 2017 he had 15 partners in his disability home industry. He is aware of the importance of marketing strategy. Therefore, his focus is currently on developing the marketing system, including offline participation in exhibitions. The government usually conducts exhibitions regularly and invites SMEs, including those which are owned by persons with disabilities (usually for free but only limited space available). This exhibition aims to increase disability businesses' participation.¹⁰⁵ However, due to limited opportunities with government exhibitions, SME4-1 tried to find alternative exhibitions held by the private sector, for example, the annual paid exhibition in Jakarta (usually held in every June-July). As the rent rate is quite expensive, he usually joins together with other micro-enterprises to share the rent.¹⁰⁶

¹⁰⁵ FGD: SME4-1—SME disability (Yogyakarta, 23 August 2017).

¹⁰⁶ *ibid.*

5. Conclusion

Together these results provide important insights into the issue of the right to work of persons with disabilities in Indonesia. These barriers are mostly impacted by a lack of awareness. Social stigma and stereotypes inevitably affect the way society treats persons with disabilities. The findings of this research suggests that the root of the problem is on the stigma and stereotypes have built barriers against persons with disabilities, in particular on the employment field. There is a combination of external and internal barriers to entering employment. Besides the significant impact of the external barriers, it is true that internal barriers faced by persons with disabilities, such as lack of confidence and mental dependency, have also contributed to hindering them from inclusion in employment. However, these internal barriers are not standing alone, but to some extent result from broader social attitudes which culturally shape the low self-esteem and lack of confidence of persons with disabilities and their families.

Despite the enactment of the newest Disability Act 2016, which draws on the human rights based approach, it is clear from the findings of this chapter that there is a widespread lack of awareness and implementation of the Act, both in the private sector and the public sector, in particular in the employment context. Difficulties arise, however, when an attempt is made to implement the law and policy. As will be seen in the next chapter (Chapter 8), some positive efforts have been made by the governments both national and local to disseminate the Act's provisions as well as to spread the disability rights based approach. However this outreach has not proved effective in certain ways nor reached the target. Moreover, as will be explored in chapter 8, there is a fracture of the implementation at local government level, considering the various features of territory and local authority that affect their approach, ability, resources, and readiness. As this thesis will demonstrate, this lack of overall coherence and consistency undermines the effectiveness of awareness measures, positive measures, and the substantive equality framework more broadly.

A possible explanation for these results may be the lack of adequate dissemination not only in terms of numbers (frequency) but also, more importantly, the necessary approach. To date, there have been no attempts to address the question of one major drawback of the government's approach to dissemination. This research demonstrates that the dissemination should use the creative tools, to effectively reach out to more targets in an efficient way. The conventional channels, which has been captured as the main approach taken by the government, such as face-to-face dissemination, is not sufficient to cover the huge area of Indonesia. To this end, a number of effective approaches need to be taken.

It has been identified these particular problems can be summarised into two major issues: lack of awareness and inadequate effective dissemination, therefore I am going to look in the next chapter at how the government institutional structure to deal with these particular concerns.

Chapter 8 Government Institutional Framework

1. Introduction

The previous chapter identified the barriers to employment experienced by persons with disabilities in Indonesia. This chapter assess how the institutional framework, in particular the government structure, addresses those barriers. This chapter attempts to answer the research question of how effective the employment policy framework adopted by Indonesia has been in advancing inclusive employment for persons with disabilities. It also assesses how effectively policy actors (and implementors) work within the government structure. As will be demonstrated, this issue is fairly challenging in the Indonesian context due to, inter alia, structural differentiation between central and local government, as outlined in Chapter 6.

For the purposes of this chapter, I would like to assess the state obligation on implementing the right to work of persons with disabilities through the institutional roles and responsibilities at each level of authority, both at central and local (provincial and municipalities/regency) levels. Despite the huge improvement on the perspective on disability outlined in chapter 6, the key argument of this chapter is that there is a fragmented institutional framework because of layers of authority which impact significantly on the implementation of the right to work in practice. Coordination remains a big challenge, both at central and local level. This is affected by a lack of cohesiveness within the structures, which impacts the use of positive measures on inclusive employment service for persons with disabilities and prevents it from reaching its best effect. This chapter further argues that these difficulties are compounded by jurisdictional gaps and issues relating to what may be termed 'sectoral ego' (the feeling of being more 'powerful' and 'significant' than other parts of the organisation).

This chapter first notes the government structure that is mainly responsible on the issue of the right to work of persons with disabilities. It will then assess

the challenge at both central and local policy level, in particular relating to coordination. This section further argues there is emerging 'sectoral-ego' at both levels.

2. Central Government

The central level is the first layer to bear responsibility on the right to work of persons with disabilities. There are various government bodies that are responsible on this, in the central level at least two major ministries having crossed-path responsibilities: The Ministry of Social Affairs and the Ministry of Manpower. The Ministry of Social Affairs is responsible for the advancement of the general rights of persons with disabilities, including the right to work. Its main step is developing vocational and rehabilitation training centres. In addition, the Ministry of Manpower is responsible for the general labour duty and has also a specific role to deal with persons with disabilities in relation to entering the labour force. This is reflected in its structure by a division for the employment for persons with disabilities (namely: 'the subdivision for the specific placement of persons with disabilities and elderly in employment').¹ However, as will be seen below, the two ministries do not always appear to link effectively together as there are key tensions between them in certain areas, such as on providing vocational training services.

2.1. Ministry of Social Affairs

The Ministry of Social Affairs has played an important role in the disability issues. In the previous law, Act Number 4 of 1997 concerning Persons with Handicaps, the Ministry of Social Affairs was appointed as a leading sector (focal point) for disability issues. Unfortunately, this has brought about a major misunderstanding among the policy makers and policy implementors, as if the disability issue has been pre-owned by the Ministry of Social Affairs

¹ Ministerial Regulation of Manpower, 'Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 8 Tahun 2018 Tentang Perubahan Atas Peraturan Menteri Ketenagakerjaan Nomor 13 Tahun 2015 Tentang Organisasi Dan Tata Kerja Kementerian Ketenagakerjaan' 122.

alone. As a consequence, it is presumably understood that programmes related disability should go to the Ministry of Social Affairs. However, the Ministry of Social Affairs has a limited authority to uphold certain issues under other ministries' jurisdictions (for example education, employment, public transport, etc). To address this situation, one of the aims of the new Disability Act 2016 is to share the responsibility on disability issues among responsible ministries, not only the Ministry of Social Affairs, but also other related ministries with specific themes of responsibility. This is to ensure that disability that consists of inter-related themes should be well-addressed by the responsible ministries.

With reference to the right to work of persons with disabilities, the Ministry of Social Affairs, as a focal point for disability issues, has very long experience of engaging with this issue. This duty is reflected by establishing the rehabilitation and vocational training centres as one of the major disability support facilities. There are 19 Unit of Rehabilitation and Vocational Training Centres across Indonesia under the Ministry of Social Affairs.² These provide a unique service to serve different types of disability, to enable persons with disabilities to live independently. The training is set to fit the needs of different types of disabilities so they can get their livelihood based on certain skills. This does not only reach open-employment goals, skills were also being developed to prepare for self-employment purposes.

Notwithstanding this, there are still shortages on the part of the centres that need to be developed further. Some recommendations come from the participants of this research, in particular civil society, to strengthen and revitalise the centres. For instance, DPO7-1 highlighted the need to expand the interaction of vocational centres with the surrounding society. He also emphasised that placement in the labour market after completing the training is currently ineffective in some ways.³ His recommendation was to engage with as many companies as possible to enlarge the opportunity for persons with disabilities to work. CG-S1 confirmed from the side of government that the

² Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

³ Focus Group Discussion (FGD): DPO7-1 (Yogyakarta, 23 August 2017).

placement of beneficiaries of the centres requires a strong cooperation between the centres and the companies/employers.⁴

CG-S2, as a former head of one of the vocational rehabilitation centres, recommended restructuring the curriculum of vocational centres.⁵ She preferred the direct placement (internship) of persons with disabilities with the companies, where the overall training purpose should be heavily on the internship to the company instead of training in the centre itself. She said, contrary to the existing vocational training arrangements, which is commonly a one year training programme, three months should be for preparatory training while the rest should be for the internship. She argued this would reduce the cost. Moreover, persons with disabilities can benefit from experience in the company, as part of a real employment world. In this regard, she emphasized the government should have strong links with business enterprises, to cooperate with them.⁶

Another issue is the lack of skill, as mentioned by CG-S1 (see Chapter 7). He asserted that vocational training centres can reach the demands of the labour market by preparing persons with disabilities with skills that are required by industry.⁷ CG-S1 emphasized that the curriculum of vocational training centres should be evaluated regularly in order to adjust to the current situation of industrial world.⁸

Discussed below are the vocational training centres under the Ministry of Social Affairs that were visited for this research (site-visit) to get an idea of how the system works and achieves its goal within the overall government structure, in order to address the right to work of persons with disabilities. I visited 3 out of 19 national vocational centres spread out across Indonesia, each with a specific focus on certain types of disability. These centres have been working under the structure of the Ministry of Social Affairs as Technical Implementation Unit (*Unit Pelaksana Teknis/UPT*) that bear the obligation of

⁴ Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

⁵ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

⁶ *ibid.*

⁷ Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

⁸ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

providing rehabilitative vocational training, carrying out staff training, and conducting research and development on rehabilitative vocational training for persons with disabilities.⁹ Among these centres, BBRVBD Cibinong has been defined as the advanced level to which the alumni of other lower level centres are referred after completion their training. UPT is managed under echelon 2 in the organisation structure of the Ministry of Social Affairs (which means two levels below the Minister).

2.1.1. BBRVBD Cibinong

BBRVBD (*Balai Besar Rehabilitasi Vokasional Bina Daksa*, or the Centre for Rehabilitation and Vocational Training for Persons with Physical Disabilities) was previously the National Vocational Rehabilitation Centre (NVRC). This Centre was agreed in 1997 as a cooperation between government of Indonesia and Government of Japan c.q. Japan International Cooperation Agency (JICA), with a donor grant of 1.65 billion Yen b (approx. 35 billion IDR).¹⁰ The aim of the centre is to enhance the vocational rehabilitation system in Indonesia that targets persons with disabilities to enable them to live independently and in dignity by availing of a job. Therefore, the vocational training aims to develop knowledge, attitude, and skills that enable persons with disabilities to live independently by availing of work that aligns with their talents, skill and ability.¹¹

As mentioned above, BBRVBD, as a higher level of Vocational Training Centre, has been set as a more advanced centre than others.¹² As the advance level, it targets those who have already got previous training at the local level. The application criteria include: having a physical disability, women and men aged 17-30 years old, minimum education of Junior High School (Junior level of Secondary School), having basic skills, NOT having a medical problem (which needs medical treatment), and passing the recruitment test of

⁹ BBRVBD, 'Profil BBRVBD', <<https://bbrvbd.kemsos.go.id/modules.php?name=Content&pa=showpage&pid=10>> accessed 3 October 2019

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Interview with CG-SVC-So3, BBRVBD Surakarta, (Surakarta, 21 August 2018).

BBRVBD.¹³ Even though the age requirement for beneficiaries as mentioned on the website of the Ministry of Social Affairs is 17-30 years old, in fact the ages range from 18 to 35 years old.¹⁴ CG-SVC-Cb1, the head of the Centre, mentioned that the beneficiary intake in 2017 was 83 persons with disabilities from all over Indonesia (34 provinces). The types of disability are mostly physical. The requirement of the Ministry of Social Affairs is to give 10% to deaf persons, hence, there were 9 deaf persons out of 85 beneficiaries.¹⁵ The service given is free of charge including their daily life in a dormitory, food, clothing, uniform, etc.¹⁶

The duration of the training is 9 months, with a 'workshop' held from Monday to Friday, from February to October. Further, from 1 November to 14 December (45 days) there is an internship stage.¹⁷ Beneficiaries do not receive a salary during their internship until they are formally employed as employees.¹⁸ BBRVBD have a list of companies that agree to accept beneficiaries for the internship. They are mostly in Jakarta, Bandung, Banten and surrounding areas. Usually, some of these companies will recruit those who perform very well to be employed following the internship.¹⁹

Joining the Centre is much sought after. One of the beneficiaries, SVC-Cb1, narrated her wishes surrounding her involvement with the training:

"My deep motivation to join BBRVBD here is to be independent. Thankfully that I feel I got much experience and skill, as I started from zero until I can do sewing to make clothes. I wish I can work afterwards so that I can earn and save up money to start my own business in the future. I only hold my primary school certificate with me, I have never worked before. This is my second time to join the vocational training, as last year (2016) I joined the vocational training centre in Bandung [the lower level] focusing on the beauty salon. Here I am happy as I have got new friends as well as experience and skill."²⁰

¹³ BBRVBD, 'Profil BBRVBD', <<https://bbrvbd.kemsos.go.id/modules.php?name=Content&pa=showpage&pid=10>> accessed 3 October 2019.

¹⁴ Interview with CG-SVC-Cb1, BBRVBD (Cibinong, 21 July 2017)

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Interview with CG-SVC-Cb1, BBRVBD (Cibinong, 21 July 2017).

¹⁸ Interview with CG-SVC-TG1, BBRVBD Kartini (Temanggung, 22 August 2017)

¹⁹ Interview with CG-SVC-Cb1, BBRVBD (Cibinong, 12 July 2017).

²⁰ Interview with SVC-Cb1, Beneficiaries of BBRVBD, (Cibinong, 21 July 2017)

Recently BBRVBD has 8 instructors for 6 subject specializations: computers, graphic design, metal work, electronics, automotive, and sewing.²¹ The vocational training service has been trying to develop the curriculum and its overall service by adopting features of the newest trends, such as multimedia. They did research to assess many related factors, such as instructors, curriculum, demand and supply on the certain subjects, etc.²² In BBRVBD, the proportion of technical assistance (core skills) compared to social assistance is 40% and 60%. Beneficiaries are drilled to be able to enter the labour force as they are equipped with a strong motivation.²³

“I see the overall focus of any vocational training as mostly still on the open labour market instead of self-employment.”²⁴ CG-SVC-Cb1, head of BBRVBD.

Entering the formal labour market is mostly the aim of the rehabilitation and vocational centres. For the centres which specifically focus on types of physical disability and sensory disability, for example, entering formal employment remains the first priority. This is to satisfy one of the aims of the placement duties of the centres, which should link the centres with industry (the open labour market). To this extent, self-employment measures are the second priority, as an alternative for those who opt out the formal employment setting, or those who for some reason have not been absorbed by the open labour force due to competitiveness or other factors. Additionally, for types of disability such as intellectual disability, mental or psychosocial disability, or multiple-disability (such as MDVI), where it can be particularly difficult to enter the formal employment setting, the informal or self-employment setting may be considered.

According to data of BBRVBD, so far the company placements of last year's programme (which is called 'lifting 19,' counted from the year when the centre was established) is 56% working (formal employment), while the other 44% mostly decided to return home, across Indonesia.²⁵

“The big challenge comes from the family/parents of our beneficiaries, which in some cases are overprotective. They do not really allow persons with

²¹ Interview with CG-SVC-Cb1, BBRVBD (Cibinong, 21 July 2017).

²² *ibid.*

²³ *ibid.*

²⁴ Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

²⁵ Interview with CG-SVC-Cb1, BBRVD (Cibinong, 12 July 2017)

disabilities to work away from them. As here they come from all over Indonesia, some of them need to return home right after completing the training.”²⁶

It remains another issue that has to be solved by local government to provide the opportunity of decent work for persons with disabilities within their local authority, following the completion of vocational training.

2.1.2. BBRSD Prof. Dr. Soeharso, Surakarta City, Central Java

BBRSBD (*Balai Besar Rehabilitasi Sosial Bina Daksa*, the Centre of Social Rehabilitation for Persons with Physical Disabilities) is located in Surakarta City, Central Java. It was first formally established in 28 August 1951, named ‘Rehabilitasi Centrum’ (RC). It was previously started in 1946 initiated by Dr. Soeharso, along with R. Soeroto Rekso Pranoto, who had been trying to make prosthetic legs for victims of the Indonesian war. Since 1949, it appeared an idea to involve them in work, therefore a series of vocational trainings was held. This Centre’s name had changed a few times, with the latest change on 23 July 2003 (by Minister of Social Affairs Decree Number 55/HUK/2003) to the name of ‘*Balai Besar Rehabilitasi Sosial Bina Daksa BBRSD Prof. Dr. Soeharso*’ (the Centre of Social Rehabilitation for Physical Disability), while the name of Prof. Dr. Soeharso is a recognition of him as the initiator.²⁷

BBRSBD provides a basic skill, while the continuation will be delivered by BBRVBD Cibinong to get advanced skills.²⁸ BBRSD is therefore a stepping stone to continue the training service in the BBRVBD Cibinong.²⁹ The BBRVBD will have certain requirements that do not apply to the lower level of vocational training centres such as BBRSD Surakarta. The educational background requirement is different to some types of vocational skills. For example, a Senior High School certificate is required to obtain manufacturing

²⁶ *ibid.*

²⁷ BBRSD, ‘Sejarah Singkat BBRSD Prof. Dr. Soeharso Surakarta <https://soeharso.kemsos.go.id/modules.php?name=Content&pa=showpage&pid=22> accessed 3 October 2019

²⁸ Interview with CG-SVC-So1, CG-SVC-So3, BBRSD (Surakarta, 21 August 2018).

²⁹ Interview with CG-SVC-So3 BBRSD (Surakarta, 21 August 2018).

skill, but not necessarily for making garments.³⁰ The yearly term consists of two classes. Class A is from January to December, while Class B is from January to June.³¹ There are two months of internship at the end of the training session.³²

Basically there are overall 16 skills offered in the Centre, but recently there is only 13 training skills available, such as sewing, beauty, electronics, carpentry, printing, handicrafts, etc. Previously the alumni of the vocational trainings were not finding it easy to reach the labour force, therefore a series of evaluations on the curriculum were conducted to analyse this ineffectiveness. In 1995, in cooperation with JICA (Japan International Cooperation Agency), the centre was trying to renew the machinery in order to adjust with the industry.³³ Based on this 1995 evaluation, since 1997, the curriculum has been adjusted.³⁴

In 2017 the beneficiaries were 155 persons with disabilities.³⁵ Recruitment took Place through the office of social affairs in each regency and city nearby.³⁶ Unlike BBRVBD Cibinong, the overall target of BBRSD Surakarta is 70-80% self-employment, with the rest in open employment. In BBRVBD Cibinong, the target is not less than 90% in open employment with 10% in self-employment. Besides the service of vocational training, BBRSD also provides the occupational support tools needed by persons with disabilities, such as prosthetics (support legs, arms, etc).³⁷

Under Minister of Social Affairs Regulation Number 6 of 2016 concerning the Responsibility of Business Entities in Managing Social Welfare, there is a particular link to the placement of persons with disabilities in business enterprises.³⁸ With reference to that provision, BBRSD have been trying to 'pick up the ball' ("*menjemput bola*"), meaning to be more active in movement

³⁰ Interview with CG-SVC-So1 and CG-SVC-So3, BBRSD (Surakarta, 21 August 2018)

³¹ Interview with CG-SVC-So1 BBRSD (Surakarta, 21 August 2018)

³² *ibid.*

³³ *ibid.*

³⁴ *ibid.*

³⁵ Interview with CG-SVC-So3, BBRSD (Surakarta, 21 August 2017).

³⁶ *ibid.*

³⁷ Interview with CG-SVC-So1 BBRSD (Surakarta, 21 August 2017).

³⁸ *ibid.*

rather than passive or 'wait and see. instead. To that extent, BBRSD is actively approaching business enterprises nearby.³⁹ BBRSD have been approaching surrounding employers to employ persons with disabilities. The concept is not charitable but rather a professional approach, highlighting that persons with disabilities are able to work. They meet the employers nearby twice a year.⁴⁰

"Sometimes we visit BBRVBD Cibinong and bringing the employers along in order to witness directly what happens there, how persons with disabilities engage with the training and so forth."⁴¹

BBRSD have been trying to establish networking with surrounding companies. For example, they held a graduation day for the beneficiaries when they complete the course. There were 155 of them wearing gowns like a regular conferring. It also invited parents, employers, and other related stakeholders. This is an arena of promotion for them to attract employers.⁴²

2.1.3. BBRSBG Kartini Temanggung, Central Java

Balai Besar Rehabilitasi Sosial Bina Grahita/BBRSBG Kartini (Social Rehabilitation Centre for Persons with Intellectual Disabilities) is located in Temanggung Regency, Central Java. It was first established in 15 September 1904 by the *Graafstal* family under Dutch Colonialism, and named "*Zwakzinnigenzorg Temanggoeng*."⁴³ It was subsequently taken over by the government of Indonesia after independence in 1945. The name of the centre has been changed over time until the recent change on 23 July 2003 by the Minister of Social Affairs Decree Number 56/HUK/2003, transforming it to the name of BBRSBG. The overall number of beneficiaries is currently 150 persons with intellectual disabilities.⁴⁴ This is for the regular programme, with dormitory stay provided. For day care (not staying in the

³⁹ *ibid.*

⁴⁰ Interview with CG-SVC-So3, BBRSD (Surakarta, 21 August 2018)

⁴¹ *ibid.*

⁴² Interview with CG-SVC-So1 BBRSD (Surakarta, 21 August 2018).

⁴³ Balai Besar Rehabilitasi Sosial Penyandang Disabilitas Intelektual "Kartini" di Temanggung, 'Sejarah singkat,' <<https://kartini.kemsos.go.id/daftaronline/>> accessed 2 October 2019

⁴⁴ in 2017 when the interview have been held

dormitory) there are another 10 beneficiaries. These live around the centre.⁴⁵ Recruitment for the regular programme of vocational training is done throughout the year, under an 'on-off-system.' This is arranged to anticipate those who quit the programme before completion for some reason. Generally, the programme will start in December, with a maximum duration of training of 36 months.⁴⁶

In cooperation with other stakeholders in each regency or city local government nearby, BBRSBG Kartini have been disseminating information about the training. In addition to this dissemination, the regency or city local government helps to recruit persons with disabilities under their authority. The service provided is all free of charge, including living in the dormitory. There are some criteria such as non-serious illness, age range 15-35, types of intellectual disability, etc. There is no minimum education requirement. The programme consists of three categories: A, B, and C. Categories A and B cover vocational training, while C is daily living training (e.g. washing dishes, sweeping, changing their own clothes, etc). For categories A and B, the vocational trainings covers 10 subjects: carpentry, pottery, doormat making, sewing, wax mattress making, food/culinary, housekeeping, farming, bamboo crafting, other handicrafts (key chains, acrylic flowers etc). There are also other supporting subjects, such as religion, sport, art and psychology.

