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Ni Putu Yogi Paramitha Dewi

Legal Mobilisation by Indonesian Women with Disabilities in Pursuing Empowerment

APMA, The Master's Programme in Human Rights and Democratisation in Asia Pacific

NI PUTU YOGI PARAMITHA DEWI

LEGAL MOBILISATION BY INDONESIAN WOMEN WITH
DISABILITIES IN PURSUING EMPOWERMENT

FOREWORD

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BIOGRAPHY

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ABSTRACT

Women with disabilities have experienced double marginalisation. As women, they remain marginalised in terms of gender, such as patriarchal culture and religious conservatism, and as a person with disability, their participation in the social, political, economic and cultural lives has been constrained by the state and society's barriers. One example can be seen from the lack of reliable statistics/data about women with disabilities in Indonesia. They remain treated as a separate entity by the state policies. This treatment, in turn, could not understand their experience of marginalisation as a unified human subject. Even though Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No 7 of 1984 and the Convention on the Rights of Persons with Disabilities (CRPD) through Law No 19 of 2011, it has not changed much and the marginalisation continues to remain. Based on that, the problems addressed in this thesis are: first, the intersectional forms of social construction that are a serious problem for women with disabilities in which sexual and gender identity escalate the condition of women with disabilities; second, the legal and institutional

settings in Indonesia positioning within different government institutions. By applying qualitative research methods through documentary research and semi-structured interviews, this research discusses the legal mobilisation by women with disabilities in Indonesia in order to pursue empowerment as well as their limitations. I divide their process of mobilising legal and institutional resources through three different strategies: advocacy from above, advocacy from within and advocacy from below. They achieved such meaningful goals in the normative context and empowering other women with disabilities; however, the challenges for further empowerment remain in place.

Implication of thesis

This research has two implications: firstly, the method will be useful for understanding how women with disabilities in Indonesia exercise their agency to mobilise legal and institutional resources in achieving empowerment. Secondly, it enriches the literature review of women with disabilities from gender and human rights approach.

Key words:

Women with disabilities / legal mobilisation / empowerment / Indonesia

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TABLE OF ABBREVIATIONS

APBN	Anggaran Pendapatan dan Belanja Negara/The State Budget
BAPPEDA	Badan Perencanaan Pembangunan Daerah/ The Regional Body for Planning and Development
BAPPENAS	Badan Perencanaan Pembangunan Nasional/National Development Planning Agency
BPS	Badan Pusat Statistik/The Indonesian Board of Statistics
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COVID-19	Coronavirus disease
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil society organisations
DPOs	Disabled people organisations
DPR	Dewan Perwakilan Rakyat/The House of Representatives
DRF	Disability Rights Fund
HWDI	Himpunan Wanita Disabilitas Indonesia/Indonesian Association of Women with Disabilities
HWPC	Himpunan Wanita Penyandang Cacat/Indonesian Association of Handicapped Women
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
KND	Komisi Nasional Disabilitas/National Commission on Disabilities
Komnas Perempuan	Komnas Perempuan/National Commission on Violence Against Women
NHRIs	National human rights institutions
NGO	Non-governmental organisation
P2TP2A	Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak/The Integrated Services Centre for Women and Children Empowerment
Prolegnas	Program Legislasi Nasional/National Legislative Program
SLB	Sekolah Luar Biasa
SDGs	Sustainable Development Goals
SIGAB	Sasana Inklusi & Gerakan Advokasi Difabel

TABLE OF CONTENTS

Foreword	II
Biography	IV
Abstract	IV
Acknowledgements	VI
Table of abbreviations	VII
1. Introduction	1
1.1 Background	1
1.2 Research question	6
1.3 Research objective	6
1.4 Research methodology	6
1.4.1 Documentary research	7
1.4.2 Interviews	7
1.4.3 Data analysis	8
1.4.4 Limitations	9
1.4.5 Ethical concerns	9
1.5 Hypothesis	10
1.6 Significance of the study	10
2. Literature review and theoretical framework	11
2.1 The intersection between disability and gender	11
2.2 Empowerment	15
2.3 Legal mobilisation as a tool of empowerment	16
2.4 Theoretical framework	19
3. Disability law during and after the post-authoritarian regime	23
3.1 Disability law during the authoritarian regime	23
3.2 Disability law in the post-authoritarian regime	27
3.3 Legal and institutional complexities	33
4. The mobilisation of resources	39
4.1 Discrimination and collective actions	39
4.1.1 The experience of women with disabilities	40
4.1.2 The emergence of collective actions	42
4.2 Mobilising resources	45
4.2.1 Domesticating the CRPD	46
4.2.2 Changing public policy through the courts	49
4.2.3 Occupying strategic positions for advocacy	51

5. Challenges ahead	58
5.1 The National Commission on Disability	58
5.2 The Omnibus Law	64
5.3 The Elimination of Sexual Violence Bill	68
5.4 Other institutional barriers	72
6. Conclusion and recommendations	75
6.1 Conclusion	75
6.2 Recommendations	77
Bibliography	79

LIST OF FIGURES

- | | |
|-----------------------------------------------------------------------|---|
| 1. <i>Percentage of the types of disability in Indonesia (2015)</i> | 3 |
| 2. <i>Percentage of persons with disabilities based on activities</i> | 4 |

1.

INTRODUCTION

1.1 BACKGROUND

Women have been one of the most vulnerable social groups in Indonesia. In the case of women, as a country with a strongly patriarchal culture, women's position has been marginalised for many years despite several legal instruments that aim to protect their rights. For instance, at the state level, Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹ through Law No 7 of 1984 which urges every state party to undertake necessary actions in eliminating discrimination against women. Furthermore, the government has also enacted several laws and regulations to address women's issues, such as the Elimination of Domestic Violence Law No 23 of 2004, and the Presidential Instruction No 9 of 2000 concerning Gender Mainstreaming in National Development.²

Similar to the case of women, people with disabilities in Indonesia have also long been marginalised in society and mainstream development policy. According to the Indonesian Population Profile SUPAS in 2015, 8.56% of the total Indonesian population were people with disabilities.³ Marginalisation in society related to the surrounding environment in which they are living. Moreover, people with disabilities are less likely

¹ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

² Yogi Paramitha Dewi, 'Gendering Adat Law: Women's Right Activists in Balinese Customary Affairs' in Sharon A Bong, Thaatchayini Kananatu and Joseph N Goh (eds), *Effecting Gender and Sexuality Justice in Asia – Finding Resolution Through Conflicts* (Springer 2020).

³ BPS, 'Profil Penduduk Indonesia Hasil Supas 2015' (*Statistics Indonesia*, 30 November 2016) 93 <www.bps.go.id/publication/2016/11/30/63daa471092bb2cb7c1fada6/profil-penduduk-indonesia-hasil-supas-2015.html> accessed 14 December 2022.

to be employed and most of them do not have access to education. They also experience stigmatisation and discrimination where many people may see disability as a personal tragedy, something that needs to be cured or prevented, as a punishment for wrongdoing, or indicate the lack of ability to behave as expected in society.

This reality requires the state's obligation to respect, protect and fulfil the rights of persons with disabilities so that they can participate in the development process.⁴ Indeed, Indonesia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD)⁵ in November 2011 through Law No 19 of 2011. Furthermore, besides ratifying the CRPD, Indonesia has also agreed to implement the Sustainable Development Goals (SDGs). Law No 19 of 2011 itself is the basis to amending Indonesia's law about handicapped persons, Law No 4 of 1997 to Law No 8 of 2016, with a new paradigm named rights-based approach.

Taking together the issues of women and people with disabilities, the intersection of both issues, manifested in women with disabilities, has created double barriers. As a woman, they remain marginalised in terms of gender, stemming from patriarchal culture and religious conservatism, to prevent girls and women from fulfilling their rights. Moreover, Astbury and Walji mentioned challenges such as poverty, violence against women and barriers to adequate sexual and reproductive education.⁶ Simultaneously, the participation of persons with disabilities in Indonesia in the social, political, economic and cultural lives has been constrained by the state and society's barriers. The experience in conjunction with a disability magnifies the challenges women with disabilities face in accessing appropriate services and support. These conditions demonstrate how disabled women have become one of the most vulnerable social groups in Indonesian society.

⁴ Agung Wardana and NPYP Dewi, 'Moving Away From Paternalism: The New Law on Disability in Indonesia' (2017) 18(2) *Asia Pacific Journal on Human Rights and the Law* 172.

⁵ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

⁶ Jill Astbury and Fareen Walji, 'Triple Jeopardy: Gender Based Violence and Human Rights Violations Experienced by Women with Disabilities in Cambodia' *AusAID Research Working Paper 1* (2013) 1.

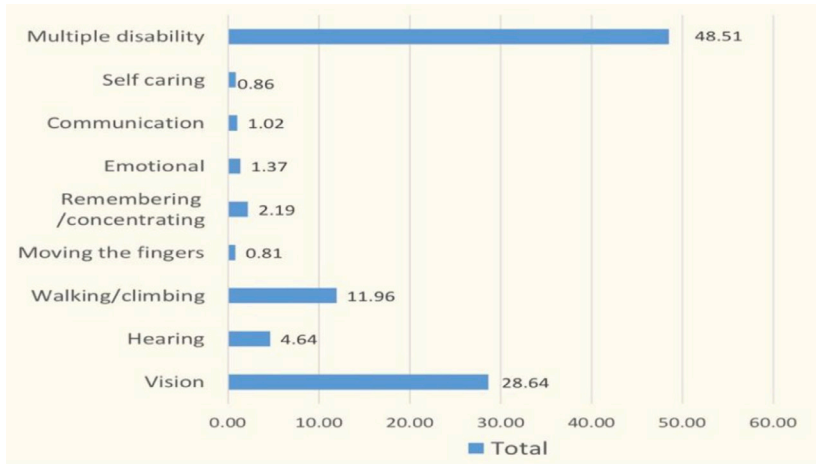


Figure 1. Percentage of the types of disability in Indonesia (2015)

(Source: BPS (2016) cited by G Amannullah, *Measuring Disability in Indonesia* (Statistics Indonesia 2016))

In Indonesia, data on women with disabilities and data on persons with disabilities in general is hard to find due to the lack of reliable statistics which stems from problems with how disability is measured.⁷ The most cited data on disability in Indonesia is a national survey on population (SUPAS) conducted in 2015 by the Indonesian Board of Statistics (BPS). According to the SUPAS, it is estimated that there are more than 21 million people or around 8.56% of Indonesia's total population⁸ with different types of disabilities (as shown in Figure 1 above). Based on this figure it can be seen that persons with multiple disabilities account for up to 48.51%. Pursuant to the elucidation of article 4(2) of the Persons with Disabilities Law, persons with multiple disabilities refers to 'Persons with multiple or multiple disabilities are Persons with Disabilities who have two or more types of disabilities, including deaf-speech and blind-deaf disabilities'. Moreover, 'moving the fingers' which refers to a specific types of physical disabilities such as cerebral palsy are estimated to be around 0.81%.

⁷ Alin Halimatussaidah and others, 'Mapping Persons With Disabilities (PWDs) in Indonesia Labor Market' (2017) 63(2) Economics and Finance in Indonesia 126.

⁸ BPS (n 3).

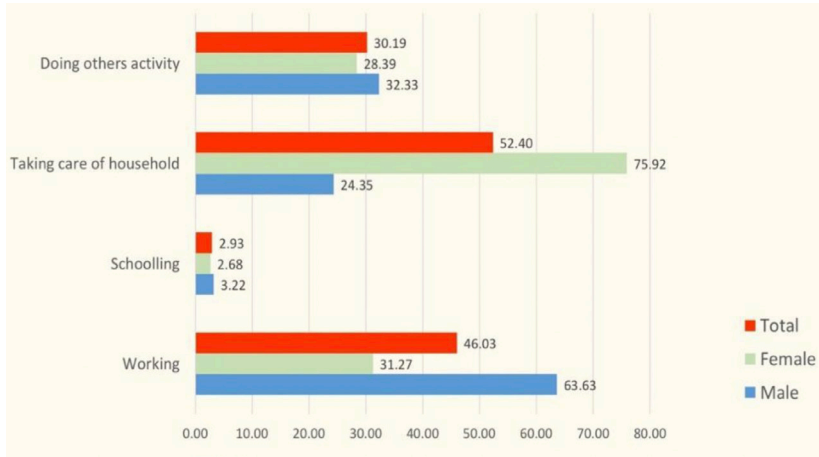


Figure 2. Percentage of persons with disabilities based on activities
 (Source: BPS (2016) cited by G Amannullah, *Measuring Disability in Indonesia*
 (Statistics Indonesia 2016))

According to sex, it is estimated that 50.09% of the total persons with disabilities in Indonesia are women⁹ and 49.01% are men.¹⁰ From a comparative perspective on activities between women and men with disabilities (as shown in Figure 2), 75.92% of women with disabilities are staying at home to undertake household activities compared to that of men with disabilities. In contrast, men with disabilities are more likely to be accepted to work outside than women with disabilities. Figure 2 shows that 63.63% of men with disabilities are working, while only 31.27% of women with disabilities work outside their house. This means that, despite being relatively equal in numbers, women with disabilities appear to be having fewer opportunities to enter the job market and, compared to men, are more likely to be restricted to a domestic sphere. This confirms that women with a disability are more vulnerable than men with a disability.

⁹ Donny Tabelak, 'Dilema 21,5 Juta Penyandang Difabel Di Indonesia' (*Radar Bali*, 7 December 2019) <<https://radarbali.jawapos.com/berita-daerah/metro-denpasar/07/12/2019/dilema-215-juta-penyandang-difabel-di-indonesia>> accessed 14 December 2022.

¹⁰ Halimatussaidah and others (n 7).

The lack of reliable data, as well as the reliance on outdated data on women with disabilities in public policies, represents how the state has overlooked their existence. Through the assertion that ‘the personal is political’, women with disabilities attempt to bring their experience of marginalisation to the public discourse. Indeed, their personal experiences of being denied opportunities are not to be explained by their bodily limitations, but by the disabling social, environmental and attitudinal barriers which are a daily part of their lives.¹¹ The apparent reality of the marginalisation of women with disabilities has not been translated into making the protections and fulfilment of their rights a priority in the state development policies. They remain treated as a separate entity within state policies, as women and as persons with disabilities.

Despite these such challenges, women with disabilities in Indonesia have not passively accepted their difficult conditions. In fact, many of them are actively organising themselves to transform the conditions through advocacy either at the local, regional or national level or even at the international level. The fall of Suharto’s New Order Regime and the adoption of the CRPD have opened opportunities for them to continue their struggles for transforming their community by utilising a rights-based approach. Therefore, this thesis aims to discuss how women with disabilities exercise their agency in improving their conditions by mobilising the legal system in the post-authoritarian regime of Indonesia. It also looks at what have been achieved by their movement and what challenges remain for their continuous search for empowerment.

Based on the background, the problems addressed in this thesis are first, the problem of intersectional forms of social construction for women with disabilities in which sexual and gender identity escalate women with disabilities’ condition and second, the legal and institutional settings in Indonesia that are positioned within different government institutions. Institutionally, women’s issues are under the domain of the Ministry of the Protection of Women and Children. In contrast, the issues of disability are the domain of the Ministry of Social Affairs. Both institutions focus on implementing separated law and regulations on their given domain. Hence, it appears that addressing the

¹¹ Jenny Morris, ‘Impairment and Disability: Constructing an Ethics of Care That Promotes Human Rights’ (2001) 16(4) *Hypatia* 1, 3.

intersectionality between women and disability would be challenging legally and institutionally.

Given these conditions, the purpose of this thesis is to discover and analyse the mobilisation of legal resources by disabled women to pursue empowerment. The focus on legal mobilisation is informed by an assumption that the CRPD is ‘the biggest victory’ and a ‘landmark in the history of the disability rights movement’¹² which indicates a paradigm shift toward a rights-based approach. Article 4 of the CRPD gives mandates to the state parties, among others, to take all necessary measures to eliminate discrimination based on disability within their territory. In Indonesia, to comply with this mandate, the government has enacted Law No 8 of 2016 concerning Persons with Disabilities. Hence, it is essential to look at how women with disabilities mobilise conventions and national legal instruments to pursue empowerment within a complex and fragmented legal and institutional setting.

1.2 RESEARCH QUESTION

How do women with disabilities in Indonesia mobilise legal resources to pursue their collective empowerment?

1.3 RESEARCH OBJECTIVE

Based on the research question, the objective of this thesis is to demonstrate how women with disabilities in Indonesia mobilise resources in pursuing empowerment, what kind of legal and institutional resources are available for them, as well as the strategies that women with disabilities are using to mobilise resources, including their achievements and limitations.

1.4 RESEARCH METHODOLOGY

To answer the research questions, I employed qualitative research methods by documentary research and semi-structured interviews. Qualitative research enables the researcher to uncover ‘as deep inside

¹² Helen Meekosha and Karen Soldatic, ‘Human Rights and the Global South: The Case of Disability’ (2011) 32(8) *Third World Quarterly* 1383, 1384.

the subject as possible, in an attempt to see social reality' through the subject's eyes¹³ and to explore 'the operation and impact of law and legal processes in society'.¹⁴ This research used interviews from key persons: women with disabilities, disabled people organisations (DPOs), the Indonesian government, academics and other relevant persons to the topic of this research.

1.4.1 Documentary research

The documentary research was employed to examine legal instruments both at the international and national levels. Most of the international instruments on people with disabilities' rights are accessed from the internet by visiting the United Nations Human Rights Office and High Commissioner website. Moreover, in scrutinising the national policies, this research examines the Indonesian government documents, such as law or regulations, workshop reports and official written decisions. The purpose of the documentary research is to understand which laws or regulations accommodate the rights for persons with disabilities/women with disabilities and which laws are detrimental for them, before examining the empirical aspect on how they mobilised them for their empowerment.

1.4.2 Interviews

Due to the COVID-19 pandemic, semi-structured interviews were conducted via Zoom meetings or other video call platforms from 29 April 2021 to 5 June 2021. The purpose of these interviews was to gather information and opinions. Semi-structured interviews focused on a specific issue that affects women with disabilities: how women with disabilities are trained on CRPD and legal advocacy; how they use the law; how they advocate for new laws; how they debated in the draft law and how they use the regulations' mechanisms. Furthermore, getting information from DPOs is also important for this thesis to understand the strategy they used in mobilising legal instruments available and the obstacles in achieving the goals. There are two types of participants

¹³ P Corbetta, *Social Research: Theory, Methods and Techniques* (Sage Publications 2003) 40.

¹⁴ P Hillyard, 'Law's Empire: Socio-Legal Empirical Research in the Twenty-First Century' (2007) 34(2) *Journal of Law and Society* 266.

that I interviewed. First, the women with disabilities activists as my key informants:

1. Fanti Frida Yanti, a public servant in Baubau, Southeast Sulawesi.
2. Nurul Saadah, the director of SAPDA Yogyakarta, a DPO.
3. Dwi Aryani, the Indonesian Program Officer of Disability Rights Fund (DRF).
4. Risnawati Utami, the founder of OHANA, a DPO in Yogyakarta and the CRPD Committee member from Indonesia.

