




Original Research Article

Law Enforcement of Right of Equality in Work for People with Disability: Evidence from Sleman, Indonesia

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ABSTRACT

This research aims to understand the implementation of supervision law toward Articles 5 and 14, and the law enforcement toward Article 28 of Law No.4 Year 1997 on People with Disability in Sleman Regency. Data are obtained through interviews and literature related to the problem. The results of this research show that the implementation toward article 5 and 14 are not yet effective and the law toward article 28 is not implemented yet in Sleman.

Keywords: people with disability; supervision; law enforcement; labour law; Indonesia.

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ABSTRAK

Penelitian ini bertujuan untuk memahami pengawasan hukum terhadap Pasal 5 dan 14, dan penegakan hukum terhadap Pasal 28 Undang-Undang No.4 Tahun 1997 tentang Penyandang Cacat di Kabupaten Sleman. Data diperoleh melalui wawancara dan pengkajian sumber yang terkait dengan masalah tersebut. Hasil penelitian ini menunjukkan bahwa implementasi terhadap Pasal 5 dan 14 belum efektif serta tidak dilaksanakannya ketentuan Pasal 28 di Sleman.

Kata kunci: penyandang cacat; pengawasan; penegakan hukum; hukum ketenagakerjaan; Indonesia.

1. Introduction

All persons are entitled to adequate standard of living. This right is guaranteed in Article 27 (2) of the 1945 Constitution of the Republic of Indonesia which states that “*Every citizen shall have the right to work and to earn a humane livelihood*”¹. These standards may be obtained domestically or abroad, and open to all persons without discrimination based on gender, ethnicity, race, religion, political views or physical condition.

Article 5 of Law No. 13 Year 2003 on Manpower² (Manpower Law) emphasizes that every labor is entitled to adequate work opportunities without any kind of discrimination.

¹ Indonesia, *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945* (The 1945 Constitution of The State of Republic of Indonesia: Unofficial Translation, 1945). [View Item](#)

² Indonesia, *UU Nomor 13 Tahun 2003 Tentang Ketenagakerjaan* (Law Number 13: SG No. 39 (ILO Translation), 2003). [View Item](#)

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Labors are persons who are able to carry out work to produce goods and/or services to fulfill their own or society's needs. As such, "labors" covers all persons who are able to work to produce goods and/or services for themselves or others, and are entitled to employment.

Article 5 of the Manpower Law means that every person has equal rights and opportunities for employment and livelihood, including the disabled. However, employers in industrial relations are often unaware of their obligations to the people with disability, even though Law No. 4 Year 1997 on People with Disability³ (hereinafter stated as People with Disability Law), where Article 5 specifically states that the disabled have equal rights and opportunities in all aspects of life and livelihood.

Moreover, Article 14 of the People with Disability Law states that all peoples with disability have equal opportunity to employment, depending on the type and degree of their disability. The People with Disability Law also obliges state and private businesses to give equal opportunity and treatment to the disabled by employing them in accordance with the type and degree of their disability, education and capabilities. In such, the total number of the disabled that employed in a company should be in proportion to the total number of employees and/or business' qualifications.

The explanation of Article 14 states that state businesses include State Owned Enterprises (BUMN) and Regional-government Owned Enterprises (BUMD), while private businesses include cooperatives. Businesses **must**, at the very least, employ one (1) people with disability who fulfills the requirements and qualifications for the employment in question, for every hundred (100) employees. Businesses utilizing high technology **must** employ at least one (1) people with disability who fulfills the requirements and qualification for the employment in question, even though their employees number less than hundred (100) employees. The explanations of that Article also elaborate the meaning of equal treatment, which said that non-discriminative treatment including equality of wages for the same work and position. Article 28(1) of the People with Disability Law states that persons who intentionally violate the provisions of Article 14 are threatened with, at the maximum, 6monthsimprisonment and/or a fine of IDR 200,000,000.00.

Dewi⁴ shows that there are about 756 businesses in Sleman regency, with 105 businesses employing at least 100 persons. However, information from the Labor and Social Agency of Sleman Regency show that in 2005 none of the 105 private businesses have been

³ Indonesia, *UU No. 4 Tahun 1997 Tentang Penyandang Cacat* (Law Number 4: SG No. 9, 1997). [View Item](#)

⁴ Mufti Pramuwardhani Dewi, "Pelaksanaan Penempatan Tenaga Kerja Penyandang Cacat Pada Perusahaan Swasta Di Kabupaten Sleman," *Mimbar Hukum* 18, no. 3 (2006): 421–22. [View Item Google Scholar](#)

recorded to employ disabled workers.

These conditions show that supervising agents have a vital role in the implementation the law. Supervision is carried out with the goal that businesses can become well-oiled economic assets, develop into strong businesses and are not hampered by violations of the law. Supervision must be carried out since not all the parties, whether employers or workers, know and understand how to implement special regulations, especially related to manpower itself.

