



## LEGAL COMPARISON BETWEEN USA'S FEDERAL LAW AND INDONESIA'S NATIONAL LAW ON THE IMPLEMENTATION OF QUOTA SYSTEM FOR DISABLED EMPLOYEE

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### Abstract

*This thesis examines the legal frameworks in the United States and Indonesia concerning the employment of persons with disabilities (PWDs). It compares the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination and mandates reasonable accommodations, with Indonesia's Law Number 8 of 2016, which establishes a quota system for PWD employment. The research investigates the effectiveness of both approaches in promoting inclusivity and identifies potential shortcomings in Indonesia's quota system, such as ambiguity in enforcement and lack of specific accommodation guidelines. By analyzing legal documents, scholarly literature, and real-world data, this study aims to inform policymakers and stakeholders on strategies to enhance employment opportunities for PWDs in Indonesia. It suggests a potential hybrid approach that combines elements of both systems, incorporating clear accommodation standards and robust enforcement mechanisms while considering cultural sensitivities and potential economic impacts. This research contributes to the ongoing discourse on disability rights and employment policies, offering insights for a more inclusive and equitable workforce in Indonesia.*

**Keywords:** *Persons With Disabilities, Employment, Quota System, Reasonable Accommodation, Disability Rights.*

### A. INTRODUCTION

The concept of ensuring job opportunities for a designated quota of individuals with disabilities emerged amidst and post-World War I across various West European nations. This emergence seems to stem from two primary factors. At first, the aftermath of the war resulted in a significant number of disabled veterans. Upon integrating into a labor market already plagued by economic downturn, these veterans faced heightened challenges due to their disabilities in acquiring and retaining suitable employment. Hence, as a token of appreciation for their service, governmental positions were frequently earmarked for them.<sup>1</sup>

The Americans with Disabilities Act (ADA) of 1990 was signed into law by President George H.W. Bush on July 26, 1990. The law provides a broad array of civil rights protections for people with disabilities, including prohibitions against employment discrimination and mandates to make public accommodations accessible. The ADA Amendments Act of 2008 expanded the definition of "disability," extending the law's protection to more people. While barriers and discrimination continue to exist, the ADA

<sup>1</sup> Social Security Bulletin, *Mandatory Employment of the Handicapped*, February Vol. 42, No. 2, SSA, Washington D.C, 1979, Page 23-24.

has had a profound impact on the ability of people with disabilities to participate in public life. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in many areas of public life, including jobs, schools, transportation, and many public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

The ADA extends civil rights safeguards to individuals with disabilities, akin to those afforded based on race, color, sex, national origin, age, and religion. It ensures parity for individuals with disabilities across diverse domains, encompassing public accommodations, employment, transportation, state and local government services, and telecommunications. Organized into five titles, the ADA delineates distinct provisions pertaining to various facets of public life. Our focus lies on the inaugural title, which delves into facilitating equitable access to employment opportunities and benefits for individuals with disabilities. Employers are mandated to furnish reasonable accommodations to qualified applicants or employees, defined as modifications or adjustments to job roles or environments enabling participation in the application process or essential job functions. Oversight and enforcement of this segment are entrusted to the U.S. Equal Employment Opportunity Commission. Entities with 15 or more employees are obliged to adhere to these statutory provisions. Title I regulations elucidate the concept of disability, outline protocols for the reasonable accommodation process, address medical evaluations and inquiries, and delineate parameters for assessing “direct threat” situations entailing significant risk of substantial harm to the health or safety of employees with disabilities.

Indonesia explicitly has Law No. 8 of 2016 concerning Persons with Disabilities which was ratified on April 15, 2016 where this Law provides a firm legal basis regarding the position and rights of persons with disabilities. In the preamble to the Law on Persons with Disabilities it was stated that; “The Unitary State of the Republic of Indonesia guarantees the survival of every citizen, including persons with disabilities who have legal standing and have the same human rights as Indonesian citizens and as an inseparable part of the citizens and Indonesian people, is the mandate and gift of God the Most One, to live forward and develop fairly and with dignity.” The birth of the Republic of Indonesia Law Number 8 of 2016 is expected to further guarantee the dignity, progress of protection, empowerment, enforcement, and fulfillment of the rights of persons with disabilities, which are the embodiment of Republic of Indonesia Law Number 19 of 2011 concerning the Convention on the Rights of Persons with Disabilities.