After attending the vocational training, there is an internship (*PBK/Praktik Belajar Kerja*). The social workers (each responsible for 5-6 beneficiaries) will assess them on their readiness. So far, most of the suitable placements of the beneficiaries with intellectual disabilities are with small industries or small enterprises as well as home industries.⁴⁷ The bigger industries are usually reluctant to accept persons with intellectual disabilities (even only for an internship) as they have certain requirements that cannot be met by persons with intellectual disabilities.⁴⁸ After completing the training, there is another short programme of *Binjut (Bimbingan Lanjut/Continued Assistance)*.

⁴⁵ Interview with CG-SVC-TG1 BBRSBG Kartini (Temanggung, 22 August 2017).

⁴⁶ *ibid.*

⁴⁷ Interview with CG-SVC-Tg2, BBRSBG Kartini (Temanggung, 22 August 2017).

⁴⁸ *ibid.*

This is a new programme held by another placement division⁴⁹ that aims to evaluate the alumni of the training.

2.1. Ministry of Manpower

Another ministry that works closely on the right to work of persons with disabilities is the Ministry of Manpower. This ministry has a particular employment placement sub division for specifically disabled workers and elderly which runs a number of programmes.⁵⁰ These include programmes such as Disability Equality Training (DET), training on disability awareness raising, Interactive Discussion on Disability, Inclusive Job Fairs, Disability Expo, and Awards.⁵¹ CG-M1 from the Ministry of Manpower admitted the limit of the programmes, which could not effectively reach out the targets across Indonesia.⁵² The ministry has also attempted to bridge business entities. CG-M1 from the Ministry of Manpower recommended companies to share with each other.

“Some companies come to us to ask for assistance on how to employ persons with disabilities at their companies. The Ministry of Manpower welcomes any inquiry to optimize the employability of persons with disabilities. Also, we encourage those who have experience to share it with other companies.⁵³”

So far, according to CG-M1, the Ministry of Manpower prefers to apply a persuasive approach instead of a ‘sanction/punishment approach’ to companies concerning the responsibility of placing persons with disabilities in the employment world.⁵⁴ The programme of rewarding companies that employ persons with disabilities is still running for this purpose. The award is held by central government (nationally) while the local government role is to recommend companies under their authority that have been assessed on the criteria for employing persons with disabilities.⁵⁵ CG-M1 highlighted the work

⁴⁹ Interview with CG-SVC-TG1 (Temanggung, 22 August 2017)

⁵⁰ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017).

of 'job canvassing' that, according to him, should be a real work of government (both at central and local level), to pick up possible job opportunities directly from employers.⁵⁶ This direct approach is important to maintain information on the demand for persons with disabilities in employment which can feed into the evaluation of progress.

CG-M1 noted the example of how to include persons with disabilities in the training centre run by Ministry of Manpower, apart from the other centres run by the Ministry of Social Affairs, described above. This centre provides vocational training in general. Even though there is no restriction on the participation of persons with disabilities in this training, it is very rare that they apply. This seems like 'segregation,' but in fact it should not be.⁵⁷

3. Local Government

The local government structure of each province, municipality or regency is based on local autonomy that organizes local resources and local wisdom. Decentralization principles are applied to deliver the authority from central government to local government (See Chapter 6). The aim is to reduce the centralized authority of the central government into a shared authority (in the form of delegated authority) of local governments. This shared authority also aims to achieve more creative freedom for local government to develop their own domain. This rectifies the past experience of so-called 'authoritarian centralized government' and aims to prevent it happening again. Nevertheless, even where local government governs its own territory, the service provided by the local government should meet the 'standard of minimum core service' that has been set nationally.⁵⁸ Under the head of local government there are structures that generally contain a secretary, agency, and offices. The nomenclature of agencies and offices can be different one another as it is part of local authority to decide. However the structure should encompass the listed affairs of each local government, excluding major

⁵⁶ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

⁵⁷ Ibid.

⁵⁸ Act Number 23 of 2014 concerning Local Government Administration and its Amendments 2014 s 1 (17).

government affairs as these are within the absolute authority of the central government.⁵⁹ Central government affairs covers foreign affairs, political arrangements, defense, national/local security, judiciary, monetary and national fiscal, as well as religion⁶⁰ (see Chapter 6). The local arrangements should cover the concurrent government affairs as delivered to the local government, consisting of compulsory government affairs and optional government affairs.⁶¹ Compulsory government affairs relate to basic services and non-basic services,⁶² while optional government affairs are the affairs that might be specifically required by each local government due to its local needs.⁶³

Manpower and employment affairs fall within compulsory government affairs, even if it does not relate to basic services.⁶⁴ Therefore it is mandatory for every local government to provide these services. However, the degree of implementation will depend on the available resources of each local government, such as their budget allocation, the priority of the programmes, as well as the target achievement.

Accordingly, there are unique relations between Ministries (central government) and local government. Ministries as set up under Central Government have their specific scope of authority in the national context, while the offices of certain affairs under the Local Government have their own local context of duty. For example, the Ministry of Manpower sets the national policy which should be delivered nationally by the Manpower Offices of each local government. However, besides the general provisions which apply nationally, each local government has also set their own duties to adjust within their local context and resources.

Each local government structure usually adopts the responsibilities of the relevant ministry at the central level. For example, the Office of Manpower at

⁶⁰ *ibid*, s 10, sub-s 1.

⁶¹ *ibid*, s 11, sub-s 1.

⁶² *ibid*, s 11 sub-s 3.

⁶³ *ibid*.

⁶⁴ *ibid* s 12 sub-s 2.

the local level usually resembles the central Ministry of Manpower structure, adjusted to the local level. The same applies to other offices, such as the Office of Social Affairs, which adopts the role of the Ministry of Social Affairs into the local level.

With reference to the arrangement of vocational training service upholding the right to work of persons with disabilities, this research found evidence of disharmony both at national level and local level. As at May 2019, data show there are 305 BLK (*Balai Latihan Kerja*/Centre of Vocational Training) spread out across Indonesia⁶⁵ some of which (19) are run by the Ministry of Manpower (central government), while others are served by local government (provincial, municipal, regency). Some of these BLK are not working well under certain local government due to insufficient budget availability.⁶⁶ Aside from those mentioned above, the Ministry of Manpower aims to establish 1000 BLK *Komunitas* (Community Vocational Centres) in 2019.⁶⁷ The source of funding for this project comes from Ministry of Manpower (national budget).

At the local level, the Office of Manpower serves general vocational training Centres/BLK (*Balai Latihan Kerja*), while most Offices of Social Affairs focus on specific disability vocational and rehabilitative training centres/ LBK (*Loka Bina Karya*) which are specifically for the needs of persons with disabilities. As the LBK are aimed at persons with disabilities, it is very rare that persons with disabilities try to attend BLK. As noted by DPO9-1 BLK in West Java Province, so far they have never recruited persons with disabilities in their vocational training. Considering BLK as having a broader service (more

⁶⁵Ditjen Bina Kelembagaan Pelatihan Kementerian Ketenagakerjaan RI, Peta Sebaran Balai Latihan Kerja Pemerintah (UPTP/UPTD) Jumlah 304 BLK' <<https://www.lemsar.net/petadata/petalpkpemerintah.php>> accessed 8 May 2019

⁶⁶ Siprianus Edi Hardum/EHD, 'Pemprov Tak Mampu Kelola BLK Serahkan ke Kemnaker,' 11 July 2018

<<https://www.beritasatu.com/ekonomi/500592/pemprov-tak-mampu-kelola-blk-serahkan-ke-kemnaker>> accessed 8 May 2019

⁶⁷ Putri Syifa Nurfadilah, '2019, Kemenaker Targetkan 1.000 titik Balai Latihan Kerja Komunitas,' 4 August 2018 <<https://ekonomi.kompas.com/read/2018/08/14/191134826/2019-kemenaker-targetkan-1000-titik-balai-latihan-kerja-komunitas>> accessed 8 May 2019

training, with more tools and experts in the field), DPO9-1 suggests to enable persons with disabilities to be included.⁶⁸ To this extent, it is beneficial to revitalise BLK to be more inclusive, thus expanding to serve persons with disabilities.

The establishment of those different centres (BLK and LBK) at the local level depends on the resources of the respective local government. The fracture in implementation happened due to institutional barriers and available resources. Some local governments run both BLK and LBK, some have only one of them. In addition, some of those which have both BLK and LBK have a varied connection, either poor or good connection and collaboration. The example of the coordination between LBK and BLK appeared in DI Yogyakarta Province. So far, according to LGSRY-M1 from the Office of Manpower, the coordination between BLK (Office of Manpower) and LBK (Office of Social Affairs) is on providing assistance with trainers, where BLK that are known to have advanced trainers could lend them to train persons with disabilities in LBK.⁶⁹ It was highlighted by LGSRY-M1 that the training conducted by BLK are set twice annually, where one session consists of 20 persons. Usually one session is for sewing skills and the next is for massage skills.⁷⁰ They also conduct some training for the purpose of competence certificates (*serifikat uji kompetensi*) on specific skills such as automotive, welding, etc. Unfortunately, this training barely attracts the interest of persons with disabilities. LGSRY-M1 supposed this is probably because the type of vocational training does not fully fit with the physical situation of persons with disabilities.⁷¹ This training is mostly aimed at open employment, hence, after completing the training, the Office of Manpower will try to link the beneficiaries to companies for possible placement, both through an online job market and a conventional job market.⁷²

LG-SVC-Yk1 from the Office of Social Affairs DI Yogyakarta admitted that the curriculum set by LBK has not sufficiently delivered the beneficiaries to

⁶⁸ FGD: DPO9-1 (Bandung, 3 August 2017).

⁶⁹ FGD: LGSRY-M1, Office of Manpower DI Yogyakarta (Yogyakarta, 23 August 2017).

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*

the labour market. He said those who succeeded in getting work in formal employment are still limited.⁷³ Additionally, the level (basic, intermediate, and advanced) of the training in fact has not been established yet. It makes difficult to define the skills that should be put in place.⁷⁴ This is despite the Local Act (*Peraturan Daerah*) of DI Yogyakarta Number 4 of 2012 concerning the Protection and Fulfilment of the Rights of Persons with Disabilities, which mandated to settle this levelling. Therefore, the Office of Social Affairs needs to restructure the curriculum of LBK to justify the market.⁷⁵

Below are examples of the crosscutting issues of disability and the right to work on the ground served by local government. This research has purposively taken two samples of local government (both at provincial level): West Java Province and DI Yogyakarta (Special Region of Yogyakarta) Province.

3.1. West Java Province

3.1.1. Office of Social Affairs

West Java Province is the most populated province among the 34 provinces in Indonesia. According to the data of the West Java Provincial Government, in 2017 its population was 46,497,175, within a territory of 35,377.76 km², spreading into 27 cities/regencies.⁷⁶ The provincial government put its attention on disability as reflected in the local law: by Law (Local Act of Provincial Level) *Perda* Number 7 of 2013 concerning Management on Disability.⁷⁷ *Perda* 7 of 2013 has been delivered into West Java Governor Regulation Number 97 of 2015 concerning Accessibility (as a further technical arrangement).⁷⁸ There are 9 General Rehabilitation Centres under the Office of Social Affairs of the West Java Provincial Government. Disability

⁷³ FGD, LG-SVC-Yk1 Office of Social Affairs DI Yogyakarta (Yogyakarta,, 23 August 2017).

⁷⁴ *ibid.*

⁷⁵ FGD: LG-SVC-Yk1 (Yogyakarta, 23 August 2017).

⁷⁶ Pemerintah Provinsi Jawa Barat, Penduduk. <<http://jabarprov.go.id/index.php/pages/id/75>> Accessed 3 August 2019

⁷⁷ Interview with LGWJ-S1, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁷⁸ *ibid.*

Rehabilitation Vocational Centre (*Balai Rehabilitasi Sosial Penyandang Disabilitas/ BRSPD*) is one of these centres, which specifically focus on persons with disability.⁷⁹ This Rehabilitation Vocational Centre is located in Cibabat, Cimahi West Java.

BRSPD provides two types of services in relation to disability. *First* is an internal service which consists of technical, mental, and physical assistance, including vocational training, internship, and a tool kit grant based on skills training. The programme lasts for 8 months and covers 100 beneficiaries (2017). There are 6 social workers serving on this project. After 8 months of training, all the beneficiaries have to complete an internship based on their vocational skills. The duration of the internship is 2 weeks.⁸⁰ *Second* is an external service that provides a series of services to the surrounding community. This consists of *Unit Pelayanan Sosial Keliling* (UPSK/Mobile Social Service Unit), which provides medical and psychological services. In relation to disability training, this unit will (following assessment) recommend delivering some persons with disabilities to LBK (*Loka Bina Karya/Vocational Training Centre*) for one to three months, depending on the available budget.⁸¹

Regarding the internal service, LGWJ-S4 from the Office of Social Affairs mentioned that all the daily life is covered, including food, uniform, health, and a small pocket money of 5,000 IDR a day (Approx. 35 cent USD). The counselling is given in person or in a group that involves experts in the field (religion, psychology, psychiatry). The vocational training is divided into two skills. The main skill includes automotive, beauty salon, electronics, handicrafts, sewing, housekeeping, and warehousing. Side skills have been set as an added value skill, such as precious stones skills (*batu akik*) and culinary skills in cooking various traditional-local foods based on local available raw food materials/staple foods (e.g. cassava, rice, glutinous rice, etc).⁸² The service of BRSPD, according to LGWJ-S3, emphasizes the capacity for

⁷⁹ *ibid.*

⁸⁰ Interview with LGWJ-S4, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸¹ Interview with LGWJ-S6, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸² Interview with LGWJ-S4, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

beneficiaries to run their own business since the barriers to entering open employment (such as inaccessibility of the workplace) are quite high for persons with disabilities.⁸³ So far, the inaccessibility of workplaces is still a barrier. The job opportunity is mostly available in the big cities, while the beneficiaries come from the outspread area of West Java.⁸⁴

As an evaluation measure, there is a continued assistance (*Binjut/Bimbingan Lanjut*) after completion of the training. LGWJ-S3 said that it is still a limited programme to reach out to alumni. So far, it randomly sets out to meet them by coordinating with the local government of regencies/cities where the alumni live. The programme is to evaluate them on what they do in their own business and what they need to develop their business. There will be a possible assistance in form of advocacy or even a loan/grant.⁸⁵ With regard to disseminating information and recruitment, the Office of Social Affairs has disseminated the programme of BRSPD Cimahi to the local government of regencies and cities in West Java Province (there are 27 regencies and cities). The dissemination is held one year prior to the programme, which starts in March. The proportion between men and women participants is purposely equal, while deaf participants slightly outnumber participants with physical disabilities (60:40).⁸⁶ Additionally, they also welcome persons with disabilities to apply directly. LGWJ-S4 explained the requirement: having a physical disability or deaf; being able to write and read (basic level), not necessarily a formal education certificate; able to do their basic daily life (bathing, eating, drinking); parental permission (for cultural reasons); aged between 15-30 years old; and a recommendation from a General Practitioner that they are healthy.⁸⁷

“Why we need the recommendation of being healthy is because it is not a hospital institution here.”⁸⁸

⁸³ Interview with LGWJ-S3, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸⁴ Interview with LG-SVC-Ct1 Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸⁵ Interview with LGWJ-S3, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸⁶ Interview with LG-SVC-Ct1, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸⁷ Interview with LGWJ-S4 Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

⁸⁸ *ibid.*

3.1.2. Office of Manpower

The Office of Manpower has been conducting job fairs, which are usually held for three days in a row, in cooperation with other stakeholders. In 2017 there were 6 job fairs, in 6 cities in West Java. Additionally, the office also looks for job opportunities directly with companies called 'job canvassing.' It has been merged with a monthly monitoring duty to visit the company's workplaces.⁸⁹

The other event that has been held is the job fair, in collaboration with other stakeholders. From the DPO side, DPO7-1 told his experience on the cooperation with Office of Manpower to establish a job fair.

"In 2011, I was Chairperson of PPDI West Java. I was asked by the Office of Manpower of West Java Province to advise on job fair cooperation between Office of Manpower with the College of Tourism NHI Bandung. On that occasion some of the companies were interested in employing persons with disabilities. Thankfully many of them (especially deaf persons) were recruited by the hotels to fill several positions (such as cooking, housekeeping, etc). The programme is still running up to now."⁹⁰

3.2. DI Yogyakarta (DIY) Province

Daerah Istimewa (DI) Yogyakarta/Special Region of Yogyakarta Province is located in (central) Java Island. The most recent statistics (updated 23 January 2018) shows the total population of DI Yogyakarta is 3,720,912.⁹¹ Yogyakarta is considered as having made advanced progress in terms of the disability movement. With reference to the disability law, this province was the first in Indonesia that adopted a by-law on disability (*Peraturan Daerah/Perda* Number 4 of 2012 concerning the Protection and Fulfilment of the Rights of Persons with Disabilities) with the newest perspective of human

⁸⁹ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017)

⁹⁰ FGD: DPO7-1 (Bandung, 3 August 2017).

⁹¹ Badan Pusat Statistik Provinsi DI Yogyakarta, 'Jumlah Penduduk Menurut Kabupaten/Kota di Provinsi DI Yogyakarta (Jiwa)' <<https://yogyakarta.bps.go.id/dynamictable/2017/08/02/32/jumlah-penduduk-menurut-kabupaten-kota-di-d-i-yogyakarta-jiwa-.html>> accessed 18 November 2018

rights based on the CRPD. It also became the pioneer to establish the team of disability disaster-preparedness management.⁹²

With regard to the right to work of persons with disabilities, LGSRY-S1 from the Office of Social Affairs of DI Yogyakarta asserted that By Law/*Perda* Number 4 of 2012 of DI Yogyakarta was aimed at connecting 3 parties: employers, persons with disabilities, and local government (as a mediator).⁹³ Revitalizing this tri-partite relationship has been envisaged to optimize the data gain on the numbers, types, and potential market demand for labour.⁹⁴ LGSRY-S1 admitted that currently persons with disabilities are still struggling to access the information of the specific job opportunities.⁹⁵ Moreover, he underlined that the Office of Manpower of the Provincial Government of DI Yogyakarta has one of the functions on placement and extended opportunities to access to work both general and special labour (persons with disabilities have considered as 'special' along with the elderly, women, and teenagers who dropped out of school). Therefore it is essential to enforce this function to establish a good partnership between persons with disabilities and employers.⁹⁶ This is an example of implementation at the local government level. It shows the fragmentation among local governments. DI Yogyakarta, as mentioned earlier, has set its approach on the human rights perspective of disability, and can be considered as an example of a local government which is advanced in the implementation of the rights of persons with disabilities, including in relation to the right to work.

According to the informants from the Office of Manpower DI Yogyakarta,⁹⁷ there are some programmes of the Office of Manpower DI Yogyakarta that support the empowerment of persons with disabilities in relation to the right to work. These include entrepreneurship training, dissemination of the

⁹² Kumparan News, 'Yogyakarta Menjadi yang Pertama Terbitkan Perda Disabilitas,' 4 December 2017 <<https://kumparan.com/@kumparannews/yogyakarta-menjadi-yang-pertama-terbitkan-perda-disabilitas>> accessed 18 November 2018

⁹³ FGD: LGSRY-S1, Office of Social Affairs DI Yogyakarta Province (Yogyakarta, 23 August 2017).

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ FGD: LGSRY-M3, Office of Manpower DI Yogyakarta Province (Yogyakarta, 23 August 2017).

⁹⁷ *ibid.*

disability employment provision and monitoring duty, partnership to related stakeholders (such as companies and DPOs), job fairs, awards, and exhibitions.⁹⁸ Notwithstanding this, LGSRY-S1 made some observations on the implementation of the above, such as the limited types of job that are provided at the job fair. He admitted that the jobs offered are limited, and are commonly 'typical jobs' for persons with disabilities, and are even limited to various types of disabilities.⁹⁹

4. Gaps in Coordination and Jurisdiction

This research has found gaps in coordination as well as jurisdiction of the governing bodies responsible the right to work of persons with disabilities. Since the 'disability' and the 'right to work' are considered as two major separate domains under respective government institutions (in terms of the roles of each institution), the gap of the coordination has a significant impact on the practical effectiveness of the right to work of persons with disabilities.

4.1. Coordination among Ministries and Offices (Central and Local Government)

Despite good intentions on simplifying the disability service with the aim of being more effective in reaching de facto equality, the coordination among government bodies remains a big challenge. CG-S2, an informant from central government, mentioned the miscoordination across ministries that often leads to massive inefficiency.¹⁰⁰

"For a simple example, to build a public sports building should consider the accessibility for persons with disabilities, otherwise it would have to be renovated afterwards, that will cause inefficiency. These all have to be set in the very beginning. The miserable fact is that not all the newest developments were being considered carefully. Sadly, some of the infrastructures that have been build were not accessible to persons with disabilities."¹⁰¹

⁹⁸ FGD: LGSRY-S1, Office of Social Affairs DI Yogyakarta Province (Yogyakarta,, 23 August 2017).

⁹⁹ *ibid.*

¹⁰⁰ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

¹⁰¹ *ibid.*

It is found a specific cause of miscoordination lies on what may be called a 'sectoral ego,'¹⁰² usually meaning a common feeling in institutions that they alone possess certain authority, that sometimes results in undermining other institutions. This could lead to issues being fought by over by two or more conflicting bodies. An example might be in the overlapping authority between provincial government and city/municipalities/ regency level on matters such as local tax (for instance the licence of establishment of a business is issued by provincial government, but in fact the company is located in a certain city/regency). On the other hand, some issues do not appear to belong to any institution or authority, hence none of the authorities would be responsible. An instance of this can be in the intersection of themes appearing in this thesis, such as between 'disability' and 'work.' The particular intersection can end up with no responsible body to handle it.

With regard to the right to work of persons with disabilities, CG-S2 from the side of (central) government perceived the miscoordination between the Ministry of Social Affairs and the Ministry of Manpower.¹⁰³ For example, after completing the vocational training provided by the Ministry of Social Affairs, there is no further engagement with Ministry of Manpower (in particular, with the sub-division of the placement of disabled workers) for placement purposes. To this extent, such a partnership between the ministries would be beneficial to serve more opportunity for persons with disabilities to enter the labour force. CG-S1, a senior official of the Ministry of Social Affairs, was aware that Disability Act 8 of 2016 mandated the other 6 ministries to be involved closely in the disability issue, in relation to the duty in their field and authority.¹⁰⁴ Therefore coordination among related ministries should be arranged on a regular basis.¹⁰⁵ It can be managed by the Ministry of Social Affairs as leading the sector of disability issues, as well as under the Coordinating Ministry for Human Development and Cultural Affairs,¹⁰⁶ as CG-

¹⁰² Jakarta Globe News Channel, 'Govt to end Sectoral Ego Within Law Enforcement Agencies,' 2 February 2016 <https://jakartaglobe.id/multimedia/govt-end-sectoral-ego-within-law-enforcement-agencies/> accessed 17 March 2019

¹⁰³ Interview with CG-S2 Ministry of social Affairs (Jakarta, 17 July 2017).