Manpower supervision is a supervisory activity and meant to enforce the implementation of manpower legislation (Article 1(32) Manpower Law). This is in line with the Minister of Manpower and Transmigration Regulation No. PER.09/MEN/V/2005 on the Guidelines to Submit Manpower Supervision Reports⁵. Presidential Regulation No. 21 Year 2010 also defines manpower supervision similarly. In addition, Article 182 of Manpower Law states that supervising agents may be given special authority as civil servant investigators. One of the authorities is to authenticate reports and information of crimes in the manpower sectors. Therefore, civil servant investigators from the Manpower Supervision's unit may carry out investigations on violations of Article 28 of the Manpower Law⁶.

Problems that arise from this authority are the confusion between police investigators and civil servant investigators and their respective investigative authorities. For example, based on research company X is against worker Y. Y's diploma certificate was held by Company X. After Y was fired, Y demanded the diploma certificate which is still held by Company X. This then became a problem.⁷ At the investigation stage, police investigators were confused in determining whether this falls under criminal or civil/manpower law. Another problem regarding a suspected manpower crime in Central Java, led to the case being transferred to the Semarang Municipal Police Headquarters, although it should have been first investigation by civil servant investigators in Central Java⁸.

Based on the background above, the research question are:

- a. How has supervision of Articles 5 and 14 the People with Disability Law in Sleman

⁵ Minister of Manpower and Transmigration of Indonesia, *Peraturan Menteri Tenaga Kerja Dan Transmigrasi No. PER.09/MEN/V/2005 Tentang Tata Cara Penyampaian Laporan Pelaksanaan Pengawasan Ketenagakerjaan* (Minister of Manpower and Transmigration Regulation Number PER.09/MEN/V/2005, 2005). [View Item](#)

⁶ Rifqi Ridlo Phahlevy, Mochammad Tanzil Multazam, and Noor Fatimah Mediawati, "Labour Rights Protection of Foreign Workers After Enactment of Law Number 6 of 2012 in Sidoarjo Regency," *Rechtsidee* 2, no. 1 (June 15, 2015): 21–52, doi:10.21070/jjhr.v2i1.3. [Crossref Google Scholar](#)

⁷ Ari Hernawan, "Interviewed by Susilo Andi Darma" (Lecturer Faculty of Law Universitas Gadjah Mada: 8 July, 2015).

⁸ Dwi Maryoso, "Interviewed by Susilo Andi Darma" (Supervisor Manpower Agency Central Java Province: 3 July, 2014).

Regency been carried out?

- b. How has law enforcement of Article 28 the People with Disability Law in Sleman Regency been carried out?

2. Materials and Methods

Legal research is a scientific endeavor based a certain method, system and way of thinking, which aims to study one or more legal realities by analysis. An in-depth analysis towards legal facts is also conducted, in order to provide a solution in the relevant situation⁹.

This research uses literature research to obtain secondary data in the field of law. This literature review and analyses secondary data is known as a textual study¹⁰. Field research dives straight into the research location to obtain relevant data. The method used is via interviews, a direct, directed and systematic question-answer session to respondents and interviewees on matters relevant to the research question¹¹. The tool used is the interview guide, which lists structured and unstructured questions which will be verbally asked to respondents and interviewees.

The data obtained in the form of secondary data will be collected systematically and classified in accordance with the research question and analyzed in a qualitative manner in accordance with its reality. The results are written out in a descriptive form, and should hopefully answer the first research question in a comprehensive manner. Qualitative analysis does not use numbers, but provides a description of the findings, and emphasizes the quality/truth of the data¹². Other results should be in the form of solutions, applicable to answer the challenges posed in the research questions.

3. Results and Discussion

3.1 Supervision of Articles 5 and 14 of People with Disability Law in Sleman Regency

Discussions on the implementation of supervision on Articles 5 and 14 People with Disability Law should first provide the text of those two articles. Article 5 states that "*All peoples with disability are entitled to equal rights and opportunities in all aspects of life and livelihood*". While Article 14 states "*State and private businesses must give equal opportunity and treatment to peoples with disability by employing peoples with Disability in their business in accordance with the type and degree of their disability, education and capability,*

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 1986). p. 43. [View Item](#)

¹⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Grafindo Persada, 2006). p.50. [View Item](#)

¹¹ M. Hariwijaya and Bisri M. Djaelani, *Teknik Menulis Skripsi Dan Tesis, Landasan Teori Hipotesis Analisa Data Kesimpulan*, 2nd ed. (Bantul: Zenith Publisher, 2004). p.43-45. [View Item](#)

¹² Lexy J. Moleong, *Metodelogi Penelitian Kualitatif* (Bandung: Rosda Karya, 1989). p.112. [View Item](#)

the number of whom shall be proportioned according to the number of employees and/or qualification of the business".

Based on Article 5 of People with Disability Law, a people with disability may suffer from physical, mental, or both mental and physical disabilities. Physical disabilities include impairment of bodily functions, such as nerve functions, sight, hearing and speech. Mental disabilities include mental and/or behavioral impairment, whether genetic or via disease. Mental-physical peoples with disability suffer from both types concurrently. All aspects of life are protected by that article, since the scope is broadened to religion, health, education, social aspects, manpower, economy, right to public service, law, culture, politics, defense and security, exercise, recreation and information.