Second, the interview with scholars and state commissionaire:

1. Bahrul Fuad, the commissioner at the Indonesian National Commission on Violence Against Women (Komnas Perempuan).
2. Dr Elga Adriana, a lecturer at the Psychology Faculty, Universitas Gadjah Mada Yogyakarta, Indonesia.
3. Sri Wiyanti Eddyono PhD, a lecturer at the Faculty of Law, Universitas Gadjah Mada, Yogyakarta, Indonesia.

1.4.3 Data analysis

This thesis uses a qualitative analysis in which data collected is analysed using a narrative approach. According to Creswell and Poth, the narrative is a study method in analysing the story that has been told by individuals (life course stages).¹⁵ In this research I use stories from women with disabilities activists who struggle to mobilise legal and institutional recourses to pursue empowerment. The struggles include how they get involved in law-making processes, including the ratification of CRPD, Law No 8 of 2016 and other legislation related to women with disabilities. In addition to this involvement, it important to see how they use different strategic institutions to promote their agenda within public policy contexts.

¹⁵ JW Creswell and CN Poth, *Qualitative Inquiry and Research Design, Choosing Among Five Approaches* (4th edn, Sage Publications 2018) 110.

1.4.4 Limitations

There were number of limitations that this research faced as follows:

1. Research was conducted to disabled women in Indonesia (Yogyakarta, Surakarta, Baubau and Jakarta). Due to the time constraint and COVID-19 pandemic, research was conducted in a short period and using an online platform to do the interview.
2. Interviews were postponed due to Eid Al Fitr (Ramadhan) in Indonesia and it was a long holiday.

1.4.5 Ethical concerns

Research for this thesis was conducted through interviews with women with disabilities activists, DPOs, National Commission on the Elimination of Violence Against Women and scholars. Some important points have been taken into account by the researcher in conducting the interviews:

1. The researcher has ensured that all respondents participated based on informed consent to avoid the research participants for being subject to harm and respect their dignity. Psychological harm has been considered for the participant who has traumatic memories of being treated in a discriminatory manner.
2. The respondents were informed about the research with honesty and transparency; any misleading information and representation of primary data findings in a biased way were avoided.
3. The research participants have been informed about the aims and objectives of this research.
4. Participants have the right to withdraw from the project at any stage if they wish to do so.
5. The researcher has ensured the participants' confidentiality and anonymity. However, the participants gave their permission to use their real names and organisations in this research.

All information collected during the research is kept confidentially. It means that any data collected during the interview sessions are be stored online, encrypted and protected by passwords and other relevant security processes and technologies, until after the degree has been conferred.

1.5. HYPOTHESIS

The legal and institutional settings for the protection of the rights of women with disabilities in Indonesia is challenging. Different legal orders exist and superimpose in contemporary Indonesia. It may become a barrier for women with disabilities to advocate their rights in society. Institutionally, the problems of women with disabilities are under the different domain of state institutions. Several legal and institutional resources are available for women with disabilities to be mobilised to pursue their empowerment. Those resources are both at the international and national levels.

1.6 SIGNIFICANCE OF THE STUDY

There are two reasons why this thesis is important. Firstly, in the context of research methodology, research for this thesis has been useful for investigating the meanings of agency, resources and achievement through women with disabilities' eyes, and to explain how women with disabilities utilise the law as a resource in exercising their agency. Furthermore, it strengthens Kabeer's framework on the three dimensions of empowerment¹⁶ in examining women with disabilities to exercise their agency in Indonesia. Secondly, this thesis is important because it enriches the literature review of women with disabilities from a gender and human rights approach. This thesis benefits women with disabilities in Indonesia because their experiences of discrimination are revealed through this research, such that readers can better understand their conditions.

¹⁶ Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435.

2.

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

This chapter aims at mapping out previous studies which are relevant to the topic of this thesis in order to find the gap in the previous studies to be contributed to. It also aims at developing a conceptual framework used in this thesis. The structure of this chapter is as follows: firstly, it discusses the literature related to disability and impairment and states the gap in the literature; secondly, it explains the conceptual framework employed in this thesis to examine legal mobilisation by women with disabilities in Indonesia.

2.1 THE INTERSECTION BETWEEN DISABILITY AND GENDER

The term ‘women with disabilities’ is a specific social category. Very often, it is treated separately in both the scholarly and public policy contexts. Scholarly, two primary pieces of literature deal with the issues of women with disabilities, namely gender studies, which focuses primarily on their gender as a woman, and disability studies, which pays particular attention to women’s impairment and disability. Concerning disability studies, the main themes in this literature tend to focus on specific types of disability, including hearing impairment or deafness,¹⁷

¹⁷ Charlotte Baker Shenk and JG Kyle, ‘Research with Deaf People: Issues and Conflicts’ (1990) 5(1) *Disability, Handicap & Society* 65; Octavian Robinson and Jonathan Henner, ‘The Personal is Political in *The Deaf Mute Howls: Deaf Epistemology Seeks Disability Justice*’ (2017) 32(9) *Disability & Society* 1416; Kristin Snoddon and Kathryn Underwood, ‘Deaf Time in the Twenty-First Century: Considering Rights Frameworks and the Social Relational Model of Deaf Childhood’ (2017) 32(9) *Disability & Society* 1400; SJ Wright, ‘Deafnormativity: Who Belongs in Deaf Culture?’ (2020) 36(8) *Disability & Society* 1221.

visual impairment or blindness¹⁸ and psychosocial.¹⁹ For disability issues in Indonesia, several articles have been published on the rights of disability in the international academic journals in which most of them focus on disability in general.²⁰ It is also important to understand the debate of disability terms in Indonesia to understand that terms can be used as a factor to empower persons with disabilities.²¹

The definitions of persons with disabilities are contested due to different conceptual approaches in viewing disability.²² In disability literature, there are two dominant approaches to how disability is conceived.²³ The first is the medical model which approaches disability from a medical point of view. In this regard, disability is a state of ‘abnormality’ in physical, mental, intellectual and sensory impairment.²⁴ This model treats persons with disabilities as an object of medical treatment and rehabilitation is to be ‘fixed’, cured or assimilated into the society.²⁵ In social and economic welfare, this model leads to a charity approach where persons with disabilities are seen as an object of caritative programmes either from the state or non-state actors.

¹⁸ C Edwin Vaughan, ‘The Social Basis of Conflict between Blind People and Agents of Rehabilitation’ (1991) 6(3) *Disability, Handicap & Society* 203; M Schillmeier, ‘Othering Blindness – on Modern Epistemological Politics’ (2006) 21(5) *Disability & Society* 471; D Bolt, ‘From Blindness to Visual Impairment: Terminological Typology and the Social Model of Disability’ (2005) 20(5) *Disability & Society* 539.

¹⁹ N Mehrotra and M Nayar, ‘Women with Psychosocial Disabilities: Shifting the Lens from Medical to Social’ in Asha Hans (ed), *Disability, Gender, and the Trajectories of Power* (Sage Publications 2015); BV Davar, ‘Legal Capacity and Civil Political Rights for People with Psychosocial Disabilities’ in A Hans (ed), *Disability, Gender, and the Trajectories of Power* (Sage Publications 2015).

²⁰ Agung Wardana and NPYP Dewi, ‘Moving Away From Paternalism: The New Law on Disability in Indonesia’ (2017) 18(2) *Asia Pacific Journal on Human Rights and the Law* 172; Satoko Tsuda and others, ‘Sex Education in Children and Adolescents With Disabilities in Yogyakarta, Indonesia From a Teachers’ Gender Perspective’ (2017) 29(4) *Asia Pacific Journal of Public Health* 328; T Lindsey, ‘Minorities and Discrimination in Indonesia: The Legal Framework’ in G Fealy and R Ricci (eds), *Contentious Belonging: The Place of Minorities in Indonesia* (ISEAS Publishing 2019).

²¹ S Suharto, P Kuipers and P Dorsett, ‘Disability Terminology and the Emergence of “Diffability” in Indonesia’ (2016) 31(5) *Disability & Society* 693.

²² Eilionóir Flynn, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities* (1st edn, Cambridge UP 2011); Theresia Degener, ‘Disability in a Human Rights Context’ (2016) 5(3) *Laws* 35.

²³ *ibid.*

²⁴ Rob Imrie, ‘Rethinking the Relationships between Disability, Rehabilitation, and Society’ (1997) 19(7) *Disability and Rehabilitation* 263; Paul Harpur, ‘Embracing the New Disability Rights Paradigm: The Importance of the Convention on the Rights of Persons with Disabilities’ (2012) 27(1) *Disability & Society* 1, 2-4.

²⁵ Rosemary Kayess and Phillip French, ‘Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8(1) *Human Rights Law Review* 1, 3.

Hence, this model tends to reproduce stigmatisation, disempowerment, segregation, dependence, low self-esteem and optional benevolence instead of duty or rights.²⁶

The second approach is the social model. It embraces disability as a social issue rather than a personal misfortune. This model differentiates between ‘impairment’ and ‘disability’ in which it is argued that a person’s impairment does not automatically make him or her disabled.²⁷ In this model, a human rights-based approach is then introduced. This approach is crucial for including persons with disabilities as part of the same society with the same rights through the principles of equal participation and non-discrimination. Once the external barrier of persons with disabilities is dismantled utilising the right claims, they may exercise their agency to pursue their empowerment.

Besides understanding perspectives that define the status of persons with disabilities in the society, it is also crucial to examine disability using gender analysis. As mentioned by Meekosha, people with disabilities are usually seen ‘without gender’ or as ‘asexual creatures’,²⁸ but in fact, gender has intensified the disability experienced by women. This condition provides women with disabilities with limited opportunities concerning education, employment, marriage and independent living.²⁹ In addition to Meekosha, Ferri and Greg also suggest that gender and disability are social constructions³⁰ in which both are influenced by dominant cultural values in the society.³¹ As a social construction, gender and disability are not naturally given; hence, the possibilities are open to be transformed once the structural conditions change. In transforming the structural conditions, the role of agency becomes essential.

Indeed, the assumptions of the dominant culture have been an important barrier for women with disabilities in exercising their agency. Here, this barrier is based on two grounds, namely the relationship

²⁶ Office of the High Commissioner of Human Rights, *The Convention on the Rights of Persons with Disabilities: Training Guide, Professional Training Series No 19* (United Nations 2014).

²⁷ Michael Oliver, *The Politics of Disablement* (Palgrave Macmillan 1990) 12-20.

²⁸ H Meekosha, ‘What the Hell Are You? An Intercategorical Analysis of Race, Ethnicity, Gender and Disability in the Australian Body Politic’ (2006) 8(2-3) *Scandinavian Journal of Disability Research* 161, 170.

²⁹ *ibid.*

³⁰ Beth A Ferri and Noël Gregg, ‘Women With Disabilities: Missing Voices’ (1998) 21(4) *Women’s Studies International Forum* 429; *ibid.*

³¹ Ferri and Gregg (n 30).

between women and culture, and the relationship between disability and culture. In terms of the relationship between women and culture, women's marginalisation in many different societies has been underpinned by the society's patriarchal culture. Here, it is clear that the patriarchal culture has been a barrier for women to enjoy an equal position to their male counterparts. Hence, this conservative culture needs to be changed in the first place in order to eliminate all forms of discrimination against women, as mandated by the CEDAW and to provide conditions for women's empowerment.

Similarly, on the issues of disabilities, the marginalisation of persons with disabilities has also been upheld by local cultural practices and norms. Those cultural beliefs influence how local communities view disability issues and their solutions. For example, in Puerto Rico, children with disabilities are seen as a consequence of their mother's sin.³² In India, disabilities are seen as a punishment for sins committed by the persons with disabilities themselves or their parent in a past life.³³ Like India, Bali, Indonesia, has a similar view in seeing persons with disabilities as a misfortune from the family due to their sins in the previous life. Meanwhile, in Islamic societies, disabilities are regarded as a given destiny (*Takdir*) from God. Different examples can also be seen in some Mexican, Haitian and Latin American cultures in which disability is seen as a curse for women or family by their enemy through the 'evil eye'.³⁴ Furthermore, Kleinman found that chronic illness and disability were seen negatively among Chinese cultures, who believe it will take away the legitimacy of that person.³⁵ However, in the Navajo Tribe, one of the Native American tribes located in North America, they positively see disability as a teacher for the clan who brings special lessons to the tribe and offers a sixth sense or unique gift.³⁶ This demonstrates how, in a number of societies, disability is predominantly assumed to be something given and cannot be changed.

³² Diana Rogers-Adkinson, Theresa Ochoa and Bernadetta Delgado, 'Developing Cross-Cultural Competence: Serving Families of Children with Significant Developmental Needs' (2003) 18(1) *Focus on Autism and Other Developmental Disabilities* 4.

³³ Nora E Groce and Irving K Zola, 'Multiculturalism, Chronic Illness, and Disability' (1993) 91(5-2) *Paediatrics* 1048.

³⁴ *ibid*; Rogers-Adkinson, Ochoa and Delgado (n 32).

³⁵ A Kleinman, 'Illness Meanings and Illness Behaviour' in S McHugh and TM Vallis (eds), *Illness Behavior: A Multidisciplinary Model* (Plenum Press 1986) 149-60.

³⁶ C Medina, D Jones and S Miller, 'Traditional versus Contemporary Navajo Views of Special Education' (Coming Together: Preparing for Rural Special Education in the 21st Century. Conference Proceedings of the American Council on Rural Special Education, 25-28 March 1998) <<https://files.eric.ed.gov/fulltext/ED417898.pdf>> accessed 28 May 2021.

In fact, the social approach to disabilities views ‘impairment’ and ‘disability’ differently, emphasising structural barriers, not physical challenges, as causes of disabilities. Impairment is related to the physical, mental and intellectual limitations that should be regarded as part of human diversity.³⁷ Accordingly, impairment does not automatically ‘make’ persons with such limitations disabled. They become disabled because of society’s social and physical barriers by disregarding their limitations.³⁸ The social barriers in this regard include cultural practices and norms. Hence, disability is not a person’s misfortune but instead constructed by the majority of persons without disabilities. Within persons with disabilities, women with disabilities are particularly more vulnerable than men with disabilities because they experience multiple marginalisation, both as a woman and as a person with disability. That is precisely why article 6(1) is inserted in the CRPD which stipulates ‘States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms’.

2.2 EMPOWERMENT

Several definitions of empowerment can be found in the literature and it is constructed by many disciplines and arenas. Zimmerman, for instance, explains empowerment as ‘both a value orientation for working in the community and a theoretical model for understanding the process and consequences of efforts to exert control and influence over decisions that affect one’s life, organisational functioning, and the quality of community life’.³⁹ In addition, Rappaport explains empowerment as a process in defining actions between ‘a psychological sense of personal control or influence and a concern with actual social influence, political power, and legal rights’.⁴⁰ Both scholars mentioned above define empowerment without specifically gendering the concept

³⁷ Imrie (n 24); Harpur (n 24).

³⁸ Oliver (n 27).

³⁹ MA Zimmerman, ‘Empowerment Theory Psychological, Organizational and Community Levels of Analysis’ in J Rappaport and E Seidman (eds), *Handbook of Community Psychology* (Kluwer Academic/Plenum Publishers 2000) 43.

⁴⁰ J Rappaport, ‘Terms of Empowerment/Exemplars of Prevention: Toward a Theory for Community Psychology’ (1987) 15(2) *American Journal of Community Psychology* 121, 121.

by assuming that the meaning of empowerment for both men and women is the same.

Furthermore, Kabeer has developed a gendered concept of empowerment. She examines whether or not access to credit, political participation and access to equal education for rural women in South Asia would lead to women's empowerment.⁴¹ For her, empowerment is 'inescapably bound up with the condition of disempowerment and refers to the process by which those who have been denied the ability to make choices acquire such an ability'. Then, empowerment should be seen as a struggle from a condition of disempowerment to be empowered in which choices are available for them. However, it does not mean that those who have many life choices but never experience disempowerment should not be regarded as being empowered. She concludes that providing resources such as access to credit, opportunities for political participation and equal access to education for women does not automatically lead to empowerment, but she demonstrates how such resources could have a transformative effect for women's conditions. In the context of women with disabilities in Indonesia, Kabeer's concept of empowerment is understood as a process through which the agency of women with disabilities mobilises available legal and institutional resources to continuously improve their conditions. It is also related to what could be achieved and cannot be achieved through such mobilisation.

2.3 LEGAL MOBILISATION AS AN EMPOWERMENT TOOL

Following Lejeune and Ringelheim, there are three approaches in examining the nexus between disability and law.⁴² The first is the law and policy approach which emphasises the normative aspects of laws and regulation concerning disability. Very often scholars in this stream focus on the paradigm shift in conceiving disability in international human rights law or domestic laws.⁴³ The second is the law and social movement

⁴¹ Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 437.

⁴² Aude Lejeune and Julie Ringelheim, 'Workers with Disabilities Between Legal Changes and Persisting Exclusion: How Contradictory Rights Shape Legal Mobilization' (2019) 53(4) *Law & Society Review* 983.

⁴³ Kayess and French (n 25); Harpur (n 24); Wardana and Dewi (n 20).

approach to disability which analyses how disability rights' activists organise themselves to transform the existing structural constraints to pursue reasonable accommodation. Legal mobilisation referring to the legal system's use in the pursuit of reasonable accommodation is an important topic in this stream. The work of Vanhala in which she studies the disability rights' activists in Canada is an example of this approach.⁴⁴ The third is the legal consciousness approach that focuses on identity-making of persons with disabilities through legal empowerment.

Lejeune and Ringelheim contribute to all three approaches by looking at the experience of workers with disabilities in Belgium in mobilising anti-discrimination laws to pursue their rights of employment.⁴⁵ They found the employee with disabilities using different identities to protect their rights to work and the outcomes also vary based on the strategies they were used. At first, he used an identity as a worker in general mobilising the labour law regime against termination but the result was negative. Thus, he changed his identity as a disabled worker who was treated discriminatively by his employer. By utilising the legal regime dealing with the rights of persons with disabilities, he could pressure his employer to provide reasonable accommodation instead of terminating him. While Lejeune and Ringelheim focus their work on legal mobilisation to pursue individual disabled interests as a worker,⁴⁶ Vanhala focuses her attention on legal mobilisation for collective purposes of persons with disabilities.⁴⁷

However, like the literature on women with disabilities, studies' geographical object on legal mobilisation tends to be dominated by developed countries where equal opportunities for persons with disabilities, including women with disabilities, at least in the legislation, are far more advanced than that of developing countries. Unlike developed countries where there has been a single and unified legal system, namely the state law, in developing countries, including Indonesia, the state law has to compete with non-state legal orders for legitimacy, such as religious law and customary laws. Hence, the adoption of human rights standards within the state law does not automatically guarantee the use

⁴⁴ Lisa Vanhala, *Making Rights a Reality? Disability Rights Activists and Legal Mobilization* (Cambridge UP 2011).

⁴⁵ Lejeune and Ringelheim (n 42).

