

CHAPTER TWO

LITERATURE REVIEW

A. Human Rights

The definition of Human Rights is mentioned a lot in many books, regulations and journals. Based on Black Law's Dictionary, the definition of Human Rights is:

“The freedoms, immunities, and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live.”¹⁴

The definition of human rights is also mentioned in the Universal Declaration of Human Rights, which states that all of the human beings are born free and equal in dignity and rights. They are also endowed with reason and conscience and should act towards one another in a spirit of brotherhood.¹⁵

Meanwhile, Article 2 states in detail that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a

¹⁴ Garner, B.A., 1999, *Black's Law Dictionary*, Seven Edition, West Group, Dallas, Texas, p. 741

¹⁵ Universal Declaration of Human Rights Article 1

person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.¹⁶

On the Law Number 39 of 1999 on Human Rights, Human Rights is defined as:

“Human rights is a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth.”¹⁷

Another definition of Human Rights can also be found on the Great Dictionary of the Indonesian Language of the Language Centre. It is defined as the right, property, authority, and power to do something and the right authority over something or to demand something. In addition, the word rights also contain the meaning of human dignity. Meanwhile, the word human rights mean basic or basic rights, such as the right to life and the right to protection.¹⁸

Every human being has equal rights with other human beings because they are human. Human rights are embodied in human beings, individual, human rights exist in every human person without an intermediary of social relations. Therefore, human rights are individual, which means that an isolated human being in the principle already has human rights.¹⁹

¹⁶ Universal Declaration of Human Rights Article 2

¹⁷ Article 1 point 1 of the Law Number 39 of 1999 on Human Rights

¹⁸ Departemen Pendidikan dan Kebudayaan (Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa), 1988, *Kamus Besar Bahasa Indonesia*, Jakarta, Balai Pustaka, p. 292

¹⁹ Rhoda E Howard, 2000, *HAM Penjelajahan Dalih Relativisme Budaya* (translated by Nugraha Katjasungkana), Jakarta, Pustaka Utama Grafiti, p. 124

Human rights are rights that humans have solely because they are human. A human being has Human Rights not because it is given to them by society or based on positive law but solely based on his dignity as a human being.²⁰

Human rights are universal by nature, which means that human rights are embodied on the human beings themselves, not given by anyone. This means that every human being has it because it is given by God, and there is nobody that could take it away.²¹

B. Disability

Black Law's Dictionary defines Disability as the inability to perform some functions; especially the inability of one person to alter a given relation with another person. An objectively measurable condition of impairment, physical or mental (his disability entitled him to workers'-compensation benefits) – is also termed handicap; incapacity.²²

On the Law Number 8 of 2016 on Persons with Disabilities, as stated in Article 1 point 1, the definition of Disability is:

“Anyone with long-term physical, intellectual, mental and/or sensory limitations or impairment who may experience barriers and difficulties in interacting with the society and participating fully and effectively with other citizens on the basis of equal rights.”²³

²⁰ Jack Donnelly, 2008, *Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia*, Yogyakarta, PUSHAM UII, p. 11

²¹ Nur Asmarani, “Teori Hak Asasi Manusia (HAM)”, *Jurnal Hukum dan Masyarakat*, XIV Nomor 1 (January, 2015), p. 36 (ISSN 1693-2889)

²² Garner, B.A., 1999, *Black's Law Dictionary*, Seven Edition, West Group, Dallas, Texas, p. 461

²³ Article 1 point 1 of the Law Number 8 of 2016 on Persons with Disabilities

In Article 4 of the Law Number 8 of 2016 on Persons with Disabilities also mentioned types of disabilities, they are:

1. Person with physical disability

A person with physical disability is someone with disruption of motion functions, such as amputations, paralyzed limbs, paraplegia, cerebral palsy (CP), due to stroke, due to leprosy, and dwarfism.

2. Person with intellectual disability

A person with intellectual disability is someone with disruption of the function of thought because of the level of intelligence is below the average, among others; slow learning, mental disability and down syndrome.

3. Person with mental disability

Person with mental disability is person with disruption of the functions of thought, emotion and behaviour, among others:

- a. Psychosocial ones such as schizophrenia, bipolar disorder, depression, anxiety, and personality disorders;
- b. Developmental disabilities that affect the ability of social interactions such as autism and hyperactivity.

4. Person with sensory disability

Person with sensory disability is person with disruption of one of the functions of the five senses, including sight disability, hearing disability, and/or speech disability.