Moreover, Article 14 of People with Disability Law states *"businesses include State-owned Enterprises and Regional-government owned Enterprises, while private businesses include cooperatives"*. This article also obligates that *"state and private businesses must provide equal opportunity and treatment"*. Opportunity means that *"businesses must employ at least 1 people with disability who fulfills the requirements and qualifications of relevant employment, for every 100 employees. Or that Businesses utilizing high technology must employ at least 1 people with disability who fulfills the requirements and qualifications of relevant employment, even when that business' employee number of employee is less than 100 employees"*. Equal treatment means *"non discriminative treatment, including wage equality for the same job and position"*.

Based on research, equal opportunity means no discrimination during job openings, regardless who applies, disabled or otherwise. Supervisory Agents always recommend the businesses to carry out the policy that for every hundred (100) employees, they should employ one (1) disabled labor. These agents have often reminded businesses to open opportunities for the disabled to work in their businesses.

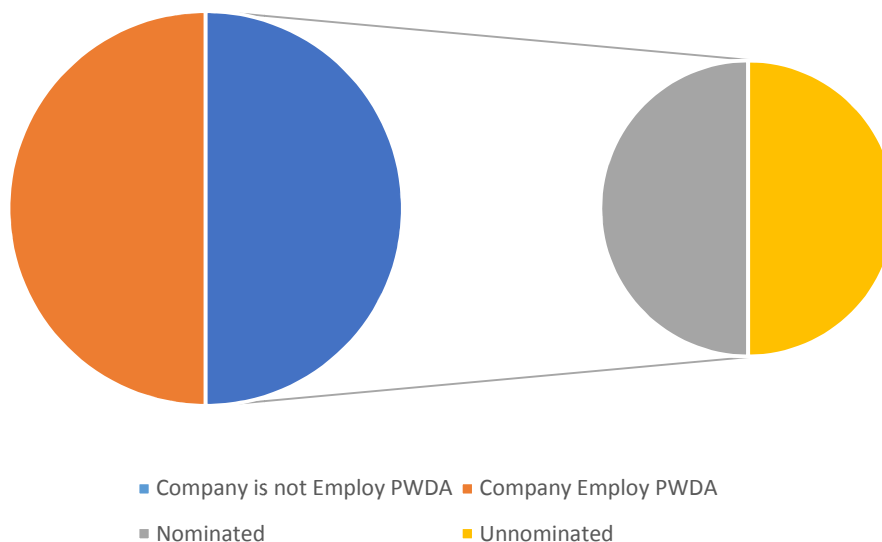
However, in reality very few disabled labor apply for job openings. Even though the opportunity exists, there are still protests from the disabled association. They have often questioned the implementation of equal work opportunity. Supervisory Agents report that they have never seen businesses in Sleman prohibiting or preventing opportunities for disabled to apply for jobs in their businesses. In addition, Supervisory Agents have also provided the opportunity for the disabled to register to the Manpower and Social Service

Office, so that they may be forwarded to businesses. No disabled has registered themselves, and they tend to become entrepreneurs or self-employment¹³.

Another effort from the Manpower and Social Service Office is through the Manpower Placement Program, which purposed to analyze positions held by disabled workers. Based on their analysis, nearly all positions in a business could be held by a disabled labor. However some adjustments will be necessary to allow for adaptation¹⁴.

Based on research, there are eight businesses in the regency which has employed peoples with disability. Even though none of them have installed facilities to support disabled workers, the efforts of these businesses are worthy of recognition. Four out of the eight businesses have been nominated for an award from Sleman Regency Manpower and Social Service Office¹⁵. The illustration can be seen on Figure 1:

Figure 1. Business Awards



The labors responding to the data from the service office, said that businesses in Sleman actually have opened equal opportunities in employment. The problems faced by disabled labors are primarily internal. Many disabled having lack self-esteem, and others place demands too high of the business' facilities or work condition. A number of disabled labors do not last long in employment because of poor relations with non-disabled

¹³ Respondent, "Interviewed by Susilo Andi Darma" (Supervisor of Manpower and Social Agency in Sleman Regency: 7 October, 2015).

¹⁴ Respondent, "Interviewed by Susilo Andi Darma" (Placement Staff of Manpower and Social Agency in Sleman Regency: 7 October, 2015).

¹⁵ Respondent, "Interviewed by Susilo Andi Darma" (Supervisor of Manpower and Social Agency in Sleman Regency: 8 October, 2015).

employees, since they may be excluded or treated differently as a disabled. This often triggers the resignation of disabled employees. The data shows that most peoples with disability are self-employed or work in the private sector¹⁶.

A problem which often occurs is the different financial capabilities between businesses. Further, employed peoples with disability require businesses to provide specialized facilities including compatible work tools and other supporting infrastructure. This is in line with data from the service office on Disabled Workers in Business. Data indicates that most companies have not outfitted themselves with facilities to support disabled workers¹⁷.

