

INDONESIA'S ROLE IN ENABLING ASEAN 2025 MASTERPLANS TO PROMOTE AND PROTECT DISABILITY RIGHTS IN ASEAN

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ABSTRACT

Indonesia is a country that upholds human rights, this has been written in the Indonesian Nation's constitution. As one of the founding countries of ASEAN regional organizations, Indonesia's role in ASEAN is very much needed. This can be seen in cases of protecting disability rights against ASEAN member countries. The ASEAN Disability Forum encourages the implementation of Enabling Masterplan ASEAN 2025 is carried out fully with direct involvement of disabilities groups in each stage of implementation and monitoring and evaluation. Indonesia must be able to assist ASEAN to immediately implement and uphold the rights held by persons with disabilities in all ASEAN member countries.

Key words: ASEAN, disability, Indonesia.

INTRODUCTION

The Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as fundamental rights inherently inherent in humans, are universal and lasting, are also protected, respected and maintained by the Republic of Indonesia, so that the protection and promotion of human rights, including for vulnerable groups, especially persons with disabilities also need to be improved.

In the span of history, the Indonesian nation officially declared Human Rights first compared to the United Nations (UN) Universal Declaration of Human Rights, because the Opening of the 1945 Constitution of the Republic of Indonesia was officially promulgated on August 18, 1945 while the Universal Declaration of Rights The United Nations Human Rights in 1948. This is a fact that shows the world that the Indonesian nation before the UN statement of human rights was achieved in fact raised human rights in its country. Apart from that, the Indonesian Nation has from the beginning had a basic principle that has been rooted in the culture of the Indonesian Nation. This can be proven in the statement of Ir. Soekarno at the BPUPKI session, as follows (Kaelan; 1999; 41): "If we really want to establish and base our country on the notion of helping, understanding of mutual cooperation and social justice, dispose of each thought, each individualism and liberalism from him ". Instead Moh. Hatta said (Kaelan; 1999; 41): "Even though it was formed a family state, but still needs to be stipulated several rights of citizens, so that the state of power (machtsstaat) does not arise."

The Indonesian Declaration in principle is contained in the text of the Opening of the 1945 Constitution of the Republic of Indonesia which is a normative source for positive Indonesian law, especially the elaboration in the articles of the 1945 Constitution of the Republic of Indonesia.

Human rights are basic rights that are inherently inherent in the nature and existence of human beings as creatures of the God of the Eternal and are His gifts. Human rights must be respected, protected, fulfilled, enforced and promoted for the sake of human dignity and dignity. The implementation of respecting, fulfilling, protecting, enforcing and promoting human rights is basically an obligation and responsibility of the state, especially the government. This is as mandated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of Law Number 39 of 1999 concerning Human Rights (Guidelines for National Action Plan for Human Rights for Higher Education 2016 - 2019).

In order to carry out the mandate of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights above, the President has issued Presidential Regulation Number 75 of 2015 concerning the National Action Plan for Human Rights (RAN HAM) Indonesia 2015 - 2019. The general objectives of the 2015-2019 RAN HAM are to increase respect, protection, fulfillment, enforcement and promotion of human rights for all levels of Indonesian society by the state, especially the government by considering religious values, morals, customs, culture, security, public order, and the interests of the Indonesian Nation in 1945. While the specific targets include increasing the understanding of human rights of the state apparatus and the community and increasing the accessibility of persons with disabilities and other vulnerable groups to participate in civil, political, economic, social and cultural fields (Guidelines for National Action Plan for Human Rights for Higher Education 2016 - 2019).

Indonesia as one of the member states of the United Nations has the obligation to implement various international human rights instruments that have been accepted by Indonesia, including the 1993 Vienna Declaration and the Convention on the Rights of Persons with Disabilities ratified through Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. This makes Indonesia a part of the global community that is committed to making every effort to realize the elimination of all forms of discrimination and guarantee the participation of persons with disabilities in every aspect of life. The mandate of the Vienna Declaration and the Convention on the Rights of Persons with Disabilities emphasizes that each country establishes and implements a National Action Plan relating to Human Rights (Presidential Regulation Number 75 of 2015).