¹⁰⁴ Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

¹⁰⁵ *ibid.*

¹⁰⁶ It is a name (nomenclature) of a ministry.

S1 mentioned.¹⁰⁷ The issue arises from some problems with the lack of coordination to date: either among central government institutions, central government to local government, and among local government institutions. CG-S2 also underlined this kind of coordination issue, noting that there is no powerful coordination body that could bridge these interests so far, hence the upcoming National Disability Commission (see chapter 6) is expected to link these particular concerns on cross-sector disability issues.¹⁰⁸

Another lesson learned, as noted by CG-S2 from the side of government, is that the process of regulating under the Disability Act 2016 has been applied across ministries.¹⁰⁹ The message is on the sharing of responsibility based on their own mandated authority in their respective fields.¹¹⁰ However, disability mainstreaming, in the sense of sharing the responsibilities among related ministries, still appears to be ineffective. Very often, there is a misperception, even on the side of government officers, that anything disability-related has to be tackled by the Ministry of Social Affairs.¹¹¹ For example, CG-S2 mentioned that in budget planning, when the word 'disability' appears, it is assumed to go automatically to Social Affairs, which means a fragmented view of disability appeared rather than a cross-cutting disability perspective. Yet disability issues cover a wide range of thematic arrangements ranging from education, health, employment, etc (in relation to economic, social, and cultural rights) to civil and political rights.

At the national level, theoretically there is existing regular coordination among ministries that are held by the Ministry of Human Development and Cultural Affairs. This is a broader coordination across ministries that discusses issues and problems in general sense (where disability issues are only part of it), hence disability does not necessarily become a focus of discussion. However, since disability is not only the domain of the Ministry of Social Affairs, this forum should be relied on linking with other ministries in arranging disability programme engagement. The Ministry of

¹⁰⁷ *ibid.*

¹⁰⁸ Interview with CG-S2 Ministry of Social Affairs (Jakarta, 17 July 2017).

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

Communication, for instance, was conducting training on disability in terms of IT tools.¹¹² With reference to the right to work of persons with disabilities, the crossroads between the Ministry of Social Affairs and the Ministry of Manpower often remains. Therefore, not only relying on the general forum of coordination among ministries, a direct coordination of ministry to ministry would be more significant instead.

CG-S2 from the Ministry of Social Affairs asserted that the challenge of coordination meant that disability mainstreaming is still not being implemented.

“In 2012, we have introduced disability mainstreaming on budgets and programmes to put responsibility across ministries in a whole cycle. For example, the development of an airport (by the Ministry of Transportation) should take disability as an entire focus of attention besides other users on the airport construction and facilities. From the start the design has to adapt to the needs of persons with disabilities, as do other facilities such as buses to and from the airport. We found that the challenge is on the coordination itself.”¹¹³

CG-Par1, from Parliament, concludes that there is an ineffective coordination among institutions where they are likely to work separately.¹¹⁴ Further, from the DPO perspective, the lack of coordination remains among ministries. For example, after completing a vocational training programme, there is no serious effort to place those beneficiaries in the labour force.¹¹⁵ These findings are rather disappointing in that there is a sense of lack of coordination between responsible ministries, in particular those working on the right to work of persons with disabilities.

4.1. Bridging Vocational Centres

With regard to vocational training, coordination and cooperation between the Ministry of Social Affairs and the Ministry of Manpower has to be strengthened because both of these are running vocational training programmes.¹¹⁶ The findings of this research on coordination have important

¹¹² Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

¹¹³ Interview with CG-S2, Ministry of social Affairs (Jakarta, 17 July 2017).

¹¹⁴ Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

¹¹⁵ FGD: DPO13-1 (Yogyakarta, 23 August 2017).

¹¹⁶ Interview with ILO, ILO-1 (Jakarta, 8 August 2017).

implication for developing a further enjoyment of the right to work. Cooperation can be built through human resources (experts), programme sharing, tools and modules, including company placements.¹¹⁷ With regard to national-local government coordination, there is a deconcentration budget allocation from the Ministry of Social Affairs (central government) to the local government regarding disability programmes, that should be optimized.¹¹⁸

With reference to the coordination between the Rehabilitation Vocational Centre (run by central government) and the local government, CG-SVC-Cb1, head of BBRVBD, mentioned that they build cooperation with local government in respect of the recruitment process. This involves the Office of Social Affairs in each province, municipality or district, which will recruit and recommend to BBRVBD within the criteria.¹¹⁹ Further, CG-SVC-Cb1 explored other coordination such as developing a Memorandum of Understanding (MoU) between the Ministry of Social Affairs, the Ministry of Manpower, and APINDO (*Asosiasi Pengusaha Indonesia*/the Association of Indonesian Employers). This was established in 2015, but unfortunately was not followed by a PKS (*Perjanjian Kerja Sama*/Letter of Agreement), hence it cannot be implemented yet.¹²⁰ This must be followed seriously by the related bodies above, otherwise it will be lack further progress. The existing draft MoU mentioned that cooperation would cover on recruitment and training (by the Ministry of Social Affairs), curriculum and instructors (support by the Ministry of Manpower) and employment placement (to be supported by APINDO).¹²¹

Apart from a 'mainstream' vocational training for persons with disabilities, the form of service for empowering persons with disabilities is not only in the institutional framework but in the form of community-based rehabilitation (*Rehabilitasi Sosial Berbasis Masyarakat*/RSBM). RSBM was designed to have a broader range of beneficiaries, as a complementary service to the

¹¹⁷ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017).

¹¹⁸ *ibid.*

¹¹⁹ Interview with CG-SVC-Cb1, BBRVBD (Cibinong, 21 July 2017)

¹²⁰ *ibid.*

¹²¹ *ibid.*

existing 'conventional' vocational rehabilitation service units. In this sense, it is important to note the coordination between central government and the local government (provincial government and municipalities/district).¹²² There is a minimum standard of service that has been set out by the central government, in particular the Ministry of Social Affairs. It sets the standard of service that has to be met by local government, in order to reach the target of achievement.¹²³

5. Conclusion

This chapter has outlined the particular responsible bodies in the institutional framework. It has shown that there are particular problems with sectoral-ego, a jurisdictional gap, and a lack of coordination. These issues impact the performance of how the institutional structure address the barriers previously identified in Chapter 7. As mentioned in Chapter 7, there is a significant improvement on the overall disability perspective, in particular on the right to work, post-enactment of the recent Disability Act 2016, as a further legislative step of the CRPD ratification. Notwithstanding this, the spirit of enhancing de facto equality on the right to work of persons with disabilities should inevitably be equipped with a strong organisational structure with responsibility for policy making as well as implementation. However, the findings of this research have shown the fractured implementation of the various responsible government bodies that are involved, as follows:

In the central government level:

The two major responsible bodies (the Ministry of Social Affairs and the Ministry of Manpower) should be more related in coordination and cooperation. The intersection of their affairs appears in providing vocational training centres as well as the placement of persons with disabilities in the workforce. The Ministry of Manpower has a more general target of all citizens (including persons with disabilities), while the Ministry of Social Affairs has a specific target of persons with disabilities as such. The fractured

¹²² Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

¹²³ *ibid.*

implementation can be seen first in the vocational training where the Ministry of Manpower runs vocational training centres which are advanced in terms of facilities and availability but only a few of which accommodate persons with disabilities. The reason for this is because the Ministry of Social Affairs has been set up to focus on the specific target of persons with disabilities, therefore the Ministry of Manpower has not really dealt with this. However, the vocational training centres run by Ministry of Manpower are easier to reach in terms of availability, as they are much more widespread. Moreover, the placement of persons with disabilities in the workforce still currently lies heavily on the Ministry of Social Affairs. Considering the broader reach of the Ministry of Manpower to link with companies (employers), greater partnership between the two ministries should be considered, to reduce the lack of coordination.

Between central and local government:

The Ministry of Social Affairs (central government) runs both the advanced level and the basic level of the vocational and rehabilitation training centres, while local government runs the lower/basic levels of vocational and rehabilitation centres for persons with disabilities. Both types of centre (central and local levels) are supposedly regulated in a levelling basis to avoid overlaps in the training arrangements. However, the local governments have varied in providing such vocational training. Not all local governments provide vocational training centres that cover all types of disabilities (due to programme priorities based on resources), and some of them provide none at all. To this extent, there is a gap of implementation resulting in practices which hinder persons with disabilities from getting vocational training due to varying availability at local level. This impacts on the further step of hindrance where those who are not able to attend the basic/intermediate level theoretically will not be able to attend the advanced level.

At local government level:

At local level, the fracture is likely similar to the fracture in the central level, as mentioned above. The fracture here is between the Office of Manpower and the Office of Social Affairs under each local government, each of which (mostly) offers vocational training: BLK being run by Office of Manpower, while LBK is run by the Office of Social Affairs. LBK appears to be exclusively for

persons with disabilities, while BLK is prone not to accommodating persons with disabilities as to some extent it is assumed that persons with disabilities have been served by LBK. The limited service of the LBK restricts persons with disabilities from having more opportunities to be exposed to vocational training. Therefore, in this sense, BLK can best answer the LBK limitation by adopting all necessary adjustments, so that persons with disabilities can be well-accommodated.

Chapter 9 Specific Measures Framework

7. Introduction

This chapter addresses the research question of how effective the employment policy framework adopted by Indonesia is in advancing inclusive employment for persons with disabilities. Referring to CRPD General Comment No. 6 (2018) on equality and non-discrimination, as elaborated in chapter 3 and 5, this research divides positive measures into two categories: ‘specific measures,’ meaning a means of creating advantages in favour an underrepresented or marginalized group, and ‘reasonable accommodation’ as an intrinsic part of substantive equality that is immediately applicable of individuals on a case by case approach. This chapter focuses on ‘specific measures’ while the next chapter will address reasonable accommodation.

As noted in chapter 3, specific measures are rooted in the concept of substantive equality, combined with the human rights model of disability that places responsibility on the state to uphold equality for disadvantaged groups. In the employment context, persons with disabilities cannot be delivered into the ‘free-market’ with no supports or positive measures (see Chapter 6). Rather, the government should establish specific measures to enable persons with disabilities to exercise their right to work. These measures should also encompass the whole cycle of employment, including pre-employment, during employment, and post-employment, as required by Article 27 of the CRPD, (see Chapter 5) as well as the self-employment context.

The aim of positive measures is to achieve de facto equality. Specific measures may therefore include ‘affirmative action measures,’ implying preferential treatment to address historical social exclusion. This research found a gap in the specific measures that should be provided under the state obligation enshrined in The Disability Act 2016, and the empirical measures

on the ground. I will argue that the specific measures have not proved effective for several reasons, notably lack of awareness by the particular stakeholders, including government and employers. This research offers suggestions on strategies to fill this gap and reduce exclusion on the right to work.

The chapter will first draw a picture of the employability of persons with disabilities as well as outlining the steps that have been taken to addressing the barriers mentioned on Chapter 7. Accordingly, the chapter will include the involvement of non-state actors that contribute to enhancing the right to work, including carrying out specific measures. The chapter discusses the use of quota systems as well as outreach and support programmes, while the advancement and empowerment measures that are the responsibility of state actors under the institutional framework have been discussed in the previous chapter. The chapter covers both open employment and self-employment measures. Examining specific measures in the self-employment context, this research also outlines a case study in the Special Region of Yogyakarta (DI Yogyakarta provincial level) that has good practice, as an attempt to establish a specific measures support model for the self-employment for persons with disabilities. The chapter will argue that the specific measures taken in Indonesia do not appear to be fully effective. This chapter will therefore investigate the factors that determine the effectiveness of specific measures in dealing with structural barriers in practice.

8. Employability of Persons with Disabilities post-Disability Act 2016

In recent developments on disability employment, many informants of this research stated that there is a significant increase in demand for disabled workers in the labour market following the enactment of Disability Act 2016. Many employers have made efforts to meet the quota requirement to avoid the penalty that would otherwise be applied (only if law enforcement is strong). In fact, as asserted by many informants of this research, most employers still have no idea how to deal with disability: how to recruit persons with disabilities, what should they do, how to provide accommodations, etc.

DPO8-1 for DPO side points out that many of the employers she met did not understand how to recruit persons with disabilities, or what approach was needed to providing supports to enable them to work.

To seek engagement on disability, there are numerous ways referenced by employers: some of the employers consult the government, some, even in a relatively small numbers, have been exposed to the government project of socialisation of the Disability Act (see Chapter 8) some have connected with DPOs to consult and recruit persons with disabilities, some have used the disability job seeker portal, and some others have been using the services of Human Resource (HR) providers. CG-M1 from the central government highlighted the significant impact of the socialization of the disability law provision to employers, so they would internalize the provision to be implemented. He also mentioned that some employers have consulted directly to the government (including to his department) about recruiting persons with disabilities.¹

The significant increase in disability employability was described by LGSRY-M3 from the Office of Manpower DI Yogyakarta. She identified progress by companies in employing persons with disabilities, in particular in DI Yogyakarta. According to data from her office, in 2016 there were 24 big companies recruiting persons with disabilities, but in 2017 this had increased to 35 companies. In DI Yogyakarta (2017) there were 391 companies with more than 100 workers,² which means they should meet the 1% quota requirement in relation to persons with disabilities. However, the employability rate of persons with disabilities under each local government is different. DI Yogyakarta can be considered quite progressive in addressing the disability issue, as it is the first local government which adopted most of the provisions of the CRPD into their local law, by law Number 4 of 2012 concerning the Protection and Fulfilment the Rights of Persons with Disabilities.

¹ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2019).

² FGD: LGSRY-M3, Office of Manpower Provincial Government of DI Yogyakarta (Yogyakarta, 23 August 2017).

2.1. Addressing the Lack of Information

There are some attempts by central government to run programmes to address the lack of information. There are periodical job exhibitions that have recently been trying to be inclusive for persons with disabilities, job canvassing, awards to employers on successfully employing persons with disabilities, spreading information on websites and other social media platforms, etc. However there is still a gap in the information on employment opportunities experienced by persons with disabilities (see Chapter 7). To fill this gap, the private sector has to some extent engaged with these issues to provide a supplementary service, by bridging employers and potential candidates with disabilities. Some of the private sector actors filling this gap include Human Resource Providers as well as Job Finder Portals that provide bridging information on specific job opportunities for persons with disabilities. Job finder portals offer an open membership for both sides. They will then analyse the opportunities that fit specific types of disabilities. Accordingly, they also provide consultation services for companies on recruiting persons with disabilities. Human Resource Providers approach companies that need to recruit persons with disabilities and try to identify persons with disabilities that fit, based on types of disability, qualifications and skills. They usually develop a database that they have collected from the various DPOs. In this case, they are very eager to generate the database as well as using it in a productive way to provide an employment opportunity service. Unlike the services provided by state actors, which are funded by the state/local budget, and are therefore free of charge to the beneficiaries, the service by the private sector actors cannot be free of charge but rather charge either party (usually employers looking for the disabled workers). JFP-1, from Job Finder Portal X.com,³ described how they started the job matching business on disability engagement in the workforce. She felt there was a big gap in accessible information for persons with disabilities in terms of finding a job that fits them.⁴

³ Interview with JFPor-2 X.com (Yogyakarta, 22 August 2017).

⁴ *ibid.*

In addition to the accessibility of information, DPO-WJ-B⁵ acknowledged the importance of extending networking to ensure that information is disseminated as much as possible. Her DPO is trying to manage networking with other stakeholders. Organisations like X.com and another portal (Y.com) are part of the network they cooperate with, based on a similar concern to provide job opportunities for persons with disabilities by engaging with broader enterprises.

2.2. Addressing Imbalances in Supply-Demand

Highlighting the emerging issue of imbalance of supply and demand (See Chapter 7). ILO-1 from the ILO maintained that after the enactment of the new Disability Act 2016, there is a growing acceptance among employers to start engaging with disability issues and to learning more how to employ and deal decently with persons with disabilities for employment purposes.⁶ For this reason, besides dealing with the government, employers have attempted to cooperate with DPOs. Some DPOs work closely with recruitment companies, such as one of the big retailers in Indonesia, which also links to local government. For example, there was a programme initiated by one retailer company to recruit 1000 persons with disabilities across Indonesia. It inevitably invited great enthusiasm among persons with disabilities. However, in the end, the numbers of recruited workers fell far short of the target, due to unsatisfactory results on standards and criteria. Eventually the selection process found only a few persons with disabilities who met the criteria.⁷

2.3. Addressing Formal Education Requirements

Given the shortage of formal education of persons with disabilities, a certificate of completion of vocational training will be worth much to fill the gap of formal education. However, there is an issue regarding limited

⁵ FGD: DPO8-1 (Bandung 3 August 2017).

⁶ Interview with ILO-1, ILO (Jakarta, 8 August 2017 by phone)

⁷ FGD: DPO12-1 (Yogyakarta, 23rd August 2017)

recognition of the certificate of completion of the training. This has become the main concern of LGWJ-M1 from the Office of Manpower, as he advised that job requirements should not only be based on formal education, but should consider the skills required on the job, which means the certificate of vocational training should be recognised.⁸

“Our main work now is how to assess the competence of persons with disabilities with their involvement in such vocational training to be the recognised certification.”⁹

LGWJ-M1 identified that there is an existing recognised certification called the “Certificate of Skill Qualification Standard” (*Standar Kualifikasi Ketrampilan/SKK*) which is formally issued by the central government (Ministry of Manpower, particularly the Institution of Professional Certification/*Lembaga Sertifikasi Profesi-LSP* under the National Professional Certification Agency/*Badan Nasional Sertifikasi Profesi-BNSP*). This is to recognise certain levels of competence in each skill, such as culinary, bartender, computer, etc., by an assessment.¹⁰ Unfortunately LGWJ-M1 regretted that the skill competence provided by most vocational training, in particular for persons with disabilities, has not been included yet in this.¹¹ In this sense, these multiple actors have been doing their own duties but not necessarily linking their authority to meet the needs of persons with disabilities.

As a result, according to LG-SVC-Ct1 as Head of BRSPD, even if have completed vocational training, persons with disabilities find it difficult to enter the labour force due to the lack of recognition for the certificate of completion, whereas the general requirement of formal education is still widely required by companies/employers.¹²

“I highlight that the certificate of completion (of vocational training) is not necessarily a recognised certificate of profession, such as for teachers. Even so, as the certificate is signed by the head of the Office of Social Affairs, there are some exemptions where companies are able to accept this anyway. Apart from job applications, the certificate of completion can also

⁸ FGD: DPO6-PD1 (Jakarta, 1 August 2017)

⁹ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017)

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Interview with LGWJ-S4, Office of Social Affairs West Java Province (Cimahi, 4 August 2017).

be used to apply for further vocational training in BBRVBD Cibinong, to avail of further advanced training skills.”¹³

The certificate of completion of vocational training has been expected to fill the gap of educational requirements as long as this certificate will be recognised, and thus can be accepted by employers as an alternative to show the skill competence.

2.4. Disseminating Awareness

This endeavour has been attempted by stakeholders on disability, including the Ministry of Manpower. For the purpose of disability awareness raising, the Ministry of Manpower has been conducting Disability Equality Training (DET) that aims to raise awareness of disability equality across stakeholders (government, employers, society/DPOs). For the local government, it sets a specific goal to provide disability-friendly services, while for the employers (both public and private sectors) it aims to involve persons with disabilities and recruit them for employment.¹⁴

Despite the programmes of socialization conducted by the government, still there is big gap in awareness. HDPO7-1, from DPO West Java, expressed his concern on the lack of dissemination. Even with a new law that highly supports persons with disabilities (the Disability Act 2016), the fact is, he said, that the law has not been well-disseminated, particularly with reference to related stakeholders, including enterprises/companies. Most of them, unfortunately, do not understand the law itself and how it should be implemented in their workplace.¹⁵

Further, from the perspective of employers, Em-CI1 suggests, the government should not disseminate it as only a matter of routine, but more importantly, should promote employer engagement with inclusive employment. Em-CI1 needed to recruit workers who met the qualifications

¹³ Interview with LG-SVC-Ct1, BRSPD (Cimahi, 4 August 2017).

¹⁴ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

¹⁵ FGD: DPO7-1 (Bandung, 3 August 2017).

of the job offered. He envisaged hiring some qualified persons with disabilities to uphold the inclusive employment enshrined in the law, as well as to comply with the new Disability Act 2016.¹⁶

Some informants of this research considered that the lack of dissemination of the Disability Act 8 of 2016 led to ignorance by related employment stakeholders, particularly employers. Many employers did not understand about the quota provision.

“Surprisingly, some companies do not know about the provision of the reserved quota for persons with disabilities.”¹⁷

The lack of awareness is also impacted by the lack of socialization that has not yet reached each element of society, in particular the employers. One of the examples is Company “Y”, a public company (sampled for this research), which employs no less than 400 workers. Em-CI1, Director of Company “Y” had just noticed that the new law requires a 1% disability quota when this researcher approached him.¹⁸

“We had no idea about that before. So, now we are aware of this provision, we plan to adjust with this provision onwards. So far, we have aligned with other provisions on the normative rights of workers as ruled in the Labour Act (Act Number 13 of 2003) and Trade Union Act (Act Number 21 of 2000). But for the case of disability, we were never advised on the disability quota by the government. I think that it is important for the government to disseminate such Acts so that we would understand what to do. It will be more beneficial if we could link with other stakeholders to manage networking on this disability issue, including in the recruitment process.”¹⁹

The lack of awareness and knowledge on the Disability Act provision on the side of government officials has also constituted a reason for the slow progress in enforcing the right to work, in particular the fulfilment of the quota. CG-M1, Senior Officer of the Ministry of Manpower, was aware of the low rate of disability employability compared to non-disabled counterparts due to unawareness of local governments of the provision enshrined in the law.

“Based on my own perspective, I try to figure out what caused the low disability rate of employability in particular in the private sector, it is because the local government (provincial, regencies/cities level) are not fully aware of any provision of implementation of disability rights. The speed of central government in disseminating the laws is far less than existing numbers of local

¹⁶ Interview with Em-Company “Y” Director (Bandung, 4 August 2017).

¹⁷ FGD: DPO8-1 (Bandung, 3 August 2017).

¹⁸ Interview with Em-Company “Y” Director (Bandung, 4 August 2017).

¹⁹ Ibid.

government that need to be directly assisted. The issue is the lack of dissemination of such laws and provisions. Hence, it has to be developed in the years to come so that they can serve persons with disabilities better.”²⁰

Awareness has also impacted on the implementation of the rights of persons with disabilities including the right to work.