⁴⁶ *ibid.*

⁴⁷ Vanhala (n 44).

of such standards in society because members of society may prefer to use their religious or customary laws. In the context of human rights, in Southeast Asia, for instance, the respect, protection and fulfilment of basic human rights has been more of a rhetorical device than an actual practice of the states,⁴⁸ not to mention the rights of persons with disabilities. Hence, this thesis adds to this gap by looking at how women with disabilities in Indonesia mobilise law, both state law and non-state legal orders, for their collective interest as a distinct social group.

Morrill and others conceptualise legal mobilisation as ‘the social processes through which individuals define problems as potential rights violations and decide to take action within and or outside the legal system to seek redress for those violations’.⁴⁹ This concept of mobilisation is focusing on the basis of mobilisation in which the claim of rights has been an important aspect. Lejeune and Ringelheim use this concept as their analytical framework to examine legal mobilisation by workers with disabilities in Belgium.⁵⁰ In this case, they observe that workers, perceiving injustices to their right to work, have utilised different legal claims. At first, some workers did not identify themselves as workers with disabilities; hence, once they faced termination from the employer due to accidents at work, they used the labour law to protect their right to work. However, when they failed in mobilising the labour law, they developed a new identity as a person with a disability who had been treated discriminately. Thus, the legal claim has changed into using anti-discrimination law, especially equal opportunities and the right to reasonable accommodation, albeit with different outcomes.

Based on the study cases, Lejeune and Ringelheim develop legal mobilisation to include three components.⁵¹ The first is the perception of injustice. This element deals with how persons with disabilities perceive their identity and how it informs how they perceive injustices and how the legal system is mobilised. The second element is the process of mobilisation which is related to awareness of disability rights built during the process of mobilisation. The third element is the effects of mobilisation related to what has and what has not been achieved as a result of legal mobilisation. Unlike in Lejeune and Ringelheim’s

⁴⁸ Avery Poole, *Democracy, Rights and Rhetoric in Southeast Asia* (Palgrave Macmillan 2019).

⁴⁹ Calvin Morrill and others, ‘Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth’ (2010) 44(3-4) *Law & Society Review* 651, 654.

⁵⁰ Lejeune and Ringelheim (n 42).

⁵¹ *ibid.*

work⁵² in which these three elements are used to analyse the individual experience of workers with disabilities in Belgium, in this thesis the elements will be applied to analyse the collective experience of women with disabilities in mobilising law in Indonesia.

2.4 THEORETICAL FRAMEWORK

In this thesis, I use an analytical framework by combining a conceptual framework of empowerment developed by Kabeer⁵³ and the concept of legal mobilisation developed by Lejeune and Ringelheim.⁵⁴ According to Kabeer, empowerment can be analysed through three related lenses: resources, agency and achievement.⁵⁵ Resources are understood as material resources in a conventional economic sense and legal and institutional resources that can be mobilised for making future claims.⁵⁶ According to Kabeer, agency is people's capacity to define their life-choices and pursue their own goals to participate in decision-making.⁵⁷ Individuals or collectives can also exercise agency by taking a form of negotiation, bargaining, deception, manipulation, subversion and resistance. The next element is achievements which are conceived as 'the particular ways of being and doing which are realised' as the outcome of the exercise of agency and mobilisation.⁵⁸

Mosedale discusses empowerment within development studies by analysing the power relations in describing and evaluating a particular context.⁵⁹ She criticises the concept of empowerment by Kabeer, which focuses on individuals acquiring ability. Mosedale assesses the empowerment by identifying constraints to action, identifying how women's agency developed and identifying how it changed limitations to action. Moreover, Batliwala analyses women empowerment interventions in India by using Kabeer's conceptual framework as one illustration.⁶⁰ In

⁵² Lejeune and Ringelheim (n 42).

⁵³ Kabeer (n 41) 435.

⁵⁴ Lejeune and Ringelheim (n 42).

⁵⁵ *ibid.*

⁵⁶ *ibid* 437.

⁵⁷ *ibid* 437.

⁵⁸ *ibid* 498.

⁵⁹ Sarah Mosedale, 'Policy Arena Assessing Women's Empowerment: Towards a Conceptual Framework' (2005) 17(2) *Journal of International Development* 243.

⁶⁰ Srilatha Batliwala, 'Taking the Power out of Empowerment: An Experiential Account' (2007) 17(4/5) *Development in Practice* 557.

the article, Batliwala pushes Kabeer's concept of empowerment further. She proposes empowerment as 'a process and the results of a process of transforming the relations of power between individuals and social groups'. Furthermore, she argues that empowerment seeks to transform social power in three critical ways as a process. Firstly, to challenge the dominant ideology, underpinning marginalisation. Secondly, to change the prevailing patterns 'of access to and control over economic, natural, and intellectual resources'.⁶¹ Thirdly, to transform the existing power structures. Both scholars use Kabeer's concept of empowerment to analyse the relationship between gender and development. In this thesis, the conceptual framework of empowerment will be applied within the context of human rights and disability movement. In this regard, it will look at what kind of resources are available, what aspects of agency are being exercised and what kind of achievement has resulted by women with disabilities in Indonesia.

In this process of pursuing empowerment, according to Kabeer, law and regulations are crucial resources mobilised by social actors as they provide a framework of action through which their interests can be claimed and pursued.⁶² Here, the conceptual framework of legal mobilisation becomes relevant. As shown by Lejeune and Ringelheim the question of identity plays a crucial role in legal mobilisation.⁶³ As in the case of disabled workers in Belgium, Lejeune and Ringelheim demonstrate how workers who had been terminated from their job used an identity as a worker in which they mobilise legal resources related to the right to work and labour law.⁶⁴ Meanwhile, those workers who experienced a similar termination of their job used their identity as workers with disabilities and they mobilised legal resources related to disability rights, equal opportunities and the right to adequate accommodation. This shows how choosing a particular collective identity would lead a decision which legal instruments and forums would be mobilised to pursue their interests.

In this thesis, the concept of legal mobilisation will be applied to understand how women with disabilities develop their identity and how they choose different identities to mobilise fragmented legal and

⁶¹ Batliwala (n 60) 560.

⁶² Kabeer (n 41).

⁶³ Lejeune and Ringelheim (n 42).

⁶⁴ *ibid.*

institutional resources dealing with women and disability and what the outcomes would be. This application would also include identifying conditions that facilitate or constrain women with disabilities to reach their expectations in the mobilisation. However, it should also be noted that legal mobilisation may possibly create a condition of what Riach and James term as ‘legal disempowerment’.⁶⁵ They develop this concept in examining Syrian refugees in Jordan in which they are alienated by the procedural and structural aspects of Jordanian legal systems and the pluralistic legal orders protecting their rights. In the context of the thesis, ‘legal disempowerment’ would mean a condition where a legal system’s complexity becomes the barriers for women with disabilities to pursue their empowerment or deflect them from their expectation. Based on the survey of the literature above, there is a gap in the literature dealing with women with disabilities. Such literature tends to be dominated by the Western liberal perspective, particularly Australia,⁶⁶ the United States of America and Canada.⁶⁷ Thus, the theme of women with disabilities in the Global South remains underexplored.

More recently, a book titled *Disability, Gender and the Trajectories of Power*, edited by Hans, focuses on women with disabilities in Asia. This book is published and aims to fill the gap in both gender studies and disability literature.⁶⁸ As an edited book volume consisting of 15 authors, the book covers a range of issues related to women with disabilities, including conceptual development⁶⁹ and case studies of countries.⁷⁰ However, geographically, the book focuses primarily on women with disabilities in South Asia, especially India. With diverse backgrounds of the contributors (male and female, disabilities and no-disabilities, scholars and activists), the book demonstrates that women with disabilities have more attention from all sectors in the society. The case study from India in the book illuminates how women with

⁶⁵ George Riach and Zoe James, ‘Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan’ (2016) 20(4) *The International Journal of Human Rights* 549.

⁶⁶ Meekosha (n 28).

⁶⁷ Ferri and Gregg (n 30); D Brownridge, ‘Partner Violence against Women with Disabilities: Prevalence, Risk, and Explanations’ (2006) 12(9) *Violence Against Women* 805.

⁶⁸ Asha Hans (ed), *Disability, Gender, and the Trajectories of Power* (Sage Publications 2015).

⁶⁹ U Cakravarti, ‘A Gendered Perspective of Disability Studies’ in *ibid*; SB Agnihotri and A Patel, ‘Women with Disabilities: How Do They Fare in Our Society?’ in *ibid*.

⁷⁰ Shubhangi Vaidya, ‘Developmental Disability and the Family: Autism Spectrum Disorder in Urban India’ in Hans (n 68); Renu Addlakha, ‘Gendered Constructions of Work and Disability in Contemporary India: Discursive and Empirical Perspectives’ in Hans (n 68).

disabilities' lived experiences becomes part of their struggle against social stigma and exclusion.

Considering the different social, political, economic and cultural contexts between South Asia and Southeast Asia, studying a Southeast Asian country, namely Indonesia, would be valuable to enrich the emerging literature on women with disabilities. As women with disabilities are the most vulnerable group within disability groups, there is an important question of why their experience seems invisible in disability studies and how they exercise their agency within the current legal and institutional context. To fill this gap, this thesis approaches issues on women with disabilities through the lenses of mobilisation and empowerment by examining the experience of Indonesia.

3.

DISABILITY LAW DURING AND AFTER THE
AUTHORITARIAN REGIME

This chapter provides the legal development of disability law in contemporary Indonesia. There are two important political regimes in the country to be considered, which are the authoritarian regime under the leadership of General Suharto, known as the New Order regime (1967-98) and the post-authoritarian regime (1998-present). Both regimes are considerably different regarding the legal-institutional arrangements and the political-economic structure of the country in which disability law has been implicated. In this light, this chapter aims to discuss how legal frameworks dealing with disability have been formulated in Indonesia and to find out the extent to which disability rights have evolved under the two regimes.

3.1 DISABILITY LAW UNDER THE AUTHORITARIAN REGIME

General Suharto took power from the first and leftist President of Indonesia, Sukarno, in 1967 through mass massacres. Within a short period (1965-66), it is estimated that 1.5 million people who were associated as members of the Indonesian Communist Party, women and peasant activists, leftist intellectuals and Sukarno supporters were killed by militias as well as military forces.⁷¹ The traumatic event had opened a solid path for General Suharto to establish his regime by consolidating military forces, political parties and bureaucracy, making it last for 32 years.

⁷¹ John Roosa, *Pretext for Mass Murder – The September 30th Movement and Suharto's Coup d'État in Indonesia* (The University of Wisconsin Press 2006) 25.

The regime gave economic development the highest priority. In this regard, social policies were highly informed by the extent to which they contributed to economic development and political stability. Spaces for public participation for citizens were very limited due to several reasons. First, laws and policies were decided in Jakarta, the capital city where the central government is situated; hence, social forces, especially those located outside Jakarta, could not participate in the decision-making process. Secondly, and more importantly, public participation was seen suspiciously, which might have unintended consequences for creating political instability due to the mobilisation of social actors for public participation. From the economic development viewpoint, an ideal citizen was seen from his/her position to the labour market as human capital or resource.⁷² Meanwhile, persons with disabilities were considered as a person who could not work nor had a full and meaningful role in economic development. As a result, they were dependent on donations provided by the government and charity organisations which tended to disempower them economically.

With regards to disability issues, as argued by many authors, the authoritarian regime was influenced by the medical model.⁷³ In this context, persons with disabilities were seen as an ‘abnormal’ individual. This paradigm fitted easily with the paternalistic political culture of the Indonesian state in which the central government as the parent of the nation was in charge in deciding what was the best for its society – the children.⁷⁴ Furthermore, although the rights-based approach to disability has been promoted since the 1970s by several international declarations, for instance, the 1971 United Nations Declaration on the Rights of Mentally Retarded Persons, and the 1975 United Nations Declaration on the Rights of Disabled Persons, the New Order government that was suspicious with the language of human rights, in general, was more comfortable to retain the medical model.

This bias perspective toward disability was clearly expressed in several relevant laws and policies, especially Law No 4 of 1997 concerning Handicapped Persons (the 1997 Handicapped Law), the first legislation

⁷² Fajri Nursyamsi and others, *Kerangka Hukum Disabilitas Di Indonesia : Menuju Indonesia Ramah Disabilitas* (1st edn, Pusat Studi Hukum dan Kebijakan Indonesia 2015) 18-19.

⁷³ *ibid* 11; Agung Wardana and NPYP Dewi, ‘Moving Away From Paternalism: The New Law on Disability in Indonesia’ (2017) 18(2) *Asia Pacific Journal on Human Rights and the Law* 172.

⁷⁴ Wardana and Dewi (n 73).

concerning disability. Judging from the use of the term ‘handicapped’ itself, the law stressed the impairment aspect of disability. Furthermore, its preamble was concerned with an increased number of handicapped persons whose needs were to be supported by the state. Article 16 stipulates efforts that should be undertaken by the government and/or public to address disability issues, which are to conduct rehabilitation, provide social funds and maintain the social welfare of handicapped persons. Those efforts were also echoed in Government Regulation No 43 of 1998 concerning Attempts to Increase the Social Welfare of Handicapped Persons to provide social services to persons with disabilities. From such provisions, disability issues were seen from the charity and medical model. Here, persons with disabilities were seen as socially, physically and mentally impaired person and rehabilitation was required to re-function and re-develop their impairments to be normally functional.

The problematic perspective toward disability in the 1997 Handicapped Law had contributed to barriers for persons with disabilities, especially women with disabilities, to enjoy their rights as citizens. For instance, in the context of education, persons with disabilities were refused to be enrolled in public schools considering their physical impairment. Adriana, a lecturer at the Faculty of Psychology and a researcher at the Center for Life-Span Development, Universitas Gadjah Mada, Indonesia for instance, shares her experience that ‘the school officials assumed that if persons with disabilities were accepted in their schools, this might disrupt other non-disabled students in studying because teachers would give more efforts and attention to students with disabilities’.⁷⁵ According to Hardi, the lack of access to education had contributed to persons with disabilities’ access to work as employers very often rejected them due to their low level of education and a common assumption that they were not capable of working due to their impairment.⁷⁶ Similarly, limited access to education and work had led to challenging economic conditions of persons with disabilities in general and made them dependent upon their parents and family members to

⁷⁵ Interview with Elga Adriana, Lecturer at Faculty of Psychology Universitas Gadjah Mada Indonesia (Yogyakarta, Indonesia, online interview, 3 June 2021).

⁷⁶ AT Hardi, ‘Muhhammad Rubby Emir Fahriza Jembatanani Pekerja Disabilitas dan Perusahaan’ (*Media Indonesia*, 28 June 2018) <<https://mediaindonesia.com/humaniora/168624/muhammad-rubby-emir-fahriza-jembatanani-pekerja-disabilitas-dan-perusahaan>> accessed 3 June 2021.

survive.⁷⁷ This observation seems to be axiomatic as unfortunately there is no reliable statistics available in Indonesia on this matter.

Moreover, another problem of the 1997 Handicapped Law was the assumption that the interests of persons with disabilities only concerned rehabilitation and financial aid. Consequently, the law ignored the interests of persons with a disability beyond social funding and rehabilitation, including the interests to form a family, enjoy culture and sports, access justice and have protection during disasters. Specifically, on the interests of women with disabilities, the 1997 Handicapped Law did not reference women with disabilities, assuming that they had a similar issue to their male counterparts. This demonstrates how the state ignored the CEDAW that had been ratified by Indonesia at the same time as when the Handicapped Law was made. In fact, despite facing similar issues to their male counterparts, women with disabilities were indeed more vulnerable than a man with disabilities in a patriarchal society, and they also faced specific issues concerning their gender and biological conditions.

Despite the authoritarian structural condition, persons with disabilities organised themselves to find spaces to exercise their rights and raise their voices. This included the establishment of many DPOs focusing on the empowerment of persons with disabilities. However, they tended to focus on economic welfare of their members by conducting job trainings or income-generating projects. In addition, they also tended to be insular in which they did not attempt to build a broader coalition with other civil society organisations (CSOs). This was also informed by the fact that CSOs appeared to be sectoral as well. This also occurred in the context of the women's rights movement, for instance, which aimed at fighting against all forms of discrimination against women.⁷⁸ Although the CEDAW was ratified under the New Order regime through Law No 7 of 1984, the women's rights movement previously appeared to give less attention to discrimination against women based on disabilities. As observed by Iriyati and Asriani, women's interests were seen as monolithic and universalised without considering different degrees of

⁷⁷ Dewi RK Hastuti, RP Pramana and H Sadaly, 'Kendala Mewujudkan Pembangunan Inklusif Penyandang Disabilitas' (Smeru Research Institute 2020) <https://smeru.or.id/sites/default/files/publication/wp_disabilitas_in_0.pdf> accessed 3 May 2021.

⁷⁸ F Iriyati and DD Asriani, 'Politik Pengakuan Perempuan dengan Disabilitas Pasca Bencana Gempa di Yogyakarta' (2012) 1(2) *Jurnal Pemikiran Sosiologi* 52, 58-59 <<https://jurnal.ugm.ac.id/jps/article/view/23442>> accessed 28 May 2021.

vulnerability that were heavily informed by the intersection of gender, class, disability and geographical (urban/rural) factors.⁷⁹

This is why issues of women with disabilities tend to be left behind from the broader advocacy in women's rights. According to a shadow report submitted by Indonesian Association of Women with Disabilities (HWDI),⁸⁰ one example is related to article 4(2) of Law No 1 of 1974 on Marriage that allows polygamy for a husband if a wife becomes physically disabled or affected by an incurably disease. This experienced is faced by Nurul Saadah, one of the informants of this thesis in which during the interview she mentioned that her husband has been told by his parent to marry another woman who is not disabled if he does not want to divorce her. Meanwhile, women's rights activists focus on refusing polygamy and see it as a fundamentally undemocratic institution that perpetuates basic women's rights.⁸¹ However, they do not criticise specifically the exception to undertake polygamy because the 1974 Marriage Law, in principle, prohibits polygamy except for several reasons.

3.2 DISABILITY LAW IN THE POST-AUTHORITARIAN REGIME

In the late 1990s, Indonesia was hit by a monetary crisis leading to the political instability of the authoritarian regime. Triggered by massive protests of students and the general public, on 21 May 1998, President Suharto was finally forced to step down from his power and was replaced by Vice President BJ Habibie as the next president. After 32 years in power, the fall of Suharto was marked as an essential process to the democratisation of the country. In responding to demands from regional governments, the state structure was changed from centralism to decentralism, where decision-making processes were transferred to the regional level. Expectedly, decentralisation might bring about more accountable and participatory decision-making processes because communities that will be affected by the government's development

⁷⁹ Itriyati and Asriani(n 78) 60-61.

⁸⁰ Himpunan Wanita Disabilitas Indonesia (HWDI), 'The Alternative Report by the Indonesian Women with Disability Association for the Adoption of List of Issues, submitted to the UN Committee of the Rights of Person with Disability' (HWDI 2019) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRPD%2FICO%2FIDN%2F41148&Lang=en> accessed 28 May 2021.

