

# Construction Policy for Person with Disabilities Based on Value of Pancasila Justice

Endang Sutrisno<sup>1</sup>; Ipik Permana<sup>2</sup>; Gilar Akbar<sup>3</sup>

**Abstract---** *Persons with disabilities must be treated equally and the same as most other citizens in general, the responsibility of the State must fulfill its obligations without exception. Legal norms have explicitly mandated fair treatment. Legislation products that are formulated must still be based on Pancasila as a boundary line for good behavior parameters, as well as the philosophical Nation's view of life. The study of policies for persons with disabilities towards public services that have been provided by the State must rely on justice with Pancasila values, this is important because the guidelines for formulating the order are reflected in the Precepts of Pancasila. The approach in this study is juridical-normative, focuses on legal products that favor to the interests of society as a whole without exception, considering that public service is a basic right of citizens and the responsibility of the Government to fulfill equality of human rights including in the form of public service facilities that can be accessed by persons with disabilities.*

**Keywords---** *Persons with disabilities; Pancasila, Human Rights.*

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## I. INTRODUCTION

One of the mandates of reform is the strengthening of the enforcement of Human Rights (HAM). Efforts to change that have been carried out in the legal field are by including guarantees on Human Rights (HAM) for all Indonesian citizens in the constitution, namely the 1945 Constitution of the Republic of Indonesia[1]. The law becomes the frontline in the governance of the State towards the Welfare State, even though on the other hand, the law is not able to carry out its function to do social engineering when the community experiences a process of change that is constantly happening, as a result of the development process that has enormous implications in the dynamic movement of community development[2]. *The government must be able to give affirmation to the community, the law that is made leads to the interests of the community and oriented towards social justice [3].*

In the second amendment of the 1945 Constitution of the Republic of Indonesia including the provisions of Human Rights, this affirms the commitment of the State to give full respect and recognition to the serious and ongoing attention to the issue of Human Rights, considering that Indonesia is a democratic country that is based on the legal order[4]–[6].

Policies that are built must be based on human values in favor of the interests of the people without exception who they are. This condition is very reasonable; the State must be present and stand for all classes of society. This point of contact, then the issue of Human Rights becomes very fundamental to be respected, protected and fulfilled. Guarantee against this matter is contained in the products of legislation that regulate the issue of Human Rights which normatively has recognized the existence of Human Rights.

State recognition to the ideology of Pancasila is an important indicator to emphasize human rights policies which have given full assurance, that this issue is no longer debated because the content of the Pancasila contains values of

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<sup>1</sup> Endang Sutrisno, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, Indonesia  
Email : endangsutrisno94@gmail.com

<sup>2</sup> Ipik Permana, Faculty of Social and Political Sciences, Cirebon, Indonesia  
Email : ipermana44@gmail.com

<sup>3</sup> Gilar Akbar, Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, Indonesia  
Email : gilarakbar1985@gmail.com

respect for human rights. Pancasila as the ideology of the State and the basis of the State is a system of noble values of the Indonesian nation that is ultimate and definitive[7].

Fulfillment of rights for citizens has a very broad scope without exception this matter by referring to the legal basis of Article 25 Paragraph 10 of the 1945 Constitution of the Republic of Indonesia; the constitution has determined the policy on the matter. The politics of law that are developed promote the equality policy, as well as respect for human rights, without knowing discrimination.

Policies for the fulfillment of the rights of persons with disabilities must be considered because the assumption of upholding humanity is the right choice, when alternative thoughts to optimize public service needs must be put forward. Ignoring rights is not the right choice, including the rights of persons with disabilities because humanity factor is a parameter of priority in policymaking.

Social reality sometimes still ignores the fulfillment of the rights for persons with disabilities, for that reason access to legal and policy resources must be opened so that there is an alignment for persons with disabilities. In the realm of locality, policy must still consider the needs of the rights of persons with disabilities, Regional Regulations, Regents of the Regent or Mayor Regulations must be responsive and progressive in understanding the humanitarian problems of persons with disabilities, regulations must be pro to people with disabilities. Stakeholders in the regions must be sensitive in formulating policies that intersect with public services, at the operational level. Policies on the construction of public facilities and social facilities must take into account the needs of persons with disabilities; policies must not assert the rights of any citizen without exception.

