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A Legal Barrier to the Enjoyment of the Right to Work for Workers with Disabilities
(Hambatan Hukum untuk Penikmatan Hak atas Pekerjaan bagi Pekerja dengan Disabilitas)

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ABSTRACT: This article focuses on the enjoyment of the right to work for workers with disabilities. This focus is driven by the fact that there are still many discriminatory practices for workers with disabilities in the workplace. This study identifies, for instance, a worker with sensory and physical disabilities that is assigned to a not accessible field of work. This assignment presents barriers faced by the worker and results in the termination of the worker's employment. Based on this fact, this article addresses two research questions. What is the legal barrier to the enjoyment of the right to work for workers with disabilities? What adequate interventions should the state take to ensure equality and non-discrimination for workers with disabilities? This normative study answers these two questions by analyzing the norms of Law No. 13/2003 on Manpower with the component of legal barriers in the social model for disability. This study proves that the provision in the Manpower Law is categorized as a legal barrier to the enjoyment of the right to work for workers with disabilities. Therefore, this study encourages the state's legislative function to complement the provisions of the Law with a substance that requires every employer to ensure that their business governance is inclusive and accessible to the diversity of workers with disabilities based on equal rights.

ABSTRAK: *Artikel ini berfokus pada penikmatan hak atas pekerjaan bagi pekerja dengan disabilitas. Fokus ini dilatarbelakangi oleh fakta perihal perlakuan diskriminatif bagi pekerja dengan disabilitas di tempat kerja. Studi ini mengidentifikasi, misalnya, seorang pekerja dengan disabilitas sensorik dan fisik justru ditempat di bidang kerja yang tidak aksesibel untuk ragam disabilitasnya. Penempatan ini menghadirkan hambatan baginya dan berujung pada pemutusan hubungan kerja terhadap sang pekerja. Berdasarkan kondisi faktual tersebut, artikel ini menjawab dua pertanyaan penelitian. Pertama, apa hambatan hukum dalam penikmatan hak atas pekerjaan bagi pekerja dengan disabilitas? Kedua, intervensi memadai apa yang dapat dilakukan negara guna menjaminan kesetaraan dan perlakuan non-diskriminasi bagi pekerja dengan disabilitas? Studi normatif ini menjawab dua rumusan masalah tersebut dengan cara menganalisis norma Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dengan komponen hambatan hukum dalam model sosial untuk disabilitas. Studi ini membuktikan bahwa ketentuan di dalam UU Ketenagakerjaan masih menjadi hambatan hukum dalam penikmatan hak atas pekerjaan bagi pekerja dengan disabilitas di tempat kerjanya. Maka itu, studi ini mendorong fungsi legislasi negara untuk melengkapi ketentuan UU Ketenagakerjaan, yang substansinya mengatur pemberi kerja untuk memastikan tata kelola bisnisnya inklusif dan aksesibel bagi keragaman pekerja dengan disabilitas berdasarkan kesetaraan hak.*

Keywords:
legal barrier;
manpower;
workers with disabilities;
right to work;
social model

Kata Kunci:
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1. Introduction

Persons with disabilities, whether physical, sensory, mental or intellectual, still experience discrimination in various sectors.[1] In the justice sector, for example, studies from the Center for Human Rights Studies at the Islamic University of Indonesia (PUSHAM UII) and Suparman Marzuki-Despan Heryansyah showed that the accessibility of courts and correctional facilities is inadequate, resulting in unequal fulfillment of the rights of persons with disabilities before the law.[2] In the education sector, Eko Riyadi also revealed the inequality in the fulfillment of rights for persons with disabilities because higher education is still held using standards that have not adopted an inclusive model. [3] In the employment sector, the same situation also occurs.

The discrimination experienced by persons with disabilities in the workplace cannot be separated from the stigma that persons with disabilities deserve pity, are incapable because they have "limitations,"[4] and are dangerous at a certain level.[5] Casuistically, discrimination in the employment sector can be inspired, among others, by the recognition of a woman worker with schizophrenia who was treated improperly and was often bullied at work and was given inadequate wages so that these things made her feel even more depressed.[6] In the case of Martinus Masa Dorita against PT Musim Mas, discrimination at work was identified from the actions of the company's management as an employer who rotated Dorita, a worker with physical and sensory disabilities, to a field of work that did not match his variety of disabilities, which led to Termination of Employment (PHK).[7]

Discriminatory treatment and stigma experienced by workers with disabilities in the workplace need to be understood as an adequate reality to review state interventions against companies and/or employers based on Indonesian labor law norms. This is relevant for three reasons. First, in the midst of this reality, Indonesia already has quite complete legal instruments related to respecting, fulfilling, and protecting the rights of persons with disabilities on an equal basis, including in the context of work.[8] Second, most of the recent studies still focus on

1 Discrimination refers to unfair treatment under comparable circumstances.Mart-Claudia and cliza, "WHAT MEANS DISCRIMINATION IN A NORMAL SOCIETY WITH CLEAR RULES ?," Lex ET Scientia International Journal 1, no. 25 (2018). hlm 89-90; Karen O'Connell, "Unequal Brains: Disability Discrimination Laws and Children with Challenging Behaviour," Medical Law Review 24, no. 1 (2016): 76–98, https://doi.org/10.1093/medlaw/fwv043. In equality, everyone in the same situation must be treated equally. On the other hand, everyone in a different situation should be treated differently. Discrimination happens when someone in the same situation is treated differently or in the different situation is treated equally.

2 See, Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas* (PUSHAM UII, 2015). Suparman Marzuki and Despan Heryansyah, "Realitas Pemenuhan Hak Penyandang Disabilitas Di Lembaga Pemasyarakatan," *Nagari Law Review* 4, no. 1 (2020): 92–105.

3 Eko Riyadi, "Pelaksanaan Pemenuhan Hak Atas Aksesibilitas Pendidikan Tinggi Bagi Penyandang Disabilitas Di Yogyakarta," *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021): 71–93, https://doi.org/10.20885/iustum.vol28.iss1.art4.

4 Kinanty, "Melawan Hambatan Penyandang Disabilitas Mental untuk Memperoleh Pekerjaan", dalam https://pjs-imha.or.id/index.php/advokasi-kita/pekerjaan, diakses pada 26 November 2022; Heather Stuart, "Mental Illness and Employment Discrimination," Current Opinion in Psychiatry 19, no. 5 (2006): 522–26, https://doi.org/10.1097/01.yco.0000238482.27270.5d.