⁸¹ Suzanne Brenner, 'Democracy, Polygamy, and Women in Post-"Reformasi" Indonesia' (2006) 50(1) *Social Analysis: The International Journal of Anthropology* 164, 166.

policies may take the opportunity to participate in the decision-making processes and to scrutinise the implementation of such policies on the ground.⁸²

The discourse on human rights, considered taboo during the authoritarian regime, has been brought to the forefront of the post-authoritarian political agendas. As a result, for the first time in the modern history of Indonesia, in 1998, the People's Consultative Assembly of the Republic of Indonesia (Majelis Permusyawaratan Rakyat) enacted decree No XVII concerning Human Rights also known as the Indonesian Declaration of Human Rights, which recognises the universality of human rights and translates the Universal Declaration of Human Rights (UDHR)⁸³ into the Indonesian context. Such a declaration has been instrumental for serving as the legal basis for undertaking an amendment of the 1945 Indonesian Constitution to incorporate human rights provisions and the enactment of Law No 39 of 1999 on Human Rights, including the ratification of the International Covenant on Civil and Political Rights⁸⁴ and the International Covenant on Economic, Social and Cultural Rights.⁸⁵

However, despite such significant progress in human rights and democratisation, persons with disabilities continue to struggle to find how they would fit into this progression and utilise it for pursuing empowerment. Human rights issues, given considerable attention in the early Reformation Era, were the civil and political rights as those rights were very often violated during the New Order regime. However, the economic, social and cultural rights were considered secondary. Group and collective rights, especially the rights of persons with disabilities and the rights of indigenous peoples, have been at the edge of development

⁸² HS Nordholt and G Van Klinken, *Renegotiating Boundaries: Local Politics in Post-Soeharto Indonesia* (KITLV Press 2007); VR Hadiz, *Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford UP 2010); A Wardana, *Contemporary Bali – Contested Space and Governance* (Palgrave MacMillan 2019).

⁸³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁸⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). Indonesia ratified the ICCPR on 23 February 2006 through Law No 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights.

⁸⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR). Indonesia ratified the ICESCR on 23 February 2006 through Law No 11 of 2005 concerning the Ratification of International Covenant on Economic, Social and Cultural Rights.

policies.⁸⁶ This was because the dominant view of disability inherited from the authoritarian era, namely the charity-based⁸⁷ and medical model,⁸⁸ had been persistent not only within bureaucracy but also with CSOs before the adoption of the CRPD because alternative perspectives to a disability, the social model or the rights-based approach, were not popular as a public discourse.

A paradigm shift has started to occur following the CRPD.⁸⁹ To show its international commitment, the Government of Indonesia ratified the Convention through Law No 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. The CRPD itself aims to promote, protect and guarantee equal rights and fundamental freedoms for all persons with disabilities and respect for the dignity of persons with disabilities as an integral part. Although Indonesia has not yet ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities,⁹⁰ the CRPD has legal implications in the national context, namely obliging the state to realise the rights contained in the Convention, through adjustments to the laws and regulations, laws and administration of each country, including changing statutory regulations. Laws, customs and practices that are discriminatory against persons with disabilities, both women and children, ensure the participation of persons with disabilities in all aspects of life such as education, health, work, politics, sports, arts and culture, as well as the use of information and communication technology.

In order to carry out the mandate of the CRPD, the Indonesian government subsequently issued Law Number 8 of 2016 concerning Persons with Disabilities (Persons with Disabilities Law). The law adopts a different paradigm from the Handicapped Law. If the medical

⁸⁶ M Rukmini and others, *Pengantar Memahami Hak EKOSOB*. (Pusat Telaah dan Informasi Regional (PATTIRO) 2006) <<https://issuu.com/pattiro/docs/pengantar-memahami-hak-ekosob>> accessed 1 June 2021; HJ Triyana, 'The Role of the Indonesian Constitutional Court for an Effective Economic, Social and Cultural Rights Adjudication' (2015) 1(1) Constitutional Review 72.

⁸⁷ Law No 11 of 2009 concerning Social Welfare, which positions persons with disabilities as a social group that experience welfare issues.

⁸⁸ Law No 13 of 2003 concerning Manpower retains the derogatory phrases '*Penyandang Cacat/Handicap Person*' and '*physically and mentally fit*'; art 9(2) and art 51 of Law No 23/2002 on Child Protection draws upon both medical and rights-based perspectives. Another example includes art 42(1) of Law No 17 of 2008 concerning Shipping, which contains some faults.

⁸⁹ Wardana and Dewi (n 73).

⁹⁰ Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283.

model and the charity-based paradigm were very dominant in the Handicapped Law, the Persons with Disabilities Law employs the rights-based paradigm predominantly in which the rights of persons with disabilities as citizens who have the same position and rights to other non-disabled citizens are emphasised. Article 2 of the Indonesian Law on Persons with Disabilities clearly states several principles in the implementation and fulfilment of the rights of persons with disabilities, namely: (a) respect for dignity,⁹¹ meaning that the dignity of persons with disabilities must be protected, respected and upheld; (b) individual autonomy, which refers to the right of every person with disabilities to act or not act and be responsible for their choice of action; (c) without discrimination⁹² referring to the right not to discriminate based on disability; (d) full participation, which means that persons with disabilities participate actively in all aspects of life as citizens; (e) human diversity and humanity, which refers to respecting and accepting differences of persons with disabilities as part of human diversity and humanity; (f) an equal opportunity, which means that persons with disabilities have the same opportunities as citizens; (g) equality⁹³ referring to the conditions of various systems in society and the environment, such as services, activities, information and documentation, are made to accommodate all people, including persons with disabilities; (h) accessibility⁹⁴ which refers to conditions that guarantee persons with disabilities access to services, buildings, infrastructure, activities, information and documentation; (i) the growing capacity and identity of the child, a specific principle for children with disability in ensuring the development and identity of children with disabilities; (j) inclusive and (k) special treatment and protection, which means that persons with disabilities need special treatment to catch up with non-disabled people and, besides that, persons with disabilities need more protection because they have different abilities from non-disabled people.

⁹¹ UDHR, arts 1 and 2; ICCPR, preamble and art 10; ICESCR, preamble and art 13; CRPD, arts 1 and 3; Committee on the Rights of Persons with Disabilities, 'General comment No 8 (2022) on the right of persons with disabilities to work and employment' UN Doc CRPD/C/GC/8 (2018).

⁹² CRPD, art 5(2); Committee on the Rights of Persons with Disabilities (n 91) para 17; CEDAW, arts 1 and 2.

⁹³ CRPD, art 5; Committee on the Rights of Persons with Disabilities (n 91).

⁹⁴ CRPD, art 9; Committee on the Rights of Persons with Disabilities, 'General comment No 2 (2014) Article 9: Accessibility' UN Doc CRPD/C/GC/2 (2014).

Article 3 of the Persons with Disabilities Law sets out several objectives for implementing and fulfilling the rights of persons with disabilities. The objectives are: (a) realising full and equal respect, promotion, protection and fulfilment of human rights and fundamental freedoms of persons with disabilities; (b) guaranteeing efforts to respect, promote, protect and fulfil the inherent dignity of persons with disabilities; (c) realising a higher quality, fairer, physically and mentally prosperous, independent and dignified standard of life for persons with disabilities; (d) protecting persons with disabilities from neglect and exploitation, harassment and all discriminatory acts, as well as human rights violations and (e) ensuring the implementation of efforts to respect, promote, protect and fulfil the rights of persons with disabilities to develop themselves and utilise all abilities according to their talents and interests to enjoy, participate and contribute optimally, safely, freely and with dignity in all aspects of the life of the nation, state and in the society.

The typology of rights covered in the Persons with Disabilities Law can be categorised into two types: general rights and special rights. General rights of persons with disabilities are rights that apply to all persons with disabilities regardless of their type and degree of disability, sex and age. These rights include the right to life; the right to be free from stigma; the right to privacy; the right to justice and legal protection; the right to education; the right to work, entrepreneurship and cooperatives; the right to health; the rights in the spheres of politics, religion, sports, culture and tourism rights; the right to social welfare; the right to accessibility; the right to public services; the right to the protection from disasters; habilitation and rehabilitation rights; the right to live independently and be involved in society; the right to freedom of expression, communicate and obtain information; the rights to mobility and to change nationality; and the right to be free from acts of discrimination, neglect, torture and exploitation.⁹⁵

Moreover, the specific rights for persons with disabilities can be further classified into two types: specific rights for women with disabilities and the specific rights for children with disabilities. For women with disabilities, the Persons with Disabilities Law recognises their specific rights as follows: the right to reproductive health, the right to accept or reject the use of contraceptives, the right to receive protection from

⁹⁵ Persons with Disabilities Law No 8 of 2016, art 5(1).

multiple forms of discrimination and the right to get protection from acts of violence, including violence and sexual exploitation.⁹⁶ Meanwhile, children with disabilities are recognised by the law of having rights to receive special protection from discrimination, neglect, harassment, exploitation and sexual violence and crimes; personal and family care for optimal growth and development; protection of their interests in decision making; humane treatment following the dignity and the rights of children; the fulfilment of special needs; an equal treatment with other children to achieve social integration and individual development; and social assistance.

In order to carry out the mandate of the Persons with Disabilities Law, the central government has issued at least three government regulations as implementing regulations for the law. The first is Government Regulation No 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process (Government Regulation No 39 of 2020). This regulation stipulates, more specifically, the guidelines for providing adequate accommodation and services for persons with disabilities who participate in the judicial process. Article 5 of Government Regulation No 39 of 2020 explains that adequate accommodation consists of services and infrastructure, which are then provided to persons with disabilities in every judicial process. The second one is Government Regulation No 70 of 2019 concerning the Fulfilment of the Rights of Persons with Disabilities. This regulation is the implementing provision of article 27(3) of the Persons with Disabilities law on planning, implementation and evaluation of the respect, protection and fulfilment of the rights of persons with disabilities. The third is Government Regulation No 52 of 2019 concerning the Implementation of Social Welfare for Persons with Disabilities aimed at meeting the basic needs of persons with disabilities, ensuring the implementation of social functions, improving social welfare with the dignity for persons with disabilities and creating an inclusive society. However, as we shall see in the following chapter, the implementation of such laws remain largely challenging.

⁹⁶ Persons with Disabilities Law (n 95) art 5(2.)

3.3 LEGAL AND INSTITUTIONAL COMPLEXITIES

Decentralism in the post-authoritarian regime has widened opportunities for public participation, including the women's rights movement⁹⁷ and the disabilities rights movement in the country. However, it has also brought legal and institutional complexities to the movements. In this regard, the state structure has been divided into three tiers of governments: national, provincial and district governments, in which each of them may claim (or even deny) authority for several governmental affairs, including governing natural resources and public service obligations. They tend to claim to have authorities related to natural resources, which may directly contribute to the increase in financial revenues.⁹⁸ However, there have been many occasions where a tier of government denies that it has any authority to undertake public services, such as facilitating adequate accommodation for persons with disabilities by appointing other tiers of government to have more relevant authorities and budgets do so. Hence, in the decentralised era of Indonesia, issues related to disability rights are scattered across different tiers of government which in turn hinders comprehensive implementations of the Persons with Disabilities Law on the ground.

Besides the legal and institutional complexity between different tiers of government, it has also been persistent within the national government itself. For instance, apart from the Persons with Disabilities Law which sets the rights of persons with disabilities comprehensively, there are also sectoral laws in which issues related to their rights are overlapped. They include Law No 20 of 2003 concerning the National Education System, Law No 13 of 2003 concerning Manpower, Law No 22 of 2009 concerning Road Traffic and Transportation, Law No 11 of 2009 concerning Social Welfare, and so forth. However, they do not necessarily adopt the human rights-based approach in their provisions on disability.⁹⁹ The National Education System Law, for example, aims to realise education in the principles of democracy, equity and non-discrimination by upholding human rights, religious and cultural values and national diversity. However, instead of ensuring inclusive

⁹⁷ Edriana Noerdin, Sita Aripurnami and Yanti Muchtar, 'Decentralization as a Narrative of Opportunity for Women in Indonesia' (Women Research Institute 2007).

⁹⁸ Wardana (n 82).

⁹⁹ Wardana and Dewi (n 73).

education, article 5(2) of the National Education System Law states that 'citizens who have physical, emotional, mental, intellectual and/or social disabilities are entitled to special education'. Hence, 'special education' here is interpreted as special, exclusive and separate education practiced under the authoritarian regime. As a result, this education model would reproduce the marginalisation of persons with disabilities in more extensive social interactions because they are kept within the disability's bubble.

Furthermore, in the Social Welfare Law, persons with disabilities are included in people who experience social dysfunction and are equated with prostitutes, ex-convicts, ex-addicts or homeless people. Article 7(1) of the Social Welfare Law states 'Social rehabilitation is intended to restore and develop the ability of a person who is experiencing social dysfunction in order to carry out his social function properly'. In the elucidation to article 7(1), it is stated that:

People who experience social dysfunction include people with physical disabilities, mental disabilities, physical and mental disabilities, prostitutes, homeless people, beggars, former chronic disease sufferers, ex-convicts, ex-narcotics addicts, addiction syndrome psychotropic users, people with HIV / AIDS (PLWHA), victims of violence, victims of disasters, victims of trafficking in persons, neglected children, and children with special needs.

With such a legal construction, article 7(2) of the Social Welfare Law also applies to persons with disabilities. This article states that 'social rehabilitation as referred to in paragraph (1) can be carried out in a persuasive, motivational, coercive manner, both within the family, community and in social institutions'. In the elucidation of the article, coercive rehabilitation is intended as an act of coercion in the social rehabilitation process. This means that persons with disabilities can become objects of social rehabilitation employing coercion without requiring the consent of those concerned or their families.

In Law No 13 of 2003 concerning Manpower (Labour Law), there are already articles that state explicitly that there is equal opportunity for workers to get a job. The Manpower Law also discusses guidance and supervision in which the supervisory mandate is given explicitly to labour inspection employees. However, the supervision and guidance scheme also did not work properly, such that the rights of persons with disabilities to work were still marginalised. Another issue related to job rights is job training for persons with disabilities. In the Decree of

the Minister of Manpower No Kep-205 / Men / 1999 concerning Job Training and Placement of Workers with Disabilities, the job training held has not been adjusted to the needs of the labour market and has not been able to train persons with disabilities to have sufficient competence. Job training programmes are primarily implemented only at the primary level, not to provide sufficient skills. The mandate for the provision of skills training has been carried out by two government agencies, namely the Social Service and the Manpower Office. There is coordination and cooperation between the two institutions, but it has not been maximised so that people with disabilities have not been able to develop adequate competencies and obtain decent work.

Equality of opportunity and participation in all aspects of life for persons with disabilities is also realised in providing accessibility facilities. This is also regulated in Law No 28 of 2002 concerning Buildings. More technical provisions have also followed this policy in the form of Minister of Public Works Regulation No 30 / PRT / M / 2006 concerning Technical Guidelines for Facilities and Accessibility in Buildings and the Environment. However, in reality, in various areas, both urban and rural, the accessibility that persons with disabilities need is still limited. Even in public facilities such as government offices that serve the community directly, the erected buildings were not equipped with accessibility facilities. The same is the case with other public facilities. Violation of this provision is only subject to administrative sanctions, which of course, causes this provision to be ineffective and therefore frequently violated.

The institutional arrangements dealing with disability issues are no less complex and overlapping. The rights of persons with disabilities as stipulated by Persons with Disabilities Law cut across different government departments and ministries, from the Ministry of Social Welfare, the Ministry of Manpower, the Ministry of Women Empowerment and Child Protection, the Ministry of Education and Culture, the Ministry of Health, the Ministry of Public Works and Housing, and the Ministry of Transportation. The duty of this Ministry Social Welfare, for instance, is stipulated in article 17 of the Persons with Disabilities Law which states that persons with disabilities' rights to social welfare included rights to social rehabilitation, social security, social empowerment and social protection. The Ministry of Manpower and Transmigration will be related to the rights to work for persons

with disabilities as stated in article 11 of the law¹⁰⁰ and article 27 of the CRPD.¹⁰¹ The rights to education of course are under the domain of the Ministry of Education and Culture, while the specific rights of women with disabilities and children with disabilities are clearly under the domain of the Ministry of Women Empowerment and Child Protection.

The Persons with Disabilities Law designates the Ministry of Social Welfare as the focal point to undertake cross-sectors and cross-ministries coordination to ensure the effective implementation of the law. However, given that, from administrative law viewpoints, the positions of those ministries are equal, meaning that none of them is above the others, the Ministry of Social Welfare has not been able to undertake its function correctly as expected. Several experiences have demonstrated that if there is a complaint to a ministry on the implementation of the Persons with Disabilities Law, the ministry concerned will direct such a complaint to the Ministry of Social Affairs on a reason that issues related to disability are under the domain of the Ministry of Social Affairs.¹⁰² A common opinion among DPOs focusing on the rights of persons with disabilities advocacy has emerged on the failure of the Ministry of Social Affairs to play its role.¹⁰³ The rejection to designate the ministry to be the focal point was expressed by DPOs and persons with disabilities representatives during the deliberation process of Persons with Disabilities Law.

They proposed that the focal point of the law should be under the president or at least a coordinating ministry because they were concerned with the persistence of the charity-based paradigm that the Ministry of Social Affairs has long practiced since the New Order era.¹⁰⁴ In fact, after five years since the law was enacted, their concerns appear to be manifested. DPOs have also attributed this institutional problem to the slow progress of implementing the law on the ground.

One institutional arrangement that is expected to play an important role in the enjoyment of persons with disabilities in Indonesia has been the National Commission on Disability. The establishment of this special

¹⁰⁰ Persons with Disabilities Law No 8 of 2016, art 11.

¹⁰¹ CRPD, art 27.

¹⁰² Roosa (n 71).

¹⁰³ Dewi Hastuti, Pramana and Sadaly (n 77).

¹⁰⁴ Yeni Rosa, webinar on Kelompok Kerja Penghormatan, Pelindungan, Pemenuhan, Penegakan, dan Pemajuan Hak Asasi Manusia Bagi Penyandang Disabilitas Mental di Indonesia organised by the Ministry of Law and Human Rights (13 December 2021).

commission is mandated by article 131 of the Persons with Disabilities Law, which reads ‘to respect, protect and fulfil the rights of persons with disabilities, the National Commission on Disability is formed as an independent, non-structural institution’. The authorities of the national commission include, among others, to carry out monitoring, evaluation and advocacy for the implementation of respect, protection and fulfilment of the rights of persons with disabilities. After several years of delay due to a sharp debate on the government and DPOs, with regard to the organisational structure of the commission and the composition of its members, the commission was finally established in 2020 through the enactment of Presidential Regulation No 68 of 2020 concerning the Establishment of the National Commission on Disability. Early in 2021, a call for the nomination of candidates to be members of the commission was announced. However, disappointment has continually been expressed by DPOs because structurally the commission is put under the auspices of the Ministry of Social Affairs. Bahrul Fuad, a disability’s rights activist, serving as the commissioner of the Women Commission, observed that ‘the disability commission will not be independent if its management and budget is derived from the Ministry of Social Affairs that is supposed to be one of among other ministries that have to be supervised and monitored in its implementation of the law’.¹⁰⁵ His observation is affirmed by other disability’s rights activists, such as Nurul Saadah¹⁰⁶ and Dwi Ariyani.¹⁰⁷ In brief, disability legal frameworks have gone through a paradigm shift in contemporary Indonesia. In the authoritarian era of the New Order regime, the legal framework was dominated by the medical and charity-based model. In this context, disabilities were seen as a personal misfortune and abnormality, and a person with disabilities was considered to need rehabilitation and assistance from the government and the public to meet their challenging conditions. However, following the fall of the authoritarian regime and the paradigm shift on disability at the international level, the disability legal framework has changed significantly to adopt the human rights-based approach. The ratification of the CRPD and the enactment

¹⁰⁵ Interview with Bahrul Fuad, Indonesian National Women Commission (Yogyakarta, Indonesia, online interview, 8 May 2021).

