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Fulfillment of the Constitutional Rights of Persons with Disabilities to Employment Opportunities in the Banking Industry of State-Owned Enterprises

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Abstract: Employment is one of many important aspect in the area of human rights protection. Indonesia's citizens have the right to work and a decent livelihood, including people with disabilities. As one of the efforts to enhance opportunities to improve the welfare of persons with disabilities, Indonesian Law Number 8 of 2016 on Persons with Disabilities was formulated, which contains various arrangements regarding the rights of persons with disabilities and the State's obligations to fulfill those rights. This study aimed to provide an overview of these regulation's fulfillment, especially that related to equal employment opportunities for persons with disabilities, with a particular focus on the banking industry within SOEs. This study employs a non-doctrinal, descriptive-analytical approach to analyze Law No. 8/2016 on Persons with Disabilities, focusing on Article 53(1) regarding workforce representation in state-owned enterprises. Data is gathered through literature reviews and stakeholder interviews, using qualitative analysis to evaluate legal norms and provide a comprehensive understanding of the legal context. The finding revealed that the state plays a crucial regulatory role in protecting the rights of persons with disabilities, yet the implementation of Article 53(1) of Law No. 8/2016 has been inadequate, resulting in less than 0.5% representation in BUMN banks against the mandated 2%. To improve compliance, both the state and companies must prioritize recruitment and create inclusive opportunities for persons with disabilities.

Keyword: Disability, Human Rights, Employment Rights, State-Owned Enterprises, Banking Industry

INTRODUCTION

Every human being has human rights that are guaranteed by the State. These rights are not differentiated from one another because of physical differences, skin colour, race, ethnicity or religion or beliefs. Human rights, in its basic concept, can be understood as a set of rights that humans have because of their nature as human beings. These rights are not granted by institutions, society or based on a positive law. These rights are owned based on the dignity of an individual as a human being. Human rights are a set of rights owned by

human beings, which are inherent to them from birth and cannot be revoked or eliminated by anyone or for any reason.

Todung Mulya Lubis (1990) identified two main perspectives on human rights theory: natural law and cultural relativism. The view of the universality of human rights is widely embraced by Western European and American countries. This view is rooted in moral universalism, the belief in the existence of universal moral codes inherent in all human beings. Moral universalism posits the existence of cross-cultural and cross-historical moral truths that can be rationally identified. From this perspective, human rights assume that each individual is a social unit with inherent rights, which cannot be denied and are directed towards the fulfilment of personal interests (Smith et al., 2008). On the other hand, some argue that the concept of human rights is not fully universal, but interrelated and influenced by the situation and conditions surrounding a human group. Many developing countries adhere to this perception of human rights relativity.

The perception of the relativity of human rights stems from the cultural relativist theory, which stands in contrast to the natural rights theory. Cultural relativity theory posits that humans are products of their socio-cultural environment. Differences in cultural traditions among societies lead to variations in thinking and perceptions about human beings, including human rights (Donnelly, 2013). The concept of human rights can be shaped by factors like ideology, culture, history, politics, and religion. Ultimately, even individual countries experience differences of opinion when formulating their specific human rights frameworks. However, despite these cultural variations, human rights have become a standard of achievement and a universal language understood by every country. As a result, every state has a humanitarian obligation to uphold the concept of human rights and all its related components.

Human rights do not necessarily apply absolutely or unlimitedly in practice. It is not enough to be understood in the context of vertical relationships between individuals and power (in this context the state), but human rights must also be able to accommodate horizontal relationships between individuals, groups or communities, even between one group of people in a country with groups of people in other countries. Prof. Miriam Budiardjo in her book interprets human rights as the rights possessed by human beings that have been acquired and brought along with their birth and presence in the life of the community. Human rights are inherent in every human being without distinction of nation, race, religion, class, gender, therefore it is basic and universal (Budiardjo, 1972). The basic concept of all human rights is that all people should have the opportunity to develop in accordance with their talents and ideals.

Conceptually, legal thinking related to human rights cannot be separated from the historical constellation. In history, every crisis concerning human rights is almost always followed by the emergence of a social revolution. After that, documents regulating human rights such as charters, documents, declarations, treaties were born as a response to the human rights crisis. The emergence of these documents can be said to be a consequence of chaos, in the form of human rights violations, political conflicts, social revolutions and the like (Alkostar, 2010). The legitimacy of human rights protection in Indonesia is explicitly regulated in various laws and regulations. Although it has gone through a long history and process, the regulation and protection of human rights has led to the recognition of human rights contained in the constitution and its derivative laws and regulations.

