

## LEGAL PROTECTION OF WORKERS WITH DISABILITIES IN FULFILLING WORK SAFETY AND HEALTH RIGHTS

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### Abstract

*The purpose of this paper is to analyze forms of legal protection for workers with disabilities in fulfilling their rights to occupational safety and health and to determine the obstacles in fulfilling their rights to occupational safety and health for workers with disabilities. The research method used for normative research is a robust approach that focuses on the study of the application of norms or rules in positive law. The data sources used in this normative legal research are secondary data in the form of primary legal materials, namely laws, and secondary legal materials in the form of legal books. The type of approach used in this writing is a statutory approach. The results of this writing show that. The protection of occupational safety and health is regulated in Article 86 paragraph (1) of the Manpower Law. A form of legal protection for workers with disabilities in fulfilling their rights to occupational safety and health can be in the form of fulfilling their rights to accessibility as regulated in the Law on Persons with Disabilities. There are obstacles in fulfilling these rights; employers or companies have not been able to fulfill the rights that workers with disabilities should receive. Therefore, it is crucial for the Government to conduct regular supervision to monitor the implementation of the provisions in fulfilling the rights to occupational safety and health for workers with disabilities.*

**Keywords:** *Legal Protection, Persons with Disabilities, Work Safety, Occupational Health*

### INTRODUCTION

Legal protection regarding occupational safety and health for workers is one form of legal protection that employers must fulfill. Occupational safety and health are important aspects of employment because the implementation of occupational safety and health aims to prevent and reduce work accidents and work-related diseases. Article 27 of the 1945 Constitution of the Republic of Indonesia states that everyone has the same right to work and a decent life. Every person referred to is a worker from a different ethnicity, race, religion, or group. Workers with disabilities also have the right to work according to their interests and receive workers' rights as regulated by statutory regulations. The guarantee of the right to work can be interpreted as the right of every citizen to have the opportunity to work to earn a living according to his or her needs.

Persons with disabilities have the same position, rights, and obligations as people without disabilities. As Indonesian citizens, it is appropriate for people with disabilities to receive special treatment, which is intended as an effort to protect them from vulnerability to various acts of discrimination and especially protection from various human rights violations. This particular treatment is seen as an effort to maximize respect, promotion, protection, and fulfillment of universal human rights. Protection of the rights of workers with disabilities will be related to and in accordance with various laws and regulations related to the realization of the rights of persons with disabilities. The provisions of Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulate that "Everyone

has the right to work and receive fair and decent compensation and treatment in employment relationships." Based on the provisions of this article it certainly guarantees that every person, including workers with disabilities, can fulfill their rights without any reason because the Indonesian State has guaranteed the right to obtain work under state law as a general rule in the administration of state administration in Indonesia (Istifarroh, I and Nugroho, W. C, 2019:22).

A disabled worker is any person with special needs who can carry out work like an average person in general in accordance with their respective job characteristics or qualifications in accordance with their abilities. Disabled workers must be given special protection related to accessibility in meeting the needs of daily life regarding the right to obtain work. The right to obtain a job is the right of every person, which is an embodiment of human rights in terms of fulfilling their living needs in order to live a decent life (Ratnasari, Y and Salain, M.S.P D, 2016: 4).

Apart from legal protection for workers in the form of protection in the aspects of social security, working hours, wages, rights of association, and assembly, safety and health protection for workers is also vital for companies or employers to pay attention to. Occupational safety and health are essential means of creating a safe and comfortable working situation so that it can encourage productivity, which will provide benefits and increase welfare for both employers and workers. Article 11 of Law Number 8 of 2016 concerning Persons with Disabilities protects the rights of persons with disabilities to obtain work without discrimination.

Occupational safety means being free from accidents while working at the workplace (occupational safety means free from accidents at the place of work). Work safety objectives are as follows:

1. Protecting workers' rights to safety in carrying out work for the welfare of life and increasing national production and productivity;
2. Ensure the safety of everyone else in the workplace, and
3. Production resources are maintained and used safely and efficiently.

Meanwhile, Occupational Health is included in social protection because it is related to society. Where employers treat their workers in accordance with applicable norms and view workers as creatures of God who have human rights. Workers who suffer from health problems or work-related illnesses tend to experience work accidents more efficiently. So, regulations regarding occupational health intend to protect workers from incidents or conditions of work relations that are detrimental to the health and morality of workers in carrying out their work. The work in question is work carried out by workers for employers in an employment relationship and receiving wages. (Darmayanti, 2018:286).

Based on the background above, a problem can be formulated: how legal protection is necessary to fulfill occupational safety and health rights for workers with disabilities and what obstacles exist in fulfilling these rights.