¹⁰⁶ Interview with Nurul Saadah, Director at SAPDA Yogyakarta (Yogyakarta, Indonesia, 24 May 2021).

¹⁰⁷ Interview with Dwi Ariyani, Regional Head of Programs – Asia, Disability Rights Advocacy Fund (Yogyakarta, Indonesia, online interview, 5 June 2021).

of the Persons with Disabilities Law have been marked as the shift in Indonesian disability policies. One important example here is the policy on inclusive education which prohibits educational institutions from refusing children with disabilities to attend schools. However, the change into a human-rights based approach does not automatically transform persons with disabilities in the country. They have been persistently facing challenges in enjoying their rights. The persistent challenges of disability have been contributed to by the persistence of the charity-based and medical model within bureaucracy and society and the complex legal and institutional constellations dealing with disability issues that have created uncertainty in implementing the law, as will be discussed in the following chapter.

4.

THE MOBILISATION OF RESOURCES

As mentioned in the previous chapter, the paradigm of disability law in Indonesia has been shifted in the post-authoritarian regime toward a rights-based approach. Although the paradigm shift opens a political opportunity structure for women with disabilities to improve their conditions, it remains questionable how such a paradigm shift at the normative level shapes their conditions on the ground. This chapter will look at how this opportunity is mobilised by women with disabilities and what has been achieved, beginning with a discussion on the emergence of collective action as women with disabilities in the post-authoritarian era, followed by an examination of how they exercise their agency by mobilising legal and institutional resources and what could be achieved.

4.1 DISCRIMINATION AND COLLECTIVE ACTIONS

Discrimination toward women with disabilities is a matter of experience. Hence, conceiving their discrimination means to understand how they experience their lives as both a woman and as a person with disability. This experience has been shaped by the societal values governing their body and impairment.¹⁰⁸ Having an impairment makes women not only far from the socially constructed ideal body but also excludes her as a full woman. In the context of marriage, for instance, they have been regarded as an asexual being incapable of having a family

¹⁰⁸ Michael Oliver, *The Politics of Disablement* (Palgrave Macmillan 1990) 12-20; C Barnes and G Mercer, *Disability* (Polity Press 2003) 26; S Thohari, 'Promoting "Difabel", Promoting Social Model of Disability in Indonesia, Study of Disability Movement in Indonesia' (2019) 3(1) *Jurnal Kajian Ruang Sosial - Budaya* 80.

and children.¹⁰⁹ This also fits with a patriarchal value that once married, a woman will be a wife whose life should be dedicated to serving the best interests of her husband. A collective identity as a discriminated social group emerges once a moment or space of encounter is opened where similar personal experiences are shared and transform into a collective will to address the discrimination.

4.1.1 *The experience of women with disabilities*

In this sub-section, I provide several forms of discrimination experienced by women with disabilities during my research. Fanti Frida Yanti, a woman with sensory disability, lives in Baubau, South East Sulawesi. Her father was a teacher and also worked as a fisherman to earn extra income. During her childhood, Fanti was very often bullied by other villagers as 'a blind girl with fishy smell'.¹¹⁰

In another part of Indonesia, Dwi Aryani, a woman with physical disability from Solo, Central Java, was almost denied access to education when she was a child, despite her good academic ability.¹¹¹ A principal at a local public school where she wanted to study told her family to bring her to a special school for children with disabilities known as Sekolah Luar Biasa (SLB) because the principal was concerned that her presence would create difficulties for her classmates and the teachers in the study process. However, after giving a guarantee that Dwi would be able to perform well, and if she could not perform well she would move to the special school, the public school finally accepted her. She proved to the principal that she had been one of the best students in her class.

A similar form of discrimination was also experienced by Risnawati Utami, a woman with physical disability and the commissioner of the CRPD Committee. She suffered from polio when she was four years old in Central Java. When she was in elementary school, Risnawati's parents refused to bring her to the SLB but insisted that Risnawati should pursue her study at a public school. At school she experienced bullying from classmates by calling her *pincang* (limp). One day, she

¹⁰⁹ U Cakravarti, 'A Gendered Perspective of Disability Studies' in Asha Hans (ed), *Disability, Gender, and the Trajectories of Power* (Sage Publications 2015).

¹¹⁰ Interview with Fanti Frida Yanti, Civil Servant at BAPPEDA Baubau, Southeast Sulawesi (Yogyakarta, Indonesia, 29 April 2021).

¹¹¹ Interview with Dwi Aryani, Regional Head of Programs – Asia, Disability Rights Advocacy Fund (Yogyakarta, Indonesia, online interview, 5 June 2021).

was called by a counselling teacher to his office because she hit a friend who called her limp. Risna did not regret it because of her principle that ‘when our dignity is degraded, there is only one word: to fight!’. She also mentions how women with disabilities are more vulnerable than men with disabilities with regards to discrimination and social acceptance.¹¹²

In contrast, Nurul Saadah, a woman with physical disability, has a relatively different story. She was born in a respected family in her village in Magelang, Central Java. Her mother was a village head (*Lurah*), making her childhood relatively easy because she received full support from her family and was even assisted by a private assistant. As a daughter of the village head, she was also respected by the villagers and her schoolmates. She never experienced discrimination when she lived in the village. She has been aware of discrimination due to her disability when she decided to get married to a non-disabled man. The parents of this man did not approve the fact that their son married a disabled woman whose impairment was regarded as a barrier for her to be a good wife and mother, a servant for her husband and children.¹¹³

The personal experience of those four women with disabilities represent similar experience faced by many women with disabilities in the country. Such experience also provides an interesting observation. It confirms that the extent to which a woman with a disability has experienced discrimination from others is closely related to their sex and social-economic conditions.¹¹⁴ With regard to sex, a woman with a disability is more likely to be discriminated than a man with disability.¹¹⁵ Moreover, a woman with a disability from a lower-middle class family is more likely to be discriminated against than a woman with a disability from an upper-middle class family. This demonstrates how the intersectionality between sex, social-economy and disability shapes the experience of disability.¹¹⁶ How this personal experience has

¹¹² Interview with Risnawati Utami, UNRPD Committee (Yogyakarta, Indonesia, 12 June 2021).

¹¹³ Interview with Nurul Saadah, Director at SAPDA Yogyakarta (Yogyakarta, Indonesia, 24 May 2021).

¹¹⁴ Michelle Fine and Adrienne Asch, ‘Disability Beyond Stigma: Social Interaction, Discrimination, and Activism’ (1988) 44(1) *Journal of Social Issues* 3; Susan Lonsdale, *Women and Disability: The Experience of Physical Disability Among Women* (Red Globe Press 1990); H Meekosha, ‘Gender and Disability, draft entry for SAGE Encyclopaedia of Disability’ (2004) 12 <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/meekosha-meekosha.pdf>> accessed 11 July 2021; Chakravarti (n 109) 29.

¹¹⁵ Meekosha (n 114) 3; Chakravarti (n 109) 28.

¹¹⁶ Chakravarti (n 109).

emerged into a collective awareness and action to address marginalised conditions of women with disabilities in the country brings us to the next section.

4.1.2 *The emergence of collective actions*

As the paradigm of disability shifts from the medical model to the social model, advocacy for pursuing empowerment for persons with disabilities has also changed. Oliver observes that the medical model, which focuses on impairment, conceives disability as a personal tragedy or problem; thus, the ways in which disability is addressed are predominantly based on an individual treatment or medicalisation.¹¹⁷ Consequently, this individual approach creates an individual identity of persons with disability as separated from other persons with disability because each of them receives different treatment in accordance to the types and degrees of their disability. However, according to Oliver, the social model, which conceives disability as a result of external barriers, requires a collective identity as a social group that has been facing similar forms of discrimination by non-disabled society based on their disability.¹¹⁸ Hence, a collective action is required to challenge such discrimination. In this sub-section, I discuss how the collective identity of 'women with disabilities' has emerged particularly in Central Java and Yogyakarta. As put by Campbell and Oliver, '[n]o account of the origins of the emerging movement would be complete without mention of some of the individuals involved'; in the discussion of the women with disabilities movement in the regions, it is necessary to provide the narratives from its key figures.¹¹⁹ They are Nurul Saadah, the founder and chairwoman of Sentra Advokasi Perempuan Difabel dan Anak (Center for Advocacy of Difiable Women and Children/SAPDA) of Yogyakarta,¹²⁰ Dwi Aryani, the founder of Women's Earth (Perempuan Bumi) Community in Sukoharjo, Central Java and Risnawati Utama from Organisasi Harapan Nusantara (OHANA) of Yogyakarta. They are all women with physical disabilities.

¹¹⁷ M Oliver, *Understanding Disability from Theory to Practice* (Palgrave Macmillan 1996).

¹¹⁸ *ibid.*

¹¹⁹ J Campbell and Michael Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (Routledge 1996) 55.

¹²⁰ SAPDA Yogyakarta is a DPO based in Yogyakarta, focusing on sexual and reproductive health for women and girls especially women and girls with disabilities.

A collective movement for women with disabilities in Central Java and Yogyakarta advocating their rights have emerged following important moments that affect women with disabilities significantly. One notable moment was the Central Java and Yogyakarta earthquake in 2006. The disaster caused more than 6,000 deaths¹²¹ and more than 37,000 people were seriously injured and became disabled, of which many of them were women.¹²² According to Fatimah, despite no exact data, many victims of the earthquake were women and they became disabled because they were busy in the kitchen preparing food for their family members when the earthquake hit their house at 6.00am.¹²³ This experience has been the turning point for women with disabilities in Central Java and Yogyakarta to organise themselves. This is because the government and humanitarian agencies' emergency response was more focused on victims in general, neglecting the specific needs of women with disabilities. Hence, Dwi Aryani and Nurul Saadah took the initiative to undertake humanitarian actions focusing on providing aid for women who became newly disabled due to the disaster. Before the earthquake, they tended to work for disability rights advocacy, but did not pay special attention to the rights of women with disabilities.

During the earthquake, they realised that women with disabilities are more vulnerable and require more special attention. Dwi Aryani, the Indonesia Program Officer of the DRF, for instance, responded to the earthquake with her networks to undertake an emergency response. They then mobilised aid for designated areas, especially for persons with disabilities.¹²⁴ She told in her story that once she went to a village hit by the disaster for undertaking identification for the victims from persons with disability, she was underestimated by the village head due to her physical condition and he asked her to take care of herself first. Later on, through her networks of DPOs she managed to provide aid and assistance for the victims – not only persons with disability but also

¹²¹ M Yuwono, 'Mengingat Kembali Gempa Yogyakarta 11 Tahun Lalu' (*Kompas*, 27 May 2017) <<https://regional.kompas.com/read/2017/05/27/13193441/mengingat.kembali.gempa.yogyakarta.11.tahun.lalu?page=all>> accessed 9 July 2021.

¹²² F Itriayati and DD Asriani, 'Politik Pengakuan Perempuan dengan Disabilitas Pasca Bencana Gempa di Yogyakarta' (2012) 1(2) *Jurnal Pemikiran Sosiologi* 52, 58-59 <<https://jurnal.ugm.ac.id/jps/article/view/23442>> accessed 28 May 2021.

¹²³ D Fatimah, 'Yang sering terabaikan: Gender dan Anggaran dalam Bencana' in AB Widyantara (eds), *Kisah Kisruh di Tanah Gempa: Catatan penanganan bencana gempa bumi Yogyakarta 27 Mei 2006* (Cindelarast Pustaka Rakyat Cerdas 2007).

¹²⁴ Interview with Dwi Aryani (n 111).

non-disabled victims. Besides Dwi Aryani, Nurul Saadah from SAPDA Yogyakarta also took part in the humanitarian action.¹²⁵ She mentions that after the disaster many women became newly-disabled. During her work, she found that during the emergency response more women with disabilities died than men with disabilities with an estimation of two women with disabilities died compared to one man with disabilities in a month. Two years later, in 2008, SAPDA conducted a study on the aftermath of the earthquake by interviewing 60 newly-disabled women and found that many of them were divorced by their husband to their family of origin due to their disability because they were considered no longer capable of being a good wife and mother for their husband's family.¹²⁶

Indeed, the experience of the earthquake in Central Java and Yogyakarta has been an eye-opening moment for Indonesia in conceiving disability issues. Previously, it was a common understanding that disability is a personal misfortune from birth or childhood. If it happens during adulthood, it was seen as an individual case due to accidents or health conditions. The aftermath of the disaster shows how disability is not a separated individual experience but a collective experience. This is demonstrated by the fact that many people became newly-disabled persons within a short period of time. As a result, it has created a sense of collective identity as persons with disability with a similar set of interests and demands toward the state. This collective experience has made the process of domestication of the CRPD and the enactment of Persons with Disability Law less controversial, as discussed below. Due to their experience in rights advocacy and disaster emergency response to persons with disabilities, the role of Risnawati Utami (OHANA), Dwi Aryani (DRF) and Nurul Saadah (SAPDA Yogyakarta) has been instrumental in the law-making process of the Persons with Disability Law especially inserting special provisions for women with disabilities and disaster management.

By stressing those three figures with their organisations, it does not mean that I underestimate other women with disabilities organisations. In fact, the first organisation to bring together women with disabilities in Indonesia was the Himpunan Wanita Penyandang Cacat (Handicapped Women Association/HWPC). It was founded in 1997 focusing on

¹²⁵ Interview with Nurul Saadah (n 113).

¹²⁶ *ibid.*

capacity building for women with disabilities. Structurally, it was a woman-wing of the Persatuan Penyandang Cacat Indonesia (Indonesian Handicapped Persons Union/PPCI). However, as their establishment was facilitated by the authoritarian regime, both the HWPC and the PPCI did not use the language of 'rights' in their work, but rather embraced the medical model and charity approach to disability. After the ratification of the CRPD, both organisations have changed their name by replacing *cacat* (handicapped) into *disabilitas* (disabilities). Hence, with regard to the human rights-based approach to disability, they are relatively new compared to the DRF, SAPDA Yogyakarta and OHANA Indonesia. This is why these three organisations represented by Dwi Aryani, Nurul Saadah and Risnawati Utama as their leaders should be given more attention in discussing advocacy for the rights of women with disabilities in Indonesia.

4.2 MOBILISING RESOURCES

In the previous sub chapter, I discussed the discrimination experienced by women with disabilities. Such experiences of being discriminated against have contributed to their views of the world and their activism to pursue empowerment of women with disabilities. Kabeer has provided three dimensions of empowerment, namely agency, resources and achievement.¹²⁷ In this sub-section, I examine these dimensions by looking at how women with disabilities exercise their agency to access and mobilise resources for challenging the structures through which discrimination against women with disabilities are underpinned. Resources here are not only referring to economic resources but also legal and institutional resources that provide opportunities for them to undertake advocacy of the rights of women with disabilities. Mobilising legal and institutional resources are also aimed to access economic and political resources to be used for supporting the empowerment of women with disabilities.

¹²⁷ Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435.

4.2.1 *Domesticating the CRPD*

In the context of legal mobilisation, Lejeune and Ringelheim notes that mobilising laws and regulations is an exercise of agency by persons with disability by using legal instruments that may contribute to their advocacy strategically.¹²⁸ Those legal instruments may be located at the international level or at the domestic level. With regards to women with disabilities in their struggles against discrimination, the use of international human rights treaties have been exercised, especially the CRPD. Hence, here I touch upon the process of domesticating the CRPD in Indonesia by taking the perspective of women with disabilities into the centre of analysis. As discussed above, the Central Java and Yogyakarta earthquake in 2006 was an eye-opening moment for the persons with disability movement. For DPOs, the moment has strengthened the networks of DPOs to get involved in the humanitarian actions for the victims of the disaster who became newly-disabled. This has been informed not only by the internal factors in which persons with disabilities have increased due to the disaster but also by the external factors, especially the adoption of the CRPD by the international community. The Organisasi Harapan Nusantara (OHANA) Indonesia, for instance, was founded by Risnawati Utami in 2012 after she finished her master's degree in international health policy and management at Brandeis University in the United States of America, funded by the International Fellowship Program at the Ford Foundation. The OHANA has explicitly used the language of 'rights' referring to the CRPD to focus on advocacy of the rights of women and children with disabilities. Risnawati Utami, who is also the future member of the UN's Committee on the Rights of Persons with Disabilities, states that '[w]e want to domesticate the international human rights instruments into the Indonesian local context'.¹²⁹

Starting in Yogyakarta in 2009, advocacy to domesticate the CRPD at the domestic level was then widened through DPOs' networks in Jakarta. A bigger coalition was then established, known as the National Coalition for Disabled Persons, with a specific objective to push the Government

¹²⁸ Aude Lejeune and Julie Ringelheim, 'Workers with Disabilities Between Legal Changes and Persisting Exclusion: How Contradictory Rights Shape Legal Mobilization' (2019) 53(4) *Law & Society Review* 983.

¹²⁹ Interview with Risnawati Utami (n 112).

of Indonesia to ratify the CRPD. This coalition not only included DPOs, but other CSOs focusing on human rights and policy advocacy, such as the Indonesian Legal Aid Institution and the Centre for Indonesian Legal and Policy Studies. Their involvement in the coalition was needed because DPOs were still lacking in human rights knowledge as well as in conducting policy advocacy given that a rights-based approach was relatively new for them. The coalition used article 4 of the CRPD as the legal basis for demanding ratification, which provides obligations for state parties to ‘adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention’ and to ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities’. Finally, after a long process of lobbying and campaigning, the Government of Indonesia has ratified the convention through Law No 9 of 2011. As argued by Wardana and Dewi, this demonstrates how the national coalition was able to mobilise the ‘transformative vision of the Convention as a vehicle for fostering national-level disability law and policy changes’.¹³⁰

However, after the ratification of the CRPD, there was an issue of the implementation on the ground as the ratification could not be directly implemented due to its general nature. As noted by Dahlan and Anggoro the biggest challenge to implement the CRPD at that time was the absence of operative national legal frameworks that fit the paradigm of the CRPD.¹³¹ The existing laws and regulations concerning disability were based on the medical model and a charity-based approach, and they were not adequate and suitable for implementing the new paradigm. Hence, the national coalition once again played an instrumental role to push the need to have a new piece of legislation that was in line with the CRPD’s paradigm. In 2013, the national coalition drafted the persons with disability bill and demanded the parliament to put the bill as one of the national priority bills for legislation.¹³² Once it became a priority for legislation, the Ministry of Social Affairs also drafted its own version of a persons with disability bill and submitted it to the parliament. As

¹³⁰ Agung Wardana and NPYP Dewi, ‘Moving Away From Paternalism: The New Law on Disability in Indonesia’ (2017) 18(2) *Asia Pacific Journal on Human Rights and the Law* 172.