As part of humanity and Indonesian citizens, persons with disabilities constitutionally have the same rights and position in the eyes of the law and government. The fulfillment of social rights for persons with disabilities is necessary, not only to provide guarantees for the rights of citizenship but also to reduce the handling of social problems related to the quality of human resources. People with disabilities have fundamental problems namely physical, mental, intellectual, and / or sensory limitations in the long term in interacting with the surrounding environment. Increasing the role and respect, protection and fulfillment of the rights and obligations of persons with disabilities in National Development is very important and strategic.

The construction of Human Rights that is promoted must be based on the crystallization of the values of the Pancasila as the nation's view of life, the source of all existing sources of the legal order. This also becomes the rationale for formulating policies in the context of fulfilling the rights of persons with disabilities. This is very reasonable considering the consideration of Pancasila as a whole must be seen as a "national guidelines", as "national standards, norms, and principles" which also contain "human rights and human responsibility"[8], [9]. The entire policy and legal product must be based on Pancasila values, including local policies. This rationale is very rational considering the Pancasila content values have reflected humanitarian aspects, especially in terms of fulfilling the rights of persons with disabilities. The Value of The Believe in the one and only God and just and civilized humanity, as well as social justice for all Indonesian people, are the benchmarks in making policy at all levels of government administration. The issue of Access to Justice for the past 18 years has been the subject of studies and programs from world institutions [10], [11], all citizens must have access to legal resources and also access to economic resources. Access to legal resources involves access to justice resources, namely substantive justice, especially for persons with disabilities; however legal justice is not always synonymous with substantive justice, because legal justice is more procedural justice [12].

State administrators must begin to reposition paradigms, not in a position to be served, but change their perspective as State administrators who should act as servants which capable to serve professionally and responsibly without having to discriminate against their citizens

## **AI. LITERATURE REVIEW**

Every citizen has the right to get the same public facilities and services from the government, including those with special needs or people with disabilities. The legal level has been confirmed through the provisions of Article 3 of Law Number 8 of 2016 concerning Persons with Disabilities, the content provides a clear arrangement that people with

disabilities are any person who experiences physical, intellectual, mental, and / or sensory limitations in the long term that in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on similarity right. And people with disabilities must get protection through these regulations, every person with a disability has the same rights as other citizens, there is no discrimination because this is related to human rights issues that are not based on ethnic, religious, and even physical disorders. Law is an important element in the development of politics and it makes the relationship with government policy clearer. Through legislation, the Government determines what it can do and what not to do. Law defined as legislation is a system of norms where the rule of law is arranged in unity within a hierarchical manner. The lower legal norms should not be contradictory to the higher legal norms [13]. An approach that is still under further discussion through a more holistic alternative paradigm [14].

The law occupies the primacy position in the dynamics of community development, paradigm changes in society due to the development process that must be followed by legal development. Development to increase the degree of community welfare must also be followed by an increase in human resources so that the community is aware of their obligations and rights. For this reason, education choices are the key to overcoming the problem of backwardness and underdevelopment of human resources, education is an activity that empowers the public by giving relevant knowledge [15].

Excellent human resources are an important motivating factor for building legal awareness and community legal compliance with legal norms, being aware of their obligations and rights. This position places Government policy in being able to respond to the needs of its citizens without exception.

Public understanding of the law must be placed in the corridor of concern for the State administrators to pay attention to this matter because this aspect can affect their law enforcement. Bearing in mind, in conditions of increasingly massive social change the role of the law becomes very important, and law enforcement becomes a priority issue even though there are factors that influence law enforcement. These factors have a neutral meaning so that the positive or negative impact lies in certain factors that influence it [16].

The position of Pancasila as a legal ideal (*Rechtsidee*) must be able to occupy its role as a filter in dealing with global values. The issue of Human Rights has been accommodated in the Pancasila order containing the contents of the First Precepts, Second Precepts, and the Fifth Precepts into a strategic gamble to formulate policies in favor of equality without knowing discrimination. If this concept is used as a reference in the study of the fulfillment of the rights of persons with disabilities, legal and policy structures will no longer be found that provide recognition of discriminatory content.