Based on the background above, the author formulates the research questions as follows: 1.) What are some of the key similarities and differences between the American Disabilities Act of 1990 and Indonesia’s Law Number 8 of 2016 Concerning Persons With Disabilities?, 2.) What are the diverging philosophical foundations between the American Disabilities Act of 1990 and Indonesia’s Law Number 8 of 2016 Concerning

Persons With Disabilities that led to their distinct approaches to addressing disability employment issues?

This study aims to provide a comprehensive understanding of the key similarities and differences between the American Disabilities Act of 1990 (ADA) and Indonesia's Law Number 8 of 2016 Concerning Persons With Disabilities, with a particular focus on their comparative effectiveness in achieving employment inclusion for persons with disabilities. By examining the fundamental provisions and underlying principles of both legislations, this research seeks to identify potential best practices and areas for improvement in fostering inclusive employment opportunities for individuals with disabilities in both countries.

## **B. DISCUSSION**

### **1. Key similarities and differences between the American Disabilities Act of 1990 and Indonesia's Law Number 8 of 2016 Concerning Persons With Disabilities.**

Both Indonesia and The United States in their own national or federal regulation, in general acknowledge that: Physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination, others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination. The staggering number of individuals living with disabilities, a figure only projected to grow, starkly contrasts with the persistent discrimination they face.

This discrimination, deeply rooted in historical isolation and segregation, continues to permeate critical aspects of life, from employment and housing to education and healthcare. The ADA mentioned directly in the finding section whereas in the Indonesian Law conveyed indirectly through its policy. Unlike those facing discrimination based on race, gender, or religion, individuals with disabilities have often lacked legal recourse to address this injustice, further exacerbating their marginalization.

The consequences of this pervasive discrimination are far-reaching and devastating. Census data and national polls consistently reveal that people with disabilities occupy an inferior status in society, experiencing severe disadvantages in various domains. Despite their individual abilities and potential contributions, they are often relegated to a position of powerlessness, trapped by societal stereotypes and barriers that limit their opportunities. The nation's stated goals of equality, full participation, and economic self-sufficiency for individuals with disabilities remain unfulfilled, while the ongoing discrimination costs the country dearly in terms of both human potential and economic productivity.<sup>2</sup>

Discrimination against individuals with disabilities persists in such critical areas as employment. Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely

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<sup>2</sup> Indonesia, Law Number 8 of 2016 and United States of America, American with Disability Act of 1990, Specifically mentioned in the whereas (Konsideran) section in Law Number 8 of 2016, concurrently mentioned in section 2 page 3 of American With Disability Act of 1990.

disadvantaged socially, vocationally, economically, and educationally. Hence, both of Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.<sup>3</sup>

## **2. The diverging philosophical foundations between the American Disabilities Act of 1990 and Indonesia's Law Number 8 of 2016 Concerning Persons With Disabilities that led to their distinct approaches to addressing disability employment issues.**

As Indonesian citizens, the position, rights, obligations, and roles of people with disabilities are the same as those of other citizens. This is in accordance with the principles of Pancasila, specifically the second principle which states "Just and civilized humanity" and the fifth principle which states "Social justice for all Indonesian people."

The Meaning of the Fifth Principle: Social justice for all Indonesian people. The fifth principle means justice for all people, where every citizen receives fair treatment in the legal, political, social, economic, and cultural fields. Social justice also encompasses the meaning of fair and prosperous. Social justice also implies achieving a balance between personal life and community life. This fifth principle is the goal of the Indonesian nation in its statehood, which is to create a just and prosperous society based on Pancasila as the foundation of the state. All formulations of Pancasila as the state foundation are taken from the values of the Indonesian people's way of life and poured into a unity as the nation's way of life. Based on its history, the formulation of Pancasila has been carried out in such a way as to reach an agreement on each of its principles. Each principle of Pancasila also has its own meaning and purpose as mentioned.<sup>4</sup>

Furthermore, it is also stated in the 1945 Constitution, Article 27 paragraph (2) which states: "Every citizen has the right to work and a decent living for humanity."