5. Person with double or multiple disabilities

Person with double or multiple disability is the person with disabilities who has two or more disabilities.²⁴

The definition of Disability also mentioned on Law Number 39 of 1999 on Human Rights. Article 5 paragraph (3) defines that Disability is a disadvantaged group in society, along with children and the poor, who are eligible to obtain treatment and more with regard to their protection.²⁵

Quoting from the official website of World Health Organization on the Health Topics of Disabilities, they put the definition of disabilities as follows:

“Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.”²⁶

Meanwhile, according to WHO Publication on International Classification of Impairments, Disabilities, and Handicaps of 1980, there are three definitions related to disability, namely; impairment, disability, and handicap.²⁷ Impairment is loss or abnormality of structure or psychological, physiological function or anatomical of the human being. Meanwhile, disability is a limitation or loss of ability (as a result of impairment) to carry out an activity in a way or within the limits that are

²⁴ Article 4 of the Law Number 8 of 2016 on Persons with Disabilities

²⁵ Article 5 paragraph (3) of the Law Number 39 of 1999 on Human Rights

²⁶ WHO, “Disabilities”, 2016, <http://www.who.int/topics/disabilities/en/> accessed on August 3rd 2018 at 1 AM

²⁷ WHO Publication (International Classification of Impairments, Disabilities, and Handicaps) Publication of 1980

considered normal for a human. Handicap is a loss for certain individuals, as a result of impairment or disability, which limits or inhibits the implementation of a normal role.²⁸

C. Right of Persons with Disabilities

There is no exact definition of Right of Persons with Disabilities, but we can get what is actually the Right of Persons with Disabilities by seeing the definition of each word. The Black Law's Dictionary provides the definition of Right as follow:

“As a noun, and taken in a concrete sense, right means a power, privilege, faculty, or demand, inherent in one person and incident upon another. Rights are defined generally as "powers of free action." And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedent to their recognition by positive law.”²⁹

On the Law Number 39 of 1999 on Human Rights, the definition of Human Rights is defined as a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth.³⁰

Another definition of Human Rights is also can be found on the Great Dictionary of the Indonesian Language of the Language Centre, it is

²⁸ Akhmad Soleh, “Kebijakan Perguruan Tinggi Negeri Yogyakarta terhadap Penyandang Disabilitas”, *Jurnal Pendidikan Islam, IV Nomor 1* (June, 2014), p. 8 (DOI: 10.14421/jpi.2014.31.1-30)

²⁹ Garner, B.A., 1999, *Black's Law Dictionary*, Seven Edition, West Group, Dallas, Texas, p. 1324

³⁰ Article 1 point 1 of the Law Number 39 of 1999 on Human Rights

defined as the right, property, authority, power to do something and the right authority over something or to demand something. In addition, the word rights also contain the meaning of human dignity. Meanwhile, the word human rights mean basic or basic rights, such as the right to life and the right to protection.³¹

Meanwhile, Article 1 point 1 of the Law Number 8 of 2016 on Persons with Disabilities explained the definition of Person with Disabilities, it is defined that a person with disability is:

“Anyone with long-term physical, intellectual, mental and/or sensory limitations or impairment who may experience barriers and difficulties in interacting with the society and participating fully and effectively with other citizens on the basis of equal rights.”³²

Black Law’s Dictionary defined Disability as the inability to perform some function; especially the inability of one person to alter a given relation with another person. An objectively measurable condition of impairment, physical or mental <his disability entitled him to workers’-compensation benefits>. – is also termed handicap; incapacity.³³

Persons with disabilities are terms to refer to those who have physical or non-physical impairment. There are three types of persons with disabilities; first, the physical impairment, consisting of persons who are blind, disabled, deaf, and mute. Secondly, non-physical impairment, consisting of mental retardation, autism, and hyperactivity. Third, a group

³¹ Departemen Pendidikan dan Kebudayaan (Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa), 1988, *Kamus Besar Bahasa Indonesia*, Jakarta, Balai Pustaka, p. 292

³² Article 1 point 1 of the Law Number 8 of 2016 on Persons with Disabilities

³³ Garner, B.A., 1999, *Black’s Law Dictionary*, Seven Edition, West Group, Dallas, Texas, p. 461

of multiple impairments, namely those who experience more than one type of disorder.³⁴

Thus, it can be concluded that the Right of Persons with Disabilities is the powers or free action which is enjoyed by human beings purely without any discrimination towards them, whether they are able or with limitations or impairments in participating fully and effectively with the society.

³⁴ Akhmad Soleh, “Kebijakan Perguruan Tinggi Negeri Yogyakarta terhadap Penyandang Disabilitas”, *Jurnal Pendidikan Islam, IV Nomor 1* (June, 2014), p. 8 (DOI: 10.14421/jpi.2014.31.1-30)