Policies formulated at the locality level through the Regional Government must continue to prioritize the interests of social orders even though at a certain point the Regional Government is faced with conditional constraints, facts prove that the local has a meaningful refraction process on development. Reality shows that the local has not fully prepared itself to face the development process. Dynamically developed communities with an understanding of their new value cannot be responded by local. Local autonomous spirit cannot be used as the foundation of local development [17].

## **BI. DATA COLLECTION**

This research uses a normative juridical approach. The law is conceptualized in the realm of rule, the realm of texts which are formulated in the form of written regulations product namely legislation, starting from the highest level up to the level of Mayor Regulations, Regent Regulation. The entire regulation is reviewed to confirm the doctrine that the law must contain the content of equal rights, Justice for All and Equality before the Law, this is to guarantee the legal principle of legal certainty, which applies amid society based on the Pancasila ideology philosophy as its legal ideal (*Rechtsidee*)[18].

The study of law and policy is very important to construct the policy function to translate the law; finally, the data analysis is carried out through qualitative to obtain an essential understanding of the validity of values in society

#### IV. DATA ANALYSIS

In the legal provisions of Article 3 Law Number 8 of 2016 concerning Persons with Disabilities, normatively it has affirmed a person with a disability, that is, anyone who experiences physical, intellectual, mental, and / or sensory limitations for a long time in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights.

The politics of law that will be developed through these regulations provides a guarantee for the survival of every citizen, without exception to the equal degree, equality of treatment and position of access to legal justice and respect for human rights must be respected by all people based on the values of the Almighty God. The rights of persons with disabilities must be fulfilled without limitation, because the conditions of disability limitations, poverty, and underdevelopment, these conditions do not become a factor for the fulfillment of their rights.

Equal rights to build prosperity, independence, empowerment so that access to legal justice can be achieved, the formulation of laws and policies must respond to the issues and the needs that needed by persons with disabilities.

The founding fathers have formulated the Pancasila as the fundamental values of the Indonesian Nation, as the basis for binding the consistency of the Indonesian Legal System [12]. Pancasila as a fundamental value, located also as a legal ideal (*rechtsidee*) of the Indonesian nation, must still be concretized at the level of positive legal provisions in force. Enforcement of the law based on Pancasila values is a challenge that must be realized.

All regulations in the Indonesian Legal System must not conflict with the Pancasila and the 1945 Constitution of the Republic of Indonesia, because the Pancasila and the 1945 Constitution of the Republic of Indonesia are the basis for the establishment of the Unitary State of the Republic of Indonesia. An independent Indonesian state must eliminate poverty, discrimination, social inequality, intolerance and must recognize diversity, respect for human rights, equality, justice and formulate policies to realize social welfare.

A manifestation of Human Rights values is an embodiment of the content of Pancasila values, the locality policy of the Regional Government in accommodating the interests of fulfilling the rights of persons with disabilities, must be understood in humanitarian construction. Persons with disabilities based on Law No. 8 of 2016, must be understood in terms of humanity given the consideration of physical, intellectual, mental and sensory limitations in the long term so that social interaction with their environment allows obstacles and difficulties to participate fully.

The formulation of public policy as a process that addresses strategic issues, must understand the problem of persons with disabilities from the perspective of equal and balanced treatment, without discrimination. The First Precept, Second Precept, and Fifth Precept already contain this sublime content, the problem is whether the implementation of public policies that are formulated and implemented have responded to the need to fulfill the rights of persons with disabilities.

Human Rights is a term commonly used to replace the term human rights, fundamental rights, or basic rights. Determination of Human Rights in Law Number 39 of 1999 concerning Human Rights, in Article 1 Number 1 regulated Human Rights (HAM) is a set of inherent rights and to the nature and existence of humans as God's creatures and is His gift, which must be respected, is upheld and protected by the rule of law, the Government and everyone for the sake of honor and protection of human pride and dignity. In general, rights can be summed up as rights that should be universally recognized as rights inherent in humans because of the nature and nature of human birth as human beings, with the basic nature of their human rights. So that no one can reduce or deprive human rights.