¹³¹ M Dahlan and SA Anggoro, ‘Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis’ (2021) 4(1) *Undang: Jurnal Hukum* 1.

¹³² *ibid.*

the legislation programme was designated as an executive initiative, the draft bill from the ministry was used as the formal draft.¹³³ Hence, the formal draft bill was heavily criticised by the national coalition, making the process of drafting and counter-drafting very intense between the national coalition and the national government.

One particular issue raised by the coalition was the fact that the formal bill was drafted without a comprehensive study on the reality of persons with disability on the ground. In addition, it was also criticised due to the lack of the involvement of persons with disability in the drafting process; hence, this was in contrast to the common adage in the disability movement of ‘nothing about us without us’.¹³⁴ In 2015, the government’s draft was changed significantly to accommodate the contents from the coalition’s draft.¹³⁵ In 2016, the government and the coalition came to an agreement to adopt the draft that was considered to represent both interests and finally it was adopted as Law No 8 of 2016 concerning Persons with Disability. During this process, the role of women with disabilities had been crucial. The national coalition was led by Aryani Soekanwo, a woman with sensory disability. She was supported by other women, such as Yeni Rosa Damayanti from the Indonesia Mental Health Spirit, as well as Dwi Aryani, Nurul Saadah and Risnawati Utami. Despite the intense debate in the law-making process, a provision on the rights of women with disabilities appeared to be less controversial. Such provision is adopted in article 5(2) which stipulates:

besides the rights of persons with disability set above, women with disability have rights: (a) concerning reproductive health; (b) to accept or to refuse the use of contraception; (c) to receive more protection from layered discrimination; and (d) to receive more protection from violence, including domestic and sexual violence.

As Nurul Saadah puts it, ‘[i]t was not really difficult for us [women with disabilities] to put our interests in the bill. Fortunately, the making process of Persons with Disabilities Law itself was led dominantly by women with disability activists’.¹³⁶

¹³³ According to Indonesian law, a piece of legislation is adopted to be a law after being agreed by the parliament and the president. In the process, a draft bill can be either an initiative of the executive or an initiative of the legislative.

¹³⁴ Interview with Bahrul Fuad, Indonesian National Women Commission (Yogyakarta, Indonesia, online interview, 8 May 2021).

¹³⁵ Dahlan and Anggoro (n 131).

¹³⁶ Interview with Nurul Saadah (n 113).

This is affirmed by Risnawati Utami. She says that during the process of advocating the bill until being enacted, the disability's rights movement was mostly led by women with disabilities. Their position in advocacy also made it easier for them to insert specific provisions on the rights of women and children with disabilities. If Risnawati Utami and Nurul Saadah were getting involved directly in the domesticating process in the parliament, Dwi Aryani contributed outside the parliament by providing the funding through her organisation, the DRF, to support DPOs working on the advocacy. The DRF also provided a financial support to the national coalition directly to undertake their advocacy in enacting the draft and afterward to formulate government regulations as operative instruments for the Persons with Disability Law as well as to monitor and evaluate the implementation of the law and its operative regulations.

4.2.2 Changing public policy through the courts

Legal mobilisation by women with disabilities was also carried out through the courts. In Indonesia, there was a landmark case where a woman with a disability was forcibly removed from Etihad Airways. It was Dwi Aryani of the DRF who had a flight from Jakarta to Geneva to attend a conference organised by the International Disability Alliance. At Sukarno-Hatta International Airport, five minutes after boarding the airplane, an operational official of Etihad Airways asked her to get off because she was unattended by any guardian and she might cause a danger to the airplane. As her luggage had been brought down to the terminal, she finally decided to get off after arguing with the officials. This took place on 3 April 2016 when the Persons with Disability Bill was still under discussion in the parliament. Very quickly, the incident gained national attention as it was condemned widely by DPOs not only in Indonesia but also internationally. Due to such pressure, the making process of the bill had been prompted and finally the bill was adopted on 15 April 2016 or 11 days after the incident.

Dwi Aryani then decided to file a lawsuit against Etihad Airways, the management of the Sukarno-Hatta International Airport and the Ministry of Transportation before the Civil Court of South Jakarta. The case, *Dwi Aryani v Etihad Airways and Others*, which was registered as No 846/Pdt.G/2016/PN JKT.SEL used tort law as the legal basis for demanding forgiveness and compensation. In 2017, the court

decided in its verdict to accept Dwi Aryani's claims that the defendants were committing unlawful acts which violated the rights of persons with disabilities. The court made a reference to the new Persons with Disability Law and ruled that the defendants should openly apologise to the plaintiff and all persons with disabilities in Indonesia through at least five printed major media and three television channels in Indonesia, by stating that:

We are the Department of Transportation of the Republic of Indonesia, the Etihad Airways Airline Company, and PT. Services Angkasa Semesta Tbk, apologise to Ms Dwi Aryani and persons with disabilities in Indonesia for the negligence of our officers who did not provide services and we promise to improve our services and this will not happen again.

The court also instructed the defendants jointly or separately to pay compensation of IDR 678,000,000 (six hundred and seventy eight million Indonesian rupiah) to Dwi Aryani as her material and immaterial losses due to the unlawful acts committed by the defendants. In this case, Dwi Aryani used her identity as a woman with physical disability who had been treated discriminately by a private company and the state institution. As a result, she gained support not only from persons with disabilities, DPOs and CSOs, but also the general public. This is why Etihad Airways accused her of looking for popularity through the case.¹³⁷

However, Dwi Aryani's case reveals the common treatment of women with disabilities in Indonesia. When they speak up about their conditions and discrimination, it would be considered as inappropriate because an ideal woman in a patriarchal society is one who complains less. Indeed, the case has changed how persons with disabilities should be treated in Indonesian transportation services. For other persons with disabilities, Dwi Aryani's case gives them inspiration to utilise the law through the court in defending their rights.

¹³⁷ ANK Movanita, 'Perjuangan Dwi Aryani Mencari Keadilan Setelah Diusir Etihad Airways' (*Kompas*, 5 December 2017 <<https://nasional.kompas.com/read/2017/12/05/06575201/perjuangan-dwi-aryani-mencari-keadilan-setelah-diusir-etihad-airways?page=all>> accessed 5 July 2021).

4.2.3 *Occupying strategic positions for advocacy*

Besides using the court, women with disabilities see institutions as a resource to be mobilised to pursue their agenda of empowerment. For them, institutions either within the state structure or outside the state structure provide opportunities to access economic and political resources for supporting their advocacy. In mobilising institutions, there are three spheres to be considered, namely: advocacy from above by occupying a strategic position in an international treaty body; advocacy from below by creating a dynamic civil society supported to the rights of persons with disabilities; and advocacy from within by taking positions in government agencies or independent state institutions.

a. Advocacy from above

Risnawati Utami is a familiar name in disability rights issues in Indonesia. She is the founder and the chairwoman of OHANA Indonesia. The OHANA Indonesia itself has two core programmes. The first relates to policy in which to make human rights instruments and the global development framework become applicable in the Indonesian development sector and to push the local government to modify those instruments into their local wisdom by providing technical assistant to introduce international human rights and the SDGs. The second is a programme advocating for the government to provide wheelchairs. Although at first it sounds like a charity-based organisation, the organisation utilises this programme strategically to have a rights-based policy. In conducting the programme, they conduct policy advocacy by demanding the government budget allocate funds for delivering wheelchairs and establishing workshops as places to assemble and undertake maintenance for wheelchairs. The establishment of those workshops is also a strategy to provide jobs for persons with disabilities. Moreover, in making the workshops run sustainably, the government also should be responsible to provide training for the disabled persons working at the workshops.

In 2009, Risna was elected as one of members to the UN's Committee on the Rights of Persons with Disabilities over a three year period (2019-22). She had a strong reason for deciding to run for the committee. During the interview, she said that education is an important step for women with disabilities to be empowered. However, Risna found that

in 2005 only 1% of persons with disabilities in Indonesia were able to access higher education which further contributed to their difficulty in finding a proper job. The barriers for empowering women with disabilities is perpetuated by the state itself which can be seen in the persistence of the charity approach and the medical model within the government institutions, including the Ministry of Social Welfare. Hence, she mentions that 'I have to be more invoicing the rights of persons with disabilities at the global level so that my country [Indonesia] might be shameful and start to do a self-correction'.¹³⁸

As a member of the CRPD committee, Risnawati Utami has also pushed the Government of Indonesia to ratify the Optional Protocol of the CRPD because, for her, 'the ratification of OP should be seen as a first step on how this state should re-learn about the human rights'.¹³⁹ Personally, she provides an inspiration to young women with disabilities in Indonesia to keep pursuing their dream.

b. Advocacy from below

Advocacy from below refers to the attempts of women with disabilities to create a vibrant civil society which is supportive of the rights of persons with disability. This includes advocating within and among CSOs to engage with the rights of persons with disabilities and to bring the grassroots voices up to the policy level. With regard to the engagement with CSOs, the attempt of DPOs to build a wider coalition in pursuing the rights of persons with disabilities has become stronger after the adoption of the CRPD. In Indonesia, the DPOs have less experience in conducting policy advocacy due to the fact that a human rights-based approach was a new perspective. In this situation, they invited human rights and legal aid organisations, such as the Indonesian Centre of Law and Policy Studies and the Legal Aid Institute, to join their agenda in domesticating the CRPD. Together they established the National Coalition for Persons with Disabilities which has managed to push the government to not only to ratify the CRPD, but to enact the Persons with Disability Law as well as establish the National Commission on Disability.

¹³⁸ Interview with Risnawati Utami (n 112).

¹³⁹ *ibid.*

Specifically on the disability rights, there have been several attempts to bring the women with disabilities' issues within women's rights movement in Indonesia. The most recent coalition between DPOs and women's rights organisations in general has been built as a response to the Elimination of Sexual Violence Bill initiated by women's rights groups, as discussed in Chapter V of this thesis. A working group involving women with disabilities organisations and women's rights organisations, such as the Indonesian Women Coalition, has been made possible through the support of the DRF as Dwi Aryani serving as DRF's Program Officer for Indonesia. In this group, they have been discussing several issues regarding the bill that may affect the rights of women with disabilities, including the provisions on the reproductive health and forced sterilisation of women with mental disabilities. Previously, such provisions had been criticised by women with disabilities organisations because they had not been invited by the initiator of the bill to discuss these matters. However, after a series of discussions within the working group, the perspective of women with disabilities has finally been taken into account and accommodated in the bill.

This experience demonstrates how women with disabilities have conducted advocacy within women's rights organisations so that those organisations would consider the rights of women with disabilities when advocating women's rights in general. This also shows how Dwi Aryani, a woman with disability, has managed to mobilise institutional resources strategically by using her position in an international donor agency to bring both women with disabilities organisations and women's rights organisations into the conversation to build a mutual understanding.

This brings our discussion to the story of Dwi Aryani to understand her motives in taking the opportunity to work for the DRF. After finishing her degree from a local university in Central Java, Dwi Aryani joined Handicap International for nine years. In 2014, she decided to join the DRF where she currently works. Her decision to work for the DRF is based on her ideology as she is very passionate about social work, especially disability issues, influenced by her experience as a woman with a disability in the past. Based on her working experience in Handicap International, she has learned how to manage organisations and its budget. She also has experience providing funding assistance to DPOs. By occupying such positions as the Indonesia Program Officer for the DRF, she continues her role to provide financial resources for DPOs. She mentions that:

What local DPOs need is resources [funding]. If we provide them with resources, I believe that they would be able to progress in advocating their rights and to start changing the society because they are the person who really understands what disability means and what issues surrounding disability are.¹⁴⁰

The ability to access funding also varies from one DPO to the other. According to Dwi Aryani, it is often the case that local DPOs working at the grassroots level find it very difficult to access international funding while DPOs located in the capital city of Jakarta have more access to donor agencies. She says that ‘I know even though they [DPOs working on the grassroots] are lacking in resources, but they have a strong motivation and spirit to speak up about the discrimination that they have experienced’.¹⁴¹

This is why she then decided to provide an affirmative policy for DPOs working at the grassroot level to access findings from the DRF. Through her position, she is also able to influence the DRF’s funding recipients to incorporate the rights of women with disabilities in their programme. She mentions that this is ‘because women with disability are more vulnerable and the DRF is focusing on the gender transformative issue’. As a result, in 2020 alone there were 15 out of 20 organisations funded by the DRF led by women with disabilities working on the issues of gender-based violence among women and children with disabilities. She says ‘so, yes, the focus [of the DRF] today is how to support the women with disabilities movement and DPOs led by women with disabilities to make disability’s rights movement in Indonesia more inclusive’. Thus, the DRF funding has enabled many grassroot organisations to conduct advocacy at the local level and to bring grassroot voices of women with disabilities to the policy level.

Besides that, Dwi Ariyani is also working with Komunitas Perempuan Bumi/Women’s Earth Community, an initiative to empower women with disabilities in Indonesia during the Covid-19 pandemic. This community has been working with 5,000 women with disabilities in nine provinces in Indonesia and 130 women with disabilities tailored to provide menstrual pads for women with mental disabilities who live in shelters.

¹⁴⁰ Interview with Dwi Aryani (n 111).

¹⁴¹ *ibid.*

Another advocacy from below strategy is carried out by Nurul Saadah, the founder and the chairman of SAPDA. Around 2002/2003, Nurul joined a non-governmental organisation (NGO) focusing on disability issues. Before that, she was not really aware about discrimination against persons with disability although she is a woman with physical disability herself. During this experience, she started to build her awareness about the issues, especially after she faced a personal experience of being rejected by her husband's family due to her disability. In 2004-05, Nurul established SAPDA to focus on changing public policies on disability. She designates her organisation to work at a regional level instead of the national level. She tells that 'I was thinking that in a regional level, it is more easier to have a meeting with the government and it will be easier to push them to understand disability issues'.¹⁴²

Ever since, SAPDA has been advocating the social welfare and specific healthcare for persons with disabilities in Yogyakarta. Due to her persistent efforts, lobbies and campaigns, in 2013, the Provincial Government of Yogyakarta finally agreed to enact a Governor Regulation concerning Special Health Insurance, designated for persons with disabilities. From that programme, couples with disabilities in Yogyakarta are no longer afraid of getting married and having children. She observes that 'previously, they were afraid to get married because they were worried about the cost to deliver their baby through a caesarean section'.¹⁴³ There has been a common believe that if a woman with disability is pregnant and wants to deliver her baby, she must go through a c-section operation. This operation is very expensive considering the challenging economic conditions of persons with disability in Indonesia, not to mention if the baby is sick and needs medication. Through the special health insurance, the cost is guaranteed by the government. For Nurul, 'it is an empowerment for them, when we eliminate one of their barriers, in this case is healthcare, they might be able to move forward even more so that they could do more better things for their life and family'.

¹⁴² Interview with Nurul Saadah (n 113).

¹⁴³ *ibid.*

c. Advocacy from within

The last strategy for advocacy is from within. This refers to the attempt of women with disabilities to occupy a strategic position within the government agency. In this regard, Fanti Frida Yanti may provide a good example. Fanti Frida Yanti works as a civil servant at the Regional Development Planning Board (BAPPEDA) for the Municipality of Baubau, Southeast Sulawesi. During the interview she mentions that ‘working in this institution (BAPPEDA), I understand how the government decides the regional budget’.¹⁴⁴ Accordingly, she uses her position to create budget allocations for the persons with disabilities rights and DPOs in Baubau. In this regard, she works with several colleagues from different government agencies such as the regional labour agency and the Integrated Services for Women and Children Empowerment (P2TP2A) to influence the budget making. The collaboration with the labour agency is to provide job trainings and workshops as well as job expos for women with disabilities. Furthermore, the collaboration with the P2TP2A is related to their four functions: data collection, reporting, mediation and consultation on the issues of women and children. She says that ‘I asked them to take a particular attention on women with disabilities and children with disabilities because they are more vulnerable’.

As the local government does not have reliable data on the number of persons with disabilities in the municipality, Fanti works together with the Women with Disabilities Association in Baubau to collect the data. From this data collection, collaborative programmes between local government institutions and DPOs to empower persons with disabilities will be able to be conducted more effectively. She also mentions that progress has been made during the development planning process as persons with disabilities are invited to participate. She tells that ‘we try to mobilise them and make the society aware of their existence as human beings. I realise that it is still small in scope. But if it is done continuously it will spread to many government institutions to always involve persons with disabilities in every public policy making’.¹⁴⁵

¹⁴⁴ Interview with Fanti Frida Yanti (n 110).

¹⁴⁵ *ibid.*

Besides those women with disabilities mentioned above, an interesting attempt to conduct advocacy from within has been undertaken by Bahrul Fuad, a man with physical disability. Although he is not a woman with disability, he decided to run for the commissioner of the National Commission on Violence Against Women (Komnas Perempuan) and he got appointed for the position for 2020-24. For him, this is an attempt to bring the issues of women with disabilities to the commission. He says that:

Yes, so far the issue of women with disabilities has not become a mainstream issue in Indonesian human rights institutions like the Women Commission itself. So, when I serve as one of the commissioners, I try to bring a different colour by providing a disability perspective even though I am not a woman.¹⁴⁶

He personally has been interested in the issues of women with disabilities since 2017 when he wrote a dissertation on the sexual violence on women with disabilities. He tells that ‘there were very limited sources and studies on women with disabilities in Indonesia compared to women’s issues in general even though the issues on women with disabilities are complex as they have double discrimination’.¹⁴⁷ By becoming the commissioner, the issues of women with disabilities within the commission would become more obvious.

In brief, from the four stories of women with disabilities above, we can see how they use their agency by occupying strategic positions and then use the positions strategically to advocate the rights of women with disabilities and to transform the conditions of women with disabilities. Besides them, a man with disability may also become an agent for advocating the rights of women with disabilities once he has a sensibility toward the issues of women with disabilities. The result of these exercises of agency in mobilising resources may be a short-term achievement, for instance in the case law of *Dwi Aryani v Etihad and others*, or in the enactment of a regional regulation on special health insurance as shown by Nurul Saadah. Other results would need more time to be seen as they are progress in the making.

¹⁴⁶ Interview with Bahrul Fuad (n 134).

¹⁴⁷ *ibid.*

5.