“As the government, we are trying to engage with awareness of disability so that each of element would understand better about the rights of persons with disabilities.”²¹

Overall, these cases support the view of the importance of awareness raising. To this extent, some initiatives have been submitted. LGWJ-S2, West Java Office of Social Affairs,²² explicated awareness raising on particularly the issue of accessibility. For this reason, the local government of West Java have been running a dissemination series on awareness raising with regard to the importance of accessibility for persons with disabilities as the core point.

“We in the Social Affairs Office of West Java Province put a focus of our programme of awareness raising on accessibility for persons with disabilities” LGWJ-S2 said.

Further, to consider the evidence presented on the lack of dissemination of the Law, DPO8-1 from the DPO side highlights the importance of disseminating Disability Act 8 of 2016 to all stakeholders, this is not only the duty of Ministry of Social affairs but also other related ministries, including the Ministry of Law and Human Rights, which is responsible for the production of law.²³To this extent the coordination among ministries is significant to underline the challenges and strategies in facilitating and promoting the law dissemination, in order to expand the quota provision.

2.5. Persuasion Measures

Beside penalty measures for certain violations, The Disability Act 2016 also presents persuasion measures in the form of rewards to parties that set up

²⁰ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

²¹ Interview with CG-SVC-Tg2, BBR SBG Kartini (Temanggung, 22 August 2017).

²² Interview with LGWJ-S2 Office of Social Affair West Java Province (Cimahi, 4 August 2017)

²³ Interview with CG-SVC-So1 Head of BBR SBD (Surakarta, 21 August 2017).

particular contributions to the protection and fulfilment of the rights of persons with disabilities. The reward can be conferred by the government (central and local) to individuals,²⁴ legal entities and government organisations,²⁵ as well as public service providers.²⁶ This provision will be regulated later by Presidential Regulation²⁷ (see Chapter 6). Despite the delay issuing this certain regulation, the reward initiative has been set up by the Ministry of Manpower far before the recent Disability Act 2016. There are existing government reward programmes for companies, in a form of a token of appreciation for upholding the right to work of persons with disabilities. Many awards have been conferred by central government in cooperation with local governments. This reward was believed to be a trigger which drives companies to be more actively involved in the protection of persons with disabilities.

To date, the government approach has widely emphasized reward and recognition rather than ‘punishment.’ A company that actively recruits persons with disabilities will be entitled to get a reward as a token of appreciation for upholding disability rights. The awards arranged by the Ministry of Manpower have also been done over several years, to note good milestones achieved by companies in their engagement with disability in employment.²⁸ One of the awardees of this category is Company “X”, where they have been granted this award several times in recent years.²⁹ In line with central government, local level initiatives have also arisen. Bandung city local government in West Java Province, for instance, initiated an award for companies by introducing the label of ‘*disabled friendly*’ company.³⁰ CG-M1, a senior officer from the Ministry of Manpower, perceived this as an effective way to advance the participation of employers in recruiting persons with disabilities. Notwithstanding the ‘soft approach’ of reward-based recognition, the informants from the DPO side have highlighted that law enforcement should also be pinpointed so as not to leave the provision as

²⁴ Act Number 8 of 2016 concerning Persons with Disabilities s 138.

²⁵ *ibid*, s 139.

²⁶ *Ibid*, s 140.

²⁷ *Ibid*, s 141.

²⁸ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

²⁹ Interview with Em1-COMPANY “X” (Bekasi, 15 August 2017).

³⁰ FGD: DPO8-1 (Bandung, 3 August 2017).

purely dependent on 'voluntary' involvement.³¹ Accordingly, the Disability Act 2016 clearly sets sanctions for violating the provision on the protection of persons with disabilities. However, so far, sanctions have rarely been applied.³² The government should be more active to enforce the law including the enforcement of sanctions for violations, hence the law would not remain toothless.

2.6. Consultation Mechanism

Article 55 of the Disability Act 8 of 2016 concerning Persons with Disabilities includes a provision on the Disability Service Unit (*Unit Layanan Disabilitas/ULD*) that aims to assist employers and persons with disabilities.³³ Therefore both parties can be easier to avail the problem solving by the Disability Service Unit. The duty to establish this unit applies under the authority of each local government,³⁴ upholding their important role in bridging employers and persons with disabilities. Following the Disability Act 2016, the technical provision should be delivered into a Government Regulation,³⁵ that unfortunately has not been released yet³⁶ (see Chapter 6).

So far, before the upcoming regulation, government institutions (both central and local) have been working respectively on employment consultation. Besides the Ministry of Manpower (and the Office of Manpower at the local government level), the Ministry of Social Affairs (central government) and the Office of Social Affairs in each local government are also responsible for consulting on the employment of persons with disabilities. In fact, there is a lack of coordination among the responsible bodies, including on the consultation mechanism (see Chapter 8).

³¹ *ibid.*

³² *ibid.*

³³ Act Number 8 of 2016 concerning Persons with Disabilities s 55, sub-s 2c, 2d, and 2e.

³⁴ *ibid* s 55, sub-s 1.

³⁵ *ibid* s 4.

³⁶ Updated October 2019

The consultation duty was envisaged by the informants of this research as bridging the gap between employers and persons with disabilities.³⁷ Employers might not understand how to deal with persons with disabilities in the workplace, and thus might need an assistance.³⁸ As an example on the ground, LGWJ-M1 explained that the Office of Manpower of West Java Province has been providing company consultations with reference to recruiting persons with disabilities.³⁹ To this end, the consultation should be broadened to impact the employability rate of persons with disabilities.

From the side of job seekers or employees, the consultation mechanism is imagined as the bridge to the employer. DPO7-7 mentioned that persons with disabilities need a bridge to solve their problem, which the government best placed to solve. Persons with disabilities have no idea where to complain, for example, in case of discrimination.⁴⁰ Therefore the establishment of a particular unit of disability service on employment would strengthen the function of each local government to uphold the right to work of persons with disabilities. The Disability Service Unit in each local government is expected to be a coordinating body (within a local scope). Individual complaints are also expected to be resolved by this unit. The current practice of employment complaint mechanism insofar is under the Office of Manpower of each local governments which is most likely on the tripartite mechanism, including a mediation process. However, in the case of disability it appears as ineffective.⁴¹

9. Involvement of Non-State Actors

The role of civil society (CSOs/DPOs) is significant to achieve the shared goal of equality and social inclusion. These organisations contribute hugely to disability mainstreaming by serving as advocates across Indonesia. DPOs

³⁷ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017)

³⁸ *ibid.*

³⁹ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017)

⁴⁰ FGD: DPO7-7 (Bandung, 3 August 2017).

⁴¹ Interview with LGWJ-M1, Office of Manpower West Java Province (Bandung, 2 August 2017)

are mostly based on certain types of disability (blind, deaf, intellectual disability, psychosocial disability, MDVI, etc), or alternatively on general disability issue or particular concerns or themes (such as education, employment, health, etc), or targeting particular groups such as women and children. NGOs and DPOs made a very important contribution during the law-making process nationally and locally. The involvement of persons with disabilities and their DPOs were very substantial.⁴² They were really strong in lobbying, including making a personal approach.⁴³ The initiative by DPOs on dissemination are small in size but it marks a potential step to building social awareness.

The disability movements that mostly appeared in the form of DPOs have been striving to influence every decision, particularly in relation to government law and policy. The representation of persons with disabilities is very important, as shown by the tagline “nothing about us, without us.”⁴⁴ FGD, a DPO representative from DPO7-3, who has a physical disability and uses a wheelchair, urged the importance of involving persons with disabilities at all stages of decision-making in the government (both local and national). They need to be involved in the meeting of *Musrenbang (Musyawarah Perencanaan Pembangunan/* Community discussion on development planning) held by the government annually in March (local government) and April (central government). This meeting is beneficial to draw up programmes so that the voice of persons with disabilities or DPOs should be taken into account. However, involvement is still fragmented among local governments in terms of how they include persons with disabilities or DPOs in every law making process as well as programme planning purposes.

“Here in West Java Province, we had our local Disability Act (2013) even before the national Disability Act (2016). Unfortunately, it was born, again, in the soul of the ‘charity-based approach’, despite our endorsement of the rights based approach, as we urged in respect of the national Disability Act at that time. It was a disappointing result in respect of the Local Act where they were not well-involved, neither is there any annual *Musrenbang*. They should listen our voice, not to leave us behind.”⁴⁵

⁴² Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

⁴³ *ibid*.

⁴⁴ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

⁴⁵ FGD: DPO7-3 (Bandung, 3 August 2017).

DPOs, as representatives of persons with disabilities, have been trying to figure out the essential needs of persons with disabilities, including in employment. For example, in relation to communication in the workplace, it seems a small issue, but it can be said that a primary need of persons with disabilities is to express their feelings with regard to the work.⁴⁶ Therefore it is important to deal with communication as a means to upholding their needs properly, such as how the environment responds to their needs, and understanding how to communicate respectfully in dignity. These are some of the training topics usually held by DPOs.⁴⁷

“Our organisation offers a twin-track approach where on one side we are trying to empower persons with disabilities, and at the same time, on the other side we aim to support employers to obtain a better understanding of disability.”⁴⁸

Besides the role of the government to empower self-employment for persons with disabilities, the ultimate involvement of civil society must be acknowledged. Several DPOs are aware of the importance of self-employment, hence they also attempt to support this. DPO8-1, for example, has been engaged with a portal for entrepreneurs on an online marketplace to improve the entrepreneurship skills of persons with disabilities and to open up their chance to run a business independently.⁴⁹ Additionally, DPO1 (for blind persons) has been coordinating with other stakeholders to train blind people who are fond of doing business. During 2017 they did training all over Indonesia for blind people on how to set up an online business.⁵⁰ DPO12, a DPO based in DI Yogyakarta, has been conducting training on internet marketing support as they realise that marketing is the biggest business challenge for persons with disabilities.⁵¹ DPO10, in the same area, has been conducting training on legal aid and advocacy, including paralegal training.⁵² DPO10 initiated advocacy for 8 villages which included the empowerment to develop economic strength at village level. The approach was based on the livelihood of each village. It was an inclusive concept that empowered groups with existing livelihoods such as farming, agriculture, and home industry. This

⁴⁶ FGD: DPO8-1 (Bandung, 3 August 2017).

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

⁵¹ FGD: DPO12-1 (Yogyakarta, 23 August 2017).

⁵² FGD: DPO10-1 (Yogyakarta, 23 August 2017).

was not necessarily to create an 'exclusive' group based on disability, but rather to integrate persons with disabilities into existing groups with existing distribution channels, such as village youth clubs (*Karang Taruna*).⁵³

For those with multiple disabilities, the barriers are often doubled. DPO2 (MDVI) is one of the MDVI DPOs based in Jakarta which has core activities on the education of children with the double disability of deafness and visual impairment. Through its activities, it has been producing products such as handicrafts (necklaces, earrings, bracelets etc), and food products (mushrooms, salted duck eggs). Beside permeating the traditional market, usually DPO2 (MDVI) gets involved in any expo/bazaar being held either by the government or private sectors.⁵⁴ The method of training deaf-blind persons is not simple. They call it the "hand under hand" method within sign language. Teaching one word will possibly take 1 to 3 months, for example the "help" sign is a "pat", which means asking someone a favour. Another method is not moving things so often. The DPO2 (MDVI) personnel regularly undertake home visits to assess accessibility and then suggest the safest way to place things. Later on, the persons with disabilities will be trained on mobility orientation.⁵⁵

For this special case of multiple disability, training is not necessarily aiming 100% at living independently, but at supported living in a family or group.⁵⁶ In this complicated situation, DPO2-MDVI1 clarifies that it is difficult to include this group in an open employment setting. Therefore, a modified sheltered workshop can be an alternative. Even though sheltered workshops raise many issues from a broader perspective of employment equality, particularly in relation to low salaries and segregated settings,⁵⁷ However, the informant of this research suggest it with a certain modification considering decent work very carefully, it might suit persons with severe

⁵³ *ibid.*

⁵⁴ Interview with CG-SVC-Tg2 BBR SBG Kartini (Temanggung, 22 August 2017).

⁵⁵ *ibid.*

⁵⁶ FGD: DPO2-MDVI1 (Jakarta, 1 August 2017).

⁵⁷ *ibid.*

disability such as MDVI.⁵⁸ CG-SVC-Tg2, as an MDVI activist, argued that in this special case of severe disability, where persons cannot easily mobile and need more supports, a limited application of sheltered employment might be considered. For that purpose, the beneficiaries will be trained in a certain skill. For example, one of the products they produce currently is *telor asin* (salted duck eggs) that are made a group of at least 6 persons. The job is divided into tasks such as washing the eggs, covering them with salted soil, and packaging.⁵⁹

With regard to salary, insofar the beneficiaries do not get the normal salary as they do the tasks on a group basis and also because the profit margin is fairly small as the market is still a traditional market where the price has to be competitive with other similar products.⁶⁰ However, another issue is about stigma. As the outcome is a food-based product, very often it faces the ‘stigmatisation’ from society,⁶¹ where the food produced by persons with disabilities will be questioned in particular on health and hygiene related issues. That is why most of the cases this food-product is less marketable than products produced by non-disabled persons. In this sense, specific measures are greatly needed to protect persons with disabilities in entering the ‘free-market.’ So far, the supports from the government are not sufficient to cover the self-employment purpose of this group.⁶²

3.2. Companies (Employers)

As mentioned above, the involvement of non-state actors in engaging with disability issues is equally important as government involvement. Companies should be aware of their responsibility to provide positive measures for

⁵⁸ EASPD, ‘The Evolving Concept of Sheltered Workshop in the EU: Realities and Future Developments,’
<https://www.easpd.eu/sites/default/files/sites/default/files/newsletters/newsletter_en_2012.pdf>accessed 2 June 2019

⁵⁹ Interview with CG-SVC-Tg2 BBRBSG Kartini (Temanggung, 22 August 2017).

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*

persons with disabilities in order to open opportunities for them to participate in the employment sphere. This research has identified cooperation between the government and private sectors as well as the community/DPOs as beneficial to ensure the active implementation of the right to work for persons with disabilities.⁶³ CG-SVC-TG1 from central government highlighted the attempts of some companies to link with vocational rehabilitation centres in order to recruit persons with disabilities for internships or employment.⁶⁴ Company “X” is an example of a company partner that opens its arms for persons with disabilities both for internships (after completing vocational training by the Rehabilitation Vocational Training Centre) and for employment.⁶⁵ This kind of partnership is beneficial to link with the alumni of vocational training centres so that they can easily enter the labour force.

Accordingly, not only the government should provide training services. According to the Disability Act 2016, employers are also obliged to provide training, in particular for employment placements for persons with disabilities, including initial orientation and training in adapting the job and workplace.⁶⁶ In addition, employers usually conduct the training as an initial orientation to the workplace and job-description (as they have been offered places already). With reference to the initial orientation, Company “X” conducts initial training for persons with disabilities that aims to incorporate them into the company culture and workplace.⁶⁷ Another example, raised by LG-SVC-Yk1, is of a hotel in Yogyakarta (Hotel X). Since the staff reached 190 workers, they have to have at least 1 person with disabilities. As a consequence, they hired a blind person in the warehouse in the accounting division. He was expected to run a computer that was adjusted to his needs. In the first three days, he was assisted with places and room orientation. The employer was satisfied with his progress as he was assessed as doing it very well. LG-SVC-Yk1 argued that appropriate assistance and support, including the required training, is very important to enable persons with disabilities to work.⁶⁸

⁶³ Interview with ILO-1, ILO (Jakarta, 8 August 2017).

⁶⁴ Interview with CG-SVC-TG1 BBRISBG Kartini (Temanggung, 22 August 2017).

⁶⁵ Interview with Em2-COMPANY “X” (Bekasi, 15 August 2017).

⁶⁶ Act Number 8 of 2016 concerning Persons with Disabilities s 48 a.

⁶⁷ Interview with Em2-Company “X” (Bekasi, 15 August 2017).

⁶⁸ FGD:LG-SVC-Yk1, (Yogyakarta, 23 August 2017).

3.3. International Labour Organisation (ILO) Indonesia

The ILO Indonesia has been paying attention to persons with disabilities in relation to employment purposes. To this end, the ILO contributes in mainstreaming the issue of disability in employment. The ILO has conducted extensive research in this regard, including one in cooperation with the university (LPEM FEB University of Indonesia) mapping disability in the labour force in 2017.⁶⁹ The ILO has also closely engaged with policy makers (government) in initiating broader cooperation with industry and employers. In 2016 it established the IBDN (Indonesia Business and Disability Network) to link among companies in disability engagement, specifically in relation to employment. The current members of the IBDN are 5 big companies in Indonesia. The ILO was one of the initiator bodies that approached these companies. ILO-1 emphasized the aim of this network to share information among IBDN members with regard to recruiting persons with disabilities and related issues. The IBDN will expand its membership to other companies in coming years.⁷⁰ The IBDN also plans to conduct research and studies concerning the recruitment of persons with disabilities in different sectors.⁷¹ This is an important partnership among companies, the ILO and the government. It will increase participation and awareness in relation to the right to work of persons with disabilities in Indonesia.

10. Review of the Implementation of the Quota System

The quota system is one of the salient features of the specific measures that aim to redress structural barriers and the historical exclusion of disadvantaged groups. As noted in the Chapter 6 (Indonesia), the quota of persons with disabilities has been regulated since the previous Disability Act

⁶⁹ ILO, 'Memetakan Penyandang Disabilitas di Pasar Tenaga Kerja Indonesia: Laporan Akhir,' <https://www.ilo.org/jakarta/whatwedo/publications/WCMS_587668/lang--en/index.htm> accessed 9 October 2019

⁷⁰ Interview with ILO-1, ILO (Jakarta, 8 August 2017).

⁷¹ *ibid.*

1997, which mandated a 1% disability quota in employment. However, before this was replaced by the new Disability Act in 2016, there were no reports declaring the fulfilment of the quota. It has also been confirmed by a member of parliament that there are no national data available on the fulfilment of the quota of the persons with disabilities to date.⁷² It cannot be traced by the Ministry of Manpower either. (See Chapter 7).

“We admit that the 1% quota is far from implementation, all we do at the moment is to massively disseminate the provisions to the companies so that they fulfil this provision to recruit persons with disabilities.”⁷³ CG-M1 from The Ministry of Manpower.

Based on interaction with many employers, NGO1-1 found that there are at least three reasons that prevent employers from implementing the quota provision to employ persons with disabilities, based on what was enshrined in the previous Disability Act 1997.⁷⁴ *First*, they consider the benefit-cost of measures when hiring anyone, including persons with disabilities. In this regard, hiring people with disabilities is generally seen as a ‘cost’ compared with employing non-disabled persons. *Second*, before the newest Disability Act (2016) it was unclear under the Disability Act 1997 whether the 1% quota provision was binding or not (See Chapter 7). *Third*, as the most important reason, there was a lack of law enforcement even when the companies breached the 1% quota provision.⁷⁵

Similar explanations for the low rate of disability employability have been identified by other informants of this research. These include perspectives on capability, law enforcement (again), and partnership.⁷⁶ This was highlighted by DPO13-1, working for DPO13, which conducted research⁷⁷ on companies that employ more than 100 persons. It found three reasons why employers seemed reluctant to hire persons with disabilities: *first*, persons with disabilities were seen as unskilled labour. *Second*, the weakness of the law enforcement. *Third*, there was no bridge between DPOs and employers. In this sense, the government is expected to bridge these parties, but in fact

⁷² Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

⁷³ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

⁷⁴ FGD: NGO1-1 (Jakarta, 1 August 2017).

⁷⁵ FGD: NGO1-1 (Jakarta, 1 August 2017).

⁷⁶ *ibid.*

⁷⁷ 2014, unpublished

that has not smoothly been arranged. Many government officers are not fully aware of the disability issue.⁷⁸ These three findings stand in line with the recent findings of this research (as discussed in Chapter 7) that identify the lack of awareness underpinning employers' view on disability as leading to reluctance to employing persons with disabilities.

Besides the significance of the private sector, it is equally important to pay attention to the public sector: the government body, both central and local, including ministries, BUMN/*Badan Usaha Milik Negara* (State-owned Enterprise of Central Government) and BUMD/*Badan Usaha Milik Daerah* (State-owned-Enterprise of Local Government). DPO8-1 argued that these government business entities are still far from implementing the quota provision. Even in relation to the provision of the previous law (1997) of a 1% quota, there is no evidence that they have been fulfilling it.⁷⁹ Therefore, DPO8-1 suggested the government needs to push this with serious attention and more dissemination.⁸⁰

In the same vein, government officers should show good intentions by proving their efforts on the fulfilment of the quota in their institution's recruitment. With regard to public sector opportunities, the government should provide a good example by implementing provisions enshrined in the law, such as accessibility and the 2% quota in the public sector. In the local context of DI Yogyakarta, LGSRY-S1, from the government side, admitted that the local government has not fully implemented the 2% quota for public sector recruitment.⁸¹ At the national level, CG-S1, a senior officer of the Ministry of Social Affairs, underlined the unfulfilled quota in the public sector. He mentioned that in 2014 there was a recruitment in the Ministry of Social Affairs where they had 130 positions available nationally for persons with disabilities in the public sector (government officer roles), but unfortunately only around 80 passed the selection test, while the rest of the positions remained unfilled.⁸²

⁷⁸ FGD: DPO13-1 (Yogyakarta, 23 August 2017).

⁷⁹ FGD: DPO8-1 (Bandung, 3 August 2017).

⁸⁰ *ibid.*

⁸¹ FGD: LGSRY-S1 (Yogyakarta, 23 August 2017).

⁸² Interview with CG-S1 Ministry of Social Affairs (Jakarta, 24 July 2017).

In addition, BBRSD, as a government body, has been trying to become a role model that implements the quota in its centres. CG-SVC-So1, Head of BBRSD Surakarta, stated that this centre has more than 3% of persons with disabilities working in the office. This is 3 persons out of 146 staff.⁸³ By contrast, CG-SVC-So1 still perceives that the majority of the government institutions, including State Owned Enterprise, have been struggling with the implementation of the quota system to date. He asserted that government institutions should be role models for the private sector.⁸⁴

According to CG-SVC-So1, Head of the Vocational Rehabilitation Centre of BBRSD Surakarta, the Centre also provides a package of informal education services equivalent to lower secondary/Junior high school, in order to fill in this gap.

“Say, if they only hold their elementary school, they can further it into lower secondary school, we provide this here in collaboration with the local office of education.”⁸⁵

CG-SVC-So3 also highlighted the example that the centre employs staff (persons with disabilities) coming from the informal education background, called ‘Package C’ (equal to Senior High School certificate of completion). Some of these have subsequently been appointed as permanent staff at the centre.⁸⁶ In this sense, informal schooling is envisaged as a midpoint proposal on the formal education shortage, where informal education can play a role to fill the gap.