The protection and fulfilment of labour-related rights for all Indonesians is an important subject matter, so it needs to be further elaborated in various derivative laws and regulations from the constitution. The state drafted various other derivative laws and regulations such as Law No. 9/1999 on Human Rights, Law No. 13/2003 on Labour jo. Law No. 6/2023 on the Stipulation of Government Regulation in Lieu of Law No. 2/2022 on Job Creation into Law, Law No. 8/2016 on Persons with Disabilities and other laws and regulations. The state is

obliged to play an active role in safeguarding (to protect), fulfilling (to fulfil) and respecting (to respect) the human rights of each of its citizens. In terms of the fulfilment of the right to employment, everyone is entitled to recognition, guarantees, protection and fair legal treatment and legal certainty, and is entitled to the protection of human rights and basic human freedoms without discrimination, including persons with disabilities.

There are quite a number of terms used as a designation for the existence and condition of people who have differences or people with disabilities, including people with disabilities, difabels, people who are abnormal, extraordinary children, invalids and so on. The term difable is an acronym of the word people with different abilities, which is defined as people with or having different abilities. Meanwhile, the word disability, which is a translation of the word disability or in Indonesian can be interpreted as incapacity. The term disability, whether we like it or not, is more often used in the medical context because there are no valid arguments to replace the term disability (Nugroho & Utami, 2004). From a medical perspective, people with disabilities can be classified into three types of disorders: physical, mental and social behavioural disorders (Efendi, 2006).

The term disability summarises a number/variety of conditions of functional limitations in one individual. The definition of persons with disabilities as stipulated in Article 1 paragraph (1) of Law No. 8/2016 on Persons with Disabilities is every person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights. However, the actual use of the phrase Disability does not first appear in Law No. 8/2016 on Persons with Disabilities but in Law No. 9/2011 on the Ratification of the Convention on the Rights of Persons with Disabilities where the Convention on the Rights for Person with Disabilities uses the term person with disabilities to refer to subjects with disabilities.

In relation to people with disabilities, we all agree that even around us, not all human beings are born with perfect physical and spiritual conditions. Around 16% of the total population in the world today or around 1.3 billion people are people with disabilities (WHO, 2023). As many as 82% of people with disabilities are in developing countries and live below the poverty line. The existence of people with disabilities in a society can create a situation that can potentially lead to discrimination from society. From the ideology of normality, it is not uncommon to see that people with disabilities are almost always temperamental or irritable, relatively more difficult to communicate and have difficulty getting along. On the other hand, people with disabilities often feel inferior as a result of the realisation of the differences in their condition (Nugroho & Utami, 2004). Towards non-disabled people, people with disabilities often assume that society will refuse to accept the shortcomings of people with disabilities, leading to a fear of harassment/discriminatory treatment. It is this gap that causes unnatural social interactions between the community and people with disabilities.

Persons with disabilities, despite having limitations or differences in abilities, do not necessarily lose their constitutional rights to obtain decent work and maintain their lives. This right is further emphasized by Article 53 paragraph (1) of Law No. 8/2016 on Persons with Disabilities, which mandates that the Government, Regional Governments, State-Owned Enterprises (BUMN), and Regional-Owned Enterprises (BUMD) must employ at least 2% of persons with disabilities. However, despite legal requirements, there remains a significant gap between the mandated quota and the actual employment rate of persons with disabilities in the BUMN banking industry. This research will describe the conditions of equal employment opportunities for persons with disabilities in the state-owned banking industry. In addition, this research will discuss the challenges and efforts that can be made in fulfilling the constitutional rights of persons with disabilities to equal employment in the BUMN banking industry.

METHOD

This study employs a non-doctrinal research approach, examining evolving laws as they are practiced in society (Muhaimin, 2020). It is characterized as descriptive-analytical research aimed at gathering factual information about policy implementation for further evaluation (Soekanto, 2006). The research focuses on the implementation of Law No. 8/2016 regarding Persons with Disabilities, specifically Article 53 paragraph (1), which regulates the minimum ratio of representation of persons with disabilities as workers in state-owned enterprises.

Data is collected through primary and secondary sources using literature reviews and interviews with relevant stakeholders. Qualitative data analysis techniques are utilized to assess the quality of legal norms, relying on expert opinions, doctrines, and theories (Mezak, 2006). This approach emphasizes the quality of findings over quantitative metrics, providing a comprehensive description of the legal state and phenomena in the context studied.

RESULTS AND DISCUSSION

The Role of the State as Regulator

In general, a rule of law is a state in which the activities of the people and the government are regulated by law to avoid arbitrary government action and the behaviour of free citizens. The rule of law is a response to the unlimited authority of the ruler (Wignjosobroto, 2002). According to Aristotle, a state that upholds the rule of law is one that ensures its citizens are treated fairly under the law (Aristoteles, 1997). Aristotle believed that the only true law is one that can represent justice in the interactions between the citizens of a state. As a result, he believed that the people who lead a state are not real people, but merely thoughts enshrined in law, with the ruler serving only as a tool to maintain order and balance (Kusnardi, 2000).