3.2 Supervision of Articles 5 and 14 of People with Disability Law in Sleman Regency

From the various opinions above, it is clear that equal opportunity alludes to the provisions of Article 14 People with Disability Law. In other words, the government views it as a quota system: one (1) disabled employee for every 100 non-disabled employees. In addition, Article 27(2) of the 1945 Constitution states that all citizens are entitled to adequate and humane employment and livelihood. Further, Article 28D (2) states that all persons are entitled to work and receive adequate compensation, and be treated fairly in work relations. United Nations General Assembly Resolution 48/96 of 1993 on Equal Opportunities for the Disabled¹⁸ states that the disabled are members of society and have a right to participate in that society. They should receive adequate support as needed through general education, healthcare, the provision of work opportunities and social services. Based on the resolution, equal opportunity is a system, and systems should be integrated. According to Mertokusumo¹⁹, the law is a system with a structure, a whole united which made up of different interrelated parts. Equal opportunity in manpower is not only means as equal opportunity to be employed but also the supporting infrastructure and support system to allow a disabled worker to work and carry out activities as other persons would.

The provisions in the People with Disability Law are re-emphasized in Government Regulation No. 43 of 1998 on Efforts to Promote the Social Welfare for the People with Disability. Equal opportunity in manpower is regulated in Articles 26-31 of that regulation. However, those provisions only repeat what has been stated in the People with Disability Law. The regulation itself also adds new rules which emphasis against

¹⁶ Respondents, "Interviewed by Susilo Andi Darma" (Disabled Labors in Sleman Regency: 8 October, 2015).

¹⁷ Respondents, "Interviewed by Susilo Andi Darma" (Entrepreneurs in Sleman Regency: 9 October, 2015).

¹⁸ United Nation, *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (December, 48/96., 1993). [View Item](#)

¹⁹ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)* (Yogyakarta: Liberty, 2008). p.115. [View Item](#)

discriminatory conduct (explanations: to employ without regard as to gender, ethnicity, race and religion). This has also been regulated in Article 5 of the Manpower Law. In addition, the Manpower Law has never discriminated the identity of a worker, whether disabled or otherwise. The government regulation above has no contribution to equal opportunity.

Law No. 23 Year 1948 Jo. Law No. 3 Year 1961 on Manpower Supervision states *"the scope of manpower supervision covers: the implementation of laws and regulations, specifically those related to labor affairs, collecting data on industrial relations and the conditions of labor in the widest sense to support the creation of new labor laws and regulation; and carry out other functions in accordance to regulations"*.

Based on these provisions, manpower supervisory agents are authorized to oversee the implementation of laws and regulations on labor. To carry out this function they may enter all premises where work is currently, usually or suspected to be carried out, and all forms of housing rented or used by employees or their representatives to house or care for workers²⁰.

Supervision by Manpower Supervisory Agents at the Manpower and Social Service Office is carried out on a priority scale. This means that priority is given to more serious cases. Supervision is divided into Primary Supervision, Regular/Repeat Supervision, and Specific Supervision.

Based on Article 4, Minister of Manpower Regulation No. Per.03/Men/1984 on Integrated Manpower Supervision²¹, Primary Supervision is a complete supervision to a business which will soon be founded or operate, or to businesses which has not yet been investigated. Regular/Repeat Supervision is Currence supervision after a complete Primary Supervision or otherwise. Specific Supervision is conducted to specialized forms of manpower problems such as tests, accidents, and reports from third parties or as ordered by superiors.

Hamid and Pramudyanto stated that the purpose of supervision activities are to assess, evaluate and determine the compliance of businesses, which means that it used to measure the extent of their efforts to comply with all regulations and permits requirements. Further investigations intent to reassess and/or update previously obtained business information. The

²⁰ Phahlevy, Multazam, and Mediawati, "Labour Rights Protection of Foreign Workers After Enactment of Law Number 6 of 2012 in Sidoarjo Regency."

²¹ Minister of Manpower of Indonesia, *Peraturan Menteri Tenaga Kerja Republik Indonesia Nomor Per.03/Men/1984 Tentang Pengawasan Ketenagakerjaan Terpadu* (Jakarta, Minister of Manpower Regulation Number Per.03/Men/1984, 1984). [View Item](#)

primary aim of supervision activities is to obtain data or information in the form of facts regarding compliance or otherwise of the object of inspection with the prevailing laws²².

Supervision that carried out by manpower supervisory agents is based on a priority scale as above. Supervision is usually conducted against businesses which have yet to be investigated or those which suffer from certain incidents. No special attention given to enforce Articles 5 and 14 People with Disability Law, but it is carried out together with general investigations. Agents are not yet prioritizing supervision of these two articles. Agents only recommend existing companies to consider equal opportunities for the disabled²³.

Supervision from Sleman's Manpower Supervisory Agents is in line with Article 2(b) of the Minister of Manpower Regulation No. Per.03/Men/1984 on Integrated Manpower Supervision, which states that the purpose of supervision is "*to give technical information and recommendations to businesses, or managers, or workers on matters which guarantee the effective implementation of manpower legislation*". In addition, Article 9(b) states that supervisory agents have the duty and obligation to "*provide guidance, education and training to workers and businesses or managers on manpower legislation*".

The Sleman supervisory agents have carried out these two requirements. The problem is that agents cannot take further action from offering recommendations. This is problematic for equal opportunities, which due to factors noted above has prevented disabled labors from joining the workforce and instead turn to self-employment. If there are reports from the society, especially from disabled labors to agents, for example if a business refuses to hire disabled labors, then the agent may scold the company. This is still in the form of a recommendation to fulfill the requirements of People with Disability Law, in line with Article 8(e) which states that "*warning or scolding should be given to deviations of prevailing laws*".