The reaffirmation in the amendments to the 1945 Constitution regarding Human Rights signifies that our country has given serious attention to human dignity in national life. Therefore, increasing the role of people with disabilities in national development is crucial and should be empowered accordingly. In Indonesia, the guarantee of Human Rights is stated in Articles 28A-28J of the 1945 Constitution. The inclusion of Human Rights in the 1945 Constitution has officially made them constitutional rights, or "constitutional rights," for every citizen. With these constitutional rights, every citizen has a constitutional guarantee for all their rights as stated in the 1945 Constitution. These articles imply that if a citizen is not granted their right to decent work, they can claim their rights from the state. Conversely, if a citizen does not fulfill their obligations, the state has the right to impose sanctions on them. Therefore, it can be concluded that the state guarantees all its citizens, without exception, the right to obtain decent work.

The concept of social justice has been one of President Soekarno's philosophical thoughts, where social justice is a society or the nature of a just and prosperous society,

<sup>3</sup> *Ibid.*

<sup>4</sup> Hukum Online, *Arti Pancasila bagi Bangsa Indonesia dan Makna Lima Silanya*, <https://www.hukumonline.com/berita/a/pancasila-sebagai-dasar-negara-lt61f23142a7e13/?page=all#!>, Jakarta, 2024, accessed on 06/03/2024.

happy for everyone, without humiliation, oppression, or exploitation. It is evident that Soekarno strongly prioritized the value of justice and upheld human rights in the concept of national life. Of course, the birth of this idea about the definition of social justice is the result of Soekarno's reflection on the dark period of Indonesian history. The Indonesian people have experienced suffering, oppression, humiliation, and exploitation by Dutch and Japanese colonialism. The statement in the text above proves that Soekarno wanted to proclaim social justice as a legacy and ethics of the Indonesian nation that must be achieved. We want to establish a state "all for all." Not for one person, not for one group, neither the nobility nor the rich, but "all for all."<sup>5</sup>

Social justice is an idealism in Pancasila, created after Indonesia's independence to foster a strong environment where every human being can truly exercise their rights as citizens in all aspects of life, namely personal justice and social justice. The state and its people must fulfill their obligations to each other. The fifth principle of Pancasila embodies the values representing the main goals of the state in life. Therefore, the fifth principle consists of forms of justice values, the consequences of which must exist in social life and must cover at least three aspects; first, distributive justice, which is the relationship between the state and its citizens, meaning the state has an obligation to fulfill justice in the form of distributing fairness, prosperity, assistance, subsidies, and also opportunities in life based on rights and obligations, second, legal justice, which is the relationship of justice between citizens and their fellow citizens. Citizens are obliged to fulfill justice in the form of adhering to the laws and regulations in force in the country, third, commutative justice, which is the relationship of justice between one citizen and another on a reciprocal basis. It is clear that the principle of justice is to be the basis of national unity. Justice is only possible in a democracy.

During the 1960s, an American philosopher named John Rawls mainly concentrated on writing *A Theory of Justice*, published in 1971, attempted to develop standards or principles of social justice that could apply to real societies. "Justice as Fairness." It consists of two principles. The First Principle of social justice concerns political institutions:

"Each person has the same and inalienable (permanent) claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all."<sup>6</sup>

This principle means that everyone has the same basic liberties, which can never be taken away. Rawls included most of the liberties in the U.S. Bill of Rights, such as freedom of speech and due process of law. He added some liberties from the broader area of human rights, like freedom of travel.

Rawls recognized the right of private individuals, corporations, or workers to own private property. But he omitted the right to own the "means of production" (e.g., mines, factories, farms). He also left out the right to inherit wealth. These things were not basic

5 Fatimatul Zahroh Anhari et al., *Implementasi Sila ke 5 Bagi Penyandang Disabilitas Dalam Mendapatkan Hak dan Perlindungan Hukum dalam Bekerja Untuk Menunjang Kesejahteraan Sosial dan Ekonomi*, JURNAL EMAS: Ekonomi Manajemen Akuntansi Kewirausahaan, 1(1), 261 - 274., Page 271.

6 John Rawls, *Theory of Justice revised edition*, Harvard University Press, Cambridge, Massachusetts, 1999, Page 33-36.

liberties in his view. Rawls agreed that basic liberties could be limited, but “only for the sake of liberty.” Thus, curbing the liberties of an intolerant group that intended to harm the liberties of others may be justified.

