

CHAPTER I

INTRODUCTION

A. Background of The Problem

Human Rights are rights that are owned not because they are given by others or because of the positive law that applies, but solely because humans are human beings who must be maintained in dignity.¹ It also means that although humans have different skin colors, ethnicities, races, nationalities, and conditions, Human Rights will always be attached to each individual. Therefore, Human Rights should not be taken away, disturbed, or ignored by other individuals. Stated in Article 1 point (1) of Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law) which explains that Human Rights are Rights owned by every individual inherent as a creature of God Almighty as a gift that must be protected by the state, law, government, and every person for honour and dignity as a human being.

Article 1 point (1) of the Law on Human Rights indicates that Human Rights are fundamental in life, apart from coming from God Almighty, Human Rights are based on human dignity and equality, which do not have the terms, conditions, and qualifications needed to obtain Human Rights.² This indicates that all human beings have human rights

¹ Jack, Donnelly. *Universal Human Rights Theory and Practice*, Cornell University. Ithaca Press, London, 2003, page 7-21.

² Nurdin, Nurliah and Athahira Ummy, Astika. *HAM, Gender, dan Demokrasi (Sebuah Tinjauan Teoritis dan praktis)*. CV. Sketsa Media, 2022, page 20.

without exception, as well as persons with disabilities. As Article 1 point (1) of Law Number 8 of 2016 concerning Persons with Disabilities (hereinafter referred to as the Law on Persons with Disabilities) states that Persons with Disabilities are every person who experiences physical, intellectual, mental, and/or sensory limitations for a n extended period of time who in social activities in their environment can experience obstacles to full participation with citizens based on equal rights. Furthermore, Article 1 point (2) of the Law on Persons with Disabilities contains equal opportunities for persons with disabilities in channelling their potential in all aspects.

Persons with Disabilities are a group of people who have the same rights as other citizens, including the right to obtain economic opportunities, assistance, and access to capital to increase their independence and standard of living. Recognition of the right to obtain assistance and access to capital is affirmed in Article 57 of the Law on Persons with Disabilities, where the Government and Regional Governments are obliged to provide assistance and access to capital to persons with disabilities in the form of independent businesses, business entities, and/or cooperatives. However, the reality in the field shows that the fulfillment of the rights of persons with disabilities, especially in obtaining assistance and access to capital, is still not optimally implemented.

Constitutionally, the fulfillment of the right to assistance and access to capital for persons with disabilities has a strong basis in the 1945

Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). The Preamble of the 1945 Constitution affirms that independence is a right that belongs to all nations. Therefore colonialism on earth must be abolished, which means that every citizen, including persons with disabilities, has the right to freedom and fair treatment both in socializing and fulfilling their standard of living. Article 27 paragraph (1) of the 1945 Constitution states that citizens are equal before the law and government without exception, so that persons with disabilities are entitled to equal treatment and opportunities in obtaining economic access. The 1945 Constitution as the basis of law as well as the basis of the state is clear evidence that equality of rights in life is a fundamental thing that must be practiced by every citizen and fulfilled by the government as the state administrator.

Article 28H paragraph (2) of the 1945 Constitution entitles every citizen to special facilities and treatment in order to obtain equal opportunities and benefits to achieve equality and justice as the noble ideals of the nation. This article is the constitutional basis for affirmative treatment that must be given to vulnerable groups, including persons with disabilities, to overcome obstacles that have prevented full participation in economic life. Article 28I paragraphs (1) and (2) of the 1945 Constitution affirm that every citizen is entitled to recognition, guarantees, protection, and legal certainty that is fair and free from discriminatory treatment. The state and

government have an obligation to protect people with disabilities from all forms of discrimination, including in access to assistance and capital.