The goal or purpose of the law is to create justice, certainty and benefits, but not all could be achieved. There are often clashes within the laws which are inevitable, between the demands of justice and legal certainty. The more certain a law, the less justice the law is (*summum ius, summa iniuria*: the highest justice is the grossest injustice)²⁴. Von Richthofen answers this by stating that the law "*Erlykeratingareda, treftlykeratinghbieda, urbiedadatunriucht, hinziamoetlykera ting, endeaecbehvilenoenmoetlikra, truchfruchtades*

²² Hamrat Hamid and Bambang Pramudyanto, *Pengawasan Industri Dalam Pengendalian Pencemaran Lingkungan*, 1st ed. (Jakarta: Granit, 2007). p.3-4. [View Item](#)

²³ Respondent, "Interviewed by Susilo Andi Darma," 2015.

²⁴ L.J. Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 2000). p. 13. [View Item](#)

era” (orders what is proper, commands what is good, prohibits injustice, and allows what is fair and sometimes what is unfair for fear of worse consequences). Geny states that the purpose of the law should be justice but is also forced to concede that “*utility and benefit are part of justice*”. Apeldoorn states that the purpose of the law is not only to create justice, disproportionate and in conflict with real condition, and neither is the law simply meant to create benefit or utility²⁵.

What the agents at Sleman are doing, attempting, created both justice and legal certainty, will not work (*summum ius, summa iniuria*). Their recommendations and advice seeks to give benefit to both parties and attempts to enforce the rules.

Supervision of Articles 5 and 14 People with Disability Law has been carried out, but in an ineffective manner. This is because agents at Sleman’s service office are still limited to giving recommendations to comply. In the event of a breach, agents are still limited to give advice to the business.

3.3 Enforcement of Article 28 of People with Disability Law at the Investigation Stage in Sleman Regency

So far, there has no formal violation of Article 14 People with Disability Law in Sleman Regency, handled by the Civil Servant Investigator (PPNS) at the Manpower and Social Service Office. This should not be a problem as the author believes that these Investigators should have already understood and are ready to possible violations.

Article 1(6) Government Regulation No. 27 Year 1983, as lastly amended on the Indonesian Criminal Procedural Code, states that Civil Servant Investigators are certain civil servants at the central or local government, who are given special authority under law. Article 1(3) of Regulation of The Chief of The Indonesian National Police (hereinafter stated as Police Chief Regulation) No. 6 Year 2010 on Investigation Management by Civil Servant Investigators states that Civil Servant Investigators are certain civil servants given special authority to carry out criminal investigation in accordance with the regulation underlying their authorities and are under the coordination and supervision of Police Investigators during their duties.

Article 1(5) and (6), Police Chief Regulation No. 20 Year 2010 on the Coordination, Supervision and Guidance of Civil Servant Investigators states that coordination is a work relation between Police Investigators and Civil Servant Investigators to carry out certain criminal investigations in accordance to relevant legal basis, and in accordance to functional

²⁵ *Ibid.*, p. 15-17.

relations. Supervision is an assessment and guidance towards investigative work done by Civil Servant Investigators to ensure the whole investigation is carried out in accordance to prevailing laws.

Article 6(3) of Police Chief Regulation No. 20 Year 2010 states that coordination is carried out via:

- 1) Providing a letter indicating the start of investigations by Civil Servant Investigators;
- 2) Providing technical and tactical support, coercive efforts and investigation consultation to Civil Servant Investigators to support and expedite work briefs;
- 3) Accepting work briefs from Civil Servant Investigators and forwarding it to the local head of the prosecutor's office;
- 4) Sharing information on the existence of suspected crimes, whose investigations are carried out by Civil Servant Investigators;
- 5) Periodic meetings; and
- 6) Joint investigation.

Supervision by Police Investigators towards Civil Servant Investigators as per Article 25(2) is carried out via²⁶:

- 1) Attending and providing advice during case deliberations conducted by Civil Servant Investigators;
- 2) Requesting and analyzing investigation progress reports from Civil Servant Investigators;
- 3) Jointly with Civil Servant Investigators, assess the work briefs from investigations and to forward them to the state prosecutors;
- 4) Based on the request of the Civil Servant Investigator's institution head, carry out joint supervision on Civil Servant Investigators;
- 5) Carry out data collection on cases handled by Civil Servant Investigator institutions and help provided from investigators; and
- 6) Analyze and evaluate the investigative work done by Civil Servant Investigators

Civil Servant Investigators at the Manpower and Social Service Office in Sleman Regency are those empowered by the Manpower Law. Article 182(1) of the Manpower Law states that "*Special authority to act as civil servant investigators may also be given, in addition to the one assigned to the investigating officials of the Police of the State of the*

²⁶ Chief of The Indonesian National Police, *Peraturan Kapolri No. 20 Tahun 2010 Tentang Koordinasi, Pengawasan Dan Pembinaan Penyidikan Bagi Penyidik Pegawai Negeri Sipil* (Regulation of The Chief of The Indonesian National Police No. 20: NG No. 439, 2010). [View Item](#)

*Republic of Indonesia, to labour inspectors in accordance with valid laws and regulations*²⁷.