5 Perkumpulan PRAKARSA, *Penyandang Disabilitas Di Tempat Kerja* (Jakarta Selatan: Perkumpulan Prakarsa, 2022). p.53. In fact, the ILO confirmed that employers tend prefer to hire persons with physical disabilities over those with mental disabilities. Tendy Gunawan & Grace Monica Halim, *Kajian Cepat Mengenai Ketenagakerjaan Bagi Orang Dengan Disabilitas Di Indonesia* (Jakarta: ILO, 2020).

6 The informants' identity were omitted as they had not agreed to disclosed their names. This information was conveyed at a workshop related to inclusive referral systems held by Sentra Advokasi Perempuan, Difabel, dan Anak (Sapda) in Hotel Prime Plaza, Yogyakarta, on 28 February 2022. The reports about this activity can be found at https://sapdajogja.org/2022/03/penilaian-personal-kunci-penting-sistem-rujukan-inklusif. See also, Perkumpulan PRAKARSA, "Malang Tiada Datang Tunggal: Multi Marginalisasi Penyandang Disabilitas Perempuan Pada Pasar Kerja Di Indonesia.," no. July (2022).

7 See, Martinus Masa Dorita melawan PT Musim Mas, Putusan Nomor 53/Pdt.Sus-PHI/2019, PN.Pbr., pp.1-2 dan 20-21. Bandingkan dengan, Putusan Nomor 1008K/Pdt.Sus-PHI/2020.

8 Constitutionally, Article 27 pargraph (2) jo. Article 28E paragraph (1) of the 1945 Constitution of the Republic of Indonesia has ensured that everyone, including persons with disabilities, has the right to decent work which he chooses and carries out according to his conscience. Together with Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is certain that every person with inherent diversity has the right to equal opportunities and benefits from a job. This constitutional commitment is strengthened by Article 5 paragraph (1) letter f of the Law No. 8 of 2016 concerning Persons with Disabilities which guarantees the optimal enjoyment of the right to work for every person with disabilities Specifically, Article 11 of the Law on Persons with Disabilities reaffirms that the scope of the right to work in the context of persons with disabilities includes the enjoyment of decent and accessible work. At the regional level, especially the City of Yogyakarta, Regional Regulation No. 4 of 2019 concerning the Advancement, Protection and Fulfillment of the Rights of Persons with Disabilities also contains the same commitment with regard to equal rights and opportunities for persons with mental disabilities to work in the government or private sectors. See Article 23 of the Yogyakarta City Regional Regulation Number 4 of 2019 concerning the Promotion, Protection and Fulfillment of the Rights of

the access of persons with disabilities as a workforce to obtain work, the main formulation of which can be found, among others, in the research of Winsherly Tan and Dyah Putri Ramadhani,[9] Geminastiti Purinami, Nurliana Cipta Apsari, and Nandang Mulyana,[10] and Utama Dewi.[11] These studies have not emphasized state intervention to ensure optimal enjoyment of the right to work for workers with disabilities. The previous researchers also did not use aspects of the obstacles faced by persons with disabilities in their analysis. Conceptually, the term barriers in disability studies refers to environmental or external factors that, either directly or indirectly, do not support inclusiveness and equal enjoyment of human rights for persons with disabilities. Third, by focusing on the obstacles faced by persons with disabilities in enjoying their rights, studies such as those conducted by PUSHAM UII in the court context,[12] Marzuki and Heryansyah in the correctional context,[13] and Riyadi in the educational context[14] do not appear to have touched on the enjoyment of the right to work and Indonesian labor law, namely Law Number 13 of 2003 concerning Labor (Labor Law), a focus which is the emphasis of this study.

This study focuses on two research questions. First, what are the legal barriers to optimal enjoyment of the right to work for workers with disabilities? Second, to overcome these legal barriers, what interventions can the state take to ensure equality and non-discriminatory treatment for workers with disabilities? In this case, substantively, discrimination includes equality of treatment for different situations, or, conversely, differences in treatment for the same situation. Based on the answers to these questions, our central argument is that the provisions of the Labor Law, especially those that form the basis of rights for any legal relationship between companies as employers and workers with disabilities, are legal barriers that prevent workers with disabilities from enjoying their right to work inequality. Therefore, more adequate intervention from the state on the Labor Law is needed.

The discussion in this article is structured in three parts. The first part explains the theoretical framework regarding the phrase "legal obstacles" especially in the context of the enjoyment of human rights for persons with disabilities. In it, there is our interpretation of the phrase legal barriers faced by persons with disabilities and the framework of interpretation that underlies it. The second part presents an analysis of legal barriers to the enjoyment of the right to work for workers with disabilities. The discussion emphasizes the provisions in the Labor Law and how these provisions are considered as legal obstacles faced by workers with disabilities in enjoying the right to work. Based on the analysis of these legal barriers, the third part of the discussion of this article is filled with the formulation of policy directions regarding adequate interventions that can be taken by the state to ensure equality and non-discriminatory treatment for workers with disabilities in the future.

2. Research Methods

This normative study is implemented using a conceptual and case approach. The analytical tool of this study utilizes the component "barriers faced by persons with disabilities" within the framework of a social model for disabilities, particularly legal barriers. This component first works in the context of our a priori analysis of how the provisions of the Labor Law contribute to the disruption of equal enjoyment of the right to work for workers with disabilities. We then illustrate the industrial relations case between Martinus Masa Dorita and PT Musim Mas to confirm the said analysis. In this case, the case works in the context of understanding the workings of the provisions of the Labor Law which are analyzed in a concrete legal event.

The selection of the Martinus Masa Dorita case against PT Musim Mas itself was based on three considerations, namely: (a) persons with disabilities whose status as workers are directly involved as one of the

Persons with Disabilities. Moreover, the Regional Government has the duty and function to provide equal opportunities and treatment for persons with disabilities to obtain employment in accordance with their abilities, conditions and the variety of disabilities. See Article 24 of Regional Regulation No. 4 of 2019 concerning the Promotion, Protection and Fulfillment of the Rights of Persons with Disabilities.

9 See, Winsherly Tan and Dyah Putri Ramadhani, "Pemenuhan Hak Bekerja Bagi Penyandang Disabilitas Fisik Di Kota Batam," *Jurnal HAM* 11, no. 1 (2020): 27, https://doi.org/10.30641/ham.2020.11.27-37.