Data from the Central Statistics Agency (BPS) in 2020 noted that only a small proportion of people with disabilities in Indonesia have access to formal financial services including business capital, out of 22 million people with disabilities in Indonesia, only around 20% of their rights have been fulfilled, and there are still 17.6 million people with disabilities who have not been fulfilled.³ This proves that the fulfillment of the rights of people with disabilities to assistance and access to capital has not been carried out thoroughly. Research by Hafni and Rahmawati revealed that persons with disabilities face obstacles in accessing capital, such as complicated administrative requirements, inadequate disability-friendly facilities, and a lack of information and assistance that cannot meet the needs of persons with disabilities.⁴

At the local level, especially in Yogyakarta, the fulfillment of the rights of persons with disabilities is regulated in Regional Regulation Number 5 of 2022 concerning Protection and Fulfillment of the Rights of Persons with Disabilities (hereinafter referred to as the Yogyakarta Protection and Fulfillment of the Rights of Persons with Disabilities PERDA) mandates local governments to provide assistance and access to

³ Cendra Arini, Shafira. “Jurus OJK Sediakan Akses Keuangan buat 17,6 Juta Disabilitas” contained in <https://finance.detik.com/jurus-ojk-sediakan-akses-keuangan-buat-17-6-juta-disabilitas> last visited Jun, 14 2024. Accessed on May, 2 2025.

⁴ Arliena Hafni, Diska and Maulidah Rahmawati, Fitri. *Aksesibilitas Permodalan Perbankan bagi Wirausahawan Difabel di D.I. Yogyakarta untuk Mewujudkan Ekonomi Inklusi*. *Kompartemen: Jurnal Ilmiah Akuntansi*, September 2019, volume XVII, page 3.

capital for persons with disabilities through various economic empowerment programs, skills training, and easy access to financial institutions. However, the implementation of the PERDA on the Protection and fulfillment of the Rights of Persons with Disabilities in Yogyakarta still faces challenges such as budget constraints, lack of coordination between agencies, and lack of socialization of the program to persons with disabilities.⁵

Indonesia has demonstrated its commitment to guaranteeing economic, social, and cultural rights for all citizens, including persons with disabilities. Similarly, the ratification of the International Covenant on Economic, Social, and Cultural Rights through Law Number 11 of 2005 obliges the state to respect, protect, and fulfil economic, social, and cultural rights. The right to work to fulfil needs and improve living standards is also included in the content of the Economic, Social, and Cultural Covenant Law which is strengthened by the Law on Persons with Disabilities to guarantee the rights of persons with disabilities.

The context of fulfillment of the right to assistance and access to capital, economic, social and cultural rights for persons with disabilities must be guaranteed in a progressive and non-discriminatory manner. The Maastricht Principles and the Limburg Principles as guidelines of the International Covenant on Economic, Social and Cultural Rights emphasize

⁵ Sari, N. P. *Implementasi Perda Nomor 5 Tahun 2022 dalam Pemberdayaan Penyandang Disabilitas In Yogyakarta*. Jurnal Kebijakan Publik, 2023, page 45-56.

that states must take definite steps in law and policy, with the aim of eliminating all forms of discrimination and ensuring equal access to economic, social and cultural rights including for persons with disabilities.⁶ Theoretically, the fulfillment of the right to assistance and access to capital for persons with disabilities is an integral part of the fulfillment of human rights and economic, social, and cultural rights that have been guaranteed by international law and national law, so the state, especially local governments, has an obligation to ensure that there is no discrimination either *das solen* or *das sein* in assistance and access to capital for persons with disabilities.

Based on the description above, it can be concluded that the fulfillment of the right to assistance and access to capital for persons with disabilities as stipulated in Article 57 of the Law on Persons with Disabilities and strengthened by Article 16 point (2) letter (h) of the Yogyakarta Regional Regulation on the Protection and Fulfillment of the Rights of Persons with Disabilities is mandatory for both central and regional governments. This research aims to examine in depth the fulfillment of the right to assistance and access to capital in Yogyakarta, focusing on the opportunities and obstacles faced and the role of related institutions in realizing what has been stated in the law. The research is

⁶ Sri Utari, A.A. *Penegakan hukum hak ekonomi, sosial, dan budaya di Indonesia*. Universitas Udayana, 2015, page 12.

outlined in a thesis entitled “Fulfillment of the Right to Assistance and Access to Capital for Persons with Disabilities in Yogyakarta”.

B. Formulation of The Problem

As described in the background of the problem above, the problem formulation is as follows:

1. How does the Yogyakarta Regional Government fulfil the right to assistance and access to capital for persons with disabilities?
2. How is the Review of Economic, Social and Cultural Rights in Fulfilling the Right to Assistance and Access to Capital for persons with disabilities?