Given the quota plays an important role in the achievement of the right to work of persons with disabilities, there are some challenges underlined by the informants of this research, as follows.

4.1. Undistributed Quota Covering All Types of Disabilities

⁸³ Interview with CG-SVC-So1 Head of BBRSD (Surakarta, 21 August 2018)

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ Interview with CG-SVC-So3 BBRSD (Surakarta, 21 August 2017).

This research also draws the attention to the undistributed nature of the disability employment quota. The quota system refers only to the proportion of persons with disabilities, regardless of the types of disability. Considering the various types of disability to be covered, there is a gap of implementation among certain types of disability. For example, psychosocial disability is considered as a type that is least favoured due to a strong stigma as well as difficulties in accommodation.

“The stigma is very strong. So, the quota of persons with disabilities should guarantee psychosocial disability to be involved”⁸⁷

This research identifies the practice of ‘cream skimming’ in employment⁸⁸ (see Chapter 4) of the employers in Indonesia, where to some extent they prone to recruit certain types of disability instead of others of ‘more difficult’ types in terms of accommodation to be provided. In this sense, They aim to satisfy the quota assignment without regards of dealing with presumably ‘harder’ types of accommodation.⁸⁹ In this sense, certain types of disability might drive the selection. Since the quota only regulates the percentage, not necessarily the types of disability, employers have flexibility to employ any type and degree of disability that is fit their situation.

This leads to issues of undistributed opportunity across types of disability. This needs further positive measures aimed at certain types of disability, such as intellectual and psychosocial disability, because if there is no further action to promote this type of disability in employment, employers will be unwilling to recruit them. Therefore, positive measures (both specific measures and reasonable accommodation) have to be taken into account to protect them from the undistributed quota.

⁸⁷ FGD: DPO6-PD1 (Jakarta, 1 August 2017).

⁸⁸ Per Skedinger and Barbro Widerstedt, ‘Cream Skimming in Employment Programmes for the Disabled? Evidence from Sweden’ (2007) 28 *International Journal of Manpower* 694-714, 695.

⁸⁹ *Ibid.*

4.2. Stereotypical Jobs for Certain Types of Disability

There is also a big gap in the typical jobs that are commonly associated with certain types of disabilities. It is important to open up opportunities by not limiting the types of job in this way. CG-Par1, a Member of Parliament, contended that we are being trapped by the typical work associated with certain types of disability. For blind persons, typical job associations include massage or telephone operator, yet there are many more opportunities that blind persons can participate in. CG-Par1 highlighted broader professional opportunities for blind persons, such as being a teacher, government official, trainer, etc. For the deaf, CG-Par1 mentioned they could engage with jobs related to strong visualisation, such as graphic design and so on.⁹⁰ The common assumption of particular job stereotypes that limit employment opportunities for people with disabilities can be considered as a barrier to entering the open labour market.

11. Outreach and Support Programmes

Besides some programmes on empowerment measures, as mentioned earlier, there are some support programmes aimed at a broader outreach regarding persons with disabilities.

5.1. Community-Based Rehabilitation/Empowerment Service (*Rehabilitasi Sosial Berbasis Masyarakat/RSBM*)

RSBM is an expansion programme of rehabilitation and vocational training (see Chapter 8). It aims to empower persons with disabilities in respect of the right to work. The discussion on community-based rehabilitation for persons with disabilities would touch on the domain of local government affairs. According to Act Number 23 of 2014 concerning Local Government, the local government is obliged to bear the duty of social rehabilitation.⁹¹ In this

⁹⁰ Interview with CG-Par1, Parliament (Jakarta, 18 July 2017).

⁹¹ Act Number 23 of 2014 concerning Local Government Administration and its Amendments.

sense, it should consider community-based rehabilitation. The idea of community-based rehabilitation as an expansion of the rehabilitation centres is to broaden the outreach to beneficiaries. Because the training centres have limited facilities, including buildings and other budget-related matters, RSBM was set up as an alternative form of empowerment. The concept of community-based rehabilitation is an external training so that the beneficiaries do not need to live or directly attend the training in the designated vocational rehabilitation centres. Rather, it empowers society to establish projects (including running a business) that involve persons with disabilities inclusively. CG-S1, a senior officer of the Ministry of Social Affairs, narrated the development of RSBM that was long introduced but officially launched only in 2011.⁹² One example of RSBM started in 2011 in BBRSD Surakarta. CG-SVC-SO3 from BBRSD explained the first initial project in Sragen Regency (Central Java). This was an establishment of RSBM marked by a Memorandum of Understanding (MoU) among Sragen Regency Local Government, UNS (State University of Sebelas Maret) in Central Java, and the Directorate General of Social Rehabilitation in the Ministry of Social Affairs. In 2015, RSBM was expanded to other regencies of local government, following a Korean funding grant.⁹³ CG-SVC-So2 gave one example of the programmes in the RSBM, this is a business empowerment of persons with disabilities by supporting them with training and tools. They are in a big group of 50 persons where they got grant of 3 million IDR (approx. 200 USD) for each person to buy equipment and materials. The grant came from the Korean Institution. With the supports they received, together they decided to produce cookery products, a local iconic snack called 'egg-rolls.' The packaging is designed to be as interesting as possible to attract the customers. Even though home industry based, the product is excellent in quality. Because the product expiration date is quite long (3 months), it has a longer distribution time and could reach out to the national market.⁹⁴ According to CG-SVC-So1, this Community Based Empowerment has been assessed as a successful project that is nationally recognised.⁹⁵ Engaging with the local authority of the village, one of the pilot projects was in Panggung Harjo village, located

⁹² Interview with CG-S1, Ministry of Social Affairs (Jakarta, 24 July 2017).

⁹³ Interview with CG-SVC-So3 BBRSD (Surakarta, 21 August 2017).

⁹⁴ Interview with CG-SVC-So2 BBRSD (Surakarta, 21 August 2017).

⁹⁵ Interview with CG-SVC-So1 Head of BBRSD (Surakarta, 21 August 2017)

in the Sewon Sub-district, Central Java. This eventually became an iconic community-based empowerment programme. Proclaiming itself as an inclusive village (declared on 17 July 2017), this village has attempted to reach (physical) accessibility, including guiding blocks, along with an entrepreneurship programme for persons with disabilities.⁹⁶ The local government at village level (*Lurah*) also took a part on this project by providing 1 HA land to plant purple sweet potatoes as a main raw material for the eggrolls. The overall goal of the project is a business development, covering design to marketing, that inclusively involves persons with disabilities and the community. It is an open business entity thus everyone can invest in this business. For marketing, the local government also supports the distribution of the product through BUMDes (Village Owned Enterprise).⁹⁷ The age of the beneficiaries ranges between 17-50 years old, and most have physical disabilities. Few of them are persons with intellectual disabilities. Another product is recycled wood handicrafts, which are eventually distributed to a modern market such as a hypermart.⁹⁸

Another example of Community-Based Empowerment has been conducted by the centre of BBRSBG Temanggung. CG-SVC-TG1 described how there were 40 beneficiaries of the day care service in 2017, while the year before 360 persons with disabilities were covered. The decrease was due to budget cuts.⁹⁹ It is common that the lack of budget will cut certain projects. Even though this project is ultimately benefiting persons with disabilities, the reduction in the budget still applied. Likewise, this Community-Based Empowerment appears as effective to reach out more persons with disabilities in an efficient way because it does not need a physical building. In 2017, BBRSBG Temanggung embraced 5 KSM (*Kelompok Swadaya Masyarakat/Community Empowerment Groups*), covering 20 persons from each of locations in 5 Regencies,¹⁰⁰ ranging from Central Java, DI Yogyakarta, to East Java. It was covering no less than 480 beneficiaries, including RSBK. This initiative of RSBM outlines the expansion of the service

⁹⁶ *ibid.*

⁹⁷ Interview with CG-SVC-So3 BBRSD (Surakarta, 21 August 2017).

⁹⁸ Interview with CG-SVC-So2 BBRSD (Surakarta, 21 August 2017).

⁹⁹ Interview with CG-SVC-TG1 BBRSBG Kartini (Temanggung, 22 August 2017).

¹⁰⁰ Interview with CG-SVC-Tg2 BBRSBG Kartini (Temanggung, 22 August 2017)

of rehabilitation and vocational centers to reach out more beneficiaries outside the wall of these training centers.

Considering the practice as mentioned above, RSBM (The Community-Based Empowerment) is an excellent programme to be developed further as it can reach out more beneficiaries and stimulate the development of local businesses in the event of sufficient supports from the government. The result showed a satisfying progress at least from the two of RSBM of the two centres (BBRSBG and BBRSBD). Unfortunately, the budget has been cut due to financial crisis. This good innovative approach that encourage economic regeneration and development thus enhancing social inclusion has to be downsized to due lack of budgetary support.

5.2. Direct and Indirect Financial Supports

This research limits the financial supports in light of the state obligation to guarantee the right to work of persons with disabilities. It is acknowledged that most financial supports do not distribute money, but rather the tools and facilities to directly or indirectly support the employment purposes. In the context of open employment measures, the training services (free of charge) provided by the government can be considered as 'indirect financial supports.' A similarly analysis can be applied to the provision of 'incentives' to the employers that meet the quota of persons with disabilities in their companies.

Article 54 of The Disability Act 2016 specifies the duty of central government and local government to provide an incentive to private sector organisations that employ persons with disabilities that meet the quota.¹⁰¹ Article 54(2) mandated the technicalities of an implementing government regulation, to be adopted after the enactment of the Act.¹⁰² Unfortunately, the Ministry of

¹⁰¹ Act Number 8 of 2016 concerning Persons with Disabilities s 54 sub-s 1.

¹⁰² Ibid. s 54 sub-s 2.

Finance, which was supposed to progress this, have not completed it yet.¹⁰³ CG-M1, a senior officer of the Ministry of Manpower, urged the completion of the government regulation on the incentive so that the provision would be implemented soon.¹⁰⁴ The proposed bill of government regulation is currently being discussed. From the side of the Ministry of Manpower, CG-M1 underlined the need to include the research and development division to conduct the research, in particular to define the types of incentive for the companies that meet the 1% disability quota.¹⁰⁵ The types of incentive could be varied, such as assisting with the payment of health insurance, or providing training for the persons with disabilities being employed.¹⁰⁶

With regard to supports after the completion of vocational training, service providers at the vocational training centres have been distributing a work-tools package to beneficiaries after completion the training programme. This is particular to the vocational centres aiming at self-employment measures, to enhance self-employment opportunities for persons with disabilities to start a micro business. Unfortunately, there is no sufficiently comprehensive evaluation on this whether this is successful or not.

Another financial support initiative in relation to disability entrepreneurship has appeared at the local level. LGSRY-S3 outlined these programmes. The Office of Social Affairs of DI Yogyakarta has conducted a programme to support disability entrepreneurship by providing supplemental capital for those who already run micro-enterprises (SMEs). This programme is held annually. It is open to persons with disabilities to apply to this support fund by describing their existing business and the proposal for expanding the business. Before the project of supplemental capital for micro-enterprises mentioned above, since 2015 the local government of DI Yogyakarta had provided a support of work tools that is expected to help disabled persons starting self-employment. After completing vocational training (conducted by

¹⁰³Putri Anisa Yuliani, 'Pemerintah Rancang 8 PP Beri Kepastian Hukum Penyandang Disabilitas,' 14 August 2018 <<http://mediaindonesia.com/read/detail/178578-pemerintah-rancang-8-pp-beri-kepastian-hukum-penyandang-disabilitas>> accessed 27 November 2018.

¹⁰⁴ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

LBK training centre, Office of Social Affairs, DI Yogyakarta) the beneficiaries availed of an additional support of work tools. But unfortunately this project was not sustainable and survived only until 2016 due to budgetary issues.¹⁰⁷ The addition support was in practical tools which cost 3 Million IDR (approximately equal to 214 USD) that was funded by local government, and in cash until 5 Million IDR (approximately equal to 357 USD) was provided by the Ministry of Social Affairs.¹⁰⁸ This amount of money was beneficial as an initial investment to set up micro-enterprises for persons with disabilities. However, LG-SVC-Yk1 admitted the possibility of misuse of the money. Financial support in the form of money like this was challenging due to the possibility of improper use.¹⁰⁹ The evaluation of the programme was not conducted comprehensively, thus the effectiveness of the programme cannot be well-assessed.

According to Disability Act No. 8 of 2016 concerning Persons with Disabilities, financial support from the government (central and local) is obligatory for persons with disabilities when they try to engage with the self-employment options. One of the forms of support is the obligation to provide access to capital assistance for the entrepreneurship purposes.¹¹⁰ However this does not mean giving cash but rather to provide necessary supports, including facilitating persons with disabilities to access capital assistance, including banks. There are serious issues with accessibility to official financial sources such as banks. (See Chapter).

12. Specific Measures to Support Self-Employment

This research identifies various specific measures relating to self-employment purposes for persons with disabilities, including technical and personal supports. Like the open-employment measures, the self-employment purpose generally appears to lack supports. There are some

¹⁰⁷ FGD: LGSRY-S3 Bapel Jamkesos (the Social Insurance Agency) DI Yogyakarta Province, (Yogyakarta, 23 August 2017).

¹⁰⁸ FGD: LG-SVC-Yk1, Office of Social Affairs (Yogyakarta, 23 August 2017).

¹⁰⁹ *ibid.*

¹¹⁰ Act Number 8 of 2016 concerning Persons with Disabilities s 57.

initiatives by the government to carry out programmes relating to self-employment measures for persons with disabilities. However, this type of support is still considered as limited in reaching out persons with disabilities.

6.1. Technical and Personal Supports

This research has attempted to identify and evaluate the technical and personal supports provided by the government, drawing also on the perceptions of persons with disabilities regarding these services. The approach to self-employment measures has been perceived as needing more supports to advance micro businesses run by persons with disabilities. Many informants of this research evaluate these supports differently. Some of them found supports beneficial, while others perceived a lack of supports. Some perceptions are outlined below.

- a. SME-SRY-A (physical disability, with two crutches), founder of one of disability-based transport service provider.

SME-SRY-A received a support from the government in the form of an adjustment to driving licences for persons with disabilities employed by his business, following the modification of their vehicles.¹¹¹ The assistance that comes from government is usually in the form of an invitation to any events.¹¹² By way of background, SME-SRY-A runs a micro-enterprise that aims to accommodate people who have transportation and mobility problems, especially persons with disabilities. There are currently 22 motorcycle drivers working for the business, all of whom are disabled. 17 motorcycles have been modified to meet the needs of both passengers and drivers with disabilities. Beside the main business, he also expanded his business to Information Technology (IT) development. For this purpose, 9 disabled people were sent to acquire IT expertise. No specific supports were provided by government for this.

- b. SME2-1 (physical disability with a wheelchair who runs an SME focusing on honey product trading).

¹¹¹ FGD: SME-SRY-A (Yogyakarta, 23 August 2017).

¹¹² *ibid.*

SME2-1 said that he had assistance from local government (the Office of Trade and Cooperation, provincial level of DI Yogyakarta) in the form of management training. No less than 20 families of persons with disabilities got the training.¹¹³ SME2-1 and his DPO have received partial assistance to establish KSP (*Koperasi Simpan Pinjam*/ Credit Union) for Disabled Entrepreneurs.¹¹⁴ He felt it is very beneficial for persons with disabilities to get business support like this.

- c. JFPor-1 (from X.com, an employment job-portal for persons with disabilities), mentioned that assistance has been provided by government through endorsement by linking official websites of the government to the portal. This was done both by central government (the Ministry of Manpower) as well as local government (at least in Yogyakarta and Surabaya City). The government has also involved the portal in any job fairs from 2015-2017, though JFPor-1 noted that not all of these were fully accessible for persons with disabilities.¹¹⁵
- d. Conversely, SME3-1 (physical disability, with crutches), who runs an SME on Convection and Sablon/Printing Products with the brand of “S Production”, mentioned that he had never got any assistance from government to run the business that he started in 2012.
- e. DPO1-Blind1 also affirmed the lack of assistance felt by blind people, who have no choice but to sell their home-made products directly as street traders. This also accords with earlier comments by SME3-1 above on the lack of supports. DPO1-Blind1 noted that blind street traders are very often targeted by *Satpol PP* (staff of local government who enforce local regulations) to be detained for the violation of public order. To this extent, DPO1-Blind1 considered there was a need for special attention on training blind traders about where to sell their product securely.¹¹⁶ It is necessary to provide alternative places to sell their products and to support effective marketing for persons with disabilities to grow their micro-business, so that they will not breach the law (in particular regarding public order) due to lack of supports. Structural supports may include the

¹¹³ FGD : SME2-1 (Yogyakarta, 23 August 2017).

¹¹⁴ *ibid.*

¹¹⁵ Interview with JFPor-1, X.com (Yogyakarta, 22 August 2017).

¹¹⁶ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

official endorsement for the product made by persons with disabilities and facilitative supports including addressing the marketing issue.

It is interesting to note that in all the experiences explored above, the assistance from government was mostly not considered too significant due to the limited support provided.

6.2. Case Study

In the context of self-employment, this case study on the Special Region of Yogyakarta Provincial level is also illustrative. It identifies a clear goal of self-employment that is largely supported by the local government authority. The form of support offers the opportunity for persons with disabilities to get orders from government's procurement, thus creating a niche market for persons with disabilities. It is also a bridging action by the government to follow up with vocational training alumni as well as to set up cooperation with other related stakeholders in the field.

Case Study

Self-Employment Supports for Persons with Disabilities DI Yogyakarta Provincial Government

The Special Region of Yogyakarta Provincial Government has its own Social Insurance called *Bapel Jamkesos* (Badan Pelaksana Jaminan Kesehatan social/Social Insurance Body). *Bapel Jamkesos* has a programme of special social insurance for persons with disabilities, such as providing support tools. During the two years 2015-2017, this programme distributed almost 2,000 support tools (wheelchairs, prosthetic legs, etc).¹¹⁷

“We are still undergoing this programme and evaluate it over time to make it more effective. We found that instead of buying a new wheelchair, which is quite expensive, we could look at whether we could fix the old ones. Therefore, the programme is now moving forward to repair-based to allow the limited available budget to reach out more beneficiaries. We also have been trying to involve persons with disabilities to train them in repair skills as it will create their opportunity to work on this programme. We create a

¹¹⁷ FGD: LGSRY-S3 Bapel Jamkesos (the Social Insurance Agency) DI Yogyakarta (Yogyakarta, 23 August 2017).

'captive market' of the beneficiaries of disability tools while at the same time involving persons with disabilities in work.¹¹⁸

The training has been conducted to avail of opportunities that can benefit persons with disabilities. There are some workshops in this regard, such as one in Gunung Kidul (Mitra Sejahtera Cooperative Unit), Imogiri, that involved around 30 persons of each period of the project. The workshop not only focused on the repair of wheelchairs and other support tools, but also covered skills on automotive modification (e.g. motorcycles) to help users with disabilities. Later, they will be prepared to receive job orders from the programme.¹¹⁹

The workshop aims to cover three stages¹²⁰

1. Home industry: this is designed to receive mild repair projects
2. Referral: this can be a group running a workshop with more complete tools to work on 'medium repairs';
3. BRTPD (vocational training run by the Office of Manpower) for the referral workshop stage 3 (working on more complex damage);

If the three above cannot fix the problems, the last resort will be to the professional companies produce the factory-made support tools.

In order to expand the programme, it has been developed to link with other institutions like the Shelter for Guidance on Non-Communicable Diseases (*Pos Bimbingan Terpadu untuk Penyakit Tidak Menular*) that consists of doctors working on physical rehabilitation. Bapel Jamkesos has been conducting training series for these doctors. This was a first in Indonesia, so that even the Ministry of Health was asking for the curriculum because they intend to develop this idea.¹²¹

"We developed the system from the service in *Posbindu*, the trained doctors will refer to the support tools to our referral system (as this is funded by the provincial government). These provisions will be included in the revision of the Governor Regulations Number 63 of 2016, Number 51 of 2013, and Number 83 of 2013. The National Social Insurance (BPJS) lists only 7 support tools, while we list 75 types of support tools as well as prices and its repair service within the types of referral system."¹²²

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² FGD: LGSRY-S3 Bapel Jamkesos DI Yogyakarta Province (Yogyakarta, 23 August 2017).

The programme has as its goal to create a new market niche that empowers persons with disabilities. In the near future, it will aim to expand to produce some of the spare parts, in order to reduce imports. It can create a workshop in cooperation between vocational training centres and other advanced companies in the field. This is an effort at mastering from upper to downstream production.¹²³ LGSRY-S3 mentioned about a Nicaragua case study that has been trying to reach out to disability enterprises involving the production from 'upper to downstream,' which means from taking possession of the raw materials up to marketing.¹²⁴

The repair service will possibly be expanded to other support tools such as orthotic prosthetics. The initial programme was arranged to link with ex-YAKUM (*Yayasan Kristen Untuk Rehabilitasi Umum/ Cristian Foundation for Public Health, based in Yogyakarta*) personnel who are already retired from this organisation. Those who are retired will be linked to manage the home industry repair service. A MoU has been prepared along with a funding scheme. Ngaglik (one of the sub-districts under the district of Sleman, DI Yogyakarta) is one of areas being targeted.¹²⁵

In addition to these support tools, this programme also aims to expand to Hearing Aids. There is fairly a big gap between BPJS (National Social Insurance) cover for hearing aids and what Bapel Jamkesos DIY covers. BPJS only covers for claims of 40 decibels and up to 1 million IDR (approx. equal to 66.67 USD), while in DI Yogyakarta, Bapel Jamkesos can avail of 90-100 decibels, even up to 120 decibels. The claim can reach up to 10 million IDR, and even more. There are some coordination arrangements between BPJS (central government) and Jamkesos (local government) with regard to the types of support tools than can be covered. Even so, there is still a problem with support tools like hearing aids and the other 68 out of 75 support tools that are not covered by BPJS. These all are currently in discussion.¹²⁶

¹²³ *ibid.*

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ *ibid.*

“With reference to the right to work for persons with disabilities, we think not only “to open the door” instead to build a house. Not only asking the market to open a door, rather to create a market itself, because there is a captive market for disability products. In consequence, it is important to build the mental skills along with technical skills for persons with disabilities.”¹²⁷

In this regard, the local government of DI Yogyakarta is aware of the disability needs tools (wheelchair, leg prosthetics, hearing aid, etc) to be provided. Instead of buying new tools that are very expensive, the local government initiative to repair broken tools impacts to reduce costs, hence with the given budget they can provide more disability tools. To repair these tools, the local government established cooperation among alumni of vocational training centres as well as other related stakeholders that work in the field. A “captive market” has been created, thus enabling persons with disabilities to work independently with continued job orders supported by the government.