One of the important characteristics of the rule of law is the guarantee and protection of human rights. Quoted from his book, according to Todung Mulya Lubis, the State of Indonesia as a State of Law or *Rechtstaat* can be described as the most ideal shelter for the enforcement of human rights that are guaranteed independence (Lubis, 2002). The State of Law according to the 1945 Constitution (UD NRI 1945) is a state in the broadest sense of the welfare of the people and is based on social justice based on Pancasila. Every person has obligations towards society because only there can be obtained freedom and perfect progress of the individual (Simorangkir, 1983). The preamble of the 1945 Constitution implicitly guarantees the existence of human rights. Various articles in the Indonesian constitution explicitly guarantee the protection of human rights. The human rights regulated in the state constitution are then referred to as constitutional rights.

The norms contained in the constitution, in relation to state power, the rights of citizens are regulated in the constitution as protection from acts that may be committed by state administrators. Jimly Asshidiqie formulated 12 (twelve) main principles of the rule of law based on the characteristics of the concept of the modern European Continental State of Law (*Rechtsstaat*) and the concept of the Anglo-American State of Law (The Rule of Law). (AshShiddiqie, 2009):

- a. Rule of Law;
- b. Equality in Law
- c. Principle of Legality;
- d. Limitation of Power;
- e. Independent Organs;
- f. Free and Impartial Judiciary
- g. State Administrative Court;
- h. Constitutional Court;
- i. Human rights protection;

- j. Democracy;
- k. Serves as a means of realizing the goals of the state;
- l. Transparency and Social Control.

The Basic Law or Constitution of a State reflects a significant relationship between the State and the people. The presence of a constitution is a *conditio sine qua non* for a State. The Constitution not only provides a description and explanation of the working mechanism of State institutions but also the relationship and position of the rights and obligations of the State. The constitution is a social contract between the people and the ruler (El-Muhtaj, 2017). Kenneth Clinton Wheare, as cited by Indra Muchlis Adnan in his book, states that the constitution is an overall picture of the government or constitutional system in a country in the form of a set of regulations that form and regulate the implementation of a country's government system (Adnan, 2017).

The state is obliged to guarantee the respect, fulfillment and protection of human rights for all its citizens. The rule of law guarantees the existence of an independent or independent judiciary, legal process and judicial review (Arinanto, 2001). Philipus M. Hadjon in Majda El- Muhtaj's book mentions that the concept of the State of Law (*rechtsstaat*) was born from a struggle against absolutism so that its nature tends to be revolutionary (Hadjon, 1993). On the other hand, the concept of rule of law develops evolutionarily. Azhary in his book states that according to Julius Stahl, a State of Law has 4 (four) main elements, namely (Azhary, 1992):

- a. Recognition and protection of human rights;
- b. Separation of powers (*Trias politica* theory);
- c. Government based on the law;
- d. The existence of a state administrative court.

Human rights have now become the core material of the texts of the constitutions of modern countries. Similarly, the rights and obligations of citizens are the subject matter that is considered necessary to be regulated in every basic law and in all modern state constitutional understandings in the world (Asshiddiqie, 2007). Historically, efforts to solve humanity's problems have been pioneered. Almost all the thoughts that have been and are being developed strengthen the stance on the importance of the image of a human being, namely his independence and freedom. In addition, because human rights are an intrinsic part of human nature, the history of the development of the concept and the struggle to uphold it is intertwined with the history of human civilisation itself (Hutabarat et al., 2022).

With the inclusion of human rights points in the 1945 Constitution, these rights then become the constitutional rights of every citizen. However, not all constitutional rights are human rights because there are also citizen's rights that are not categorized as human rights. As a country that protects the constitutional rights of its citizens; especially in relation to human rights, Indonesia has dared to include the main points regarding the protection of the human rights of its citizens. In the constitution, human rights are separately regulated in Chapter X Article 28. Furthermore, these points are further emphasized in Law No. 39/1999 on Human Rights.

The state fulfills its role as a regulator with the birth of various laws and regulations aimed at providing protection for vulnerable groups, such as Law No. 39/1999 on Human Rights, Law No. 19/2011 on the Ratification of the Convention on the Rights of Persons with Disabilities and Law No. 8/2016 on Persons with Disabilities, Government Regulation No. 70/2019 on Planning, Implementation and Evaluation of Respect, Protection and Fulfillment of the Rights of Persons with Disabilities, Law No. 13/2003 on Manpower as amended by Law No. 6/2023 on Stipulating Government Regulations in Lieu of Law No. 2/2022 on Job Creation into Law.