The vision and mission of the President of the Republic of Indonesia, namely President Jokowi as outlined in Nawacita contains 9 (nine) priority agenda of change in order to realize a sovereign, independent and personable Indonesia. The vision and mission also includes the President's policy in overcoming problems in the field of human rights. In order to realize the vision and mission and obligations and responsibilities, the government views the need to perfect and continue the implementation of the 2011-2014 National Action Plan for Human Rights (RANHAM) and the 2004-2013 National Action Plan for Disabled Persons (RAN Penca), by integrating justice values, humanity, and inclusiveness of vulnerable groups into an inclusive National Action Plan, namely the National Action Plan for Indonesian Human Rights (RANHAM) (Presidential Regulation Number 75 of 2015).

The Indonesian people uphold human rights can be seen also in Article 2 of the Law on Human Rights which states that the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent in and inseparable from humans, which must be protected, respected, and upheld for the sake of enhancing human dignity, prosperity, happiness, and intelligence and justice. Then in Article 3 it is stated (1) Every person is born free with equal and equal human dignity and values and has the mind and conscience to live in a society, nation and state in the spirit of brotherhood, (2) Everyone has the right to recognition, guarantee, protection and fair legal treatment and obtain legal certainty and equal treatment before the law, (3) Everyone has the right to the protection of human rights and basic human freedoms, without discrimination.

In the regulation of persons with disabilities, the State of Indonesia has laws and regulations relating to these matters. In 1997, Indonesia issued Law Number 4 of 1997 concerning Persons with Disabilities. then in 2016 Indonesia again replaced the law relating to persons with disabilities through persons with disabilities through Law No. 8 of 2016. There was a shift in the meaning of persons with disabilities in persons with disabilities, in Law Number 4 of 1997 concerning Persons with Disabilities, in Article 1 paragraph (1) referred to as a person with disability is any person who has a physical and / or mental disorder, which can interfere or constitute obstacles and barriers for him to do properly, which consists of :

- (a) persons with physical disabilities;
- (b) persons with mental disabilities; and
- (c) physically and mentally disabled.

In Article 1 paragraph (1) of Law Number 8 of 2016, it is explained by persons with disabilities that every person who experiences physical, intellectual, mental, and / or sensory limitations for a long period of time in interacting with the environment can experience obstacles and difficulties in participating fully and effectively with other citizens based on equal rights.

The Republic of Indonesia which is based on Pancasila (Kaelan; 34) and the State Constitution of the Republic of Indonesia in 1945 respects and upholds human dignity. Human rights as fundamental rights inherent in human nature are universal, need to be protected, respected and maintained, so that respect, protection and fulfillment of human rights for vulnerable groups, especially persons with disabilities is a state obligation.

This is also confirmed in Law No. 39 of 1999 concerning Human Rights, so that the community has a responsibility to respect the rights of persons with disabilities. People with disabilities have experienced a lot of discrimination which has resulted in not fulfilling the implementation of the rights of persons with disabilities (Article 1 paragraph (1) of Law Number 8 of 2016). So far, regulations regarding persons with disabilities are regulated in Law Number 4 of 1997 concerning Persons with Disabilities, but this arrangement has not had a human rights perspective. The material in Law No. 4 of 1997 concerning persons with disabilities is more charity based and the fulfillment of the rights of persons with disabilities is still considered a social problem whose policies for fulfilling new rights are social security, social rehabilitation, social assistance, and increased social welfare. Persons with disabilities should get the same opportunity in an effort to develop themselves through independence as a dignified human being.

With the enactment of Law Number 19 Year 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities on 10 November 2011, the commitment and sincerity of the Government of Indonesia to respect, protect and fulfill the rights of persons with disabilities is ultimately expected to improve the welfare of persons with disabilities. Thus, persons with disabilities have the right to be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and abuse, and have the right to receive respect for their mental and physical integrity based on similarities with others, including in it the right to obtain protection and social services in the framework of independence, as well as in an emergency. Therefore, the Government is obliged to realize the rights contained in the convention, through adjusting legislation, including ensuring the fulfillment of the rights of persons with disabilities in all aspects of life such as education, health, employment, politics and government, culture and tourism, and the use of technology. information, and communication (Law Number 19 Year 2011). In this study we will discuss the Role of Indonesia in Enabling the Masterplan for ASEAN 2025 to Promote and Protect the Rights of Disability in ASEAN.

HUMAN RIGHTS AS FUNDAMENTAL AND UNIVERSAL RIGHTS

The concept of human rights includes three main elements for human existence both as individual beings and social beings, namely human integrity, freedom and equality (Eide, Asbjorn, Catarina Krause, Allan Rosas, 1995; 21). These three elements are conceptualized into understandings and understanding of what human rights are.