Thus, manpower supervisory agent may be given authority as a Civil Servant Investigator.

Civil Servant Investigators under Article 182(2) of the Manpower Law has the authority to:

- 1) Carry out investigation of the validity of reports and information of crimes in the manpower sector;
- 2) Carry out investigation to persons suspected of crimes in the manpower sector;
- 3) Request information and evidence from persons or legal institutions, in relation to crimes in the manpower sector;
- 4) Carry out investigation or confiscation of materials or evidence related to crimes in the manpower sector;
- 5) Carry out investigation of letters and/or other documents related to crimes in the manpower sector;
- 6) Request the help of experts in order to carry out investigations related to crimes in the manpower sector; and
- 7) Suspend investigation if there is insufficient evidence of a crime in the manpower sector.

Article 28(1) of the People with Disability Law states that “*persons who intentionally violate the provisions of Article 14 are threatened with, at the maximum, 6 months’ imprisonment and/or a fine of IDR 200,000,000.00*”²⁸. This crime is classified as a violation/misdemeanor. The contents of Article 14 People with Disability Law is that state and private businesses should give equal opportunity to the disabled by employing them in accordance with the type and degree of their disability, education and capabilities, and the total number of them should be proportioned to the total number of employees and/or business’ qualifications. In addition, disabled employees should not be treated discriminatively, including equal wage for the same job and position.

Based on interviews with Civil Servant Investigator, “all persons” means business owners or their personnel. Business owners may be apprehended as suspects due to policies on disabled workers. If a business’ personnel are aware of rules, which is to oblige equal treatment and fails to notify the business owner, that personnel could also be liable as a suspect²⁹.

²⁷ Indonesia, *UU Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*.

²⁸ Indonesia, *UU No. 4 Tahun 1997 Tentang Penyandang Cacat*.

²⁹ Respondent, “Interviewed by Susilo Andi Darma” (Civil Servant Investigator of Manpower and Social Agency in Sleman Regency: 7 October, 2015).

The next criteria of intention mean knowledge on behalf of the business owner. If a business owner is aware, but fails to carry out policies then that is considered intentional. If the business owner is unaware, but the personnel is aware and fails to inform the business owner, the personnel may also be responsible. Thus, business owners or personnel who fail to give equal opportunity and treatment may be subject to at the maximum, 6 months' imprisonment and/or a fine of IDR 200,000,000.00. (Two hundred million rupiahs)³⁰

3.4 Enforcement of Article 28 of People with Disability Law at the Investigation Stage in Sleman Regency

The explanations of Article 1(3) Police Chief Regulation on Management of Investigation by Civil Servant Investigator indicated that Civil Servant Investigator might carry out investigations under the coordination and supervision of Police Investigators. The Management of Investigation by Civil Servant Investigator is the planned, organized, controlled, effective and efficient criminal investigation carried out by Civil Servant Investigator. The Civil Servant Investigator cannot act on their own authority and must be coordinated and under supervision of Police Investigators. Prior to investigation, a Civil Servant Investigator must notify the prosecutor via a Police Investigator that an investigation has begun (Investigation Commencement Notification/SPDP). During summons, Civil Servant Investigators may request the aid of Police Investigators to summon witnesses beyond the work area of the Civil Servant Investigator. Civil Servant Investigators in Manpower do not have the authority to carry out arrests based on Article 182(2), and must request the assistance of Police Investigators.

The most important part of the investigation is the transfer of the briefs from the investigator to the prosecutor. Civil Servant Investigators may not directly send briefs to the prosecutor and must instead transfer it via a Police Investigator. This is in line with Article 38 of the Head of Police regulation on Management of Investigation by Civil Servant Investigator. Police Investigators do not directly transfer the brief to the prosecutor but must ensure the brief in complete through joint examination with the Civil Servant Investigator. Civil Servant Investigators hold the primary role in investigation while Police Investigators only coordinate and supervise. This is in line with statements from the Coordinator of Civil Servant Investigator at Yogyakarta's Regional Police.³¹

³⁰ *Ibid.*

³¹ Respondent, "Interviewed by Susilo Andi Darma" (Coordinator of Civil Servant Investigator at Yogyakarta's Regional Police: 6 October, 2015).

Data from Civil Servant Investigators at Sleman's service office has yet to show a legal construct to criminalize Article 28 People with Disability Law. It is still unclear how corporate responsibility could fulfill the elements violated by that corporation. As noted by are still problems related to corporate crimes, which cannot be assessed in the same manner as general crimes. The legal subject owing responsibility in corporate crimes are problematic as are the determination of fault.

Based on these three issues the author attempts to elaborate the elements of crimes as regulated in Article 28 of People with Disability Law. The first element is the provision of equal opportunity and treatment. According to the elucidations of Article 14, this means providing opportunity for 1 people with disability out of 100 workers to work in a business, or 1 people with disability for less than 100 workers in high technology, while treatment refers to non-discriminative treatment including equal wages for similar work and position.