Law No. 8/2016 on Persons with Disabilities brings great hope to this nation, especially for persons with disabilities. The regulation of this law includes the fulfillment of equal opportunities for persons with disabilities in all aspects of State administration, including respect, protection, and fulfillment of the rights of persons with disabilities, including the provision of accessibility and proper accommodation. The implementation of the rights of persons with disabilities aims to create a better quality, fairer, physically and mentally prosperous and dignified standard of living for persons with disabilities. In addition, the implementation and fulfillment of the rights of persons with disabilities in this legislation also aims to protect persons with disabilities from neglect and abuse, harassment and all discriminatory actions and human rights violations.

Conditions of Equal Employment Opportunities for Persons with Disabilities in State-Owned Banks

Indonesia is one of the countries that has ratified the Convention on the Rights of Persons With Disabilities through Law No. 19/2011 on the Ratification of the Convention on the Rights of Persons With Disabilities. With the ratification of these provisions, it becomes an obligation for Indonesia to implement all the provisions set out in the convention. As stated in Article 27 paragraph (1) of the Convention on the Rights of Persons with Disabilities, the State Parties recognize the rights of persons with disabilities to work on an equal basis with others, including the right to the opportunity to finance a living with work that is freely chosen or accepted in the labor market and a work environment that is open, inclusive and accessible to persons with disabilities. However, in practice, the arrangements contained in each of these laws and regulations have not been fulfilled properly, one of which is Article 53 paragraph (1) of Law No. 8 of 2016 concerning Persons with Disabilities which mandates a minimum representation of persons with disabilities of 2% (two percent) of the total number of employees.

Persons with disabilities should receive treatment that prioritizes the principle of inclusiveness, which is intended as an effort to protect from vulnerability to various acts of discrimination and especially protection from various human rights violations. Citizens with disabilities need to be given the same opportunity to do activities as humans in general. There is no circumstance that can deny or reduce the rights of citizens with disabilities with other citizens. Constitutional rights such as the right to live and defend his life, the right to get a decent job, the right to get equal opportunities, the right to get education and so on remain inherent and differences in the ability of a person with a disability do not necessarily eliminate these rights.

In the 2020 Integrated Social Welfare Data statistics as contained in the Operational Guidelines for Social Rehabilitation Assistance for Persons with Disabilities, more than 1.2 million people in Indonesia have disabilities in Indonesia. The types of disabilities experienced vary, ranging from physical disabilities or mental disabilities. Almost half of this figure is dominated by the productive age group, namely the range of 22 - 60 years as illustrated in the table below (Ministry of Social Affairs, 2020).

Table 1. Data on Disability in Indonesia in 2020

No	Variety of Disability	Total
1	Physical Disability	331.564
2	Intellectual Disability	219.468
3	Visual Disability	169.758
4	Physical and Metal Disability	139.820
5	Deaf Disability	130.262
6	Mental Disability	85.048
7	Speech Disability	81.133
8	Deaf and Speech Disability	52.762

No	Variety of Disability	Total
9	Visual and Physical Disability	31.025
10	Deaf, Speech and Physical Disability	24.427
11	Deaf, Speech, Visual and Physical Disability	18.583
12	Visual, Deaf and Speech Disability	12.913
Total		1.296.781

Regarding the absorption of available Workers with Disabilities (*Tenaga Kerja Penyandang Disabilitas* (TKPD)) into the labour market, it can be described through the Open Unemployment Rate (OUR) indicator. Based on data from the National Labour Force Survey (Sakernas) as quoted in the 2020 Welfare Indicators publication by the Central Statistics Agency, the OUR of persons with disabilities in Indonesia from year to year is still below the non-disabled workforce due to the lack of persons with disabilities entering the workforce (Budiati, 2020). From 2016 to 2019, there was a decrease in the Open Unemployment Rate (OUR) of persons with disabilities in Indonesia. From this data, it can be said that people with disabilities who are included in the workforce can be absorbed by the job market.