13. Conclusion

Besides the discussion on the State actors and policy actors above, this research acknowledges the important involvement of non-state actors, such as civil society including CSOs/DPOs as well as companies (employers). These parties share the important role in disseminating awareness on disability as well as conducting some valuable skill training for persons with disabilities. The DPOs have long been engaging with the issue of disability awareness and put effort into awareness raising not only with persons with disabilities but also with the government, in terms of suggesting improvements in law and policy on disability related issues. Accordingly, in the employment context, the role of employers in implementing the right to work of persons with disabilities is crucial on the ground. Their understanding and awareness of the rights-based disability perspective will be reflected in their actions in the workplace.

As mentioned previously, one of the goals of specific measures is to address the underrepresented group on the disability ground. To this extent, this

¹²⁷ *ibid.*

chapter also investigates the form of specific measures taken to date in Indonesia and the effectiveness of each measure, such as the quota system, as well as the outreach and support programmes. There are still significant gaps in the implementation regardless of the improvements that have been made.

With regard to the disability employment quota, the research suggests there is an improvement of employers' engagement on the employability of persons with disabilities. However, there is still no clear data on the implementation of the quota system to date. Yet there is an emerging serious issue on the supply-demand of disability labour due to unfulfilled requirements as well as the undistributed quota which does not distinguish between the types of disability. This indicates that the series of specific measures initiated by the government has not dealt sufficiently with the barriers that exist. To this extent, all possible supports of empowerment and support programmes outlined by the government should focus on the employability of persons with disabilities in the labour force by removing barriers identified in practice.

As demonstrated in this research, the empowerment and support programmes should also reach out to the general requirements of self-employment by persons with disabilities. There is an interesting example highlighted by the local initiative of DI Yogyakarta on self-employment supports for persons with disabilities where the government attempts to get closely involved in creating the model of self-employment supports that encompasses broader engagement with stakeholders, and more importantly, to provide a sustainable measures to support micro-businesses run by persons with disabilities.

Chapter 10 Reasonable Accommodation

1. Introduction

As stated in the previous chapter, the 'positive measures' evaluated by this research consist of 'specific measures' and 'reasonable accommodation.' This chapter focuses on the second part of positive measures and examines the use of reasonable accommodation in the employment context in Indonesia. In line with the previous chapter, the central question addressed by this chapter is how far substantive equality has been implemented through reasonable accommodation. From this, I will draw insight to answer another research question, on the effectiveness of inclusive employment measures to date. To this extent, this study makes a major contribution to research on disability rights by evaluating the use of reasonable accommodation to address structural employment barriers faced by the ranged types of disability in Indonesia. Besides investigating the usefulness of reasonable accommodation, this chapter also aims to unravel some of misunderstandings surrounding reasonable accommodation, and seeks to remedy this particular issue by bridging the empirical data to the literature on the reasonable accommodation framework.

The structure of this chapter is as follows. It first gives a brief overview of the issue of reasonable accommodation, including the reluctance of persons with disabilities to request a reasonable accommodation. It will then go on to review the evidence of various accommodations required by ranged types of disability where a different type and degree of disability needs different types of reasonable accommodation to enable them to work. The last section will examine the emerging role of reasonable accommodation in relation to self-employment. As mentioned in Chapter 6, in the Indonesian context, self-employment has been selected by the majority of persons with disabilities in exercising the right to work. This research defends the significant role of self-employment as an alternative trajectory to advancing the right to work of persons with disabilities, which has a huge impact on the national economy

of Indonesia. A reasonable accommodation duty can support removing barriers faced by persons with disabilities and hence guarantee their participation in the employment.

I argue that there are some misunderstandings on reasonable accommodation to date, where employers are unsure of reasonable accommodation as it is usually understood as something costly. However, there are a range of reasonable accommodations that can be made by a small adjustment to the workplace, which are less costly. There is also an issue of reasonable accommodation in the self-employment context, where there are no employers to be liable. In this regard, the duty of accessibility of the service provider (government) is significant to provide reasonable accommodation by 'making facilities accessible'¹ to particular users.

2. The Issue of Reasonable Accommodation in Employment

This part highlights the importance of reasonable accommodation as an intrinsic part of an immediately applicable non-discrimination duty. As outlined by CRPD General Comment Number 6 (2018) on Equality and Non-discrimination, reasonable accommodation focuses on a case by case/individual approach including: "*making existing facilities accessible, modification of facilities/equipment, reorganizing activities, rescheduling work, adjusting learning materials and teaching strategies, adjusting medical procedures, or enabling access to support personnel without disproportionate or undue burden.*"² In Indonesia, The Disability Act 2016) describes reasonable accommodation as: "*modification and suitable adjustment that is required to ensure the enjoyment of human rights and fundamental freedoms of persons with disabilities on an equal basis.*"³ The Act also guarantees reasonable accommodation in the employment.⁴

¹ UN Committee on the Rights of Persons with Disabilities, 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6' para 23.

² *ibid.*

³ Act Number 8 of 2016 concerning Persons with Disabilities 2016 s 1 point 9 (translated by author).

⁴ *ibid* s 11 (c) (translated by author).

Highlighting other aspects of reasonable accommodation in employment, the evidence presented in this section suggests the need for capturing reasonable accommodation in education as an ultimate bridge to employment. A positive correlation was found between education and employment in that education creates the opportunity for employment, therefore reasonable accommodation is essential in education too, because the lack of reasonable accommodation in education creates barrier to entering the workforce (see Chapter 7). Data from several sources of this research have identified the relevance of reasonable accommodation in education to significantly impact employment. In particular to persons with psychosocial disability, the situation of inaccessible and lack of service⁵ have impacted the access to the right to work. One of the arguments comes from DPO6-PD1, chairperson of a national DPO focusing on psychosocial disabilities, with much experience in advocating the cases of persons with psychosocial disabilities who dropped out of education. DPO6-PD1 highlighted their report on successful and unsuccessful cases to date. Some individuals eventually continued with their studies. A recent example of an advocacy success story was on a drop-out case in the Agriculture Institute of Bogor, after intensive lobbying to the Institute.⁶ Those who cannot continue their study due to their disability will very likely have less chance to enter the workforce compared with those who do.

This chapter argues that in Indonesia there is lack of understanding on reasonable accommodation, impacted by a lack of awareness to date. In this regard, this research found a positive correlation between the lack of adequate law dissemination and the understanding on reasonable accommodation. This highlights the role of government in spreading disability awareness, in particular to employers as the key stakeholder bearing responsibility for reasonable accommodation.

⁵ Yurika Fauzia Wardhani and Astridya Paramita, 'Mental Health Service Disability and Life style of Indonesian' (2016) 19 (1) Buletin Penelitian Sistem Kesehatan 97-107,104.

⁶ FGD: DPO6-PD1 Psychosocial Disability (Jakarta, 1 August 2017).

This research will now examine some of the issues emerging in relation to reasonable accommodation.

2.1. Adjustment on the Workplace

To be a professional in the employment field, many persons with disabilities need supports. DPO7-1 from the DPO side acknowledged that reasonable accommodation is a key to employment success.⁷ CG-M1 from the Ministry of Manpower argued that employing persons with disabilities is not the highest achievement of employers, rather, providing reasonable accommodation in terms of working supports, safety, convenience, and career advancement, is way more important for persons with disabilities so they can be respected in dignity.⁸

The provision of reasonable accommodation is closely related to awareness: what it is, why and how it needs to be addressed. This is shown by an example from CG-M1 about the complications of decision-making due to bureaucratic processes as well as lack of disability awareness. He mentioned the experience of one central government institution office where setting up disabled parking took about 2 years after being requested.⁹ CG-M1, as a government officer who had been working in this institution, regretted this, as it happened very likely because of the failure to appreciate the urgency of reasonable accommodation for persons with disabilities.¹⁰ In the overall picture, it indicates the challenges of paradigm-shifting even among the government officers with disability awareness and knowledge of the rights-based approach. To some extent, reasonable accommodation (in this example, a special parking space) was not being perceived as the right of persons with disabilities, but rather a “general request” of a building user with a disability who, like other users of the building, requested a certain facility.

⁷FGD: DPO7-1 (Bandung, 3 August 2017)

⁸ Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

⁹ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

¹⁰ *ibid.*

2.2. The Necessary Measures of Reasonable Accommodation

A variety of perspectives on reasonable accommodation were expressed by the informants of this research. Some felt that reasonable accommodation does not stand alone but rather works closely with the accessibility duty.¹¹ The prevailing view among these participants is that the a necessary adjustment is important in individual basis to enable a particular person with a disability to work decently, while the general accessibility duty is significant to enable persons with disabilities to access employment as well as the workplace. If accessibility were improved, far fewer people might need individual accommodations.

Additionally, some informants of this research underlined misunderstandings on accessibility which is often understood as just providing a ramp in the workplace. DPO11-1 mentioned that very often when a company is equipped with a ramp, it declares that the workplace is accessible.¹² However, the accessibility duty should consider broader types of disability. With reference to reasonable accommodation, a comprehensive assessment has been suggested by the informants of this research to establish individually-tailored responses to each worker with disabilities. For this reason, DPO11-1 asserted that the company needs to learn the various types of disability and actively communicate with the particular person with a disability to reasonably accommodate them.¹³

This research also highlights a side effect of the 'freedom' of employers to recruit selectively depending on the possible adjustments people would require. In consequence, they select only those who fit with the existing environment, rather than adjusting the environment to the situation of each person with disabilities.¹⁴ The DPO1-Blind1 confirmed that employers tend to select certain types of disabilities for recruitment, usually to avoid further adjustments to the existing environment.¹⁵ Two discrete reasons emerged for

¹¹ FGD: DPO8-1 (Bandung, 3 August 2017).

¹² *ibid.*

¹³ FGD: DPO11-1 (Yogyakarta, 23 August 2017).

¹⁴ FGD: DPO6-PD1 (Jakarta, 1 August 2017).

¹⁵ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

this. First, the employer's consideration of burden and cost. Second, a type of job that is assumed to fit with certain types of disability. For example Company "X", as a company that is quite advanced in dealing with disabled workers, mostly hires deaf and physically disabled persons (without a wheelchair) due to the types of work they feel are suitable and due to inaccessible environment, in particular for wheelchairs.¹⁶ However, another impediment to providing reasonable accommodation for persons with disabilities, as suggested by one informant of this research, can be related to external factors such as building tenure. Most private companies rent their offices as leaseholders. There are some restrictions applied to modifying the building facilities, including providing ramps.¹⁷ Another impediment is the cost burden in providing a system that fits certain disabilities, such as screen readers for blind persons (e.g. Oracle).¹⁸ This is often raised by employers where they cannot provide a certain accommodation. So far there is no responsible institution to monitor the application of reasonable accommodation, or to assess 'disproportionate or undue burden' in the event of failure to provide reasonable accommodation of certain employers. Although the provision of reasonable accommodation is highly supported in the Disability Act 2016, the detailed application of this provision is still fragmented.

2.3. A Case Study of Reasonable Accommodation in one DPO in DI Yogyakarta

Reasonable accommodation is often misunderstood by employers as always involving a cost, yet one example of reasonable accommodation can be as simple as providing a higher work-chair to enable persons with certain physical disabilities work comfortably.¹⁹ Another example, in Company "X", is that persons with disabilities (especially those with physical disabilities) will be dismissed first when thousands of workers are exiting the building at the same

¹⁶ Interview with Em2-Company "X" (Bekasi, 15 August 2019)

¹⁷ FGD: Em-HRP1, Human Resource Provider Company (Jakarta, 1 August 2017).

¹⁸ *ibid.*

¹⁹ Interview with CG-M1, Ministry of Manpower (Jakarta, 9 August 2017).

time to go home.²⁰ Worker1 in Company “X” feels comfortable to have “a small” preferential treatment to make mobility easier.

“According to my experience, here in Company “X”, our colleagues are nice and very helpful. The system also ensures we can easily access some of the facilities such as the bed in the dorm, where we get the first floor and the lower bed, as well as the lower locker for us. In addition, there is no difference in the salary we get.”²¹

This research has found in general that a reasonable accommodation in the recruitment process is quite challenging. Many employers are not aware of the possible need for reasonable accommodation in the recruitment process. Notwithstanding, some initiatives fall to this purpose. The Ministry of Social Affairs, for instance, is currently considering a support scheme for persons with disabilities. For example, blind people would get a reader to assist, as well as an extra time.²²

Another kind of reasonable accommodation is access to communication in the workplace, in particular for meetings. It was suggested by the informants of this research that developing communication to bridge persons with disabilities with their counterparts at work is very important. DPO11-1 explained that some of deaf workers do not have access to communication so they feel lonely in a crowd, where they cannot access what has been discussed in a meeting. This happened because no adequate support to access the information was provided.²³

3. Various Accommodations Needed for Ranged Types of Disabilities

Positive measures, as tools of substantive equality, should cover each type of disability to protect people from unlawful discrimination. Each type of disability faces its own barriers. Although universal design for products and

²⁰ Interview with CG-SVC-So1 BBRSD (Surakarta, 21 August 2017). To this measures, this accommodation is not to discriminate persons with disabilities (particularly for those in needs) but to make them comfortable by not jostle in the crowd.

²¹ Interview with Worker2-Company “X”, Worker with physical disability (Bekasi, 15 August 2017).

²² Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017).

²³ FGD: DPO11-1 (Yogyakarta, 23 August 2017).

services are being endorsed, still there are some situations of disability that need a specific individual accommodation because of the barriers that hinder someone from participating. Reasonable accommodation as an approach is aimed to accommodate persons with disabilities individually based on the particular barriers that need to be removed.

3.1. Physical and Sensory Disability

Barriers to entering the workforce were experienced by persons with disabilities to different degrees. For physical disabilities, sensory and intellectual disabilities, and other specific types disabilities that are considered as quite 'visible,' employers were relatively willing to deal with arrangements that are mostly 'tangible' or 'physical/visible' and can be repeatedly used (e.g. ramps, adjusted desks, blue dots, handrails, indicating lights, sign boards, accessible toilets, etc).²⁴ The investment of the company for this reason is only at the beginning.²⁵ The accommodation is once and done.²⁶ Reasonable accommodation may also enhance general accessibility, because the modification of a facility in light of (individual) reasonable accommodation as a reactive duty, can also enhance general accessibility to others. The adjusted facilities can be used not only by those particular persons with disabilities but also anyone who might need that facility afterwards. To this extent, it can be considered as providing accessibility to the workplace.

For sensory disability such as deafness, a sign interpreter in some cases might be required. It is sometimes perceived as 'costly' by employers, hence it can potentially be a disproportionate burden. However, it may be provided for an occasional event that needs sign language interpretation while the working daily activity will mostly be done independently without a sign language interpreter to assist. To this extent the accommodation cannot be seen as disproportionate undue burden. Company "X", for example, has dealt with this issue for a long period of time as they have been recruiting deaf persons to their company. According to Em1-Company "X", from

²⁴ FGD: NGO1-1 (Jakarta, 1 August 2019).

²⁵ FGD: DPO1-Blind1 (Jakarta, 1 August 2017).

²⁶ FGD: NGO1-1, (Jakarta, 1 August 2017).

Company “X”, they found that there is no real problem with accommodation so far.²⁷ Company “X” is one example of an enterprise that employs persons with disabilities (physical disabilities and deafness). They have a long history of cooperation with vocational training centres to provide labour with disabilities as well as assistance to arrange sign language interpretation during the selection and training process, in particular for workers who are deaf.²⁸ In this regard, establishing cooperation with other parties, including the government, can be beneficial to support employers. The government might support these good efforts of employers in employing persons with disabilities by helping to enhance the right to work of persons with disabilities. To this extent, the concern of employers related to the cost can be overcome with good knowledge and awareness on reasonable accommodation, as well as cooperation with other stakeholders.

3.2. Intellectual Disability

Following the requirements of reasonable accommodation in vocational training for persons with intellectual disability, there are some measures initiated by vocational training providers, including private organization and Civil Society Organizations/CSO, one of which is DPO4 (Intellectual and Developmental Disability). The organisation focuses on persons with intellectual disabilities and provides a private vocational training service which aims to increase productivity and living independently. This organization attempted to engage with reasonable accommodation in terms of adjusting curricula, learning materials, and teaching strategies.²⁹ DPO4 (Intellectual Developmental Disability) divides the beneficiaries into two categories: borderline and moderate. Borderline is considered as ‘educatable’ while moderate is ‘trainable.’ Educatable means that they are considered as able to attend formal education (which in this context means a special school setting) that adopts a general curriculum of education with various adjustments. The second layer is ‘trainable’ where they were assessed as not able to be placed

²⁷ Em1-Company “X”, Management Company “X” (Bekasi, 15 August 2017).

²⁸ *ibid.*

²⁹ UN Committee on the Rights of Persons with Disabilities “General Comment of CRPD No.6 on Equality and Non-Discrimination” (26 April 2018) UN Doc CRPD/C/GC/6’ (n 2) 6 para 23.

in the formal education settings, but still can be trained to get some vocational skills.

According to FGD, DPO4-IDD1, there are three goals of the training: to produce an employee, an entrepreneur, or a trainer for the organization. DPO4 (Intellectual and Developmental Disability) established a vocational school (equivalent to senior high school) at first. But since the beneficiaries needed further skills and competences to enter employment, DPO4 set up an academy providing follow-up to the formal education of senior high school.³⁰ It aims to develop skills as well as the self-confidence. The self-confidence of persons with disabilities has been identified as the important factor to break the mental block, thus developing a strong determination (see Chapter 7). After the training, some of the beneficiaries can avail of formal employment (such as with garment companies), while some others have been involved in entrepreneurship. To this purpose, they have set up KUB (*Kelompok Usaha Bersama*/Joint business group) that usually consists of 3-4 persons working together to establish self-employment business units in their particular skill.

Em-As1, as a private vocational training provider, stated that persons with intellectual disabilities also need certain accommodations, in particular to access education and training. Generally, it will be more effective to avail of small group mentoring rather than in a big group or in a classical way. In consequence, it will cost more.³¹ Regardless of this insight, providing certain training services that apply a specific accommodation would be beneficial in order to guarantee the participation of persons with disabilities for employment purposes.

Vocational training services for persons with intellectual disabilities should consider re-organizing activities as well as modifying teaching strategies. The training materials and content are likely similar to other general vocational training services. However, there are some kinds of adjustments need to be provided to facilitate persons with intellectual disabilities. One of the training

³⁰ FGD: DPO4-IDD1 (Jakarta, 1 August 2017).

³¹ Interview with Em-As1, Employer's Association (Jakarta, 31 July 2017).

service providers for persons with disabilities (LBK) in the provincial level government of DI Yogyakarta, has provided certain adjustments to enable both persons with intellectual disabilities and psychosocial disabilities to participate in training. The particular adjustment made by local Government of DI Yogyakarta is to involve the parents or family members of the beneficiaries in the training. This aims to ensure their involvement in assisting persons with disabilities later after the training is completed (post-training). These parents or family members will learn all the stages of the training as well as the follow-up measures to assist the persons with disabilities in performing their skill.³²

3.3. Psychosocial Disability

Overall, this research considers that one of the most challenging areas for reasonable accommodation is psychosocial disability. This type of disability appears in different forms, hence it needs various adjustments that are usually 'invisible' accommodations such as flexibility in terms of time and place of work,³³ depending on the case. People with psychosocial disabilities struggle with stigma, and are most likely to be rejected (in employment) when identified as persons with psychosocial disabilities.³⁴ As mentioned in the previous chapter, there is usually a psychometric test in work recruitment that is designed to help employers to assess the candidates in aspects such as cognitive abilities, attitude, personality and knowledge.³⁵ This kind of test is very common in recruitment by big companies and institutions. It has been considered as the most awful test by persons with psychosocial disabilities, where only by chance can they pass this test (due to detection measures in the test materials).³⁶ The common situation is that the majority of persons with psychosocial disabilities prefer to hide their disabilities, due to potential further discrimination. In this sense, the recruitment stage of employment (that contains the psychometric test) will be likely a 'natural selection' for

³² FGD: LG-SVC-Yk1 Office of Social Affairs DI Yogyakarta (Yogyakarta, 23 August 2017).

³³ FGD: DPO6-PD1, DPO of Psychosocial Disability (Jakarta, 1 August 2017).

³⁴ *ibid.*

³⁵ Practice Psychometric Tests <https://www.practiceaptitudetests.com/psychometric-tests/> accessed 26 March 2019

³⁶ FGD: DPO6-PD1, DPO of Psychosocial Disability (Jakarta, 1 August 2017).

those whose psychosocial disabilities as the chance to pass is very minor.³⁷ The kind of test that hinders disadvantaged groups from being selected can be regarded as indirect discrimination. This indirect discrimination is hard to prove as the reason for refusal is often not clearly stated. Through this test, the assessment can detect the tendency of psychosocial disability, which will be categorized 'abnormal,' and thus will be a strong reason of refusal to the particular candidate (see Chapter 3). DPO6-PD1 Conversely, an individual modification is possible to be applied in this situation, for example, by request from the particular person with the psychosocial disability not to be subjected to the test. However this can be pointless because in most cases persons with psychosocial disabilities tend to hide their disability due potential discrimination, given that stigma and stereotype are quite strong. To this end, the choices are going with the test (with the possibility that the disability will be identified) or withdrawing (which means losing the chance to be recruited at all).

This research previously found there is a huge challenge of barriers faced by certain types of disability, in particular psychosocial disability (see Chapter 7). Persons with this type of disability have been stigmatised as "mentally incapable" of entering employment (as well as participating in many fields of life). With relation to legal capacity, as mentioned in Article 12 CRPD, there is very little awareness, hence society seems to be preventing the participation of people having these types of disability. Further, those who are ready to work are those who are 'recovered' but still need long term medication to maintain their mental health. There are 'up' and 'down' phases suffered by persons with psychosocial disabilities. In the 'down' phase, more supports and accommodations may be required.³⁸ Because the degree varies among persons with psychosocial disability, accommodations should be individually adjusted, including 'break periods.' This is the critical point of reasonable accommodation for employers where at some point it can be considered as breaching the company rules (e.g. exceeding leave of absence).