Understanding of this understanding becomes clear when the recognition of these rights is given and is seen as a human process of humanization by other parties in a vertical context (individual with state) and horizontal (between individuals) both de facto and de jure. Thus, human rights values are fundamental and universal in the presence of recognition, protection and promotion of

integrity, freedom and human equality in the main international human rights instruments, both at the international, regional and national levels. Even though its values are universal, human rights can be distinguished into several normative academic groupings namely, first, personal rights or "personal rights". Second, economic rights or the right to own something ("property rights"). Third, the right to get equal and equal treatment in law and government or "right of legal equality". Fourth, political rights or "political rights". Fifth, social and cultural rights or "social and cultural rights", such as obtaining and choosing education, develop the preferred culture. Sixth, the right to litigation and its protection or "procedural rights". Understanding and understanding of human rights in terms of these substances becomes complicated and complex based on developments, existing realities and the complexity of other determinant factors.

The concept and values of human rights change and in line with time both through evolutionary and revolutionary processes from normative forces into the process of social and political change in the entire order of human life (Perwira, 2003; 38). Thus, understanding and understanding of the meaning of human rights in terms of substance must be returned to the basic concept of why human rights exist. Human rights exist and arise because these basic rights are very basic or fundamental in the sense that their implementation is absolutely necessary so that humans can develop according to their talents, ideals, and dignity as human beings regardless of differences that cause discrimination based on nation, race, religion and gender. The principles of understanding human rights must be used as the main foundation so that the understanding and understanding of human rights from the substantive aspect becomes applicable. These principles are the application of the concept of the indivisibility and the interdependence of human rights values themselves (UNICEF, 1998).

According to the ontology, human rights are rights owned by humans that are obtained and carried along with their birth or presence in people's lives because they have a privilege that opens the possibility for them to be treated according to those features (Huijbers, 1990; 96). With a simpler understanding, human rights are the right of someone who if the rights are taken from him will result in the person becoming no longer human (United Nations, 1998; 4).

Human rights, as understood in the human rights documents that emerged in the twentieth century such as the Universal Declaration of Human Rights (UDHR), have a number of prominent features, namely (James W., 1987): First, so that we do not losing the notion that is already firm, human rights are rights. The meaning of this term is unclear, but at least the word indicates that it is certain norms that have high priority which is mandatory. Second, these rights are considered to be universal, which are owned by humans solely because they are human. This view shows indirectly that characteristics such as race, gender, religion, social position, and citizenship are not relevant to question whether a person has or does not have human rights. This also implies that these rights can be applied throughout the world. One special feature of human rights that prevails now is that it is an international right. Compliance with similar rights has been seen as an object of legitimate attention and international action.

Third, human rights are considered to exist by themselves, and do not depend on their recognition and application in customary systems or legal systems in certain countries. This right may indeed not be an effective right until it is carried out according to law, but that right exists as a standard of argument and criticism that does not depend on the application of the law. Fourth, human rights are seen as important norms. Although not entirely absolute and without exception, human rights are quite strong as normative considerations to be applied in conflicts with national norms that are contradictory, and to justify international actions carried out for human rights. The rights outlined in the Declaration are not arranged according to priorities; its relative weight is not called. It is not stated that some of them are absolute.

Thus the human rights described by the Declaration are something philosophers call *prima facie* rights. Fifth, these rights imply obligations for individuals and the government. The existence of this obligation, as well as the rights associated with it, is deemed not to depend on the acceptance, recognition or application of it. Governments and people everywhere are obliged not to violate someone's rights, even though the government of that person may also have the primary responsibility for taking positive steps to protect and uphold the rights of that person. Sixth, these rights set minimum standards for proper community and state practice. Not all problems born of cruelty or selfishness and ignorance are human rights problems. For example, a government that fails to provide national parks for its people can indeed be criticized as incompetent or not sufficiently paying attention to opportunities for recreation, but this will never be a human rights issue.

The state and each individual have their own role in implementing human rights. The role of individuals is related to the principle of balance as stated above, namely that human rights do not only contain authority or freedom but also individual responsibilities or obligations, and every individual as the subject of human rights has an obligation or responsibility to respect the human rights of others, as well as others to respect his human rights. The violation of someone's human rights by another individual is an action that can be requested legally.