## **LITERATURE REVIEW**

### **Occupational Safety and Health Concept**

Imam Soepomo divides three concepts of occupational health and safety, namely: (Hidayat, M.R, and Dalimunthe, 2022:242)

1. Social protection Protection is associated with social efforts aimed at providing employees with opportunities to experience and develop human life as a whole.
2. Economic protection Protection is related to efforts to provide workers with sufficient income to meet their daily needs and those of their families.
3. Technical protection is related to efforts to protect workers from the risk of accidents caused by heavy equipment or other work equipment.

According to Imam Soepomo, occupational health refers to rules and efforts designed to protect workers from damage caused by someone or from labor conditions that can harm health or morality because workers carry out work in an employment relationship. Occupational health includes all efforts to prevent occupational diseases and other illnesses in the workplace. The aim of occupational health is for workers to be placed in jobs that suit their physical and mental abilities so that each worker is in a healthy and prosperous state from the time they work until they finish working. Occupational health efforts aim to protect workers/laborers in order to create maximum work productivity through preventing accidents and work-related diseases, controlling workplace hazards, and treatment and rehabilitation. So, based on this description, the objectives of occupational health are as follows (Puji Hartatik, Indah, 2014:315)

1. Protect workers or laborers from the risk of work accidents;
2. Improving the health status of workers or laborers; And
3. So that workers or laborers are guaranteed work safety and health.

### **Legal Protection Concept**

According to Satjipto Raharjo, legal protection provides protection for human rights that are harmed by other people. Its protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to create protection that is not only adaptive and flexible but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice (Raharjo, Satjipto, 2000:55).

In Philipus M. Hadjon's opinion, legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, directs dispute actions, and directs government action to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in judicial institutions. Legal protection includes two things, namely: (Hadjon, Philipus M, 2007:29)

- a. Preventive legal protection is a form of legal protection in which people are given the opportunity to raise objections or opinions before a government decision becomes definitive.

- b. Repressive legal protection, namely a form of legal protection, is more aimed at resolving disputes.

## **METHOD**

The research methodology employed in this paper is normative legal research, a significant approach that focuses on the study of the application of norms or rules in positive law. This type of research is not only expected to provide solutions for future legal discoveries but also places law as a system of norms. The norm system in question encompasses the principles, norms, rules, and regulations of court decisions, agreements, and doctrines (Mukti Fajar, N.D, and Achmad, Y, 2010: 183).

This paper meticulously examines only written statutory regulations. The data sources used in this normative legal research are secondary data in the form of primary legal materials, namely laws, and secondary legal materials in the form of legal books. The approach used in this writing is statutory, ensuring the reliability and accuracy of the findings (Peter Mahmud Marzuki, 2011:97).

## **RESULTS AND DISCUSSION**

### **Forms of Legal Protection for Workers with Disabilities in Fulfilling Occupational Safety and Health Rights**

The aspect of protection for workers includes two essential things, namely protection from the power of employers and protection from government action. Legal protection of the employer/employer's power is implemented if the statutory regulations in the labor sector that require or force employers to act as stated in the legislation are actually implemented by all parties because the validity of the law cannot only be measured juridically, but is measured sociologically, and philosophical (Nurcahyo, N, 2021:71).

Every worker has the same opportunity without discrimination to obtain work so that workers with disabilities also have the right to receive equal treatment in obtaining work and fulfilling their rights as workers. Based on Article 67 paragraph (1) of Law Number 13 of 2003 concerning Employment as amended in Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, it states that Entrepreneurs who Employing workers with disabilities is obliged to protect according to the type and degree of disability. This provision is in accordance with Article 11 of Law Number 8 of 2016 concerning Persons with Disabilities, protecting the rights of persons with disabilities to obtain work without discrimination.

Workers with disabilities are workers in the vulnerable group category because workers with disabilities are workers who experience physical, intellectual, mental, and/or sensory limitations for an extended period when interacting with the environment. The limitations of workers with disabilities should not be considered an obstacle to obtaining work in accordance with statutory provisions. Hence, persons with disabilities have the right to obtain work without discrimination. When working, one of the rights that employers have the right to fulfill towards workers is the fulfillment of the right to occupational safety and health.

Occupational safety and health are safety conditions free from the risk of accidents and damage where we work. This includes building conditions, machine conditions, safety equipment conditions, and worker conditions. Occupational health and safety are conditions in which work is healthy and safe, both for the worker, the company, and the community and environment around the workplace (Purwanto, D., Bahar, U., & Suhartini, E, 2020:41).

Occupational safety and health must be applied and implemented in every workplace (company). A workplace is any place that contains three elements, namely:

1. The existence of a business, be it an economic business or a social business;
2. The existence of resources;
3. Some workers work in it, either continuously or only from time to time.