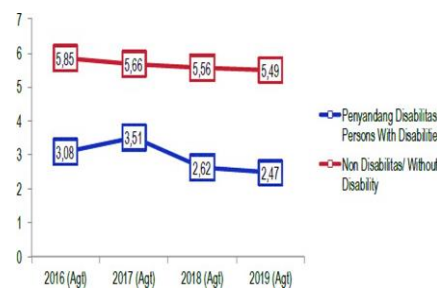
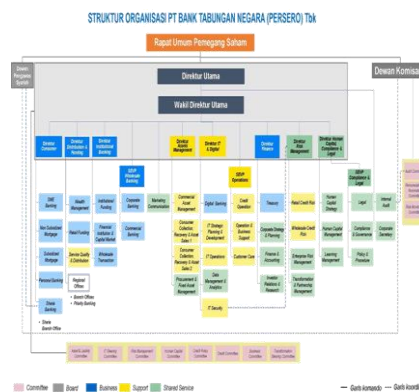


Figure 1. Open Unemployment Rate (OUR) for Population Aged > 15 Years

Bank BRI, BNI, BTN and Mandiri, which are the references in this research, are all companies engaged in the financial services industry with the status of BUMN. The four state-owned banks should be subject to and comply with the provisions of Article 53 paragraph (1) of Law No. 8 of 2016 concerning Persons with Disabilities. The banking industry can be said to be one of the industries that has various types of work. The various types of work in the banking industry allow increasing opportunities for people with disabilities to have a career in the industry. Taking the organisational structure of Bank BTN as an example, as reported on the company's official website, Bank BTN has 42 Divisions, each of which has different job responsibilities outside of Branch Offices and Regional Offices spread throughout Indonesia (BTN, 2023).



Source: (BTN, 2023)

Figure 2. Organizational Structure of Bank BTN

In a field study conducted by the author at Bank BTN, several obstacles were found in efforts to implement TKPD recruitment so that Bank BTN has not been able to meet the minimum limit of 2% (two percent) of TKPD. The condition is not much different from Bank BRI, which until now has not succeeded in fulfilling the mandate of Article 53 paragraph (1) of Law No. 8/2016 concerning Persons with Disabilities. From the Company side, Bank BRI, BNI, BTN and Mandiri as the Employer since approximately the last 2 (two) years have specifically focused on conducting joint recruitment specifically for TKPD. The four state-owned banks together with other state-owned companies are members of a forum called the Indonesian Human Capital Forum (FHCI) which was initiated by the Ministry of BUMN. FHCI itself departs from an idea to get solutions from media sharing and best practices carried out by various BUMNs in managing human resources in various BUMN companies. On FHCI's website, one of their flagship programs is the implementation of the Joint Recruitment of SOEs with Disabilities, which is intended specifically for colleagues with disabilities of working age (FHCI, 2023).

On June 13, 2023, the author conducted in-depth interviews with Mr. N as a representative of the Human Capital Division responsible for employee recruitment at Bank BTN and Mr. A as a representative of the Human Capital Strategic Division responsible for designing HR management policies at Bank BTN on June 21, 2023. Based on information from Mr. A, in 2005 Bank BTN already employed TKPD who are currently still active employees at Bank BTN. Bank BTN again intensely conducted special recruitment for TKPD in 2021 and 2022 together with FHCI. The total number of employees at Bank BTN currently reaches 11,850 employees and the number of TKPD accepted at Bank BTN until the last recruitment still does not meet the 2% quota of the total number of employees as mandated by Article 53 paragraph (1) of Law No. 8/2016 concerning Persons with Disabilities. Bank BTN is committed to recruiting TKPD again in 2023 through joint recruitment.

Based on an interview with Mr. N, the recruitment method for TKPD candidates implemented by Bank BTN is relatively no different from recruitment for non-disabled employee candidates. Prospective employees will undergo an initial screening to determine the type of disability and record the domicile of the TKPD candidate so that they can be placed in a location that is relatively close to home. Job positions that can be filled by TKPD at Bank BTN will be reviewed based on the type of disability of each TKPD candidate, but it is ensured that the positions filled are not positions that require high mobility and burden TKPD. The categories of disabilities that can be accepted at Bank BTN are temporarily limited to people with mild disabilities and speech impairments. However, Bank BTN does not rule out the possibility of accepting TKPD with other types of disabilities in future recruitments. This is done at the same time by preparing proper accommodation and accessible facilities for TKPD. The disability categories currently used by Bank BTN in determining job titles are as follows:

Table 2. Table 2. Explanation of Disability Categories Used at Bank BTN

Type	Name	Type of Disability	Definition
B	<i>Tunarungu</i> : Hearing Impairment	physical disabilities	unable to hear and/or deficient in hearing; deafness
C	<i>Tunawicara</i> : Speech Impairment	physical disabilities	unable to speak; mute
D	<i>Tunadaksa</i> : Physical Disability	physical disabilities	bodily defect
E1	<i>Tunalaras</i> : Mental Disability	physical disabilities	voice and tone defects

Bank BTN is also committed to providing equal career development opportunities for both TKPD and non-disabled employees. In a career at Bank BTN, all TKPD employees, as long as they have good performance in their work, have the opportunity to advance their careers and be given grading adjustments and salary increases along with benefits according to their performance. In addition, in the event that an employee at Bank BTN during his/her

working period experiences a condition that results in temporary or permanent disability, the Company does not necessarily terminate the employment relationship with the employee. The Company can also provide job adjustment options for these employees if deemed necessary.