However, the role of the state is very central and important in the implementation of human rights. Referring to various human rights instruments, it is a country that has an obligation to guarantee the fulfillment of human rights. The state has an obligation to guarantee that human rights are respected, protected, promoted and fulfilled. Respect (to respect), protect (to protect), promote (to promote) and fulfill (to fulfill) shows the level of actions or actions that must be taken by the state in relation to the implementation of human rights. Respect is the most "minimal" government action (in the form of negative actions, in the sense of not committing a violation), and fulfilling is the state's obligation to take the most "full" effort to realize human rights.

The nature of state obligations mandated in international human rights instruments relating to the implementation of human rights differs between civil and political rights, and economic, social and cultural rights. For civil and political rights, the ICCPR requires the state to "immediately" take necessary steps in the field of legislation or other steps in order to respect and guarantee the implementation of these civil and political rights. As for economic, social and cultural rights, the ICESCR requires the state to take

steps, keeping in mind the maximum resources it has, in the context of progressive realization of economic, social and cultural rights.

This is understandable because to realize civil and political rights there is no need for large economic resources as in economic, social and cultural rights. But this does not mean that the new state must take efforts to realize these economic, social and cultural rights when the state has reached a certain level of economic growth. Whatever the ability of economic resources or other resources, a country will continue to move as soon as possible towards the realization of these rights. Moreover, there are several rights guaranteed in ICESCR which do not require large economic resources. The state, for example, can immediately reform legislation that is discriminatory, or which causes people to be deterred from enjoying their rights, or legislation that "facilitates" violations of rights by the state. Such measures do not have to wait until the country is truly prosperous.

When a country ratifies an international human rights instrument, it can directly incorporate the provisions of the instrument into its domestic legislation and / or through other measures. The implementation of human rights can be done as well as possible if good legislation, independent judiciary, and established democratic institutions are available. In addition, education and the dissemination of human rights values are also very important efforts in the context of the implementation of human rights.

THE ROLE OF INDONESIA IN ENABLING THE MASTERPLAN OF ASEAN 2025 TO PROMOTE AND PROTECT THE RIGHTS OF DISABILITY IN ASEAN

The ASEAN Enabling Masterplan 2025 seeks to complement and concretise the ASEAN Community Vision 2025 in mainstreaming the rights of persons with disabilities across all three pillars of the ASEAN Community, and fosters Member States' commitment towards an inclusive community. It is guided by the underlying principles that for all actions concerning persons with disabilities whether undertaken by individuals, public or private social welfare institutions, courts of law, administrative authorities or legislative bodies or entities, their interests and needs must be taken into consideration, acknowledging that inclusion and mainstreaming should be promoted and specialised approaches considered as a last resort. Additionally, as ASEAN is aiming at embedding sustainable development in line with the 2030 Agenda, the Enabling Masterplan serves as a key instrument in steering its policies and programmes to be inclusive for persons with disabilities.

The promotion and protection of human rights and fundamental freedoms, strengthening democracy, enhancing good governance and adherence to the rule of law are among ASEAN's key principles and purpose (ASEAN Charter).

Building on the gains and momentum from these regional and global developments, there is an opportunity to leverage cooperation at the ASEAN level to push for legislative and policy reforms towards fully implementing the CRPD at the national level, to eliminate discrimination, remove barriers, and ensure accessibility. At the same time, actions at the national level can amplify regional collaboration by highlighting issues that are more effectively addressed at the regional level. Such issues include the impact of ASEAN Community integration, particularly economic integration, on ensuring employment and decent work for persons with disabilities. More importantly, in order to ensure that no one is left behind, the post-2020 agenda must be purposive and programmatic in reaching out to persons with disabilities including: children with disabilities, women with disabilities, youth with disabilities, elderly/older persons with disabilities, persons with disabilities affected by disasters, conflicts and crises, and persons with disabilities who are victims of violence and trafficking.

The Enabling Masterplan recognises the obligations of Member States to respect, promote, protect, and fulfil the rights of persons with disabilities set forth in the CRPD and other human rights instruments relevant to all rights holders, particularly persons with disabilities. To translate these obligations into actions, Member States are expected to create an enabling environment, including building capacity of both government mechanisms/implementers and duty bearers, to enhance understanding of human rights principles and their effective application. In this spirit, the Enabling Masterplan will be operationalised by the relevant Sectoral Bodies according to their respective priority areas by translating the key action points of mainstreaming human rights of persons with disabilities into specific action lines or programmes, projects, and activities as part of their respective work plans, and shall report their progress to their respective conferences (ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities).