CHALLENGES AHEAD

In the previous chapter, I have examined how women with disabilities activists mobilised legal and institutional resources available to them and how they use their identity to intervene public policies. Such mobilisation may come up with important achievements toward their empowerment. However, such legal mobilisation by women with disabilities may also lead to a condition of ‘legal disempowerment’ when they may face a constant challenge that may deflect them from their expectation in the process of pursuing empowerment.¹⁴⁸ This chapter discusses processes of mobilising legal and institutional resources through which women with disabilities have found them challenging, such as the establishment of the National Commission on Disability, the enactment of the Omnibus Law, the Elimination of Sexual Violence Bill and the social and political barriers.

5.1 THE NATIONAL COMMISSION ON DISABILITY

In order to protect, fulfil and respect the rights of persons with disabilities, article 131 of Law No 8 of 2016 concerning Persons with Disability has a mandate to establish an independent National Commission on Disability. The independency of this commission means that it should be a non-structural institution having authorities to monitor, evaluate and advocate the fulfilment of the rights of persons with disabilities. However, the establishment of the commission is quite problematic. The first issue is related to the designation of the

¹⁴⁸ George Riach and Zoe James, ‘Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan’ (2016) 20(4) *The International Journal of Human Rights* 549.

commission which is a way for the mandate to be an independent and non-structural institution. In this regard, the commission being currently established is designated under the Ministry of Social Affairs. Paradoxically, it would not be easy to be an independent body as it depends on the Ministry of Social Affairs for its budget and the ministry should also be the target for monitoring by the commission. The second issue is related to the unaccountability of the Ministry of Social Affairs, which may affect the image and credibility of the disability commission in monitoring the budget allocation for fulfilling the rights of persons with disabilities.

Bahrul Fuad, a commissioner for the National Commission on Women Against Violence as well as a disability rights activist, explicitly criticises the establishment of the disability commission (*Komisi Nasional Disabilitas/KND*), when he states that:

If we [persons with disabilities] want to be inclusive so we should be consistent. The KND will make us be exclusive. The KND is contra productive with our [persons with disabilities] movement for an inclusive society. How can non-disabled people understand us if we do not try to interact with them? The mainstreaming of disability rights need to be undertaken within every tier of government and in every state institutions as well as in every societal aspect so that others people will learn about disability issues.¹⁴⁹

For Fuad, it is important for disability's rights activists to participate in many strategic state institutions including independent commissions in order to mainstream persons with disability rights within the state structure. He argues that the establishment of the special commission on disability would canalize the disability's rights movement within one inclusive institution. This is why he considers that joining the National Commission on Violence Against Women is more strategic rather than joining the National Disability Commission. In this regard, he insists that the Indonesian government needs to provide an affirmative policy to facilitate many persons with disabilities participating in the state institutions. Thus, they might be able to provide a more inclusive perspective on how the state institutions should conceive and treat them according to their rights.

¹⁴⁹ Interview with Bahrul Fuad, Indonesian National Women Commission (Yogyakarta, Indonesia, online interview, 8 May 2021).

A different concern was also mentioned by Risnawati Utami on the establishment of the National Commission on Disability. She does not have a problem if a special commission on disability is established. But for her, this issue is how the organisational design of this commission should be. The current attempt carried out by the government by putting the commission under the Ministry of Social Affairs, according to her, has been the result of the vagueness of the Persons with Disability Law on provisions of the commission because they do not comply with the Paris Principle, a set of principle which requires national human rights institutions (NHRIs) as follows:

1. To meet the minimum standards for effective and credible NHRIs.
2. Require NHRIs to have independency in law, membership, operations, policy and control of resources.
3. Require the NHRIs to have a broad mandate, pluralism in membership, broad functions, adequate powers, adequate resources, cooperative methods and engage with international bodies.
4. Full compliance with the Paris Principles provides NHRIs with international recognition.

If they follow the Paris Principles, the commission must be like other independent state agencies, such as the National Human Rights Commission, where they have autonomy to undertake their authorities, instead of being established under the Ministry of Social Welfare. Utami illustrates this problem:

If KND [the disability commission] is to be established, it will be against the international human rights law because it is a mistake since the beginning. Ideally, the KND should not be under the Ministry of Social Affairs, it should be independent like the National Human Rights Commission. Because not all human rights commissions are ready and understand how to mainstream disability rights or how to create disability specific focus, we still need a special independent commission on disability rights. If this commission can be established in addition to other human rights commissions, in the future there will be like a twin-track approach to disability rights.¹⁵⁰

¹⁵⁰ Interview with Risnawati Utami, UNRPD Committee (Yogyakarta, Indonesia, 12 June 2021).

Moreover, Risnawati Utami also discusses people's distrust toward the Ministry of Social Affairs regarding its accountability. She explicitly expresses her concern due to the track-record corruption in the ministry:

The Ministry of Social Affairs will be the institution for allocating the national budget (APBN) to the Disability Commission. There has been a common issue of ego-sectoral within state ministries with regard to budget because none of them wants to lose its national budget and in fact, they even want to increase it. This means that the establishment of the Disability Commission under the Ministry of Social Affairs will provide the opportunity for the ministry to ask for more national budget allocation. I was witnessing how corrupt this ministry is. In 1998-1999 there was a demonstration in the Rehabilitation Centre in Solo, Central Java, Indonesia, managed by the Ministry of Social Affairs. This demonstrate on was triggered by a corruption case committed by the head of rehabilitation centre who was from the ministry by corrupting the budget for women's menstrual pad in the centre. I have no respect anymore to the ministry after this experience. They have not been transparent and accountable. How can we trust them to handle the commission on disability?¹⁵¹

Indeed, her concerns have been proven. More recently, the Minister of Social Affairs, Juliari Batubara, was arrested by the Commission on Corruption Eradication as a suspect for corruption involving the distribution of COVID-19 social aid. According to the Commission on Corruption Eradication, Batubara reportedly accepted roughly 12 billion Indonesian rupiah or US\$582,020.¹⁵² In August 2021, Batubara was found guilty and punished by the Anti-Corruption Court of Jakarta with 12 years in prison. This case has created a sense of distrust and a sceptical view among disability's rights activists, including Risnawati Utami, about how the Ministry of Social Affairs has managed the budget allocations for persons with disabilities and in the future will manage the budget for the National Commission on Disability. This concern is valid because, according to a report from the Smeru Research Institute, from the total national budget allocated for persons with disabilities almost 90% of the total budget has been channelled through the Ministry of Social Affairs.¹⁵³

¹⁵¹ Interview with Risnawati Utami (n 150).

¹⁵² R Fachriansyah, 'Minister Juliari Named Suspect in COVID-19 Aid Graft Case' (*The Jakarta Post*, 6 December 2020) <www.thejakartapost.com/news/2020/12/06/minister-juliari-named-suspect-in-covid-19-aid-graft-case.html> accessed 20 July 2021.

¹⁵³ Dewi RK Hastuti, RP Pramana and H Sadaly, 'Kendala Mewujudkan Pembangunan Inklusif Penyandang Disabilitas' (Smeru Research Institute 2020) <https://smeru.or.id/sites/default/files/publication/wp_disabilitas_in_0.pdf> accessed 3 May 2021.

Similarly, Dwi Aryani also states her opinion regarding the National Commission on Disability. She observes:

There are still so many issues. One of them is regarding the independency. The KND should be established as a watchdog for disability issues. Another one is related to budgeting under the Ministry of Social Affairs. But, at the same time, this ministry will become one of the government institutions that should be monitored by the KND.¹⁵⁴

However, a different perspective in seeing the establishment of KND is offered by Nurul Saadah. She says:

I am trying to see it pragmatically because we have [the] Persons with Disability Law which mandates us under the law to establish it [the commission]. So why do not we try it first and see whether the implementation might be good or bad? If it will be bad for the rights of persons with disability, the disabilities rights movement will have a common enemy and we should put our effort to change the structure of the commission. If the KND will be a good institution, *Alhamdulillah* [thanks to God], so we could move on to other issues. But, I am still having a concern that this [commission] will end up as government's formality.¹⁵⁵

Besides concerns on the submission of the commission under the Ministry of Social Affairs, Dwi Aryani is also concerned on the composition of the commission's members and the selection process to be a commissioner. According to Presidential Decree No 68 of 2020 concerning the Establishment of the National Commission on Disability,¹⁵⁶ the members of the National Commission on Disability are seven commissioners, four of them should be persons with disabilities and three are from non-disabled persons. This is problematic for her because persons with disabilities should be given more commissioners not only presenting the types of disabilities, but also representing women with disabilities. She is concerned that women with disabilities would be under-represented within the commission.

¹⁵⁴ Interview with Dwi Aryani, Regional Head of Programs – Asia, Disability Rights Advocacy Fund (Yogyakarta, Indonesia, online interview, 5 June 2021).

¹⁵⁵ Interview with Nurul Saadah, Director at SAPDA Yogyakarta (Yogyakarta, Indonesia, 24 May 2021).

¹⁵⁶ Presidential Decree No 68/2020 concerning the Establishment of the National Commission on Disability, art 7(2)(a).

It seems that among the disability rights activists the idea of the National Commission on Disability remains inconclusive. Some may reject the establishment of the commission while others agree on the establishment, but believe it should be in accordance with the Paris Principles for ensuring its independency and credibility. Meanwhile others appear to be more pragmatic as the process of the establishment has been ongoing. I contend that the last position seems to be more realistic on several grounds. First, it is true that the process of establishing the commission has been ongoing and it seems difficult to stop for accommodating the other side of opinions. Second, learning from the experience of the National Commission on Human Rights, institutional design is not fixed once and for all, but rather it is in continuous evolution considering the social-political condition and the agency within the institution themselves. The National Human Rights Commission for instance, was established in 1993 by the authoritarian regime of Suharto in response to the bad image of the Indonesian military after the 1991 Santa Cruz massacre tragedy in East Timor.¹⁵⁷ At first, it was put under the control of President Suharto; hence, it was far from independent. But, once the political condition changed after the fall of authoritarian regime, which also opened opportunities for human rights activists to be the commissioners. The commission has transformed itself into an independent commission with relatively strong authority.¹⁵⁸ Thirdly, the ability to navigate the constraining structure of the commission would depend on the persons who are in charge within the institution. Nowadays, the recruitment process for the commissioners has been on-going with 1,200 people applying for the position.¹⁵⁹ This means that the public, including DPOs, still have opportunities to monitor the process as well as submit comments and feedback on the record of the applicants to the recruitment team. This is important to ensure the elected commissioners are those who are disability rights activists with strong integrity, credibility and capability

¹⁵⁷ Ken Setiawan, 'Between Law, Politics and Memory: The Indonesian National Commission on Human Rights (Komnas HAM) and Justice for Past Human Rights Crimes' (2018) 19(1) *Australian Journal of Asian Law* 117.

¹⁵⁸ *ibid.*

¹⁵⁹ ANA Ansori, 'Stafsus Angkie Yudistira: 1.200 Orang Mendaftar Jadi Komisiner Komisi Nasional Disabilitas' (*Liputan6*, 3 February 2021) <www.liputan6.com/disabilitas/read/4473639/stafsus-angkieyudistira-1200-orang-mendaftar-jadi-komisiner-komisi-nasional-disabilitas> accessed 10 August 2021.

to bring the interest of the persons with disabilities. For the long run, those commissioners should be able to bring about an institutional transformation toward an independent body according to the Paris Principles.

5.2 THE OMNIBUS LAW

On 5 October 2020, the Government of Indonesia passed the Omnibus Law on Job Creation. The law aims at harmonising and amending 79 laws that were considered to be constraining business enterprises and investments. Bahrul Fuad explicitly expresses his concerns regarding this new law and how it would impact persons with disabilities in terms of their right to work. For him, the Omnibus Law is contra-productive to what disability rights activists have been advocating for on the rights to works. Since the beginning, the Omnibus Law has been widely opposed by many elements in Indonesia's society, such as labour unions, environmentalists, academics, and so on. Such opposition is not only because its process was not participatory by utilising the pandemic of COVID-19 to hinder public participation, but also because of its controversial contents covering a wide range of sectors including spatial planning, environmental and building permits, manpower and taxation.¹⁶⁰ Consequently, it will affect many aspects of people's lives including persons with disabilities.

Around 11 million persons with disabilities, many of whom are at productive ages, are not an exception in this regard.¹⁶¹ They will be affected particularly in the context of manpower as their right to work has been stipulated by the Labour Law, one of the laws that are amended by the Omnibus Law. There are at least three points as to why the Omnibus Law becomes a challenge to the enjoyment of the rights of persons with disability in the future. First of all, the Omnibus Law returns to an outdated and degrading terminology of 'handicapped persons' (*penyandang cacat*) instead of using a more acceptable term of 'persons with disability' (*penyandang disabilitas*). This return is not only a matter of a semantic choice but it represents the paradigm used for

¹⁶⁰ A Wardana, *Contemporary Bali – Contested Space and Governance* (Palgrave MacMillan 2019).

¹⁶¹ Alin Halimatussaidah and others, 'Mapping Persons With Disabilities (PWDs) in Indonesia Labor Market' (2017) 63(2) *Economics and Finance in Indonesia* 126.

approaching disability issues. ‘Handicapped persons’ is used to express the medical model which stresses on the impairments, while ‘persons with disability’ is used to express the social model which emphasises the disabilities and is also the term used to indicate the move away from a charity-based approach into a human rights-based approach.¹⁶² Hence, returning to a ‘handicapped person’ in the Omnibus Law ignores the rights-based approach.

Secondly, the Omnibus Law treats persons with disabilities unfairly with regard to work termination. It inserts a new article to the Labor Law, article 154A, stipulating conditionality for the termination in which one of the reasons is ‘an employee experiences a prolonged illness or disability due to a work accident and is unable to carry out his work beyond the 12-month limit’. This provision is a violation to the Persons with Disabilities Law in which article 11 stipulates that persons with disabilities have the right to work including the right of not to be terminated for a reason of disability. This article itself is a further articulation of article 27(a) of the CRPD which mandates the state parties to ‘[p]rohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, the continuance of employment, career advancement and safe and healthy working conditions’.

Thirdly, with regards to the work conditions, the requirement for providing accessibility in every building is omitted by the Omnibus Law. Consequently, accessibility is no longer a requirement in constructing a building, including a workplace, be it a factory or an office. This will perpetuate further discrimination by preventing them from enjoying reasonable accommodation caused by physical and environmental barriers in the workplace. This is a violation of article 27(i), which mandates the state to ensure ‘that reasonable accommodation is provided to persons with disabilities in the workplace’. Although the CRPD does not provide any elaboration on what ‘reasonable accommodation’ means, the International Labour Organization understands it as necessary and appropriate modifications or adjustments of the work environment to allow a worker with disabilities to enjoy equal opportunities in the workplace.¹⁶³

¹⁶² Agung Wardana and NPYP Dewi, ‘Moving Away From Paternalism: The New Law on Disability in Indonesia’ (2017) 18(2) *Asia Pacific Journal on Human Rights and the Law* 172.

¹⁶³ International Labour Organization, *Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide* (International Labour Organization 2016).

Furthermore, in the bill paid leave, including maternal and menstrual leave, were omitted; however, after a massive protest against such omission in the law after being enacted, such leaves were then regulated, but based on the agreement between employers and employees. Considering the imbalance of power relations it is very likely that the employers will provide conditionality that suits their interests at the expense of employees' rights.

Accordingly, Bahrul Fuad also discusses the strategy that might be used by the disability rights activist in order to tackle this problem. He and other activists in the national coalition of DPOs have conducted meetings on how persons with disability should respond to the Omnibus Law. One of the ideas from the meeting is to file a judicial review to the Constitutional Court on the basis that the Omnibus Law violates human rights, especially the rights of persons with disability, that have been recognised by the 1945 Indonesian Constitution.

In December 2020, two persons with disability, Putu Bagus Dian Rendragraha and Simon Petrus Simbolon, filed a judicial review against the Omnibus Law to the Constitutional Court arguing that the law contradicts persons with disabilities' right to work.¹⁶⁴ Considering the fact that the Omnibus Law has been challenged by persons with disability in the Constitutional Court, the national coalition of DPOs finally decided to focus on building resistance at the grassroots level. Bahrul Fuad states:

We better focus to conduct advocacy to change policies at the local level ... For instance, we are currently working on an index of inclusive development that has been introduced by the National Development Planning Board (BAPPENAS). Moreover, we need also to work on village development programs in which the village fund should be allocated from ensuring the enjoyment of the rights of persons with disability in the village. If we conduct rights advocacy at the national level, it needs more energy and resources. This is why some DPOs focus their works at the grassroot level. In the end of the day, we want to see a change not only in the public policy but also in the real conditions of persons with disability on the ground.¹⁶⁵

¹⁶⁴ S Mashabi, 'Dua Penyandang Disabilitas Ajukan Uji Materi UU Cipta Kerja ke MK' (*Kompas*, 18 December 2020) <<https://nasional.kompas.com/read/2020/12/18/18320971/dua-penyandang-disabilitas-ajukan-uji-materi-uu-cipta-kerja-ke-mk?page=all>> accessed 2 September 2021.

¹⁶⁵ Interview with Bahrul Fuad (n 149).

This strategy to focus on building movement at the grassroots level is understandable due to limited resources in the disability rights movement. In addition, at the same time many social forces at the national level, including labour unions, environmentalists and student activists, have filed their judicial review before the Constitutional Court. Disability rights activists may just support the judicial review by providing analysis from their perspectives. Once it is revoked by the constitutional court, it would be also good news for the disability rights movement. However, once the judicial review is dismissed by the court, the movement has prepared to handle it at the local level. The first step taken by DPOs in the national coalition has been to express their disappointment toward the Omnibus Law through the mass media. They also have raised their concern on this issue directly to the Ministry of Manpower, but their concern seems to be ignored. Bahrul Fuad says:

Stubborn! Slamet [Thohari, a disabled lecturer from Brawijaya University], Joni [Julianto, from SIGAB], and I had an audience with the Minister of Manpower on the impacts of Omnibus Law to persons with disability. But the minister had no clue whatsoever on this issue and no perspective toward inclusivity. The minister even persuaded us that the law would benefit persons with disabilities. Yes, this is part of our challenges ahead.¹⁶⁶

Currently, a judicial review into the Omnibus Law has been filled by several plaintiffs, including labour unions, human rights organisations and environmental NGOs. All of them have been under review by the Constitutional Court including the judicial review submitted by Putu Bagus Dian Rendragraha and Simon Petrus Simbolon representing persons with disabilities. Meanwhile, disability rights activists in the national coalition of DPOs have continued their struggle against the law by building awareness among persons with disabilities at the local level through campaigning and lobbying like-minded local government officials to enact regional legislations for protecting the rights of persons with disabilities. Dwi Aryani, through the DRE, for instance, has provided funding for local DPOs, such as Puspadi Bali to advocate the enactment of district regulations for the protection and the fulfilment of the rights of persons with disabilities in all districts in Bali. She believes that this could be a strategy to challenge the Omnibus Law because by

¹⁶⁶ Interview with Bahrul Fuad (n 149).

having a rights-based regulation in place, persons with disabilities at the local level may have a right claim to prevent the Omnibus Law affecting their rights.