10 Geminastiti Purinami A, Nurliana Cipta Apsari, and Nandang Mulyana, "Penyandang Disabilitas Dalam Dunia Kerja," *Focus : Jurnal Pekerjaan Sosial* 1, no. 3 (2019): 234, https://doi.org/10.24198/focus.v1i3.20499.

11 Utami Dewi, "Implementasi Kebijakan Kuota Bagi Penyandang Disabilitas Untuk Mendapatkan Pekerjaan Di Kota Yogyakarta," *Jurnal Kajian Ilmu Administrasi Negara* 3, no. 2 (2015): 67–83, https://doi.org/10.21831/jnp.v3i2.11969.

12 Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*.

13 Marzuki and Heryansyah, "Realitas Pemenuhan Hak Penyandang Disabilitas Di Lembaga Pemasyarakatan."

14 Riyadi, "Pelaksanaan Pemenuhan Hak Atas Aksesibilitas Pendidikan Tinggi Bagi Penyandang Disabilitas Di Yogyakarta."

parties; (b) the judge's considerations are directly related to the substance of the Labor Law examined through this study; and (c) this case was investigated up to the Supreme Court stage – which indicates the high level of seriousness of the claims therein – and has permanent legal force. As far as this study is concerned, no other cases have been identified whose characteristics are identical to the industrial relations case involving Martinus Masa Dorita.

The data of this research are qualitative in nature, originating from primary legal materials such as the Constitution of 1945 of the Republic of Indonesia (Constitution of 1945 of the Republic of Indonesia), Law Number 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities), the Labor Law, and decisions court. The legal material is combined with secondary legal material in the form of scientific documents, including peer-reviewed journals, research results from nongovernmental organizations (NGOs) and non-profit organizations working on the issue of the rights of persons with disabilities, and books which specifically related to issues of persons with disabilities, the right to work, and employment. These data were analyzed prescriptively.

3. Discussion

3.1 Legal Barriers to Persons with Disabilities: A Theoretical Framework

The presence of the Law on Persons with Disabilities is a new chapter in efforts to respect, fulfill and protect the rights of persons with disabilities in Indonesia, including in the context of enjoying the right to work. In it, persons with disabilities are defined as any person who "experience physical, intellectual, mental and/or sensory limitations" and "experience barriers" in interacting with their environment.[15] The law seems to place obstacles as one of the elements of persons with disabilities. However, the use of the term obstacle is not accompanied by an explanation of it. Therefore, we begin this discussion with the meaning of the barriers experienced by persons with disabilities in interacting with their environment, including legal barriers, based on recent studies on human rights and persons with disabilities.

The term barriers in the issue of persons with disabilities can be found, among others, in the literature that discusses social models for disabilities.[16] According to the social model, disability is a condition caused by an environmental situation that is not inclusive, inaccessible, and incompatible with the inherent diversity of each individual.[17] Different from its predecessors, especially the medical model which understands disability as a disability and disturbance from within (internal factors),[18] the social model understands disability as a problem

15 Article 1 number 1 The Law No. 8 of 2016 on Persons With Disabilities.

16 The social model is one of the most adequate models in the current context in understanding disability. The presence of this model marks a monumental shift in understanding disability, bearing in mind that previously disability was strongly understood within the framework of the medical model. Srikala Naraian and Sarah Schlessinger, "When Theory Meets the 'Reality of Reality': Reviewing the Sufficiency of the Social Model of Disability as a Foundation for Teacher Preparation for Inclusive Education," *Teacher Education Quarterly* 44, no. 1 (2017): 81.\\uc0\\u8221{} {\\i{}Teacher Education Quarterly} 44, no. 1 (2017 Lihat juga, Teryl L. Dobbs, "A Critical Analysis of Disabilities Discourse in the Journal of Research in Music Education, 1990-2011," *Bulletin of the Council for Research in Music Education*, no. 194 (2012): 7–30, https://doi.org/10.5406/bulcouresmusedu.194.0007. Today, the social model has succeeded in replacing the medical model and has had a major impact on the global discourse on disability. Stephen Bunbury, "Unconscious Bias and the Medical Model: How the Social Model May Hold the Key to Transformative Thinking about Disability Discrimination," *International Journal of Discrimination and the Law* 19, no. 1 (2019): 26–47, https://doi.org/10.1177/1358229118820742; Anna Lawson and Angharad E. Beckett, "The Social and Human Rights Models of Disability: Towards a Complementarity Thesis," *International Journal of Human Rights*, 2020, 1–32, https://doi.org/10.1080/13642987.2020.1783533. See also, the United Nations Convention on the Rights of Persons with Disabilities.

17 Edurne Garcia Iriarte;, Roy McConkey, and Robbie Gilligan, *Disability and Human Rights. Global Perspective* (London: Palgrave Foundations, 2016). In contrast, the medical model understands disability as a form of damage to the body, Eko Riyadi, "Proses yang Menghargai Prinsip '*nothing about us without us*'", dalam Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*., hlm. viii, and an individual's limitations/disability problems that may be caused by disease, accident, or other health conditions. Agustina Palacios, "THE SOCIAL MODEL IN THE INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES," *The Age of Human Rights Journal* 4, no. 4 (2015): 91–110.\\uc0\\u8220{}THE SOCIAL MODEL IN THE INTERNATIONAL CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES,\\uc0\\u8221{} {\\i{}The Age of Human Rights Journal} 4, no. 4 (2015 To understand how people with disabilities are treated under the medical model, see Nick Watson, Alan Roulstone, and Carol Thomas, *Routledge Handbook of Disability Studies, Routledge* (Oxon, 2012). hlm 70.

18 Edurne Garcia Iriarte;, McConkey, and Robbie Gilligan, *Disability and Human Rights. Global Perspective*. p. 13. The medical model came under sharp criticism especially in the 1960s-1970s. Hisayo Katsui and Shuaib Chalklen, *Disability, Globalization, and Human Rights.*, ed. Routledge (New York, 2020). p. 8. The debate began with a commotion about the meaning of "disability" from a medical

that originates from outside the individual (external factors).[19] For example, if a deaf person cannot communicate with the people around him, then this is not caused by hearing loss in his ears but because the people around him do not communicate using a sign or written language. If a wheelchair user cannot go up to the second floor of a company building, then this is not because his legs – in the language of the medical model – are not working but because the company building does not provide adequate ramps or lifts wide enough for wheelchair users. A person with schizophrenia is not unable to pursue education because there are – again in the language of the medical model – mental deficiencies or damage but because the education system does not provide proper accommodations in providing education according to their needs, both in terms of services and facilities and infrastructure.