Implementation of occupational safety and health in the workplace (company) is carried out jointly by the company leadership or management and all workers (Kahfi, A, 2016:59-72). Companies have an essential role in implementing Occupational Safety and Health as regulated in Article 87, paragraph 1 of Law Number 13 of 2003 concerning Manpower, which states that every company is obliged to implement an occupational health and safety management system that is integrated with the company management system. In connection with this, there are legal consequences for the company or employer to regulate guarantees or fulfillment of the rights to occupational safety and health for workers.

Based on Article 86 paragraph (1) of Law Number 13 of 2003 concerning Manpower, it is stated that every worker/laborer has the right to obtain protection for:

1. occupational Health and Safety;
2. morals and decency, And
3. treatment that is in accordance with human dignity and religious values.

Occupational safety and health efforts intended in the Manpower Law are to provide safety guarantees and improve the health status of workers/laborers by preventing work-related accidents and diseases, controlling workplace hazards, and health promotion, treatment, and rehabilitation. One form of fulfilling the right to occupational safety and health for workers with disabilities is the availability of accessibility for Persons with Disabilities. Article 1 number 8 of Law Number 8 of 2016 concerning Persons with Disabilities states that accessibility is the convenience provided for Persons with Disabilities to realize Equal Opportunities. This accessibility will make it easier for workers with disabilities to work.

Accessibility rights for Persons with Disabilities are regulated in Article 18 of Law Number 8 of 2016 concerning Persons with Disabilities, including:

1. the right to obtain accessibility to utilize public facilities; And
2. the right to obtain Adequate Accommodation as a form of Accessibility for individuals.

In the Convention on the Rights of Persons with Disabilities, it is explained that the state provides accessibility for persons with disabilities to obtain as much information as possible in terms of obtaining employment. Apart from that, the Law on Persons with Disabilities also explains that Employers are obliged to provide facilities that are easily accessible to workers with disabilities. Accessibility is the convenience provided for Persons

with Disabilities to realize equal opportunities. This accessibility must be prepared by employers, including during recruitment, acceptance, job training, job placement, work continuity, and career development (Wiraputra, A. D, 2021: 40). The form of legal protection in fulfilling occupational safety and health rights is not only by providing accessibility but the provision of work tools and personal protective equipment must also be provided by employers according to the type and degree of disability.

Apart from the Accessibility Rights that workers with disabilities must accept, maintenance guarantees are also required as an effort to overcome and prevent health problems. Occupational Health is defined as every business and effort as well as regulations that aim to protect workers from actions and conditions that can disrupt physical and psychological health and (violate norms of) decency in an employment relationship (Uwiyono, 2014: 77). Healthcare insurance is a guarantee as an effort to overcome and prevent health problems that require examination, treatment and/or care, including pregnancy and childbirth. Health maintenance is also intended to increase workforce productivity so that they can carry out their duties as well as possible. It is a health effort in the field of healing. Because healing efforts require a large amount of funds and are burdensome if borne by individuals, it is appropriate to try to overcome community capacity through a workforce social security program. Occupational health, in this case, aims to protect workers from events or conditions in work relationships that are detrimental to health when workers carry out their work.

Based on Article 13 paragraph (1) of Presidential Regulation Number 82 of 2018 concerning Health Insurance, employers are required to register themselves and their workers as Health Insurance Participants with the Social Health Insurance Administration Body by paying contributions. Meanwhile, Article 13 paragraph (6) regulates sanctions for employers who have yet to register their workers in the National Health Insurance program, and these sanctions are in the form of written warnings, fines, and/or not receiving certain public services. In accordance with these provisions, employers are obliged to fulfill the occupational health rights of workers with disabilities by registering workers with disabilities as Social Health Insurance Administration Body participants. Fulfilling occupational health rights, especially in health care, functions to increase the productivity of workers with disabilities so that they can carry out their duties as well as possible. Another benefit for employers or companies is that companies can have workers with disabilities who can focus on work, so they are more productive.

### **Obstacles in Fulfilling Occupational Safety and Health Rights for Workers with Disabilities**

Implementing occupational safety and health is one of the efforts to create a workplace that is safe, healthy, and free from environmental pollution so that it can reduce occupational accidents and illnesses so that, ultimately, worker productivity is not disrupted. As industrialization, mechanisms, and modernization develop, the operational work of workers increases; the machines and tools used today contain many toxins, poor working methods of tools, lack of workers' skills, and lack of work training are sources of danger—occupational

illness. In Law Number 1 of 1970 concerning Work Safety, workers are protected from the dangers of using work tools and materials used by the Company (Djumialdji, F.X, 2006:5).