5.3 THE ELIMINATION OF SEXUAL VIOLENCE BILL

Indonesia is a country with a high rate of violence against women. In this patriarchal society, women are seen as second-class citizens in which their rights are very often overlooked. According to a report of the Indonesian Women Commission, between 2011 to 2019 there were reportedly 46,698 cases of sexual violence against women. From that number, 23,021 cases happened in the public sphere such as rape (9,039 cases), sexual harassment (2,861 cases) and cybercrimes with sexual nuance (91 cases). From those cases, 66% of them were experienced by women with disabilities, especially women with mental and intellectual disabilities (47%) and women with sensory disabilities in particular deafness (19%).¹⁶⁷ This number is the tip of the iceberg because women are still afraid to report their experiences due to the stigma of 'victim blaming' in the society, whereas, as victims, once they speak up, they would be treated negatively as a 'troubled' woman.

Women with disabilities are more vulnerable from sexual abuse than women without disabilities. This is due to the failure of the state and the society to address gender-based violence in general,¹⁶⁸ and also due to situational reasons related to their disabilities because very often perpetrators of sexual abuses are those who are in a position of trust.¹⁶⁹ Hence, the perpetrator has the trust as somebody who is familiar to the victim, especially women with intellectual and mental disabilities. Moreover, women with disabilities are less likely to report their experience in seeking justice due to their limitations in terms of communication ability or they are prevented by their family in order

¹⁶⁷ Komnas Perempuan, *Kekerasan Meningkat: Kebijakan Penghapusan Kekerasan Seksual untuk Membangun Ruang Aman bagi Perempuan dan Anak Perempuan: Catatan Kekerasan Terhadap Perempuan Tahun 2019* (Komnas Perempuan 2020).

¹⁶⁸ Janine Benedet and Isabel Grant, 'Sexual Assault and the Meaning of Power and Authority for Women with Mental Disabilities' (2014) 22 *Feminist Legal Studies* 131.

¹⁶⁹ Andrea Hollomotz, *Learning Difficulties and Sexual Vulnerability: A Social Approach* (Jessica Kingsley 2011); Sara-Beth Plummer and Patricia Findley, 'Women with Disabilities' Experience with Physical and Sexual Abuse: A Review of the Literature and Implications for the Field' (2012) 13(1) *Trauma, Violence & Abuse* 15.

to prevent creating a negative image for the whole family.¹⁷⁰ As victims of sexual abuse, they find it difficult to enjoy their rights to sexual and reproductive health. In some cases, they are forced to undergo sterilisation or abortion without a medical reason as they might have a baby with disabilities as well.¹⁷¹ Consequently, their right to be a mother, if they wish, is denied because there is a common assumption that they would not be a good mother.

Indonesia, indeed, has ratified the CEDAW through the enactment of Law No 7 of 1984. This means that Indonesia also has an obligation to eliminate violence against women. To comply with this obligation, a bill concerning the elimination of sexual violence (the Elimination of Sexual Violence Bill) in Indonesia has been drafted by the National Commission on Violence against Women collaboratively with CSOs. This bill is also an instrument to implement article 15 (1) of the CEDAW: 'States Parties shall accord to women equality with men before the law'. The equality before the law also means that women should have legal protection in front of the law. However, the law-making process of this bill has been polemical.

The bill itself was firstly initiated in 2012 by the National Commission on Violence against Women in responding to the high number of sexual violence cases in Indonesia. In 2016, the government together with the House of People's Representative (DPR) agreed to prioritise the bill in the National Legislative Program (Prolegnas). The Indonesian President, Joko Widodo, at that time also stated that he supported the bill to become legislation.

During the process in the House of People's Representative, the Elimination of Sexual Violence Bill went to the Commission VIII on social and religious matters. Under this commission the original bill has been reduced significantly from 125 articles to include only 50 articles. The polemic against the bill emerged in 2018 when a member of the Justice and Prosperity Party, an Islamic conservative party, strongly opposed the bill especially with regard to marital rape. He stated that according to his religious belief, a wife must be a servant to her husband;

¹⁷⁰ Sandra Martin and others, 'Physical and Sexual Assault of Women with Disabilities' (2006) 12(9) *Violence Against Women* 823.

¹⁷¹ Robyn Powell and Michael Stein, 'Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis' (2016) 11(1) *Frontiers of Law in China* 53; Komnas Perempuan (n 167).

hence, for him, there is no such thing as ‘marital rape’. Another stance of opposition against the bill has been argued by a member of the Nation Awakening Party, a moderate Islamic party, stating that the bill is influenced by liberal values, especially on the issues of lesbian, gay, bisexual and transgender rights, so for him the bill contradicts the religious and cultural values of the Indonesian society.

Due to massive movements from the society to enact the Elimination of Sexual Violence Bill, the House People’s Representative then agreed to put the bill back into the list of priority bills of 2021 and Prolegnas of 2020-24.¹⁷² The National Commission on Violence Against Women also mentioned several crucial articles in the bill which are related to 15 types of sexual violations in many contexts. Nine out of 15 types of violations were categorised as criminal laws whereas six other types cannot be categorised as criminal laws as they do not have subjective and objective elements of criminal law.¹⁷³

During the drafting process of the bill, there was intense discussion between women with disabilities organisations and other CSOs, including women’s rights activists. This discussion was related to issues on contraception and sterilisation for women with disabilities. Article 11(2) stipulates that one form of sexual violence is the forced installation of contraception. In Article 101(1), this form of sexual violence shall be punished by a minimum of one year imprisonment and at maximum three years imprisonment. If this forced installation of contraception is undertaken to persons with disabilities, the sanctions are increased with a minimum at two years in prison and a maximum at six years in prison (article 101(3) of the bill). If this is conducted on children with disabilities, the sanctions become a minimum of three years in prison and a maximum of nine years in prison. However, article 104 seems to water down this prohibition further by stating that ‘[i]n the case of the forced installation of contraception to persons with mental disabilities that is carried out based on a request from their family and on advice from experts, with a consideration to protect the continuity of their life, is not a considered as a crime’.

¹⁷² Friski Riana, ‘Masuk Prolegnas 2021, Ini 11 Pasal Krusial di RUU PKS’ (*Tempo*, 10 March 2021) <<https://nasional.tempo.co/read/1440656/masuk-prolegnas-2021-ini-11-pasal-krusial-di-ruu-pks>> accessed 5 July 2021.

¹⁷³ *ibid.*

Indeed, article 104 of the bill is still a matter of ongoing discussions between disabled women's rights activists and women's rights activists. For disabled women's rights activists, such an article is considered to legally justify sexual violence toward women with mental disabilities. Sri Wiyanti Eddyono, a lecturer at the Faculty of Law, Universitas Gadjah Mada, Indonesia, also the former commissioner for the National Commission on Violence Against Women, has been actively involved in the legal drafting process of the bill. She mentions that this article appears based on the discussion between the DPOs and the Commission in Jakarta. Furthermore, she also argues that this article is still being debated among DPOs themselves as, on the one hand, some of them want to reduce the burden of the mother of the woman with mental disabilities who become victims of rape. The mother will have the responsibility to look after the baby resulting from the rape. However, the focus of this bill should be on preventing rape from happening instead of putting more burdens on women. On the other hand, Sri Wiyanti Eddyono also mentions that this article cannot eliminate the basic element of sexual violence. This is because the perpetrator, who is very often a close relative to a woman with mental disability, can still conduct the rape and even, potentially, increases the possibility of rape because, after sterilisation, she could not get pregnant.¹⁷⁴

Furthermore, several women with disabilities which were participants in this research also tell their perspective having seen this article. For example, Nurul Saadah made a similar point to that of Sri Wiyanti Eddyono, as mentioned. However, Dwi Aryani is concerned with article 104 on the bill, stating that 'the article 104 of the bill is very problematic as it shows that the majority of the legal drafter did not understand the conditions of women with mental disabilities'.¹⁷⁵ Indeed, as observed by Dwi Aryani, at first there was a tension during the drafting process in which women with disabilities tend to be left behind from the discourse on women issues in general. However, after a series of dialogues has been conducted, the tension has been reduced. There has been an indication that they have reached an agreement to omit article 104 from the bill based on a mutual understanding toward the conditions of women with mental disabilities. Furthermore, disabled women's rights activists and

¹⁷⁴ Interview with Sri Wiyanti Eddyono, Lecturer at the Faculty of Law Universitas Gadjah Mada Indonesia (Yogyakarta, Indonesia, 9 June 2021).

¹⁷⁵ Interview with Dwi Aryani (n 154).

women's rights activists have also agreed to build a strong coalition to consolidate the strengths of the women and women with disabilities movement to advocate for the enactment of the Elimination on Sexual Violence Bill as an essential piece of legislation to protect women from sexual objectification.

5.4 OTHER INSTITUTIONAL BARRIERS

Regarding the social and political barriers, there are two main issues that still exist in relation to persons with disabilities in Indonesia. The first issue is the lack of reliable data on persons with disabilities in Indonesia. As mentioned in the background of this thesis, data on persons with disabilities in the country is hard to find which is partly caused by how disability is defined.¹⁷⁶ The lack of reliable and accurate data on persons with disabilities can represent one obstacle in fulfilling their goals because effective and meaningful empowerment programmes are hard to design without the data. In addition, this condition has led to a sense of underestimating the issues of persons with disability by assuming they are a minority social group in Indonesian society. Hence, from a public policy perspective, as a minority in number, they may receive minimum prioritisation from government policies and programmes, including resource allocation. It also includes political supports that need to seriously provide inclusive development and put the persons with disabilities on a priority scale development agenda, both at the national and regional levels.

The second issue is related to government institutions. The Ministry of Social Affairs has been designated as the focal point of disability issues in the country. Especially with regards to the rights of women with disabilities, the institutional structure is far more challenging. Besides being directed to be under the domain of the Ministry of Social Affairs, the rights of women with disabilities are under the domain of the Ministry of the Protection of Women and Children; for instance, on the issues of women with disabilities, see article 6 of the CRPD.¹⁷⁷

¹⁷⁶ Halimatussaidah and others (n 161).

¹⁷⁷ CRPD, art 6 which establishes the state obligation to ensure the equal enjoyment of girls and women with disabilities to be empowered as they are subject to multiple forms of discrimination.

In reality, however, both the Ministry of Social Affairs and the Ministry for the Protection of Women and Children, as the duty bearer of the rights of women with disabilities, focus on implementing separated laws and regulations under their designated domain and priority. The persistent understanding to see disability issues using a charity-based approach under the domain of the Ministry of Social Affairs has made the enjoyment of their rights complicated.

Therefore, it appears that addressing the intersectionality between women and disability would be challenging legally and institutionally. If disabilities issues are conceived to be solely the domain of the Ministry of Social Affairs, it would be hard for women with disabilities to advocate their rights beyond the domain of the Ministry of Social Affairs. For instance, if they complain about the violation of their rights to reproduction to the Ministry of Health, the Ministry of Health would suggest they direct their complaint to the Ministry of Social Affairs as the focal point of Persons with Disability Law. From a woman with disability's viewpoint, this would create a sense of frustration, leading to legal disempowerment. This is a condition when instead of empowering women with disabilities through enjoyment of their rights, it would delay the enjoyment of their rights due to the complex legal and institutional structure that would need to be navigated by them as a woman and at the same time with a disability that, according to the common view, are supposed to remain within the domestic sphere.

In conclusion, pursuing empowerment for women with disabilities remains challenging. This has been due to the current conditions in Indonesia with regard to institutional and legal development which tends to overlook the rights of persons with disabilities. In pursuing empowerment for women with disabilities, there have been several challenging processes including the establishment of the National Commission on Disability that is supposed to be independent, but in fact was established under the Ministry of Social Affairs whose credibility and accountability has been questionable. Moreover, the enactment of the Omnibus Law on Job Creation would hinder the opportunity for persons with disabilities, especially women with disabilities, to enjoy their right to work because paid leave such as maternal leave and menstrual leave have been vaguely regulated. The other challenge is the persistence rejection from the members of the parliament to enact the Elimination of Sexual Violence Bill which may protect women with disabilities from sexual violence. An equally important challenge is

the lack of reliable data which contributes to ineffective empowering programmes targeting persons with disabilities.

Learning from the experience of Syrian refugees in Jordan, the Jordanian complex legal and institutional settings have contributed to legal disempowerment, a condition of frustration for the refugees in advocating their rights.¹⁷⁸ In this context of women with disabilities in Indonesia, although complexity of legal and institutional arrangement have been constraining women with disabilities to put their agenda at the policy level, they are far from being legally disempowered in Riach and James' sense.¹⁷⁹ This is because, despite such challenges in the process in pursuing empowerment, they remain persistent in their struggles. Also to some extent, regarding the National Commission on Disability, they remain optimistic that through their struggles there will be an improvement of the conditions of women with disabilities in the future. Consistent to Kabeer's conception, empowerment from them is conceived as a continual process to create a better condition and to keep pushing this better condition to the ideal condition.¹⁸⁰ This optimism has been derived from their life experience through which they have started their struggles since the beginning as an underserved and marginalised social group and continued to struggle after being empowered by the rights-based approach in demanding the enjoyment of their rights.

¹⁷⁸ Riach and James 2016 (n 148).

¹⁷⁹ *ibid.*

¹⁸⁰ Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435.

6.

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

This thesis began with a preposition that women with disabilities have been a marginalised social group in Indonesia and based on that condition, how they have mobilised legal and institutional resources available for them in order to pursue their empowerment collectively. Through the stories of Fanti Frida Yanti, Dwi Ariyani, Nurul Saadah and Risnawati Utami, we can see that their success in intervening strategic positions in turn made them able to advocate for women with disabilities' rights. Their advocacy strategies can be divided into three types, which are advocacy from above, advocacy from below and advocacy from within.

First, the advocacy from above can be seen from the story of Risnawati Utami by joining the CRPD Committee and bringing the issue of persons with disabilities in Indonesia to an international level and to push the government to ratify the CRPD Optional Protocol. Second, the advocacy from below is shown through the stories of Nurul Saadah and Dwi Ariyani. Through her organisation called SADPA, Nurul is advocating on behalf of disabled women and children to access their right to health in regional level in Yogyakarta, Indonesia. Moreover, Dwi Ariyani, who works as the Program Officer for DRF, provides resources (funding) for the women-led DPOs at the grassroots level to be able to bring the issues to regional/national levels so that governments and many people within the society are aware of them. Third, the advocacy from within is illustrated by Fanti Frida Yanti's story. Fanti is using her position in BAPPEDA to intervene in the local budget as well as working together with other government institutions to provide job expos for women with disabilities in her region, Baubau.

The story of those four women with disabilities can be seen as an entry point on how they use their agency to mobilise available resources including institutions and the rights claim available in the existing legal instruments. As discussed in the earlier chapters, what they have achieved is not individual empowerment but use of the institutions and legal instruments strategically in attempting to improve the conditions of Indonesian women with disabilities in general. As the key figures in the women with disabilities movement in the country, they become a living aspiration for many women with disabilities in Indonesia especially by providing a lived proof on what women with disabilities can achieve if opportunities are opened for them. In this regard, they should not wait for the opportunity to open but continue their struggles to dismantle the barriers. As Kabeer puts it, empowerment is a continual process through which social agents exercise their agency by mobilising available resources in order to achieve better conditions, albeit gradually.¹⁸¹

Despite such meaningful achievements, the challenges for further empowerment remain in place. Firstly, it relates to the persistent social construction in seeing women with disabilities as a second class citizen which in turn has continually marginalised them from enjoying their rights to education, work and family life. Secondly, it relates to the conditions of complex legal and institutional settings of contemporary Indonesia which informs which state institutions (between the Ministry for Women Empowerment and the Ministry of Social Affairs, or between the national government and the regional government) are responsible to be the focal point in protecting and fulfilling the rights of women with disabilities. A promising mandate of the Persons with Disability Law for establishing a national commission on disability to monitor the implementation of the law and to receive complaints from persons with disabilities in the case of discrimination has also been distorted by the Ministry of Social Affairs through submitting the newly-established commission under the ministry. This has created a sense of pessimism and distrust among persons with disabilities, including the informants in this thesis, due to the negative track record of the ministry in accountability and transparency. In addition, the rights to work for persons with disability and to a larger extent to the rights to work for women with

¹⁸¹ Naila Kabeer, 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment' (1999) 30(3) *Development and Change* 435.

disabilities will be threatened by the enactment of the Omnibus Law on Job Creation. This is because the new legislation has obscured the provisions on paid leave such as maternal leave and menstrual leave which may contribute to uncertainty on its enforcement. Another legal challenge has been the persistent rejection of the parliament to enact the Elimination of Sexual Violence Bill which seeks to protect women with disabilities from sexual violence.

Despite such current challenges, women with disabilities in Indonesia are far from facing a condition of ‘legal disempowerment’. As Riach and James suggested, legal disempowerment is a condition where people face frustration in seeking the fulfilment of their rights due to the complicated legal and institutional constellation.¹⁸² Women with disabilities in Indonesia see the complicated legal and institutional constellation as a room for manoeuvre and seek to navigate it for achieving their agenda. The thesis shows how women with disabilities have continuously struggled to tackle and handle such challenges. At least they are confident enough to see that they have achieved something by mobilising legal and institutional resources so far. From current conditions, they seek to push the condition further to be more empowering. Hence, for them empowerment is not seen as a final point in time to be achieved once and for all but as a condition that may facilitate further struggles for betterment. In this process, they do not only change the existing condition but also change their subjectivity. This is evident in the changing ways in which they see their disability, from being fatalistic under the imposition of the charity-based approach to being empowered under the banner of human rights.¹⁸³

6.2 RECOMMENDATIONS

From the discussion, this thesis brings scholarly and practical contributions. In terms of scholarly contribution, it enriches the literature on disability rights in two respects. First, it brings the agency of women with disabilities to the forefront of the disability movement,

¹⁸² George Riach and Zoe James, ‘Strengthening the rule of law on the margins: experiences from Za’atari refugee camp, Jordan’ (2016) 20(4) *The International Journal of Human Rights* 549.

¹⁸³ Aude Lejeune and Julie Ringelheim, ‘Workers with Disabilities Between Legal Changes and Persisting Exclusion: How Contradictory Rights Shape Legal Mobilization’ (2019) 53(4) *Law & Society Review* 983.

a topic that is currently under explored, at least in Indonesia. Secondly, the thesis reveals the meanings of empowerment for women with disabilities in Indonesia in which it is pursued by exercising their agency and mobilising legal institutional recourses to achieve better conditions. At the practical level, it provides several recommendations for women with disabilities' rights movement in the country to address the current legal and institutional challenges, which are:

Strengthening the involvement of women with disabilities' rights organisations within the women's right movement to ensure their rights are also regarded as an integral part of the feminist agenda;

Giving voice to women with disabilities at the grassroots level so that their marginalisation and experience can become a public discourse and be considered in the policy-making;

Carrying out capacity building for women-led DPOs especially in improving their knowledge on human rights and their skills in conducting policy advocacy, paralegal and campaigns;

Undertaking policy advocacy through judiciary as shown in the case of Dwi Aryani so that the courts are aware of their role in protecting and fulfilling the rights of women.

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