Based on the social model, the commitment to overcoming disability conditions is thus more focused on providing appropriate accommodations[20] and not on healing efforts based on the will to "normalize or perfect again" an individual's condition.[21] For example, a worker who is blind will certainly find it difficult to read job documents provided in plain text format. Therefore, provide work documents in audio or braille format to eliminate the obstacles faced by blind workers. Carey also gave another example, that "people who process information more slowly would not necessarily be 'disabled' in settings that did not require them to process complex information or that provided for them to do so."[22]

The interpretation of the social model regarding persons with disabilities – in which the condition of disability is believed to occur due to factors outside the individual's body – becomes a framework for interpreting the obstacles faced by persons with disabilities in living their lives. In the context of equal enjoyment of human rights, external factors are constructed as obstacles faced by persons with disabilities. Due to obstacles, the rights that should be enjoyed optimally and equally by every person with disabilities are hindered. The result is inequality in the enjoyment of rights. In this regard, various literatures that discuss equalizing the rights of persons with disabilities within the framework of the social model have developed the types of barriers that persons with disabilities face in interacting with their environment. The obstacles in question consist of obstacles to physical facilities and infrastructure, behavioral barriers, technology, information and communication barriers, to resource constraints.[23] However, as also identified by Robyn Powell, Erin Andrews, and Kara Ayers, scholars

perspective which tends to be inhumane and degrading to human dignity. In medical belief, disability is an individual disorder. Disabled constructions are also closely related to the meaning of damage, uselessness, and imperfection. Everything has a negative connotation. Suparman Marzuki, "Proses Peradilan Harus Menjamin Aksesibilitas bagi penyandang Disabilitas", dalam Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*. p. xiii. See also, Michelle A. Travis, "Gendering Disability to Enable Disability Rights Law," *California Law Review* 105, no. 3 (2017): 837–84, https://doi.org/10.15779/Z38599Z13G.which understands disability not as an inherent personal deficiency but as the result of the environment with which an impairment interacts. The social model is reflected in the accommodation mandate of the Americans with Disabilities Act of 1990 (ADA The medical model has also been criticized for directing human categorization into "normal" or "abnormal" and "perfect" or "imperfect," which also has a negative connotation. The medical model is also seen as reducing the knowledge of persons with disabilities about their own bodies and experiences. Edurne Garcia Iriarte;, McConkey, and Robbie Gilligan, *Disability and Human Rights. Global Perspective*. p. 16.

19 Hashem N. Alsharif, "The Models of Disabilities In Saudi Arabia," *Indonesian Journal of International & Comparative Law* 6, no. 1 (2019). hlm 11-13.

20 Adequate accommodation for persons with disabilities are modifications and adjustments that are appropriate and necessary to ensure the enjoyment or implementation of all human rights and fundamental freedoms for persons with disabilities on an equal basis. Article 1 number 2 Government Regulation No. 39 of 2020 concerning Adequate Accommodations for Persons with Disabilities in the Judicial Process.

21 Instead, the solution that the medical model offers is to return the abnormal to the normal or the imperfect to the perfect. However, as Iriarte noted, "*the disproportionate expense made on technology and research to 'cure' disability when, first, there is insufficient evidence of the effectiveness of such techniques, and second, investment in improving social conditions for disabled people may have an even greater quality of life benefits.*" Edurne Garcia Iriarte;, McConkey, and Robbie Gilligan, *Disability and Human Rights. Global Perspective*. p. 16. As emphasized by Hawking in *World Report on Disability* 2011, "*in fact, we have a moral duty to remove the barriers...to unlock the vast potential of persons with disabilities.*" World Health Organization, "World Report on Disability", WHO Press, Geneva, 2011, p. ix. Chan and Zoellick also commented that the unfavorable conditions experienced by persons with disabilities today exist because "*persons with disabilities experience barriers in accessing services*" sehingga "*we must…remove the barriers which prevent them participating in their community; getting a quality education, finding decent work, and having their voices heard.*" World Health Organization, "World Report on Disability", p. xi.

22 Allison C. Carey, *On the Margins of Citizenship. Intellectual Disability and Civil Rights in Twentieth-Century America* (Philadelphia: Temple University Press, 2009). p. 16.

23 See, Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*, 79–142. See also, JD Robyn M. Powell, PhD, ABPP Erin E. Andrews, PsyD, and PhD Kara B. Ayers, "Becoming a Disabled Parent: Eliminating Access Barriers to Health Care Before, During, and After Pregnancy," 2022. 369-422; Virginia Atkinson, Rebecca Aaberg, and Staffan Darnolf, "Disability Rights

have not adequately studied legal barriers that can interfere with the enjoyment of human rights for persons with disabilities.[24]

Interestingly, PUSHAM UII has developed a theoretical guide to assess the obstacles faced by persons with disabilities, one of which is legal barriers.[25] Legal barriers themselves refer to legal norms that do not promote inclusivity and equal enjoyment of human rights for persons with disabilities. The law that should be the basis for advancing equal enjoyment of rights for everyone, including persons with disabilities, in this case, has actually become a factor causing discriminatory situations experienced by persons with disabilities. In the context of the right of every person with disabilities to vote or be elected in a political process, for example, legal obstacles arise when the state actually establishes a policy that prohibits persons with disabilities from participating on the basis of their disability condition. This policy becomes a legal obstacle because its norms interfere with the access of every person with disabilities to vote and be voted for.

Legal barriers based on the meaning constructed by PUSHAM UII have been used in assessing various aspects, starting from the enjoyment of the right to education to the right to a fair trial in courts and correctional institutions.[26] However, not a single study has used legal barriers as an analytical tool to examine the enjoyment of the right to work for workers with disabilities. In this context, this research uses legal barriers as optics to assess how policies in the field of employment contribute to the disruption of the enjoyment of the right to work for workers with disabilities.