Accordingly, businesses must prove that they have given equal opportunity or not, and may be seen from whether they have announced that they would accept disabled workers or not. Another problem is whether this policy should only be a formality. Should companies who announce open applications for disabled but receive no application be deemed to provide equal opportunity?

The next problem concerns the legal subject responsibility. Article 28 stated that "all persons who intentionally". All persons may be interpreted *hij die*, which was first aimed at private persons but based on further development also includes commission through organizations in civil law and other fields³². Subekti³³ notes that in addition to biological persons, the law also recognizes institutions or associations which also have rights and may carry out legal acts as a human would.

Offenders of Article 14 may be state or private businesses. As noted above persons may act on behalf of civil organizations or other associations. Thus, violations of article could be carried out by businesses. The problem which follows is whether corporate crimes could be given a legal sanction by the state under administrative, civil or criminal law³⁴.

Setiyono³⁵ states that corporate crimes could be divided into crimes for corporations, crimes against corporations, and Criminal Corporation. Crimes for corporations are crimes done for the interest of that corporation. Crimes against corporations are crimes by their own

³² Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2014). p. 161. [View Item](#)

³³ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2003). p. 21. [View Item](#)

³⁴ Hiariej, *Prinsip-Prinsip Hukum Pidana*. p. 156.

³⁵ *Ibid.*, p. 156-157.

personnel against their own corporation. Criminal corporations are those which are intentionally made and controlled to commit crimes. According to Setiyono's definition, the author views violations by businesses against Article 28 of People with Disability Law as crimes for corporation. Violations are meant to avoid the implementation of Article 14 so that businesses do not have to provide facilities to support disabled workers and do not incur additional costs.

Returning to the issue of responsibility for Article 28 of People with Disability Law, the explanation above shows that businesses should be responsible. Based on Article 1(5) of Law No. 40 Year 2007 on Limited Liability Companies³⁶ (Company Law), the Board of Directors is the company's organ in charge of and fully responsible to manage the company's interest, in accordance with the object and purposes of the company, and to represent the company within and outside of courts in accordance with the company's charter.

Article 92(1) of the Company Law states that the Board of Directors carry out company matters for the company's interest according to its object and purpose. Paragraph (2) gives them the authority to manage matters in paragraph (1) through proper policies, and within the limits set by the Company Act and/or company charter. In addition, Article 97(1) states that the Board of Directors is responsible for the management of the company as noted in Article 92(1). Paragraph (3) states "*all members of the Board of Directors are fully and personally responsible for the losses of the company if that person is guilty or fails to carry out their duties in accordance with paragraph (2)*". The provision of paragraph (2) requires management to be carried out responsibility and in good faith.

Based on these provisions each director could be responsible as long as their actions are related to the object and purpose of the company. Or if they are guilty or fails to carry out their duties, they may be personally liable even to the extent of their own personal assets. For any of these to apply, we must first determine whether companies have a policy to employ disabled workers or not. To support claims, there needs to be strong written evidence to show the existence of a policy on hiring disabled workers.

The third element is the existence of fault. Van Bemmelen and Van Hattum avowed that fault at its widest extent means all elements to which a person may be responsible according to criminal law against an unlawful act and covers all complex psychological aspects related to the crime and its perpetrator. Van Hamel also states that fault is an element with psychological meaning: the relationship between the psychological condition of the

³⁶ Indonesia, UU No. 40 Tahun 2007 Tentang Perseroan Terbatas (Jakarta, Law Number 40: SG No. 106, 2007). [View Item](#)

perpetrator and the realization of the elements of crimes due to their action. Fault in the legal sense means responsibility under law. Based on these opinions, two conclusions could be drawn. First, fault in its wider meaning is identical to responsibility. Second, fault cannot only be seen from its psychological understanding but should also be seen in the legal definition of fault as a normative element. Fault in the psychological sense is the mental relationship between a perpetrator and the act committed. If the act was willed by the perpetrator, then the person has intentionally done so³⁷.

Based on this opinion, if a company's managers intended an act, knowing full well that it is against the law and entails legal consequences, and then the company could be deemed to have been at fault. In addition, it must be proven that the company could be held responsible, as both businesses and their managers could be liable criminally, or under civil or administrative law³⁸.

Consequently, law enforcement of Article 28 of People with Disability Law must be conducted in both formal and material sense. Formally, Civil Servant Investigators cannot act alone but must stay in coordination and under the supervision of the Police Investigators. Secondly, Civil Servant Investigators must prove whether or not a crime had occurred, whether a legal subject could be held responsible, and whether there is a fault carried out in an unlawful manner.

4. Conclusions

The conclusion could be concluded from the research as follows; first, Supervision of Articles 5 and 14 of People with Disability Law has not been carried out effectively. This is because Manpower Supervisory Agents in Sleman Regency are still limiting their self on giving recommendations for companies to comply with the regulation. And second, Law enforcement of Article 28 of People with Disability Law must be carried out in both the formal and material sense, but unfortunately this article was not yet implemented in Sleman Regency. Formally, Civil Servant Investigators cannot act alone but must stay in coordination and under the supervision of the Police Investigators. Secondly, Civil Servant Investigators must prove whether or not a crime had occurred, that a legal subject could be held responsible, and that there is a fault carried out in an unlawful manner.