The International Convention has recognized the respect and protection of persons with disabilities; it is undeniable that efforts to negate the fulfillment of their rights are violations of humanity that impede justice for all. The instruments developed by the Regional Government should no longer neglect the rights of persons with disabilities, the policy, and legal products that made must still uphold equal rights.

Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD), through Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities). This makes Indonesia as a part of the world community that is legally committed to formally taking all efforts to realize optimally all forms of honor, protection, and fulfillment of the rights of persons with disabilities as stated in the Convention on the Rights of Persons with Disabilities (CRPD).

This commitment strengthens the political law of the State for persons with disabilities to remain viewed at the level of humanity, respect for human rights without exception, concern for equal rights and equality of all human needs and interests without exception.

The progress of respecting to persons with disabilities can be arranged in the formulation of legislation product policies, namely Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 39 of 1999 concerning Human Rights, and by continuing to refer to the values of the Pancasila Rechstidee, the 1945 Constitution of the Republic of Indonesia. This clear legal basis must be elaborated by the Regional Government at the local level through the legal products of Regional Regulations (*Perda*), Mayor Regulations or Regent Regulation to provide clear arrangements regarding the fulfillment of the rights of persons with disabilities. Local Governments are sensitive to the demands of changing needs and interests that must be fulfilled by every citizen, without exception. Development in the region always pays attention to the needs of persons with disabilities, and it is time for these stakeholders to pay attention to these conditions. Awareness of the rights of persons with disabilities is a demand in strengthening the understanding of respect for human rights and implementing the understanding of the values of the Pancasila content which does not merely stop at the normative domain but has penetrated the realm of praxis to be applied and upheld in all aspects of people's lives.

The legal norms and fair policies based on Pancasila values are the priority that must be formulated by the Regional Government, considering the contents of the First Precepts, Second Precepts and Fifth Precepts that have been determined must be able to be elaborated in all the legislative products made. And it becomes important if the thought is applied in the formulation of legal norms and policies for the fulfillment of the rights of persons with disabilities.

In the future, the development of human rights for persons with disabilities must be encouraged to keep on going by promoting democratic and participatory mechanisms that are based on the logic of the interests of the people including the interests of people with disabilities. Policies at the local level, the Regional Government must pay attention to legal products and their legal ideals, namely Pancasila. It is appropriate that the formulated policy construction must carry the values of respect for Human Rights based on the values of the ideals of law, as a crystallization of the philosophy of National outlook on life that has united this nation in the container of the Republic of Indonesia (NKRI), which is multiethnic, pluralism, diversity the customary-cultural order clings in the spirit of the Indonesian Unity, in the content of the Third Precepts of the Pancasila

## **VI. STUDY RESULTS, SUMMARY AND CONTRIBUTION**

In the policy always contains idealized legal norms (ideal norms), namely by carrying out the legal objectives for legal justice, welfare, equality of treatment, respect for human rights. This aspect has been accommodated through the spirit of values in the content of Pancasila, this legal ideal has become the foundation in the formulation of policies prepared by the Regional Government, including in the realm of fulfilling the rights of persons with disabilities. The values in the First Precepts, Second Precepts, and Fifth Precepts from Pancasila have affirmed understanding for respect for Human Rights, including persons with disabilities.

Local Governments must be able to formulate legal norms and public policies that can reflect the ideals of achieving legal goals for substantive justice which is not only limited to procedural justice, the rights of persons with disabilities must be fulfilled considering that international regulations have set them out in international conventions namely the Convention on the Rights of Persons with Disabilities (CRPD), and subsequently regulated in Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities, Law Number 8 of 2016 concerning Persons with Disabilities, and Law Number 39 of 1999 about human rights.

## ACKNOWLEDGMENT

The author of this study would like to thank the contacted representative surveyors in Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, Indonesia and Faculty of Social and Political Sciences, Cirebon, Indonesia for the highly valuable contribution. Also, the author would like to thank the panel of an expert at the different departments for their cooperation in response to this study.

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