3.2 The Right to Work for Persons with Disabilities and Legal Obstacles in Their Enjoyment

The right to work is one of the human rights.[27] Recognition of this right is important because of its connection with what Abraham Maslow theorized as basic human needs.[28] This meaning can be found, among others, in the writings of Charles Fourier[29] and Hugh Collins.[30] Fourier, as explained by Scotto, interprets the right to work based on the natural tendency of every human being to hunt, fish, gather food, and herd animals.[31] In studies related to human history, everyone performs these actions to fulfill their basic needs in order to live.[32] In Maslow's language, thus, the right to work is close to efforts to fulfill human physiological needs.[33]

and Election Observation: Increasing Access to the Political Process," *Nordic Journal of Human Rights* 35, no. 4 (2017): 375–91, https://doi.org/10.1080/18918131.2017.1400348; Li Chen, "Interpretation of the Marrakesh Treaty Based on the Human Rights Model of Disability," 2022. G De Beco, "The Right to Inclusive Education: Why Is There so Much Opposition to Its Implementation?," *International Journal of Law in Context*, 2018.

24 Robyn M. Powell, PhD, Erin E. Andrews, PsyD, and Kara B. Ayers, "Becoming a Disabled Parent: Eliminating Access Barriers to Health Care Before, During, and After Pregnancy," 373.

25 Puguh Windrawan (ed), *Aksesibilitas Peradilan Bagi Penyandang Disabilitas*.

26 Puguh Windrawan (ed). Marzuki and Heryansyah, "Realitas Pemenuhan Hak Penyandang Disabilitas Di Lembaga Pemasyarakatan."; Riyadi, "Pelaksanaan Pemenuhan Hak Atas Aksesibilitas Pendidikan Tinggi Bagi Penyandang Disabilitas Di Yogyakarta."

27 His confession can be read in various legal documents, such as Articles 23 of the *Universal Declaration of Human Rights*, Article 6 and 7 *International Covenant on Economic, Social, and Cultural Rights,* and Article 27 paragraph (2), Article 28D paragraph (2), and Article 28E paragraph (1) UUD NRI 1945.

28 Maslow is widely known, among others, through his theory of the hierarchy of human needs. About Maslow and his theory, read A. H. Maslow, "A Theory Of Human Motivation," *Psychological Review*, no. 13 (1943): 223–49, https://doi.org/10.1007/978-3-030-36875-3_12.tools for measuring the impact of climate change mitigation activities and economic activities in general are required to be increasingly precise. Specifically, these tools will be expected to bring more clarity as to whether activities are compatible with a <2 °C-world or not. This fine but decisive distinction between what is climate-friendly and what is climate-friendly enough to support the transition to a <2 °C-world is a question being asked with increasing pressure by a range of stakeholders, such as policymakers, investors and financial institutions. The X-Degree Compatibility (XDC Abraham Maslow, *Motivation and Personality* (New York: Harper and Row, 1943). Abraham Maslow, *Toward a Psychology of Being* (Princeton: D. Van Nostrand Company, 1962).

29 See, Charles Fourier, *The Theory of the Four Movements*, Cambridge (Cambridge, 1996). Pablo Scotto, "Thinking the Future of Work through the History of Right to Work Claims," *Philosophy and Social Criticism* 46, no. 8 (2020): 942–60, https://doi.org/10.1177/0191453719860220.

30 See, Hugh Collins, "'Is There a Human Right to Work?,'" in *The Right to Work. Legal and Philosophical Perspective*, ed. Virginia Mantouvalou (Oregon: Hart Publishing, 2015).

31 Scotto, "Thinking the Future of Work through the History of Right to Work Claims," 944.

32 Read, James C. Davis, *The Human Story: Our History from the Stone Age to Today* (Harper Collins, n.d.); Yuval Noah Harari, *Sapiens. A Brief History of Humankind*, Diterjemah (Tangerang Selatan: PT Pustaka Alvabet, 2017).

33 Maslow's own physiological needs were placed as the most basic needs, where the fulfillment of these needs became the earliest motivation for everyone to be fulfilled. Concrete examples of physiological needs are the needs for air, water, food, clothing, shelter, and reproduction.

Collins on another occasion claimed that the value or interest of each individual will be self-realization explaining why the right to work needs to be considered as a human right.[34] Such meaning is identical to what Maslow constructed as self-actualization,[35] namely the will for self-fulfillment; this is a kind of natural tendency in every person to actualize the potential he has.[36] Borrowing Maslow, self-realization or self-actualization refers specifically to "the desire to become more and more what one is, to become everything that one is capable of becoming".[37] Thus, if Fourier constructs the right to work as a right that is close to efforts to fulfill human physiological needs, then Collins arrives with another construction in which the right to work is a right that is close to the self-actualization efforts of each individual.

One of the most authoritative interpretations of the meaning of the right to work today comes from the UN Committee on Economic, Social, and Cultural Rights (CESCR) through General Comment No.18 on the Right to Work (General Comment No.18).[38] CESCR emphasizes that respect for this right is expressed through the freedom of every individual, including persons with disabilities, to choose a job based on their conscience.[39] The CESCR also emphasizes that the right to work is developed through the recognition that everyone, as stated in Article 7 of the CESCR, has the right to enjoy just and favorable working conditions.[40] The work must conform to generally accepted standards of honorable or moral conduct and promote equality.[41] Thus, the right to work also includes the right "not to be unfairly deprived of employment".[42] CESCR also explained that the right to work has normative content in the form of accessibility.[43] In this case, the enjoyment of the right to work must be free from discriminatory treatment[44] and the workplace must be inclusive of the diversity inherent in every individual, including persons with disabilities.[45]

We put the meaning of the CESCR as an interpretation framework to understand the state's obligation to ensure that every worker with a disability enjoys the right to work optimally. One of the obligations that the state needs to realize in this context is protecting the right to work for workers with disabilities. To realize this, the state needs to, first, take positive steps to prevent third parties, including employers, from interfering with the freedom of a person with disabilities to choose a job based on his conscience. Second, the state needs to develop

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34 In finding the essence of the right to work, Collins divides the right to work into positive and negative dimensions. He explained, "*the negative aspect of the right concerned with freedom from unjustifiable discrimination and barriers in employment takes the form of a traditional civil liberty. The positive right plainly shares the characteristics of a social and economic right.*" According to him, the essence of the right to work is twofold, namely the right to have a job and the right to be able to work. Hugh Collins, "'Is There a Human Right to Work?'".