Legal protection in fulfilling the rights to occupational safety and health for workers with disabilities is, in practice, not yet complete. Employers or companies have not been able to fulfill the rights that workers with disabilities should receive, especially in terms of occupational safety and health. In general, the obstacle to implementing the health insurance program is that employers have a very minimal budget to register for health insurance for their workers, so internal company problems are also one of the reasons. There needs to be more awareness and understanding of workers regarding Social Health Insurance Administration Body regulations. Mandatory Social Health Insurance Administration Body membership must be fully understood by every employer and employee in order to obtain health insurance protection.

At work, occupational safety and health are crucial factors to pay attention to because someone who experiences illness or an accident at work will have an impact on themselves, their family, and their environment. (Sunyoto, 2013:76). The development of worker safety and health in work relations is directed at protecting the safety of workers/laborers in order to realize optimal work productivity, work safety, and health efforts need to be implemented. Social Insurance Administration Body is a legal entity established to administer social security programs as a form of social protection to ensure that all people can fulfill their basic needs for a decent life. The Social Insurance Administration Body referred to are the Social Health Insurance Administration Body and Social Employment Insurance Administration Body. Social Employment Insurance Administration Body is a mandatory social security program for workers that provides Work Accident Insurance (JKK), Pension Plan (JHT), Pension guarantee (JP), and Death Insurance (JKM) programs (Sujaya, I.M K, 2018:4).

Work accidents and occupational diseases are risks faced by all workers who do work, including workers with disabilities. To cover the loss of part or all of one's income resulting from death or disability due to work accidents, whether physical or mental, it is necessary to have work accident insurance. Work accident insurance is regulated in Law Number 40 of 2004 concerning the National Social Security System with the aim of ensuring that participants receive health service benefits and compensation if workers experience work accidents or suffer from work-related illnesses.

Work Accident Insurance is regulated in Minister of Manpower Regulation Number 5 of 2021 concerning Procedures for Implementing Work Accident Insurance, Death Insurance, and Pension Plan Programs. Based on Article 26 of the Minister of Manpower Regulation Number 5 of 2021 concerning Procedures for Implementing the Work Accident Insurance Program, Death Insurance, and Pension Plan, it regulates employers who have not included their workers in the Work Accident Insurance Program with Social Employment Insurance Administration Body, if there is a risk of work accidents for their workers. , employers are obliged to pay workers' rights in accordance with statutory provisions.

For work accidents that happen to workers with disabilities due to work relationships, employers or companies can provide compensation to workers affected by work accidents.

Work accident compensation is compensation given to workers who experience work accidents. Compensation in the form of money will be given to workers or their families. In principle, this compensation payment is given periodically with the aim of ensuring that workers or their families can meet part of their daily needs on an ongoing basis. Apart from that, regular compensation payments can also be given as a lump sum. It is intended to encourage productive activities to improve welfare.

The issue of work accident insurance in employment is the responsibility of the employer or entrepreneur to cover workers who are exposed to work risks. With the Social Employment Insurance Administration Body program, all workers, including workers with disabilities who experience work accidents, are required to receive legal protection in the form of work accident insurance. Obstacles that occur in the implementation of occupational safety and health protection for workers with disabilities are due to the fact that companies are financially unable to pay the premiums or contributions that must be paid every month in the event of a work accident as insurance and other things that are required to participate in the Social Employment Insurance Administration Body program. Another obstacle that usually occurs is that employers or companies have not registered their workers in the Social Security program, namely the registration process is complicated; some temporary workers can resign at any time, so if the company registers with the Social Employment Insurance Administration Body program, the company will suffer losses.

## **CLOSING**

### **Conclusion**

Legal protection for workers with disabilities in fulfilling their rights to occupational safety and health receive the same legal protection as other workers and without discrimination. Occupational safety and health protection have been regulated in the Manpower Law to provide safety guarantees and improve the health status of workers by preventing work-related accidents and diseases, controlling workplace hazards, health promotion, treatment, and rehabilitation. A form of legal protection for workers with disabilities in fulfilling their rights to occupational safety and health can be in the form of fulfilling their rights to accessibility as regulated in the Law on Persons with Disabilities.

However, there are no provisions that clearly regulate sanctions for employers who cannot fulfill the rights to occupational safety and health for workers with disabilities. The obstacle in fulfilling the occupational safety and health rights of workers with disabilities is that employers or companies have not been able to fulfill the rights that workers with disabilities should receive, such as preventing work accidents and work-related diseases, which can be done by registering workers in the work accident insurance program. Health insurance has yet to be implemented simultaneously by all employers or companies.

### **Suggestion**

Legal protection for workers with disabilities in fulfilling their rights to occupational safety and health requires regular supervision by the Government. This supervision is to monitor the implementation of laws and regulations regarding employment. With this



supervision, the government can guarantee the enforcement of labor laws and the effectiveness of the implementation of labor laws and regulations, as well as monitor labor norms in terms of occupational safety and health, especially with regard to workers with disabilities.

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