C. Research Objectives

Based on the background and problem formulation described above, the objectives of this study are as follows:

1. Knowing and analyzing how the fulfillment of the right to assistance and access to capital provided by the Yogyakarta Regional Government to persons with disabilities, including policies, programs, implementation, and their impact in the field.
2. To assess the fulfillment of economic, social and cultural rights in the context of assistance and access to capital for persons with disabilities, by reviewing aspects of equality and non-discrimination, as well as the protection of the rights of persons with disabilities in accordance with human rights based on applicable laws and regulations.

D. Originality of the Research

No	Title	Author	Year of publication	Differentiator
1.	Kebijakan Baru: Jaminan Pemenuhan Hak Bagi Penyandang Disabilitas	Imas Sholihah	2016	This journal focuses on the effectiveness of social empowerment programs for persons with disabilities in Yogyakarta City, the role of social institutions in improving the quality of life. without specifically highlighting aspects of assistance and access to capital.
2.	Aksesibilitas Permodalan Perbankan Bagi Wirausahawan difabel di D.I. Yogyakarta untuk	Diska Arliena Hafni and Fitri	2019	This journal discusses the financial management

	Mewujudkan Ekonomi Inklusi	Maulidah Rahmawati		strategies of micro businesses for people with disabilities in Yogyakarta, focusing on the internal management aspects of the company.
3.	Implementasi Pemenuhan Hak atas Sarana Prasarana yang Aksesibel bagi Penyandang Disabilitas Fisik di Perpustakaan Yogyakarta	Ardhitya Bagas Pratama	2019	This research examines the level of accessibility of facilities and infrastructure at Grhatama Pustaka Yogyakarta Library with a focus on how physical facilities can support inclusion in the library.
4.	Pemenuhan Aksesibilitas Layanan dan Sarana Prasarana bagi Penyandang Disabilitas	Faza Taqyuddin Muzakki	2022	This research examines the fulfillment of accessibility of

	Sensorik dan Fisik dalam Pemilihan Bupati Kabupaten Rambang Tahun 2020			services and facilities for people with sensory and physical disabilities in the 2020 Rambang Regency Regent Election and focuses on the participation of people with disabilities in politics.
5.	Dampak Pemberian Bantuan Stimulan terhadap Pemberdayaan Ekonomi Penyandang Disabilitas Alumni Balai Rehabilitasi Terpadu Penyandang Disabilitas Yogyakarta Perspektif Maqasid Syariah	Masda Tanjung	2018	This research focuses on the impact of stimulant assistance from the vocational rehabilitation program of the Integrated Rehabilitation Center on the economic empowerment.

E. Literature Review

1. Fulfillment of Rights

The fulfillment of rights in general is a fundamental aspect that forms the basis for the implementation of law in a country that upholds human rights. In the context of the fulfillment of human rights in Indonesia, human rights theories become an important foundation in understanding the rights that are recognized, protected, and must be fulfilled by the state. One of the main theories is the theory of natural rights, which states that human rights are inherent in every individual from birth and cannot be revoked by anyone. This theory asserts that the state has an obligation to respect, protect, and fulfil rights without discrimination.⁷ The social contract theory put forward by famous figures such as John Locke and Jean-Jacques Rousseau emphasizes that the state is formed on the basis of a collective agreement which aims to protect individual rights.⁸

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) clearly regulates the fulfillment of the basic rights of citizens through Articles 28A to 28J. These articles include the right to life, the right to work, the right to associate and assemble, and the right to obtain fair and equal protection of the law without discrimination. The 1945 Constitution explicitly explains that

⁷ Boediningsih, Widyawati, and Novi Prameswari, Regina Dermawan. *Perkembangan HAM di Indonesia dan Problematikanya*. Education, Vol. 3 No. 2, Juli 2023, page. 77-87.

⁸ *Ibid*, page 78-79.

everyone is obliged to respect the human rights of others in life, so that the fulfillment of rights is not only an individual right but also a social obligation that must be carried out. Constitutional framework establishes a comprehensive human rights regime that obliges the state not only recognize and guarantee these rights but also to actively protect and fulfil them. The inclusion of rights in the highest legal document reflects Indonesia's commitment to international human rights standards, while also embedding these rights within the nation's legal and cultural context.⁹

The Human Rights Law is the main legal umbrella that specifically regulates human rights in Indonesia. The Human Rights Law contains 106 articles that explain the basic rights of each individual as well as the state's obligation to protect, uphold and respect all rights owned by citizens. The fulfillment of rights in Indonesia is philosophically rooted in Pancasila as the basis of the state, placing respect for human dignity. Pancasila implies that every individual is created with rights that must be respected and fulfilled without discrimination, and also requires cooperation between all elements of the nation, including the community and government.