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³⁷ Hiariej, *Prinsip-Prinsip Hukum Pidana*.,p. 124.

³⁸ *Ibid.*

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Bibliography

Journals:

Dewi, Mufti Pramuwardhani. "Pelaksanaan Penempatan Tenaga Kerja Penyandang Cacat Pada Perusahaan Swasta Di Kabupaten Sleman." *Mimbar Hukum* 18, no. 3 (2006): 421–22. [View Item](#) [Google Scholar](#)

Phahlevy, Rifqi Ridlo, Mochammad Tanzil Multazam, and Noor Fatimah Mediawati. "Labour Rights Protection of Foreign Workers After Enactment of Law Number 6 of 2012 in Sidoarjo Regency." *Rechtsidee* 2, no. 1 (June 15, 2015): 21–52. doi:10.21070/jihr.v2i1.3. [Crossref](#) [Google Scholar](#)

Books:

Apeldoorn, L.J. Van. *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita, 2000.

Hamid, Hamrat, and Bambang Pramudyanto. *Pengawasan Industri Dalam Pengendalian Pencemaran Lingkungan*. 1st ed. Jakarta: Granit, 2007. [View Item](#)

Hariwijaya, M., and Bisri M. Djaelani. *Teknik Menulis Skripsi Dan Tesis, Landasan Teori Hipotesis Analisa Data Kesimpulan*. 2nd ed. Bantul: Zenith Publisher, 2004. [View Item](#)

Hiariej, Eddy O.S. *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka, 2014. [View Item](#)

Moleong, Lexy J. *Metodelogi Penelitian Kualitatif*. Bandung: Rosda Karya, 1989. [View Item](#)

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia Press, 1986. [View Item](#)

Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: Grafindo Persada, 2006. [View Item](#)

Subekti. *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa, 2003. [View Item](#)

Sudikno Mertokusumo. *Mengenal Hukum (Suatu Pengantar)*. Yogyakarta: Liberty, 2008. [View Item](#)

Legal Documents:

Indonesia. *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945*. The 1945 Constitution of The State of Republic of Indonesia: Unofficial Translation, 1945. [View Item](#)

———. *UU No. 4 Tahun 1997 Tentang Penyandang Cacat*. Law Number 4: SG No. 9, 1997. [View Item](#)

———. *UU Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*. Law Number 13: SG No. 39 (ILO Translation), 2003. [View Item](#)

———. *UU No. 40 Tahun 2007 Tentang Perseroan Terbatas*. Jakarta, Law Number 40: SG No. 106, 2007. [View Item](#)

Indonesia, Minister of Manpower and Transmigration of. *Peraturan Menteri Tenaga Kerja Dan Transmigrasi No. PER.09/MEN/V/2005 Tentang Tata Cara Penyampaian Laporan Pelaksanaan Pengawasan Ketenagakerjaan*. Minister of Manpower and Transmigration Regulation Number PER.09/MEN/V/2005, 2005. [View Item](#)

Indonesia, Minister of Manpower of. *Peraturan Menteri Tenaga Kerja Republik Indonesia Nomor Per.03/Men/1984 Tentang Pengawasan Ketenagakerjaan Terpadu*. Jakarta, Minister of Manpower Regulation Number Per.03/Men/1984, 1984. [View Item](#)

Nation, United. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*. December, 48/96., 1993. [View Item](#)

Police, Chief of The Indonesian National. *Peraturan Kapolri No. 20 Tahun 2010 Tentang Koordinasi, Pengawasan Dan Pembinaan Penyidikan Bagi Penyidik Pegawai Negeri Sipil*. Regulation of The Chief of The Indonesian National Police No. 20: NG No. 439, 2010. [View Item](#)

Interviews:

Hernawan, Ari. “Interviewed by Susilo Andi Darma.” Lecturer Faculty of Law Universitas Gadjah Mada: 8 July, 2015.

Maryoso, Dwi. “Interviewed by Susilo Andi Darma.” Supervisor Manpower Agency Central Java Province: 3 July, 2014.

Respondent. “Interviewed by Susilo Andi Darma.” Supervisor of Manpower and Social Agency in Sleman Regency: 7 October, 2015.

———. “Interviewed by Susilo Andi Darma.” Placement Staff of Manpower and Social Agency in Sleman Regency: 7 October, 2015.

———. “Interviewed by Susilo Andi Darma.” Supervisor of Manpower and Social Agency in Sleman Regency: 8 October, 2015.

———. “Interviewed by Susilo Andi Darma.” Civil Servant Investigator of Manpower and Social Agency in Sleman Regency: 7 October, 2015.

———. “Interviewed by Susilo Andi Darma.” Coordinator of Civil Servant Investigator at Yogyakarta’s Regional Police: 6 October, 2015.

Respondents. “Interviewed by Susilo Andi Darma.” Disabled Labors in Sleman Regency: 8 October, 2015.

———. “Interviewed by Susilo Andi Darma.” Entrepreneurs in Sleman Regency: 9 October, 2015.