35 Collins said, instead of using the term self-actualization, he chose to use self-realization. Hugh Collins..

36 See also, A. H. Maslow, "A Theory Of Human Motivation," 382.tools for measuring the impact of climate change mitigation activities and economic activities in general are required to be increasingly precise. Specifically, these tools will be expected to bring more clarity as to whether activities are compatible with a <2 °C-world or not. This fine but decisive distinction between what is climate-friendly and what is climate-friendly enough to support the transition to a <2 °C-world is a question being asked with increasing pressure by a range of stakeholders, such as policymakers, investors and financial institutions. The X-Degree Compatibility (XDC

37 A. H. Maslow, "A Theory Of Human Motivation."tools for measuring the impact of climate change mitigation activities and economic activities in general are required to be increasingly precise. Specifically, these tools will be expected to bring more clarity as to whether activities are compatible with a <2 °C-world or not. This fine but decisive distinction between what is climate-friendly and what is climate-friendly enough to support the transition to a <2 °C-world is a question being asked with increasing pressure by a range of stakeholders, such as policymakers, investors and financial institutions. The X-Degree Compatibility (XDC

38 General Comment No.18 on the Right to Work: Article 6 of the International Covenant on Economic, Social, and Cultural Rights, *UN.Doc.E/C.12/GC/18*, 6 February 2006.

39 General Comment No.18, paragraf.4.

40 General Comment No.18, paragraf 8.

41 Contextually, it refers to "*respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration*," "*provides an income allowing workers to support themselves and their families*," and incompatible with "*physical and mental integrity*" everyone who enjoys a job. General Comment No.18, paragraf 7. See also, Colm O'Cinneide, "The Right to Work in International Human Rights Law," in *The Right to Work. Legal and Philosophical Perspective*, ed. Virginia Mantouvalou (Oregon: Hart Publishing, n.d.), 2015.

42 General Comment No.18, paragraf 8.

43 Other normative contents of the right to work are availability, acceptability and quality.

44 In particular on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, health status (including HIV/AIDS), sexual orientation, or civil, political status , social, or other. States should design and implement national policies to promote equality of opportunity and eliminate discrimination with the aim of protecting disadvantaged and marginalized individuals and groups in particular.

45 In this case, the state is obliged to build data networks and facilities as well as provide various information related to access to jobs, including the labor market, starting from the local, national, regional and international levels.

an intervention mechanism for employers to ensure that working conditions for workers with disabilities are equipped with proper accommodations so that every worker with disabilities is free from obstacles. Third, the state needs to ensure that persons with disabilities enjoy the right to work based on respectable and equal standards of behavior. Fourth, the state needs to ensure that employers do not place workers with disabilities in inaccessible jobs with a variety of disabilities. In addition, the state must not turn a blind eye if this happens, especially if this results in the dismissal of workers with disabilities. Fifth, the umbrella for all of these obligations is that the state must intervene so that workers with disabilities are treated equally and are free from discrimination in the companies where they work.

The question is, to what extent are the norms of the Labor Law compatible with these protection standards? Unfortunately, we identified that the norms of the Labor Law are not yet compatible with such protection standards. This is because the Labor Law seems to exclude company management from interventions that can be carried out by the state. This was identified, among others, from the provisions of Articles 108 to 111 of the Labor Law which stipulates that company regulations, including collective labor agreements between employers and workers, are drawn up and are the sole responsibility of the company. The consequence of these provisions is that the rights and obligations between the company and workers, terms of employment, and company regulations become the jurisdiction of the company. The Labor Law seems to distance the state from corporate affairs and governance.

The room for intervention from the state to ensure workers with disabilities are free from discriminatory treatment is limited because of this. On the one hand, the state has a positive-active obligation that has been ensured through the constitution to prevent discrimination in the enjoyment of the right to work for workers with disabilities. However, on the other hand, the Labor Law closes the opportunity for the state to realize this obligation by purifying the substance of company regulations and collective labor agreements between employers and workers as the company's full responsibility which appears to be free from state intervention.

This was confirmed, for example, in the Martinus Masa Dorita case against PT Musim Mas. Dorita is an employee at PT Musim Mas. One day, he had two work accidents, which resulted in him having sensory and physical disabilities.[46] This made the company's management rotate Dorita from one field of work to another for the reason "there is a need."[47] At first, Dorita accepted the company management's decision for the first transfer. However, when he was rotated for the second time for the same reason, he refused due to the incompatibility of the work area with his sensory and physical conditions.[48] He also conveyed this to the management of the company.[49] In the midst of such a situation, the management of PT Musim Mas considered Dorita to be unproductive and this led to the termination of employment.[50]

Dorita took the termination of employment decision to the Industrial Relations Court (PHI). The PHI judges attractively favored Dorita on the grounds that, among other things, the termination of employment carried out by the management of PT Musim Mas was illegal because the court found that the transfers were not made on the basis of the company's needs and did not meet proper and proper professional values.[51] The PHI decision was then appealed by PT Musim Mas to the Supreme Court.

The Supreme Court, unfortunately, overturned the PHI's decision in favor of PT Musim Mas.[52] Instead of considering in depth the obstacles faced by Dorita as a person with physical and sensory disabilities due to the rotation carried out by the company's management, the Supreme Court considered that Dorita's action not to carry out the rotation order "could be categorized as violating the Collective Labor Agreement" between him and the company.[53] The Supreme Court is of the opinion that termination of employment is legal if the worker violates the Collective Labor Agreement.[54]

The Dorita case is a concrete example of the immunity of company regulations and collective labor agreements between employers and workers from state intervention. This immunity does not only come from

46 Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., pp.20-21.
47 Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., p.14.
48 Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., pp.2-3.
49 Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., p.4.
50 Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., p.22.
51 See, Decision Number 53/Pdt.sus-PHI/2018/PN.Pbr., pp.21-23.
52 Read, Decision Number 1008K/Pdt.Sus-PHI/2020.
53 Decision Number 1008K/Pdt.Sus-PHI/2020, p.6.
54 Decision Number 1008K/Pdt.Sus-PHI/2020, p.7.

the Labor Law but is also approved by the Supreme Court. The immunity of company regulations, including collective labor agreements between employers and workers, which are legitimized by the Labor Law, in fact, results in workers with disabilities receiving discriminatory treatment.