In 2022, Bank BRI received the National Award in Respect, Protection and Fulfillment of Employment Rights of Persons with Disabilities from the Ministry of Manpower. As one of the companies that is inclusive of TKPD, one step ahead of other HIMBARA colleagues, Bank BRI has made a different breakthrough in an effort to fulfill the mandate of Law No. 8/2016 concerning Persons with Disabilities. However, based on an interview conducted with Mr. R as a representative of the Human Capital division on June 23, 2023, it is recognized that the difficulty of meeting the minimum number of TKPD representation is also experienced by Bank BRI. Until the end of 2022, if seen from Bank BRI's annual report, the total number of employees in that year reached 74,735 (seventy-four thousand seven hundred thirty-five) employees. The number of TKPD who work at Bank BRI is approximately 60 employees (BRI, 2022).

Slightly different from Bank BTN, outside the TKPD recruitment process that is routinely carried out, Bank BRI took the initiative to organize a Job Training and Apprenticeship Program for people with disabilities which is carried out without charging any fees. In the past period, Bank BRI opened a job training and apprenticeship program for 100 (one hundred) people with disabilities spread across Jabodetabek, Denpasar, Yogyakarta and Bandung. The Job Training and Apprenticeship Program aimed at increasing the capabilities of persons with disabilities organized by Bank BRI not only focuses on providing training related to office administration that can be used by persons with disabilities if in the future they are interested in a career in the formal sector, but also entrepreneurship. Based on findings in the field, quite a number of colleagues with disabilities are more interested in working in the informal sector or independent entrepreneurship. The hope is that with the Job Training and Apprenticeship Program, people with disabilities can have practical skills that can be applied to office management and entrepreneurial management techniques.

The method implemented in the Job Training and Apprenticeship Program by Bank BRI for colleagues with disabilities who choose the office administration program starts from debriefing and training for the initial 2 (two) weeks. In its implementation, not a few of the participants brought their own tools, although the committee itself had actually provided tools that would be needed during the program. The implementation of the program also involved several organizations and foundations that focus on fulfilling the rights of persons with disabilities. According to Mr. R, this is very necessary, given the Company's limitations in reaching out to people with disabilities.

Bank Mandiri has also made various efforts to fulfill the mandate of Article 53 paragraph (1) of Law No. 8/2016 concerning Persons with Disabilities. Since 2016 Bank Mandiri itself has been recognized as one of the state-owned banks that is friendly to people with disabilities. In 2016, Bank Mandiri recorded more than 40 TKPD with the scope of work as contact center and back office agents. During the recruitment process of workers with disabilities, Bank Mandiri first ensures that TKPD is equipped with the skills and competencies that are in accordance with the scope of work. At the initial stage, the disabled workforce will be tandem before then independently carrying out their respective duties and jobs. Bank Mandiri is committed to providing the widest possible space for all employees, including workers with disabilities, to continue to grow.

In the Sustainability Report and Annual Report 2022, the total employees at Bank Mandiri at the end of 2022 reached 38,176 employees with a total workforce of 31 people with disabilities divided into 2 categories, namely permanent workers and craft apprentices (Bank Mandiri, 2023). In the TKPD recruitment process, not only does it join the joint recruitment for persons with disabilities organized by FHCI, but Bank Mandiri also conducts independent recruitment. The recruitment of workers with disabilities at Bank Mandiri in

2022 was 17 people, an increase of 240% where in 2021 Bank Mandiri only recruited 4 workers with disabilities. The recruitment of workers with disabilities at Bank Mandiri is intended to fill boxes or staff positions at the Contact Center, Mandiri University and IT.

In line with what has been implemented by Bank BRI, in 2022 Bank Mandiri again showed its commitment in supporting the empowerment of people with disabilities by organizing the Call Centre Training Program and Entrepreneurship Seminar for the Realization of Inclusive Economy. The program was organized by Bank Mandiri, in collaboration with the Menembus Batas foundation and the Indonesian National Commission on Disability. The program was held in Jakarta, Yogyakarta, Bandung, Solo, Surabaya and Bali with more than 300 participants with disabilities.

The implementation of the program is a follow-up effort to the previous program held by Bank Mandiri as a form of support to the Government to create an inclusive and supportive ecosystem for people with disabilities. In the Bank BNI Annual Report 2022, it was recorded that the number of employees of the company reached 27,170 employees (Bank BNI, 2023). In the same year, the number of TKPD working at Bank BNI was 33 employees or approximately 0.12% of the total employees working at Bank BNI. No different from the previous three state-owned banks, Bank BNI has also implemented the Respectful Workplace Policy. Bank BNI also applies the principle of equality for workers with disabilities to be able to occupy positions and jobs that are in accordance with their respective competencies and skills. The current distribution of TKPD at Bank BNI occupies positions such as Payroll & Benefit Assistant at the Human Capital Division, Administrative Assistant both in the Division and at the Branch Office.