Progressive legal theory and integrative legal theory are elements that strengthen the foundation for the fulfillment of rights in Indonesia.

⁹ Jimly Asshiddiqie. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta, Rajawali Pers, 2010, page 145-150.

Progressive legal theory emphasizes that the law must be able to provide substantive justice, not just formal justice. Meanwhile, integrative legal theory has efforts to integrate moral aspects, justice, and benefits in law enforcement.¹⁰ Therefore, the fulfillment of rights in Indonesia is not only guaranteed normatively, but must be realized in reality through policies, law enforcement, programs, and protection of the basic rights of citizens. The fulfillment of rights in the perspective of national law is related to the concept of individual protection and state protection. Individual protection requires the state to guarantee the freedoms and rights of each individual, while state protection is related to efforts to protect the environment and territory which is also an important part of human rights.¹¹

2. People with Disabilities

Persons with Disabilities in Indonesia are recognized as legal subjects who have equal rights with other individuals, in fulfilling the rights of persons with disabilities a strong instrument is needed to support equal rights. One of the instruments for the fulfillment of rights is the ratification of the Convention on the Rights of Persons with Disabilities by Indonesia through Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with

¹⁰ Budiwono, Eko *Analisis Yuridis Hak dan Kewajiban Warga Negara dalam Perspektif Hukum*. Jurnal Darussalam; Jurnal Pendidikan, Komunikasi, dan Pemikiran Hukum Islam. Volume 16, 2025, page 75.

¹¹ Hakim, Lukman and Kurniawan, Nalom. *Membangun Paradigma Hukum HAM Indonesia Berbasis Kewajiban Asasi Manusia*. Jurnal Konstitusi. Volume 18, 2021, page 6.

Disabilities (hereinafter referred to as the Law on the Ratification of the Convention on the Rights of Persons with Disabilities) which emphasizes the state's commitment to protect and guarantee basic rights and fundamental freedoms for individuals with special needs without discrimination. This was followed by the Law on Persons with Disabilities which replaced the previous legal framework with more emphasis on equality and rights protection.

Conceptually, the rights of persons with disabilities are an integral part of human rights that must be respected, protected and fulfilled by the state. Article 3 of the Convention on Rights of Persons with Disabilities (CRPD) affirms the general principles of:

- a. respect for inherent dignity, individual autonomy, including freedom of choice, and individual liberty;
- b. nondiscrimination;
- c. full and effective participation and engagement in the community
- d. respect for differences and acceptance of persons with disabilities as part of human diversity and humanity;
- e. equality of opportunity;
- f. accessibility;
- g. equality between men and women;
- h. respect the evolving capacities of children with disabilities and honor the right of children with disabilities to maintain their identity.

The general principles above are clear in respecting, protecting and fulfilling the rights of persons with disabilities from discriminatory acts that are contrary to both social and legal norms. The general principles also require states to take appropriate measures to ensure that there is no restriction or derogation from the human rights and freedoms recognized in the convention.

Persons with disabilities are protected in the same way as other individuals, expressly stating that states must adopt all legislative and administrative measures in accordance with Article 4 of the CRPD.¹² Thus, the rights of persons with disabilities not only require the elimination of discrimination, but also require concrete policies and actions from the state to create an inclusive environment. The implementation of the principles of the CRPD and the Law on Persons with Disabilities is the basis for designing programs, policies and public services to ensure equality and justice for persons with disabilities in Indonesia.

3. Government Responsibility

The fulfillment of the rights of persons with disabilities is part of the state's responsibility in guaranteeing human rights as a whole. The 1945 Constitution Article 28I paragraph (4) explicitly states that matters

¹² Harahap, R.R. and Bustanuddin *Perlindungan Hukum terhadap Penyandang Disabilitas menurut Convention on The Rights of Person with Disabilities (CRPD)*. Jurnal Inovatif, Volume VIII, 2015, page 25.

relating to the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, which is focused on the government. This shows that the state has the primary obligation to ensure that all citizens, including persons with disabilities, obtain protection and fulfillment of their rights without discrimination.