³⁷ *ibid.*

³⁸ *ibid.*

Another significant factor hindering persons with psychosocial disabilities from entering the workforce is the education gap. The disrupted educational background of persons with psychosocial disabilities impacts their ability to meet the education requirements of most job opportunities. The educational background of persons with psychosocial disabilities generally proceeds in a different track. According to DPO6-PD1, chairperson of DPO6, the drop-out rate from educational institutions can reach up to 80%, as commonly they get their disabilities in the upper teenage stage, ranging in age from 19-24 years old.³⁹ During that time they usually opt out of any activities, including education. For people with psychosocial disabilities, the gap period can be longer as suitable treatment is often takes time to seek.⁴⁰ In some cases the doctors give medication that has side-effects on the patient (e.g. Parkinson's, affected by the medication of *Haloperidol* - a cheap medication that unfortunately is still legal in Indonesia while in most countries it is already banned). Therefore, after a long period of time, they go back to their activities and find that they have reached the maximum duration of study (a maximum of 7 years according to the Regulation of the Ministry of Education 2015), which means they are dropped out automatically.⁴¹ Accordingly, this gap of education will be the main hindrance for them to enter the workforce. Therefore, DPO6-PD1 emphasized that reasonable accommodation in the recruitment process should include no age limit, no minimum formal education background but rather the possibility of replacement with a certification of skill/non-formal education, such as computer, automotive, etc.⁴² This might open up the opportunity for persons with psychosocial disabilities to participate in employment. Unfortunately, so far most companies do not consider this kind of reasonable accommodation.⁴³ Even where they are aware of the disability quota provision, the existing general requirements must be fulfilled with no exceptions, including age requirement, educational background, etc. A positive correlation was found between the lack of awareness of employers and the weak bargaining position of persons with disabilities as job seekers. This situation might lead to the issue of

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² FGD, DPO6-PD1 (Jakarta 1 August 2017)

⁴³ *ibid.*

supply-demand of persons with disabilities in the labour market (see Chapter 7), where the recruitment demand for persons with disabilities as a result of the quota system does not mean jobs will automatically go to the supply (disabled job seekers).

4. Negotiation on Reasonable Accommodation

Given that reasonable accommodation must be negotiated by the applicant(s),⁴⁴ the findings of this research suggest challenges on negotiation experienced by persons with disabilities. There are various factors involved, one of which the reluctance of persons with disabilities to request the reasonable accommodation they need mostly due to ‘imbalanced relations with the employer.’ These are some examples told by the informants of this research:

Case of the Lack of Reasonable Accommodation (1)

This case was experienced by one of the staff in our DPO. He got cerebral palsy (CP). He was not using any medical equipment or support tools, but he had an issue with communication. He was delighted to get the job while we were all aware that it was so hard to get such an opportunity for him. He accepted an offer in the cleaning service division of a fast-food restaurant. Unfortunately, the working hours were from night to dawn (8 pm-4 am). He was asked by the owner of the restaurant to be gone before customers came in the next morning at the opening time. He was there but He had to be 'hidden' from the customers, therefore He got the working hours at the time when the restaurant was closed until it was about to open. As time went by, he was losing weight and had a cough problem because of the cold weather during the night time, when he worked. After attending a medical check-up, he was advised by the doctor to quit working because he was potentially suffering a lung problem due to the cold conditions. On the other hand, he was insisting on retaining that job because it was vital for him to survive, he also planned to marry, and to start a family. Therefore He thought that he had to work hard, whatever the situation was. Those two hard choices for him, whether to plan his better life or to give up with his medical

⁴⁴ ‘UN Committee on the Rights of Persons with Disabilities “General Comment of CRPD No.6 on Equality and Non-Discrimination” (26 April 2018) UN Doc CRPD/C/GC/6’ (n 14) para 24b.

condition that could worsen his disability. In the end, after he discussed with us, he opted to leave his work.⁴⁵

In this case, there is a lack of awareness on the disability of the employer resulting in the lack of reasonable accommodation on the person in question. Since the beginning, the employer had told him to have this night hour, the stage in which He has no option but accepts it because he needed the job anyway. He imagined, if He bargained, He was afraid to be 'disqualified' by the employer.⁴⁶ Because even if it was a non-permanent job, but it was meaningful for him. It seems the employer, due to particular reason, did not want their disabled staff to be visible, that was why They arrange the night shift to him.⁴⁷

Case of Lack of Reasonable Accommodation (2)

"In another case, we have a colleague who was disabled due to haemophilia. He used a wheelchair for his daily activities. He was so delighted at being accepted for the Caroline service (online customer service) of a prestigious telecommunication company in Indonesia. He got his working hours from 2am to 8pm. His wife usually helped to drop him to the office and collect him back. Basically, the infrastructure of the workplace was accessible for wheelchairs. Persons with physical disabilities who use wheelchairs are well-accommodated: lift, ramp, accessible toilet. However, he worked in a room full of computer devices that was equipped with air conditioning to make sure all the devices were working well. Because he had to work 8 hours each night, plus surrounded by cold air conditioning, it likely impacted to his health deteriorating. Very often, we asked him whether he was feeling good with his job, and he used to say that everything was fine. He said that as a breadwinner, he had a big responsibility to his family. He said that his life was more meaningful by working like others do. He mentioned that the company also gave him a health protection insurance (BPJS) when he felt sick. However, his health was decreased over time. At that stage, actually he tried to look for other jobs but was unsuccessful. At last, he was sick, being hospitalised due to a lung problem. He finally died at the age of 40. Sadly, he died not because of the major disability cause (haemophilia), rather, other external factors he obtained during his work."⁴⁸

⁴⁵ Interview with DPO8-1 Chairperson of DPO8 (Bandung, 3 August 2017)

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

(Another case raised by DPO8-1)

These cases indicate that there is a lack of understanding from the side of the employer, showing that they do not fully understand the needs of persons with disabilities, such as working time adjustments and protecting the workers from factors that could threaten their health (referring to health and safety at work as also a form of positive measures, to some extent). Conversely, persons with disabilities were not bravely open to ask their query on what they need to the employers.⁴⁹ To this end, it is important to conduct an open discussion on any required support in relation to health and a comfortable working situation. In circumstances where fewer job opportunities are available, persons with disabilities often cannot openly say anything about what might be troubling them, particularly where they are trying to retain their responsibility as breadwinner for their family. DPO8-1 hopes that there will be no more cases where unfortunate work situation reduce the life expectancy of persons with disabilities.

These stories also highlight the imbalanced relationship between a worker with disability and the employer as duty bearer of the reasonable accommodation. Workers can be reluctant to request a reasonable accommodation because they are afraid of losing their job, or do not want appear to be “demanding”, which might make the employer not like them and, as consequence, the contract will possibly not be extended (many jobs are non-permanent). Another circumstance appears in psychosocial disability in relation to reasonable accommodation. As mentioned previously, persons with psychosocial disabilities tend to hide their disabilities due to social stigma and stereotypes that might lead to potential discrimination. Considering this situation, a reasonable accommodation will not be negotiated or requested by persons with psychosocial disabilities. As consequence, a reasonable accommodation will not be provided anyway.

⁴⁹ *ibid.*

5. Reasonable Accommodation in Particular of Self-Employment Measures

Persons with disabilities in self-employment need positive measures to remove particular barriers. The supports as mentioned in The Disability Act 2016 imposes a broad obligation to ensure the protection of persons with disabilities in running self-employment,⁵⁰ accessing capital assistance,⁵¹ expanding opportunities to the procurement of goods and services,⁵² facilitating marketing practices,⁵³ and providing the required training on entrepreneurship⁵⁴ for persons with disabilities to run their business. However, bringing the provision into action is mostly challenging.

5.1. Engagement with Self-Employment Purposes

Regardless of the worth of aiming for the open employment setting, which to some extent is not easily accessed, a self-employment setting, which very likely lies in the informal economy as mentioned previously, is a good alternative to engage with.

According to the findings of this research, there are some reasons why persons with disabilities prefer to choose this alternative. **First**, Indonesia is a huge potential market for any goods and services including those which come from the informal sector (see Chapter 6). **Second**, a traditional and cultural warmth of wisdom of the communality that partly exists where buying products produced by relatives, colleagues, or neighbours, is believed to carry out the value of a society's ties to enhance neighbourhood welfare and togetherness in a sense of mutual cooperation (*gotong royong*).⁵⁵ **Third**, since accessibility remains a big challenge to date (see Chapter 7), self-employment becomes a preferred choice. Self-employment is usually based

⁵⁰ Act Number 8 of 2016 concerning Persons with Disabilities s 56.

⁵¹ *ibid* s 57.

⁵² *Ibid* s 58.

⁵³ *ibid* s 59.

⁵⁴ *ibid* s 60.

⁵⁵ FGD: DPO4-IDD1 Persons with Intellectual Disability (Bandung, 3 August 2017); and Interview with CG-S2 Ministry of Social Affairs (Jakarta, 17 July 2017)

on household production, hence there is no need to deal with daily mobility to the workplace that in some cases will be very costly, especially when public transport is inaccessible so that private transport must be selected.⁵⁶ **Fourth**, an entrepreneur can arrange their time more flexibly to adjust with their production and selling, not merely what is called “nine to five clock” (9am to 5 pm or 8 am - 4 pm of 8 hours of usual weekdays working) as commonly required for employment in general. Moreover, the recent development of online shopping and delivery service bring much benefits to traders who can offer their goods and services online, which is very handy to reach out more customers. It does not require profound IT skills, rather a basic knowledge on how to use the internet can support this purpose.⁵⁷ **Fifth**, it generates a household economy as it could employ members of the household as well as possibly employing nearby neighbours and community (depending on the scale). In a broader calculation, these small economic activities gather as massive attempts with other micro-enterprises nationwide to contribute hugely to the national economy (see Chapter 6). **Sixth**, in most of the cases, self-employment does not require a particular level of education but just skill and, more importantly, persistence. The various vocational trainings are very beneficial in this regard as they empower persons with disabilities in their own capacity. It is important to note the improvement of these micro-enterprises over time by, inter alia, enhancing capabilities and skill through various capacity buildings, including the related vocational trainings.⁵⁸

5.2. Making Existing Facilities Accessible

Recent developments in the disability movement place more attention on employment rights, including self-employment measures. This account seeks to maintain the purpose of reasonable accommodation “to make

⁵⁶ Interview with CG-SVC-Tg2 BBRSBG Kartini (Temanggung, 22 August 2017); Interview with CG-S2, Ministry of Social Affairs (Jakarta, 17 July 2017) ; FGD: DPO4-IDD1 (Jakarta, 1 August 2017); FGD: DPO1-Blind1 (Jakarta, 1 August 2019)

⁵⁷ FGD: SME1-1-; SME2-1; SME3-1; SME4-1 (Yogyakarta, 23 August 2017); Interview with CG-SVC-Tg2, BBRSBG Kartini (Temanggung, 22 August 2017)

⁵⁸ FGD: DPO4-IDD1 (Jakarta, 1 August 2017); Interview with CG-SVC-Cb1 BBRVBD (Cibinong, 21 July 2017); Interview with CG-SVC-Tg2 BBRSBG Kartini (Temanggung, 22 August 2017); FGD: DPO8-1 (Bandung, 3 August 2017); FGD: SME2-1(Yogyakarta, 23 August 2017)

existing facilities accessible,”⁵⁹ including to provide all possible supports. Reasonable accommodation for self-employment remains a big challenge on what accommodation should be made and who will be the duty bearer of the reasonable accommodation. Unlike in the open-employment, where the duty bearer is employer, in the self-employment context there is no party to provide a reasonable accommodation instead. In certain situations, such as in relation to training, exhibitions, or other means of empowerment of persons with disabilities in self-employment, that relate to a service provider, the duty bearer can be consider as the service provider. However, most of the activity during the self-employment cycle is independent, and thus will not involve any service provider.

To the extent to which persons with disabilities run micro-businesses, there is an example where a reasonable accommodation was not easily got from the service provider.

Case of Lack of Reasonable Accommodation (3)

Based on his own experience, SME4-1 pays more attention to reasonable accommodation in joining promotional events, in light of accessibility to the venue.⁶⁰ He mentioned one of the exhibitions held in Bali (held by the government) that was very unfortunately inaccessible for wheelchairs. He was disappointed that the venue was not accessible to wheelchairs, and ended up dragging himself to climb the stairs. Regrettably one of the organisers was not sorry at all, but rather blamed him for not appointing somebody else to represent him to attend. As he was fully aware that the opportunity to be involved in such exhibitions is quite difficult to get due to limited space, he just preferred not to complain to the organiser.⁶¹

In this case, there is a cross-cutting issue between reasonable accommodation and an accessibility duty, where the duty of reasonable accommodation, that is supposed to be an ‘individualized reactive duty’ (which has to be provided at the moment of request) cannot be fulfilled due to an inaccessible venue, which can considered as a duty of accessibility that

⁵⁹ UN CRPD, General Comment No.6 (2018) (n 1) para 23.

⁶⁰ FGD: SME4-1 (Yogyakarta, 23 August 2017).

⁶¹ *ibid.*

should be a proactive and systematic duty.⁶² Unfortunately the lack of awareness made of the officer had no idea to serve certain accommodation for persons with disabilities. However, given many of public services (including hotels) are not fully accessible for persons with disabilities, in this case, the organizer should pre-emptively have chosen a venue that was accessible for all participants, including those with disabilities. In this sense, the communicative approach should come from two sides. However, in this case, this person with disability were not complain to the organizer because a weak of bargain position. The reluctance to request the accommodation appeared due to the concern of being excluded from the next event.⁶³

In addition to making facilities accessible, Banks and financial institutions have an issue of difficulty to access the service, as well as physical accessibility of the building. The latter is usually resolved with the support of the bank-staff, who are able to help. SME2-1, a wheelchair user who runs a micro-enterprise, figured out the challenge facing persons with disabilities in relation to banking accessibility, including the physical accessibility of the bank.⁶⁴ Not only is it difficult to access a bank loan, but it is also difficult to access the services of some banks in particular due to physical inaccessibility. Another informant, SME3-1, felt that the bank is quite difficult to access in physical terms. Sometimes he asked the security of the bank to help him getting into the cashier, or bringing him the form to fill.⁶⁵ He also mentioned the inaccessibility of bank loans is due to collateral requirements.⁶⁶

With reference to the inaccessibility of the bank, SME3-1, who is selling honey products, still can access the bank loan, thus his business is quite expanding. The business is currently being expanded in light of numbers of distributors (most of them are non-disabled) to cover no less than 700 customers nationwide.⁶⁷ Even with very limited access, he was grateful can still access the bank while most people with disabilities cannot.

⁶² UN Committee on the Rights of Persons with Disabilities 'General Comment of CRPD No.6 on Equality and Non-Discrimination' (26 April 2018) UN Doc CRPD/C/GC/6' (n 2) para 23.

⁶³ FGD: SME4-1 (Yogyakarta, 23 August 2017).

⁶⁴ FGD :SME3-1 (Yogyakarta, 23 August 2017).

⁶⁵ FGD : SME2-1 (Jakarta, 23 August 2017).

⁶⁶ *ibid.*

⁶⁷ *ibid.*

6. Conclusion

Despite the growing acceptance of positive measures, including reasonable accommodation, alongside disability rights development in Indonesia, this research has consistently shown that there is a lack of awareness in relation to the practice of reasonable accommodation to date. There is an issue of misunderstanding about reasonable accommodation which leads to a misleading perception. This research has found that many employers are unaware of the need for reasonable accommodation and are unsure of what it involves. To this extent, it seems that employers are not sufficiently aware of the individual 'tailoring accommodation' and thus tend to justify the accommodation only in relation to certain common attempts. In consequence, they perceive the accommodation as always involving a cost. To some extent, it leads them to be reluctant to provide reasonable accommodation. However, this research has shown that the accommodation is not always as costly as they perceive. In fact, reasonable accommodation can be also only small step with little or even no financial impact at all.

Since disability comes with multiple faces, it needs various adjustments to address each face of disability, inter alia the types and degree of disability. For example, for physical disability, there are a wide range of forms and degrees, hence this requires a certain accommodation individually. There are types of disability: physical, sensory, intellectual, and psychosocial disability, or multiple disability, which may combine different types of disability, such as MDVI/Multiple Disability of Deafness and Visual Impairment. Within these types of disability, there are different degrees and forms of disability. Physical types of disability can be categorised as 'upper part' or 'under part.' For either part, there are further different forms of accommodation to be considered. For example, those who use crutches supports (under part) will need an adjustment that is different from those who pose the upper part of disability (for example, no arms). In brief, each type and degree of disability has to be individually accommodated to fully support people with disabilities to work.

In cases where a reasonable accommodation is perceived as beyond the financial ability of the employer, it will be assessed as a “disproportionate or undue burden,” depending on the employer's circumstances. However, there is no responsible or adjudicating body that monitors and assesses employers on the objection to providing reasonable accommodation in a certain case. Moreover, employers prefer to select certain disabilities because it corresponds to certain accommodations (according to their own interpretation), which they might be able to provide.

Accordingly, this chapter critically examines the changing nature of reasonable accommodation across types of disability. It is acknowledged that one of the complexities of reasonable accommodation is adjustment for psychosocial disability as it encounters a very strong stigma to date. In this sense, reasonable accommodation has not always dealt with “physical adjustment” as such, but rather can be more about re-organizing activities, rescheduling work, including flexibility of time and place of work.

Reasonable accommodation has been scrutinized not only in relation to the open labour market but also in self-employment measures. As this research acknowledges the importance of self-employment measures besides the open-employment purpose, the engagement of persons with disabilities in self-employment purposes should be appropriately supported by positive measures, including the application of reasonable accommodation. A significant requirement specifically on the self-employment purpose has mainly put in how to make the existing facilities accessible for persons with disabilities who run the business (that is likely a micro-business/Small-Medium Enterprises), as well as training, supports on connecting it to the market and access to microcredit initiative. By doing so, it will uphold the protection of the right to work of persons with disabilities and also enhance the national economy of Indonesia.

Chapter 11 Conclusions and Recommendations

1. Background

Persons with disabilities, as a disadvantaged group, often face discrimination in their daily lives. The discriminatory behaviour towards persons with disabilities appears in both direct and indirect forms. Focusing on the employment of persons with disabilities in Indonesia, this research shows the employability rate of persons with disabilities is commonly lower than non-disabled. It confirms that persons with disabilities are significantly less likely to be unemployed. Living in this vulnerable situation allows them to be easier hit by unemployment, thus leading to poverty. The inaccessibility of public services has greatly impacted the implementation of the enjoyment of rights by people with disabilities, including the right to work. Impacted by medical model of disability, stigma and stereotypes on disability have also emerged as factors limiting the ability of persons with disabilities to participate in employment. Most of the time they are perceived as 'not able' or 'incapable' of doing the work.

Considering the discrimination and the historical disadvantages of persons with disability, this thesis proposes the use of a substantive equality model to address their specific circumstances. The substantive model of equality addresses the unique features of each human being. This is important to overcome the unsuccessful formal equality approach to dealing with disadvantages. This thesis argues that substantive equality is the appropriate model of equality to address the disadvantages of persons with disabilities and to enable them to exercise the right to work. As a tool for removing structural barriers, positive measures are ultimately required by substantive equality to achieve equal participation and social inclusion.

Equality is one of the essential principles of the human rights. As such, it should ensure meaningful equality in practice, including full enjoyment of human rights for disadvantaged groups. Human rights play an important role

in addressing the disadvantages posed by disability. Strengthening the social model of disability, which focuses on addressing barriers, the human rights model of disability also incorporates state obligations. The Convention on the Rights of Persons with Disabilities (CRPD) 2006 is the first UN treaty which specifically focuses on persons with disabilities in human rights law. The CRPD explores the general principles of human rights and calls for inherent dignity, non-discrimination, full and effective participation and inclusion, respect for difference as a part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, and respect for the evolving capacities of children with disabilities to preserve their identities.

Article 27 of the CRPD outlines the appropriate steps to be taken by the state to ensure equality of opportunity and inclusive and accessible work for persons with disabilities. This includes the duty to provide reasonable accommodation to achieve de facto equality. It outlines that work is important for persons with disabilities for dignity and for economic and social meaning. Article 27 of the CRPD ensures the protection of the whole cycle of employment, including pre-employment, during employment, and post-employment engagement in an open labour market (public and private sectors), within necessary supports provided by duty bearers. Also, equally importantly, it covers self-employment purposes.

Noting various trajectories to fulfil the right to work, besides formal employment, this research acknowledges the role of the informal employment, including self-employment. It finds that persons with disabilities in Indonesia are more likely to be involved in informal employment than formal employment. Hence, all practical measures should ensure the opportunity of persons with disabilities to participate broadly in the employment arena in both the formal and informal employment settings. To this end, positive measures reinforce de facto equality in the employment framework by requiring duty bearers to respond effectively to the particular needs of each type of disabilities.

2. Summary of Findings

Although the Global South is receiving increased attention in disability studies, there is comparatively little literature on the development of disability employment rights in Indonesia, in particular relating to the equality framework. Past studies about Indonesia have predominantly identified disability employment in general, portray disability employment in a broader sense of particular situation of the unemployability of persons with disabilities in Indonesia. However, a key strength of this present study is the comprehensive analysis of the specific barriers in relation to the current use of substantive equality in the statutory disability frameworks and its implementation in practice. Accordingly, another key strength of this research is on emphasizing cross-sector involvements of state and non-state actors. This study therefore has the potential to make a significant contribution to the improvement of de facto equality on the right to work of persons with disabilities in Indonesia. The study has a number of significant implications for future practice, especially in serving as a guide for both central and local governments to develop disability equality mainstreaming for employment purposes.

The research investigates the development of substantive equality in the statutory employment and policy frameworks on disability, as well as empirical evidence on the practical operation of law and policy. As outlined in Chapter 1 of this thesis, there are three central research questions, as follows:

2.1. Relating Research Question No.1

To answer research question no. 1: *“How has the ratification of the CRPD by Indonesia impacted on the legal policy framework that advances the right to work of persons with disabilities?”* this thesis shows that the legal policy development on disability in Indonesia is largely improved. The ratification of the CRPD by the Government of Indonesia in 2011 escalated a new hope for human rights mainstreaming in the disability ground. It marked a

milestone of Indonesia officially adopting a human rights approach into the disability ground. The ratification of the CRPD has incorporated a foundation of the human rights approach into domestic laws and policies. After the ratification, cross-sector disability movements started to campaign for a new disability Act that took human rights into account. Five years after the ratification, after a massive endorsement by disability movements and stakeholders across institutions, the new Disability Act 2016 was enacted. This has become the major national framework that delivers the CRPD into the national context and that also provides sanctions for the violation of such rights. It outlines the rights of persons with disabilities and more consistent ways to protect such rights. To some extent, this newest Act has adopted positive measures in light of substantive equality, including in relation to the right to work.

2.2. Relating Research Question No.2

To answer research question no.2: *“To what extent does the legal policy framework adopted by Indonesia in the context of employment require substantive equality measures to fulfil the right to work of persons with disabilities?”* This research examines the statutory frameworks on the right to work of persons with disabilities. In the context of Indonesia, the recent disability policy framework, in particular the Disability Act 2016, has engaged with substantive equality to require particular ‘specific measures’ as well as ‘reasonable accommodation’ in its arrangements. Specific measures and reasonable accommodation are the two key aspects of positive measures as developed by this research, which encompass all necessary measures taken by state actors and non-state actors to achieve substantive equality.