Discrimination in this context occurs in the form of indirect discrimination. In the context of laws and regulations, indirect discrimination occurs when a provision in a regulation, although initially not intended and formulated for discriminatory purposes, turns out to result in a situation of discrimination against a certain group. The provisions of Articles 108 to 111 of the Labor Law – which stipulate that company regulations, including collective labor agreements between employers and workers, are drawn up and become the sole responsibility of the company – are certainly not intended and formulated for discriminatory purposes from the start. However, the impact of implementing these regulations is the discriminatory treatment for workers with disabilities is an undeniable fact.

Law through the Labor Law has failed to become a tool for the state to ensure that every person with disabilities enjoys the right to work optimally according to the variety of disabilities. The existing norms of the Labor Law in this regard have not been able to encourage third parties, especially employers or companies, to ensure decent and barrier-free working conditions for workers with disabilities. Thus, the Labor Law has not been able to strengthen the aspects of equality and respect for workers with disabilities in corporate governance.

Reflecting on Dorita's experience, the Labor Law is not even able to ensure that companies or employers do not place workers with disabilities in inaccessible work fields with a variety of disabilities, which leads to termination of employment. The Labor Law as a legal umbrella that should protect the equality of all workers, including workers with disabilities, means that it has not opened up sufficient space for the state to intervene to ensure that corporate governance complies with company regulations, including collective labor agreements, realized based on equality and non-discrimination commitments.

The failure of the Labor Law to ensure that workers with disabilities are free from discrimination in the workplace can be considered as a legal obstacle to the enjoyment of the right to work for workers with disabilities. In accordance with its meaning, the construction of barriers in the social model for disabilities refers to external factors that are direct or indirect causes of an environment that is not inclusive and accessible for every person with disabilities. Legal barriers thus refer to the existence of laws that, firstly, are unable to engineer the environment to be inclusive and accessible for all kinds of disabilities. Second, legal barriers also refer to the existence of laws that are actually a source of exclusion and discrimination for persons with disabilities.

With this emphasis, the provisions of the Labor Law can be considered as a legal obstacle. This is because its existence is actually a source of exclusion and discrimination for workers with disabilities considering that the provisions of the Labor Law have indirectly limited the scope for state intervention to ensure that workers with disabilities are free from discriminatory treatment in the workplace.

3.3 Protecting the Enjoyment of Equality and Non-Discrimination Treatment for Workers with Disabilities

This discussion focuses on adequate interventions that can be carried out by the state, especially in the field of legislation, to protect the enjoyment of the right to equal and non-discriminatory treatment for workers with disabilities. The field of legislation is considered appropriate because, in reality, this research found that the provisions of the Labor Law contribute to legal barriers to the enjoyment of the right to work for workers with disabilities. In this case, amending the Labor Law is the most basic step to remove existing legal barriers.

Amendments to the provisions of the Labor Law to eliminate legal barriers for workers with disabilities are justified based on the policy direction of the law. One of the goals to be achieved by the Labor Law itself is manpower development which improves the quality of the workforce and its role in development. The state also seeks to provide protection to workers based on human dignity. This protection is realized to guarantee human rights for every worker, regardless of the differences inherent in each worker.[55]

Based on these considerations, the state seems to have aspirations to ensure the running of corporate governance while still paying attention to human rights for workers including the right to work for workers with disabilities. However, the reality is just the opposite. The provisions of the Labor Law actually become a legal

55 See, Letters c and d of the consideration of Law Number 13 of 2003 concerning Manpower (UU Ketenagakerjaan).

obstacle to the enjoyment of the right to work because the norms have been proven to result in discrimination against workers with disabilities as confirmed in the case of Martinus Masa Dorita against PT Musim Mas.[56] Therefore, this study encourages the revision of the Labor Law to realize the protection of rights for workers with disabilities. The intended revision focuses on providing more space for the state to intervene in the formation of company regulations and collective labor agreements between employers and workers. This intervention is not intended to interfere with the corporate household, but to ensure that workers with disabilities enjoy work optimally in accordance with their conscience, the variety of disabilities, and the equality attached to them.

The Labor Law, as described in the previous subchapter, limits the scope for state intervention by excluding company regulations and collective labor agreements between employers and workers as independent company affairs. Therefore, the idea offered in this study is that future Labor Law must contain provisions regarding the principles for forming company regulations and collective labor agreements, which at least contain the following norms:

1. Company regulations and collective labor agreements must contain specific clauses that respect human rights based on equality and treatment without discrimination on any basis;
2. The commitment to respect human rights through company regulations and collective labor agreements must comply with human rights law standards; and
3. The commitment to respect human rights through company regulations and collective labor agreements must contain clear formulations.

These three things are cumulative and become the basic principles in the formation of company regulations and collective labor agreements. The meaning of the three formulas above is as follows. First, what is meant by respecting human rights is that company regulations and collective labor agreements do not interfere with the equality of all workers, including workers with disabilities. In the concept of law, equality is a fundamental principle in human rights. Equality is a form of equal treatment; in the same situation must be treated equally and in different situations must be treated differently.[57] In the context of workers with disabilities, equality can occur if companies provide different treatment in the form of fulfilling reasonable accommodations for workers with disabilities so that they can carry out their work activities on an equal footing with workers with non-disabilities.[58] Meanwhile, what is meant by discrimination is that the same situation is treated differently or different situations are treated equally.[59]

Second, company regulations must comply with human rights law standards. What is meant by conformity with human rights law is limited to the relationship between employers and workers, especially workers with disabilities. At a minimum, this commitment must comply with the Convention on the Right of Persons with Disabilities (CRPD) which has been ratified into Law Number 19 of 2011 concerning the Ratification of the CRPD, the International Labor Organization's Declaration on Fundamental Principles and Rights at Work, and the Law on Persons Disabilities. Third, what is meant by a clear formulation is that every company regulation and collective labor agreement must use a choice of words or terms that are clear and easy to understand so that they do not give rise to various interpretations in their implementation.

56 This is because the company regulations that were formed are not based on accessibility for workers with disabilities. The various cases described previously illustrate the existence of serious problems in the formation of company regulations. The formation of company regulations is based on Article 110 of the Labor Law as amended by Law Number 11 of 2020 concerning Job Creation which reads (1) Company regulations are drawn up by taking into account suggestions and considerations from representatives of workers/labourers in the company concerned. Regarding the material regulated in company regulations, in general it becomes the full authority of the company. However, Article 111 paragraph (1) of the Manpower Law confirms that company regulations contain at least: a. rights and obligations of entrepreneurs; b. rights and obligations of workers/laborers; c. working conditions; d. company rules; and e. period of validity of company regulations.