Social and economic inequalities are to satisfy two conditions:<sup>7</sup>

1. first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and
2. second, they are to be to the greatest benefit of the least-advantaged members of society (the Difference Principle).

This Second Principle focused on equality. Rawls realized that a society could not avoid inequalities among its people. Inequalities result from such things as one’s inherited characteristics, social class, personal motivation, and even luck. Even so, Rawls insisted that a just society should find ways to reduce inequalities in areas where it can act. By “offices and positions” in his Second Principle, Rawls meant especially the best jobs in private business and public employment. He said that these jobs should be “open” to everyone by the society providing “fair equality of opportunity.” One way for a society to do this would be to eliminate discrimination. Another way would be to provide everyone easy access to education.

In the United States, classical liberalism, also called laissez-faire liberalism, is the belief that a free-market economy is the most productive and government interference favors a few and hurts the many—or as Henry David Thoreau stated, “that government is best which governs least” that played a significant part on the making of the American with Disabilities Act of 1990. The term liberalism took on its current meaning in the United States during the 1920s. In the 19th century and the early 20th century, the term had usually described classical liberalism, which emphasizes limited government, religious freedom, and support for the free market. Classical liberalism is a philosophy of individualism and self-responsibility with little concern for groups or sub-communities. Classical liberals in the United States believe that if the economy is left to the natural forces of supply and demand, free of government intervention, the result is the most abundant satisfaction of human wants.

The relationship between individualism and collectivism, individualism and collectivism are often seen as opposing philosophies, with individualism emphasizing personal autonomy and self-reliance, and collectivism emphasizing group identity and collective action. However, these two philosophies are not necessarily mutually exclusive and can interact in complex ways. Individualism and collectivism can be seen as complementary values that balance each other out. For example, individualism can encourage creativity and innovation, while collectivism can foster cooperation and social harmony. However, individualism and collectivism can also conflict with each other. For example, individualism can lead to a focus on personal achievement at the expense of the common good, while collectivism can stifle individual creativity and initiative. The relationship between individualism and collectivism is complex and multifaceted.

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<sup>7</sup> Constitutional Rights Foundation, *BRIA 23 3 c Justice as Fairness: John Rawls and His Theory of Justice*, Teach Democracy Foundation, Volume 23, No. 3, 2007, Page 1-2.

While these two philosophies are often seen as opposing values, they can also be seen as complementary and can work together to create a more balanced and equitable society.

Can individual rights coexist with collective rights? Yes, individual rights can coexist with collective rights, but it often requires careful balancing and negotiation. Individual rights refer to the liberties of each individual to pursue life and goals without interference from other individuals or the government. Examples of individual rights include the right to life, liberty and the pursuit of happiness as stated in the United States Declaration of Independence. Collective rights, on the other hand, are rights held by a group rather than its members separately; in other words, they are rights held by a group as a group, and not by its members as individuals. The coexistence of individual and collective rights is a complex issue that often requires careful balancing. This is because the exercise of individual rights can sometimes conflict with the exercise of collective rights, and vice versa. For example, an individual's right to freedom of speech might conflict with a group's right to dignity and respect. In such cases, it is necessary to find a balance that respects both types of rights.

One way to achieve this balance is through the concept of 'reasonable limits'. This concept, which is used in many legal systems, allows for the limitation of certain rights in order to protect other rights and the common good. For example, the right to freedom of speech can be limited in order to prevent hate speech and protect the dignity of certain groups. Another way to balance individual and collective rights is through the principle of 'proportional representation'. This principle, which is used in many democratic systems, ensures that all groups in society are represented in decision-making processes. This can help to ensure that the rights of both individuals and groups are taken into account.

### **C. CONCLUSION**

Despite the similarities on the end goals—which are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency of disabled employments—the technical legal frameworks (legal approach) differ greatly. Those differences lie in the definition of person/employee with disabilities, mandatory quota system, sanction, covered entities, and their reasonable accommodations policy.

Indonesia has Pancasila (the national philosophical foundation) and the 1945 Constitution as its foundation. It uses a quota system that prioritizes equality among Indonesian citizens through government policies. On the other hand, the United States uses liberalism, the principle of rationality, independent living philosophy, classical liberalism, and deontology, which focuses more on individual rights than collective rights.

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