With regard to specific measures in employment, a variety of approaches have been taken into account. The quota system is highlighted in the recent Disability Act 2016. This applies a 2% quota in the public sector, and 1% in the private sector. In accordance with the specific measures, the employment protection is outlined in a particular section within the headings: ‘Employment, Entrepreneurship, and Cooperative.’ This section firstly

highlights the 'state obligation' on both central government and local government to guarantee normative rights in non-discrimination measures covering the entire cycle of employment, including recruitment process, vacancy, placement, career sustainability and advancement. In addition, it outlines the opportunity for persons with disabilities to attend the vocational training conducted by the public sector or private sector. It also highlights the need for reasonable accommodation by employers (both public and private sectors) to enable persons with disabilities to exercise the right to work. Further, reasonable accommodation can include time flexibility in certain situations. The section also outlines sanctions for employers who breach the provision. The Disability Act 2016 also outlines incentives that might be applied to those employers who successfully employ persons with disabilities. With reference to administrative arrangements in the local governments, this Act flags the establishment of Disability Service Units (*Unit Layanan Disabilitas/ULD*) in each local government. This agency will pose an important role in the overall protection of the right to work of persons with disabilities in the role of local government to bridge persons with disability and employers, including in relation to potential disputes. The provisions of The Disability Act 2016 also enforce the protection of self-employment, which should cover open access to micro-credit initiatives, training, and other related marketing supports, including opening up access to government procurement of goods and services.

However, there is an issue with the law and policy framework with reference to its arrangements at the local level. Every local government, both provincial level or city/regency level, has authority to establish local laws (by law/*peraturan daerah* or '*perda*') to administer their local law and policy framework adjusted to their available resources and priorities. It is usually also related to the local budget allocation to each programmes. Basically, the national law assigns a minimum threshold of the rights. In fact, to deliver this on the ground in the form of local laws, each local government employs various approaches. Further, in the context of disability, to date, not all local governments have established local laws on disability in general, let alone on a specific theme such as the right to work of persons with disabilities.

2.3. Relating Research Question No.3

To answer question no.3: *“How effective has the employment policy framework adopted by Indonesia been in advancing inclusive employment for persons with disabilities?”* This thesis shown that in terms of legal recognition in the legislation, Indonesia has hugely progressed and has moved away from the medical or charitable model of disability into the human rights model of disability. Positive measures as the essential tools of substantive equality have largely been recognised in the legislation. It took much time and effort to reach this point to bring human rights and combat stigma and stereotypes. There are significant legal and political changes in supporting this.

Notwithstanding the progress on the law and policy framework as outlined above, implementing the law effectively on the ground needs a major effort, including paradigm shifting, changes in mental attitude, and institutional adjustment. Despite the recent human rights approach in the legal framework, in fact the medical model of disability is still applied in most of society, including by decision-makers. This situation inevitably impacts the implementation of the law, particularly the slow implementation of the rights. As consequence, the overall implementation appears ineffective in some ways.

To highlight the implementation of the right to work of persons with disabilities, this research observes a number of most important findings as follows:

2.3.1. Specific Measures

2.3.1.1. Outreach of Support Programmes

This research investigates the specific measures taken by both central and local government to enhance the opportunities of persons with disabilities in employment. The programmes conducted so far are dissemination of The Disability Act 2016, workshops, job canvassing, inclusive job expo, exhibitions (of the products of micro-businesses/SMEs, including those run

by persons with disabilities, persuasion measures (such as awards), and placement of disabled workers (including job matching). Another big piece of work is on providing vocational rehabilitation centres, which include conventional manner (training in the centre/dormitory-based) as well as broader outreach community-based rehabilitation which invites various social groups to be involved (inclusive settings). These approaches are effective in some way, but still there is room for improvement particularly in relation to the narrow scale and limited outreach of these programmes.

2.3.1.2. Quota

With reference to open employment, this thesis identified a number of issues in relation to the quota system in practice. There are several factors that have resulted in the unsuccessful implementation of the quota so far, including: *first*, lack of awareness of employers who are unwilling to recruit persons with disabilities for various reasons (mostly related to inaccessible workplaces and misunderstanding the provision of reasonable accommodation). *Second*, when employers are willing to recruit persons with disabilities, they usually adjust the types of disability to the nature of the work as well as the available workplace, which relates to the mandatory provision of reasonable accommodation. This implies a 'preference' to pick up certain types of disabilities while leave others. *Third*, where employers agree to recruit persons with disabilities, there are some cases where they cannot sufficiently reach persons with disabilities due to unmet requirements (mostly in relation to educational background and skills). As a consequence, the requirement for a certain higher education background (particularly in a specific subject) will also reduce the chance of recruiting persons with disabilities due to the inaccessibility of education to date. *Fourth*, law enforcement that has not been fully effective yet. *Fifth*, the opportunity across types of disability is not proportionally distributed, as the quota does not distinguish between these. The least opportunity commonly happens to psychosocial disability due to strong stigma and stereotypes on this type of disability. For example, on many occasions such as an inclusive job expo, there are job vacancies for persons with disabilities which usually mention the types of disability that can apply. This sometimes involves a traditional assumption by the employers about

'typical jobs' that are considered suitable for certain types of disability. However, the types of work to fit certain types of disability can be varied. It is broader than which have been understood as 'typical jobs' associated with certain types of disability. For example, blind persons are usually associated with certain occupations such as massage therapist, singer, or telephone operator. In fact, more jobs can be appropriate to blind persons, such as teacher, computer operator, musician, accountant, researcher, academic appointments, etc. To some extent, this misunderstanding indirectly limits the opportunities for persons with disabilities to enter employment in varied ways. To some extent, the issues mentioned above imply a supply and demand issue on disability in the labour force. On the one hand, following the quota system, wider opportunities have been opened for persons with disabilities, but on the other hand, those opportunities are often unavailable to many persons with disabilities due to lack of qualifications and also sometimes due to their types of disability.

2.3.1.3. Reasonable Accommodation

The result of this investigation shows that reasonable accommodation is also perceived differently by different parties. It is clear that some employers do make good efforts at reasonable accommodation, often only by serving quite simple measures. However, most employers are unaware that the individual 'tailoring' of reasonable accommodation is what is most important. The accommodation of persons with disabilities is very wide-ranging, depending on the type and degree of disability. In this account, providing reasonable accommodation can be expensive (within a limitation of 'disproportionate or undue burden'), or can be very simple steps to provide certain work supports for individual needs, including time flexibility for certain types of disability. As a consequence, the misunderstanding surrounding reasonable accommodation, where it is usually seen as 'costly,' might lead to reluctance by employers to recruit persons with disabilities. It is likely that these results were influenced by the lack of awareness on disability rights.

2.3.2. Structural Barriers

Despite the advancement of disability development which is currently focused on human rights model of disability, this research found a considerable lack of awareness on the rights-based approach, which leads to structural barriers being faced by persons with disabilities in relation to exercising their right to work. These structural barriers can be divided into two major classifications: internal and external barriers that both limit the enjoyment of the right to work.

Accordingly, this research shows a link between types and degree of disability and the potential barriers that may appear. It finds that different types and degrees of disability might impact differently in exercising the right to work. Therefore, positive measures should be adjusted to address these barriers. In addition, this thesis shows a gap of implementation across types of disability. One of the findings of this research is that one of the biggest challenge relates to psychosocial disability, due to strong stigma and stereotypes. The fact is that some psychosocial disabilities are 'unseen,' and that most persons with psychosocial disabilities who engage with employment prefer to hide their disability in order to avoid potential discrimination. This leads to a lack of reasonable accommodation for their individual needs. This research found that, so far, little attention has been paid to the allocation of employment opportunities proportionally to all types of disability.

2.3.3. Fractured Implementation

The issue of the rights of persons with disabilities inevitably entails cross-sectoral responsibilities of related institutions. The human rights approach emphasizes the state obligation to take steps in order to fulfil and to protect rights. To this end, the state/government institutions play an important role in ensuring the enjoyment of such rights. There are some effective efforts so far, however this research found that disharmony occurs due to the lack of cohesiveness and coordination among government institutions. Various things are tried in different institutions, but an overall coherent approach is

missing. This fractured approach seems impacted by political tension and authority, including the 'sectoral ego' of each authority, geography, and also the disparity of resources, in particular in the context of local government administration. In particular, there are clear variations in the local government implementation mostly due to the disparity of resources and priorities. Each local government has taken different approaches, thus leading to different results.

The government of Indonesia has partly implemented positive measures on the right to work of persons with disabilities. However, the national legal framework impacts differently at the national level and the local level. At the national level, there is a gap between ministries in terms of understanding and awareness on disability issues, as well as a lack of coordination at some points. Local governments possess considerable authority in their own territories, all of which administer their local law (by law), which is applied based on decentralization duties.

Another issue is the delay in issuing the derivative legislation, as mandated by the Disability Act 2016. Some specific provisions were arising in the Act that needs further arrangements to transform into the lower legislation of Government Regulation, Presidential Regulation, and Ministerial Regulation. It has been agreed by the government to issue eight Government Regulations, each of which will rule derivative measures on certain issue, covering: 1) Reasonable Accommodation in the Courts; 2) Reasonable Accommodation in Education; 3) Disability Service Unit and Social Welfare; 4) Social Habilitation and Rehabilitation; 5) Housing and Public Services, 6) Incentives and Concessions; 7) Planning, Organizing and Evaluating the Protection of Rights; and 8) The Fulfilment of the Rights of Persons with Disabilities. Besides, there are other derivative regulations as mandated: two presidential regulations (on the Awards and the National Disability Commission), and one ministerial regulation on Disability Identity Card. To date (updated 14 October 2019), from those lists of regulations it is recorded that two government regulations and one ministerial regulation have been enacted, it was Government Regulation Number 52 of 2019 concerning Administration of Social Welfare for Persons with Disabilities; Government

Regulation Number 70 of 2019 concerning Planning, Organizing, and Evaluating on the Respect, Protection, and the Fulfilment of the Rights of Persons with Disabilities; and Ministerial Social Affairs Regulation Number 21 of 2017 concerning Disability Identity Card. The delay of issuance of those derivatives regulations (due to the long process of discussion prior to enactment) leads to uncertainty in delivering these provisions into practice.

2.3.4. Non-state Actors Engagements

This research shows that disability movements have played pivotal role in bringing the human rights approach into the disability ground in Indonesia. This has been initiated by cross-sectoral stakeholders including Disabled Persons Organizations (DPOs), National Human Rights Institutions (Komnas HAM), Non-governmental Organizations (NGOs)/Civil Society Organizations (CSOs), the ILO, academics and other related stakeholders with shared concerns on disability. Together they encourage a broader involvement and participation of persons with disabilities in all aspects of life, including in decision-making processes. There is currently a growing acceptance among persons with disabilities on living independently in the society. The constant awareness-raising attempted by the disability movements seems to contribute largely to persons with disabilities (who are usually exposed to the DPO movements) no longer feeling that they have to be dependent to their families. Instead, with equality of opportunities, they would contribute more to society by participating in work to achieve their livelihoods in a decent way. To some extent, even on a much smaller scale, the disability movements do their best to fill the gap of implementation on the right to work of persons with disabilities to date, by actively disseminating as well as running various projects of empowerment of persons with disabilities in relation to open employment and self-employment.

2.3.5. Self-Employment Measures

Considering the internal and external barriers posed by persons with disabilities, this thesis found that the open labour market (formal employment) has not always opened its door widely for persons with

disabilities. In these circumstances, the presence of informal employment (including self-employment) is beneficial as an alternative way to engage with employment. In a typical developing country like Indonesia, the informal economy emerges as a promising power for the national economy, in the way in which it contributes to the Gross Domestic Product (GDP). It generates the informal employment that provides goods and services to the society. The data has shown the growing trend among persons with disabilities for working in informal rather than formal employment (open employment). It has greatly impacted on the choices made by persons with disabilities to engage with the self-employment setting.

In summary, there are some explanations found in this research for why persons with disabilities prefer to engage with self-employment, including: *First*, there are no educational requirements. As highlighted by this thesis, the formal education shortage is one of the issues when entering open employment. *Second*, the insecurity resulted by non-permanent work as has mostly been offered by the open employment to date. Contractual-based work (non-permanent work) is what commonly available particularly in the private sector, while opportunities in the public sector which mostly permanent job, are relatively limited. In this sense, it can be perceived by persons with disabilities as lacking sustainability, where work will be over when the contract ends, unless they can find another job afterwards, which is not easy. *Third*, Accessibility to reach the workplace. In most places, public services are not fully accessible for any type of disability. This difficulty indirectly limits persons with disabilities in relation to the right to work. *Fourth*, the cultural background also contributes to this. In most cultures in Indonesia, there is a kind of local wisdom of '*gotong royong*' (help each other) to develop a lively neighbourhood. It includes buying products and services from neighbours, which helps to set a particular cohesiveness and warmth in the society. This account has also encouraged people with disabilities to enter self-employment by running micro-business to serve the neighbourhood.

To this end, the recent Disability Act 2016 has recognized the protection of self-employment as well as open employment. In fact, as found by this research, the vast majority of persons with disabilities in Indonesia are

engaged with self-employment. In this setting, positive measures consist of bank loan schemes (access to micro-credit initiatives), training, and marketing supports, including the government procurement system of goods and services that promotes products and services produced by persons with disabilities. However, there are also shortcomings in self-employment, including skill and capital to develop products and services as well as to penetrate the market. This research acknowledges these shortages and finds a lack of supports in assisting self-employment in practice. To some extent, this is due to attitudinal barriers by government officers.

Self-employment supports taken by the DI Yogyakarta Provincial Government can model good practice to promote self-employment for persons with disabilities. This local government initiates a 'link and match' project between vocational training and the market. This research captures at least two benefits on this approach. *First*, it supports the alumni of vocational training to start micro-businesses within the skills they gain from the vocational training. *Second*, the effort of local government to distribute certain projects of goods and services to micro-businesses run by persons with disabilities, allows the business to grow. In this sense, this particular support draws a connection between vocational skill and disability empowerment to sustain self-employment.

3. Recommendations

This research provides important insights into disability employment measures and the current use of positive measures to achieve substantive equality in Indonesia. Overall, this thesis recommends a comprehensive awareness-raising on disability measures and institutional reforms, aligned with the goal of inclusive employment. These two recommendations require better law enforcement. This will enhance the fulfilment of the right to work of persons with disabilities in Indonesia. These recommendations are discussed in more detail below.

3.1. Disability Awareness Raising

3.1.1. Addressing the Lack of Education

Considering the lack of education has greatly impacted the right to work, it is important to advance the right to education of persons with disabilities. Inclusive education (in a formal setting) has to reach wider participation of persons with disabilities. The programmes of inclusive education which have been initiated in several pilot projects across Indonesia has to be broadened to reach more persons with disabilities. To this end, cooperation between related institutions is very significant. In the meantime, it is also essential to take alternative education measures into account. The existing informal education system, as has been initiated by the government (in particular nine years of basic education within a non-school based setting), is one of the alternatives for persons with disabilities to participate into the education. This kind of informal education, as a community-based setting, is much more flexible in terms of place and time. The participants have to take the national exam at the end of each term ('package A' is equal to 6 years elementary school; 'Package B' is equal to 3 years junior high school; and 'Package C' is equal to 3 years senior high school). Equally important, if they pass the exam, they will get a certificate of completion that can be formally accepted for any purposes (further education or employment). With specific reference to the involvement of persons with disabilities in rehabilitation and vocational training to develop their skills, it is crucial to increase the recognition of the certificate. To date, it is mostly used as only to complement the formal education certificate, which remains the major requirement of most job vacancies.

3.1.2. Partnership among Employers

This thesis highlights the importance of establishing employer partnerships to enhance the participation of persons with disabilities in employment. Some initiatives appear in this regard, such as IBDN (Indonesia Business Disability Networks), and other forms of partnership to share the experience of recruiting persons with disabilities among the employers. However, this

initiative is still very small-scale compared with the majority of employers, who have no idea of disability awareness. Notwithstanding this, it appears effective in some ways, as they can share the knowledge directly from their own experience. It can be facilitated with or without government assistance.

3.1.3. Broadening the Opportunity to All Types of Disability

The subject of disability awareness should also cover the various types of disability. So far, there is a big gap in the types of disability involved in the employment. Psychosocial disability has been shown to gain the least attention. Therefore, this thesis recommends giving proportional attention to involving all types of disability in employment. With regard to reasonable accommodation, it is important to disseminate awareness on the potential accommodations in relation to types and degrees of disability. There are ranged types and degrees of disability, each of which needs a particular accommodation to assist these specified individual needs. In this sense, greater understanding of accommodations for different types of disabilities can broaden participation across-disabilities.

3.1.4. Government Partnership with Employers and other Stakeholders, including Civil Society

As highlighted by this thesis, non-state actors play an important role in disability development in Indonesia. A sustainable and maintained partnership should be considered. The partnership can include reaching out for more employment opportunities as well as creatively disseminating information online and offline, including the use of social media and partnerships. This requires supporting roles by other stakeholders, including the private sector (companies) as well as civil society, such as Disabled Persons Organisations (DPOs) and other related institutions and organizations.

3.1.5. Law Enforcement (Disability Act)

The responsibility of implementing the law not only lies on the government but also on the private sector, society, persons with disabilities and their family members. The private sector (employers) should take responsibility for implementing the right to work of persons with disabilities. On the other side, the monitoring and controlling system by the government should be strengthened to safeguard the implementation. So far, there is a gap, where the controlling duties are not effectively implement the right to work of persons with disabilities, such as enforcing the quota provision and providing reasonable accommodation.

3.2. State Institutional Reforms

This thesis demonstrates that the current fragmented approach leads to a lack of cohesiveness and coordination between government institutions, both central and local. Addressing this, it is important to highlight the importance of institutional reform, including revitalizing certain roles and responsibilities.

3.2.1. Revitalizing Rehabilitation and Vocational Training Centres

Considering its important responsibility to develop skills and to bridge employment, this research recommends the comprehensive revitalization of the rehabilitation and vocational training centres (run by central and local governments). This should address: regular evaluation of the curriculum, targets for open employment and self-employment, as well as significant partnership with related stakeholders (including employers) to place the alumni of the centres into employment. In this open employment purpose, it is important to develop a job matching scheme that bridges the supply (persons with disabilities) and demand (job vacancies).

3.2.2. Community-Based Empowerment

Besides the essential role of vocational and training centres, as mentioned above, this research gives special attention to the initiative of community-based empowerment as an extension programme of vocational and training centres. However, so far, this programme has appeared stagnant. Considering the bigger outreach and potential for achieving an inclusive society offered by this particular programme, this research recommends developing it further and expanding it to be modelled as a direct practical inclusive employment measure.

3.2.3. Enhancing the Synergy of LBK and BLK.

LBK (*Loka Bina Karya*) is the training centres run by most Offices of Social Affairs in local government. It is the specific training centre exclusively for persons with disabilities, which attempts to accommodate certain types of disability. Hence, there are adjustments on the tools, buildings, curriculum, accessibility, etc. BLK (*Balai Latihan Kerja*), run by the Ministry of Manpower (central government), is spread out across Indonesia, in several provinces, cities/regencies, offers training for general job seekers.

This thesis recommends reviewing the target audience of the 'general' vocational training centre (BLK) to be inclusively open for persons with disabilities, with the necessary adjustments (including reasonable accommodation) so that persons with disabilities could have more opportunity to gain vocational skills. This would offer more opportunities for persons with disabilities to engage with certain vocational training centres, while addressing the limited outreach of LBK. Accordingly, it is important to develop a coordination between LBK and BLK in terms of information and resource sharing, to effectively shape the performance of both agencies.

3.3. Enforcing Self-employment Supports

Considering the importance of self-employment for persons with disabilities, this thesis recommends that both central and local governments conduct programmes to promote self-employment. As mandated by the recent Disability Act 2016, governments are obliged to assist self-employment measures, including access to capital, training, and marketing.

3.4. Dissemination

This thesis also pays attention to specific requirements of dissemination by the central and local governments. As mentioned previously, awareness is one of the biggest challenges to date. This thesis recommends developing forms of dissemination to related stakeholders. Indonesia is a big nation with a very large territory. Instead of visiting those regions one by one, it needs a more advanced approach to optimize the use of technology (including social media engagement).

Accordingly, beside these approaches as above, it is important to outline the establishment of these below institutions which are set under the current Disability Act 2016. The establishment of these two institutions awaits the derivative regulation of the Disability Act 2016 (see part 2.3.5. of 'fractured implementation' above).

3.5. Disability Commission

This research recommends to immediately establishing the 'Disability Commission' as outlined by The Disability Act 2016. This is important to guarantee the monitoring, evaluation and advocacy of the rights of persons with disabilities, including the right to work.

3.6. Disability (Employment) Service Unit (*Unit Layanan Disabilitas/ULD*)

Noting its significant role particularly in local governments, this research recommends immediately establishing the Disability (Employment) Service Unit in each local government. This will monitor the overall implementation of the right to work for persons with disabilities, as well as bridging persons with disabilities to employers.

4. Suggestions for Further Research

This thesis has assessed the use of positive measures to achieve substantive equality in the right to work of persons with disabilities in Indonesia. Despite these promising results, questions remain. To develop a comprehensive picture of the rights of persons with disabilities in Indonesia, further research needs to be undertaken, as follows:

- (1) Accessibility measures to support the right to work
- (2) Inclusive education measures
- (3) Informal education measures for persons with disabilities.
- (4) Self-employment support measures for persons with disabilities
- (5) Accommodation of all types of disability in the labour force
- (6) Employment measures for persons with psychosocial disabilities
- (7) Internal challenges of mentality and adaptability of persons with disabilities
- (8) Disability employment in the private sector
- (9) Disability employment in public sector
- (10) Enhancing an effective quota measure
- (11) Institutional reforms on disability employment
- (12) Community-based empowerment for the self-employment of persons with Disabilities
- (13) Reasonableness of reasonable accommodation in employment

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APPENDICES

1. Research Ethics Approval



Leas-Uachtarán
um Thaighde

Vice President
for Research

20 April 2017

Ref: **17-Mar-32**

Yeni Rosdianti
Centre for Disability Law & Policy
Institute for Lifecourse & Society
NUI Galway

Dear Yeni

Re: 'The role of Positive Measures on The Right to Work of Persons With Disabilities in Indonesia'

I write to you regarding the above proposal which was submitted for ethical review. Having reviewed your response to my letter, I am pleased to inform you that your proposal has been granted **APPROVAL**.

All NUI Galway Research Ethic Committee approval is given subject to the Principal Investigator submitting annual and final statements of compliance. The first statement is due on or before 20 April 2018.

See annual and final statement of compliance forms below. Section 7 of the REC's Standard Operating Procedures gives further details, and also outlines other instances where you are required to report to the REC.

Yours sincerely,

Allyn Fives
Chair, Research Ethics Committee

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2. Map of Field Research