57 Eko Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional, Dan Nasional* (Depok: Rajawali Pers, 2018), 28.

58 Eko Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional, Dan Nasional*.

59 Eko Riyadi, *Hukum Hak Asasi Manusia Perspektif Internasional, Regional, Dan Nasional*. If the state does not intervene in the formation of company regulations, it can be said to be a form of indirect discrimination. That is when the practical impact of laws and/or policies constitutes a form of discrimination even though it is not intended for discriminatory purposes. For example, the construction of an airport without regard to accessibility for persons with disabilities. Because indirectly, people with disabilities are discriminated against because they cannot access the facilities.

What if the company does not comply with the norms mentioned above? Referring to the Regulation of the Minister of Labour Number 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations and Making and Registration of Collective Labor Agreements (Permenaker 28/2014), the agency responsible for manpower affairs has the authority to ratify company regulations and collective labor agreements. Article 7 Permenaker 28/2014 ensures that the ratification of company regulations and collective labor agreements is carried out by (1) heads of government agencies in the district/city labor sector for companies that are only located in one regency/city area; (2) head of government agency in the provincial labor sector for companies that have more than one district/city in one province; or (3) Director General, for companies located in more than one province. Permenaker 28/2014 indicates that the state can ascertain whether company regulations and collective work regulations that have been prepared contain material that provides adequate respect for workers with disabilities.

The main question following the existence of this idea is: is it justifiable to provide space for the state to intervene in corporate governance? This article emphasizes that such efforts can be justified by reasons related to the state's duty to protect workers with disabilities based on the framework of state obligations in human rights law and, in practice, state intervention in corporate governance is not new at all in Indonesia. Here's an explanation.

First, regarding the state's duty to protect workers with disabilities in companies. International human rights law mandates the state to positively and actively ensure the optimal enjoyment of the right to work for everyone, including persons with disabilities. This obligation contains two dimensions, namely prevention and recovery. The prevention dimension requires the state to develop various measures to prevent human rights losses from third parties, including from companies through their management. The recovery dimension is needed considering the inevitability of human rights losses from third parties. Therefore, the state needs to develop various mechanisms in order to recover those whose human rights have been harmed by third parties, including in this case by companies through their governance.[60] In the context of manpower, today's international human rights law has the United Nations Guiding Principles on Business and Human Rights (UNGP), which specifically mandates a "state duty to protect human rights" including in the context of manpower.[61]

Second, regarding the practice of state intervention in corporate governance today in the context of employment. In practice, the state has intervened in corporate governance in order to provide equality and guarantee rights for workers. This can be inspired by various statutory regulations. For example, Article 53 of the Law on Persons with Disabilities requires the Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises to employ at least 2% of workers with disabilities. Private companies are also required to employ at least 1% of persons with disabilities. This rule explicitly instructs companies in both the government and private sectors to provide quotas for workers with disabilities. Apart from that, there is also Government Regulation Number 60 of 2020 concerning the Disability Service Unit (ULD) in the Employment Sector, in which the norms regulate the tasks and forms of coordination between local governments and employers to ensure respect, protection, and fulfillment of the rights of workers with disabilities.

Other interventions can be seen in regulations regarding occupational health and safety. Through Law Number 1 of 1970 concerning Work Safety (Occupational Safety Law), the state is actively involved in ensuring work safety for workers. Article 10 of the Occupational Safety Act authorizes the Minister of Labour to form a safety and health committee. His job is to ensure that the implementation of obligations in the field of work safety runs optimally. Based on the obligations and rights of workers in the context of occupational safety, the Occupational Safety Law mandates companies, among other things, to (a) provide self-protection equipment for workers, (b) fulfill and comply with all occupational safety and health requirements, and (c) ensure the availability an objection mechanism for workers who feel that certain jobs do not comply with work safety procedures.[62]

Other interventions are identified in the provision of minimum wages for workers. Article 90 paragraph (1) of the Labor Law stipulates that employers are prohibited from paying wages lower than the minimum wage. If it violates, then the company can be suspended. This is done in order to ensure the welfare of workers. In addition,

60 Lottie Lane, "The Horizontal Effect of International Human Rights Law in Practice: A Comparative Analysis of the General Comments and Jurisprudence of Selected United Nations Human Rights Treaty Monitoring Bodies."
61 See, Principles 1-10 *United Nations Guiding Principles on Business and Human Rights*.
62 Article 12 of Law Number 1 of 1970 concerning Work Safety.

there are provisions regarding company obligations in the context of social and environmental responsibility as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (Company Law). Companies that do not carry out this obligation may be subject to certain sanctions based on the Company Law.

The above regulations have described the form of state intervention. Conceptually, this intervention was carried out as a consequence of the adherence to the concept of a welfare state based on the Constitution of 1945 of the Republic of Indonesia. In this concept, the state's responsibility for the welfare of its people, among other things, can be carried out through interventions in corporate governance. In the context of workers with disabilities, interventions carried out by the state apart from preventing discrimination are also an effort to provide welfare for workers with disabilities.

4. Conclusion

Legal barriers to the enjoyment of the right to work for workers with disabilities can come in two forms. The first form is the absence of laws that ensure that workers with disabilities enjoy the work they choose based on their conscience under inclusive conditions, accessible to all kinds of disabilities, and equal. The second form is the existence of laws that actually open up opportunities for exclusivity and discrimination for workers with disabilities in the workplace. This study proves that the provisions of the Labor Law regarding company regulations and collective work regulations between employers and workers still have an impact on exclusive working conditions and discriminatory conditions for workers with disabilities. At the same time, the provisions of the Labor Law also limit the space for state intervention in order to ensure that companies respect the equality of every worker in the workplace, including every worker with a disability. Therefore, this study encourages changes to the Labor Law. Provisions in the Labor Law regarding company regulations and collective labor agreements between employers and workers must open up space for the state to intervene, particularly in terms of establishing company regulations and collective labor agreements. This policy change is supported, among other things, by (a) the legal basis for human rights, particularly in relation to the state's duty to protect the right to work for workers with disabilities in the context of corporate governance, and (b) state intervention practices that have been widely developed and realized today on corporate governance.

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