Based on the explanation above, it can be seen that the four state-owned banking companies have not been able to implement the mandate of Article 53 paragraph (1) of Law No. 8/2016 concerning Persons with Disabilities. Mr. Hari Kurniawan as Commissioner of Komnas HAM hopes that in the future all companies with the status of State-Owned Enterprises (BUMN) can increase the need for prospective workers with disabilities every year. According to him, the weak supervision of the Ministry of Manpower related to the implementation of Law No. 8/2016 on Persons with Disabilities, especially those related to employment aspects, is one of the factors that affect the non-fulfillment of the minimum number of workers with disabilities in a company, especially in BUMN in accordance with the mandate of Article 53 paragraph (1).

Challenges and Efforts to Fulfill the Right to Equal Employment Opportunities for Persons with Disabilities

As a form of the Government's commitment to creating an inclusive country, especially in relation to employment aspects, Article 53 paragraph (1) of Law No. 8/2016 concerning Persons with Disabilities has mandated that at least 2% of the total number of employees in Government offices, both regional and central, BUMN and BUMD are TKPD. However, in practice, until now this has not been fulfilled. In the scope of the BUMN banking industry, the 4 state-owned banks have not been able to accommodate the minimum number of representation of workers with disabilities in their respective companies as mandated by legislation.

Based on the research that has been conducted, the banking industry, especially BUMN, has made various efforts that are considered capable of supporting the implementation of Law No. 8/2016 concerning Persons with Disabilities. However, it needs to be understood that in the banking industry, there are still job families that are required to have specific competencies, and there are still job boxes that require employees to have mobility with demands for fast job completion. A clear and comprehensive job classification is needed in all aspects related to the banking industry to then determine which jobs can be carried out by workers with disabilities.

Based on the results of interviews and data searches that have been conducted with resource persons from Bank BTN and Bank BRI and looking for data sources related to workers with disabilities at Bank Mandiri and Bank BNI, there are still many challenges that may be faced by the Company as an Employer in the implementation of recruitment of persons with disabilities, especially in the banking sector, among others, as follows:

a. Readiness of Office Facilities and Infrastructure

Until now, not all office buildings of state-owned banks have been equipped with facilities and infrastructure that are friendly to people with disabilities, especially in the Company's office buildings with rental status. Improvements are still being made to ensure that all offices, both Head Offices, Regional Offices and Branch Offices of all HIMBARA Banks are ready to ensure the accessibility of workers with disabilities and support the effectiveness of disability work in the banking sector, especially in Banks with BUMN status. This factor is also the reason why until now the banking industry is only able to recruit TKPD with mild to moderate levels of disability.

b. Incompatibility of TKPD Candidate Competencies

Joint recruitment efforts for applicants with disabilities organized by FHCI sometimes encounter challenges. Many applicants with disabilities are eliminated at the beginning of the recruitment process due to a mismatch between their qualifications and the job requirements, particularly regarding age and education. In other cases, even when qualified, applicants with disabilities may be screened out due to a maximum age limit set by the company.

Mr. Fajri Nursyamsi, an academic and disability rights advocate, highlights this issue through his experience. He mentions that in 2018, Bank Mandiri opened job vacancies specifically for applicants with disabilities, demonstrating the company's commitment to providing employment opportunities. However, the initiative had limited success in attracting qualified applicants with disabilities.

This highlights a key challenge. Data from the 2020 National Socio-Economic Survey reveals a significant gap between the educational qualifications typically sought by employers and the educational attainment of most persons with disabilities. The survey shows that only 5.12% of people with disabilities complete tertiary education, while many job vacancies require higher education.

c. Lack of Access to Data on Persons with Disabilities

Companies as employers find it difficult to get access to a complete database related to the demographics of persons with disabilities. It is hoped that with the joint recruitment for disabilities that has been routinely running, data support for persons with disabilities, especially those who have entered the working age category from the Ministry of Social Affairs, can be provided so that the Company can get a complete picture of the demographics of persons with disabilities (Kementerian Sosial RI, 2020). From the data obtained, the Company can develop a plan for the fulfillment of workers with disabilities, in accordance with existing competencies and conditions.