The AMMSWD as the focal point for inter-pillar cooperation shall oversee the implementation of the Enabling Masterplan, and will receive an annual report from the ASEAN Secretariat on the progress of implementation of the Enabling Masterplan in the three Communities for consolidation and forward the report to the three ASEAN Community Councils. The ASEAN Secretariat shall report the progress of the implementation of the Enabling Masterplan for the three Communities to the Joint Consultative Meeting (JCM). The Coordinating Conference of the APSC (ASCCO), the Committee of the Whole (COW) for AEC and the Coordinating Conference on the ASCC (SOC-COM) shall have a standing agenda item on the progress of implementation of the Enabling Masterplan during their respective conferences (ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities).

The ASEAN Disability Forum (ADF) encourages the implementation of the Enabling Masterplan for ASEAN 2025 to be carried out fully with direct involvement of disability groups in each stage of implementation and monitoring and evaluation. ADF recommends establishing a Joint Working Group on Persons with Disabilities as a supporting group to ensure the implementation of the Enabling Masterplan document. The Enabling Masterplan is an ASEAN work plan to further promote and protect the rights of people with disabilities in Asean who have work programs up to 2025.

This joint working group will work in two levels; as a supporting group that will provide input to the ASEAN government in this regard AICHR, ACWC and SOMSWD and also ensure that the master plan agenda is implemented properly in each ASEAN member country. The joint working group has three mandates. First is the function of ensuring the implementation of the master plan on the three ASEAN pillars. Second is the function of monitoring its implementation. Third, to provide input or advisory for the implementation of the master plan. The Joint Working Group will also be filled by DPO representatives from each Asean country who have competence and independence, whose selection is submitted to the national process (<http://setnas-asean.id>).

The ADF also provides substantial input regarding the contents of the master plan on three pillars to ensure the fulfillment of the rights of persons with disabilities in all aspects of life. It is hoped that this input will be accepted before this masterplan is ratified at the ASEAN Summit. This is very important, considering that in ASEAN there are many discriminatory actions against persons with disabilities. One of them happened to the Regional DPOs Monitoring and Consultation of the Masterplan on the Rights of Persons with Disabilities held by the ADF on June 4-6 2018 at Aryaduta Hotel, Central Jakarta. Participants from Brunei Darussalam, Muhammad Hamzi experienced discriminatory acts from the Royal Brunei airline when they were about to check in to fly to Jakarta to attend the ADF event on June 3, 2018 at Banda Seri Begawan Airport. and rules in Brunei. The OPD in Brunei is very quick to advocate for this incident to its government, so that Muhammad Hamzi can fly and attend Regional Consultation events in Jakarta on June 5, 2018 (<http://setnas-asean.id>).

In 2013, one of the participants in the regional consultation event in Jakarta on June 4-6 from Thailand, Saowalak Thongkuay also experienced discriminatory acts from the same airline when he wanted to check in from Bangkok to Brunei Darussalam. He also received a flight ban without a companion from the airline but later Saowalak was allowed to fly to Brunei after getting permission from the flight captain. Even so, Saowalak was disappointed with the incident, especially since the discriminatory policies have not been changed to date.

Not only in other ASEAN countries, discriminatory events related to transportation accessibility also occur in Indonesia. Dwi Aryani who wants to fly from Jakarta to Geneva on December 4, 2017 to attend a training event is also prohibited from flying alone without a companion by the Etihad Airways officer. Even though he had gone through a series of check-in, immigration, etc., the airline considered that he could endanger the flight. Such discriminatory actions have occurred many times in the Asean region and it should be a concern for ASEAN countries to immediately change their country's policies regarding accessibility in the transportation of persons with disabilities. With the existence of a Master Plan for Persons with Disabilities in ASEAN, the ADF hopes that ASEAN can encourage members of its country to implement the rights of persons with disabilities which are also listed in the CRPD Convention effectively (<http://setnas-asean.id>).

CONCLUSION

The Indonesian government has a regulation on respect and protection for persons with disabilities in Indonesia, this is a positive signal to give an example to ASEAN member countries to prioritize the rights of persons with disabilities. Through the Enabling Masterplan ASEAN 2025 is a forum to continue to promote and protect the rights of disability in ASEAN.

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