The efforts that can be carried out by the State as the holder of the obligation to fulfill human rights for its people include:

- a) Develop a blueprint related to the implementation target of the fulfillment of the rights of persons with disabilities in accordance with existing laws and regulations, which includes, among others, determining the target of fulfilling the minimum representation of persons with disabilities of 2% in companies, especially SOEs. With the target set, the Government can then regulate what programs can be implemented gradually or progressively, adjusted to the existing timeline.
- b) Organizing apprenticeship programs aimed at persons with disabilities who have entered working age. The program initiated by the Government can be implemented in various agencies, especially in state-owned companies. In addition to equipping prospective

workers with disabilities to face the world of work, the existence of the program can indirectly be a reminder for companies to immediately make the necessary adjustments to accommodate TKPD.

- c) Optimizing the duties and functions of the Employment Disability Service Unit (ULD) at every level of government is crucial. ULDs play a vital role as a source of information and a liaison between persons with disabilities and employers (both government and private). They act as an extension of efforts to respect, protect, and fulfill the rights of persons with disabilities in the workplace. This obligation is further emphasized by Minister of Home Affairs Regulation Number 40 of 2020 concerning Guidelines for the Preparation of the 2021 Regional Government Work Plan. The appendix to this regulation specifies that providing disability services in the field of employment is a key concern for local governments.
- d) Integration of Database of Persons with Disabilities. The availability of integrated and easily accessible data related to the distribution of persons with disabilities who are at least able to indicate age, type of disability experienced, latest level of education, competencies possessed and domicile, can assist the Company in preparing recruitment plans for persons with disabilities.
- e) Develop a program that can monitor the interests and talents of persons with disabilities from an early age that can be embedded in the scope of education for persons with disabilities. Furthermore, the Government can directly channel potential disabled colleagues to companies that need them, in accordance with their respective competencies.
- f) Organizing regular and periodic job fairs specifically for prospective workers with disabilities can be a highly effective strategy. The inclusive job fair held for the first time in Central Java by the ILO and the Central Java Provincial Government in December 2022 serves as a successful example for other local governments. This approach not only offered employment opportunities for persons with disabilities but also provided valuable information for company human capital representatives regarding the recruitment process for this population. Job fairs are a valuable tool for local governments to fulfill their role in connecting prospective employees with disabilities with companies seeking qualified workers.
- g) Encourage the implementation of award or reward programs, especially for BUMN Companies as Employers.
- h) Through the Ministry of SOEs, formulate and issue Regulations and/or Circular Letters of the Minister of SOEs related to Standardization of Facilities and Accessibility in Office Buildings of State-Owned Enterprise Companies.
- i) Implementation of periodic evaluations involving business actors to see what achievements and obstacles occur in the field during the TKPD recruitment process..

CONCLUSION

The state acts as a regulator through the establishment of various laws and regulations aimed at protecting human rights for vulnerable groups, especially persons with disabilities. Article 53, paragraph (1) of Law No. 8/2016 on Persons with Disabilities, which mandates the minimum representation of persons with disabilities in companies, exemplifies the state's role in ensuring the constitutional rights of persons with disabilities to equal employment opportunities. However, in practice, the implementation of these regulations has not been optimal, as evidenced by the high unemployment rate among persons with disabilities.

Currently, equal employment opportunities for persons with disabilities in the BUMN banking industry are not being implemented in accordance with the mandate of Article 53, paragraph (1) of Law No. 8/2016, which requires BUMN to employ at least 2% of persons with disabilities from the total number of employees. The percentage of workers with

disabilities in each HIMBARA Bank is below 0.5%. This low representation is due to various external and internal factors. Additionally, all HIMBARA Banks are still in the process of addressing issues related to accessibility and proper accommodation for prospective TKPD (Workers with Disabilities).

As a regulator, the state should ensure the implementation of the mandates of laws and regulations, particularly Article 53, paragraph (1) of Law No. 8/2016, which pertains to the minimum representation of workers with disabilities at 2% in government agencies, regional governments, state-owned enterprises (BUMN), and regional-owned enterprises (BUMD). This can be achieved by setting targets for fulfilling the law's mandates, which should be outlined in a government blueprint that includes indicators for fulfilling the rights of persons with disabilities. Such a framework will enable a more focused and measurable approach to implementing these rights.

Companies, as employers, must commit to fulfilling the minimum representation of workers with disabilities in accordance with Article 53 of Law No. 8/2016, particularly paragraph (1). This can be achieved by prioritizing programs that support increased recruitment of workers with disabilities each year until the minimum requirements for representation are met. All parties need to collaborate in ensuring the fulfillment of the constitutional rights of persons with disabilities to equal employment opportunities. This includes implementing routine and periodic apprenticeship and training programs for persons with disabilities, optimizing the roles of Disability Service Units (ULDs), organizing inclusive job fairs, and improving the provision of decent and disability-friendly facilities and accommodations.

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