Government responsibilities are not only normative but also practical, covering the provision of physical and non-physical accessibility for persons with disabilities. Strategic issues that are the main elements for persons with disabilities are 18 responsibilities that are the domain of ministries and local governments, namely education, employment, health, politics, religion, sports, culture and tourism, social welfare, accessibility, and public services. The obligations are related to disaster protection, habilitation and rehabilitation, data collection, expression and communication, community involvement, citizenship, special protection including discrimination, neglect, torture, and exploitation, and legal subjects.¹³

The central and local governments have a strategic role in carrying out these responsibilities, from planning, program implementation, to monitoring the fulfillment of the rights of persons with disabilities. Local governments are required to establish programs and activities that are in accordance with local needs and ensure the availability of

¹³ Affandi, Firdaus. *Analisis Yuridis Tanggung Jawab Negara terhadap Penyandang Disabilitas yang Terlantar*. Jurnal Intelektualita: Keislaman, Sosial, dan Sains, Vol. 11, 2022, page 1.

inclusive and accessible public services. The synergy between various government agencies, the private sector, and civil society is the key to successful fulfillment of these rights.

Thus, the government's responsibility in fulfilling the rights of persons with disabilities is a constitutional and legal obligation that must be realized in real terms through comprehensive and sustainable policies, programs, actions, and impacts in order to create equality, justice, and respect for human dignity.

F. Research Methods

1. Type of Research

The type of research used is an empirical juridical research method with a descriptive analytical approach. This method was carried out by collecting data and information from primary sources in the field, such as interviews, observations, and documentation, to obtain an overview of the implementation of the fulfillment of assistance rights and access to capital for persons with disabilities. An empirical approach was chosen to obtain real information regarding the fulfillment of the rights of persons with disabilities in the field.

2. Object of Research

The object of this study is the fulfillment of the rights of persons with disabilities, particularly in relation to the fulfillment of their rights to assistance and access to capital.

3. Data Source

Based on the title and several explanations in this study, the data sources to be used are primary data sources supported by secondary data, namely data collected directly through methods such as surveys, interviews, or observations, supported by existing data from relevant parties, such as data from government agencies or journals.

a. Primary legal material

Primary legal material is material taken directly from the source, through several stages such as observation and interviews with informants. The informant is National Commission on Disability, Ministry of Social Affairs, Expert, and Business Owner with disabilities.

b. Secondary legal material

Secondary legal materials in this study refer to existing literature such as books and journals that serve as supporting references and complement the primary legal materials in this study. Secondary data sources were obtained through an in-depth literature review of various existing publications.

c. Tertiary legal material

Tertiary legal materials are data that can be used as supporting data to supplement previous legal materials, including expert opinions, online news, and mass media, with the aim of providing a broader perspective in conducting this research.

4. Method of Approach

The research method used in this study is based on direct observation, experiments, or surveys to answer the research questions. This approach emphasizes empirical evidence, namely real experiences, supported by existing theories or concepts.

5. Data Collection Techniques

The data collection techniques used to conduct this research include observation, interviews, and literature studies. The observation was in the form of direct observation of phenomena in the field, interviews for direct interaction with informants, and literature studies to collect data from literature relevant to this research.

6. Data Processing and Analysis

This research involves several stages, from data collection to presentation of results. The collected data were managed by researchers to ensure its quality and relevance. Then, the data analysis was conducted to identify patterns, relationships, implementation, and impact in the field. In general, a qualitative descriptive method was used. Therefore, this research is expected to provide factual and applicable information.

G. Thesis Framework

Chapter I (Introduction) of this study contains the background of the problem, problem formulation, research objectives, originality of the research, literature review, operational definitions, research methods, thesis framework, bibliography, and research instruments.

Chapter II (General Review) in this study explains the points that will be important topics of discussion, such as an explanation of the right to assistance and access to capital for persons with disabilities, the right to assistance and access to capital from an Islamic perspective, the government's responsibility for the obligations stated in the law, and a review of the program and the impact of the right to assistance and access to capital for persons with disabilities.

Chapter III (Research Findings and Discussion) in this chapter discusses the elaboration of the questions in the research problem regarding the fulfillment of assistance rights and access to capital provided by the Yogyakarta Regional Government to persons with disabilities, including policies, programs, implementation, and their impacts in the field, as well as examining the fulfillment of economic, social, and cultural rights in the context of assistance and access to capital for persons with disabilities.

Chapter IV (Conclusion) in the final chapter includes the conclusions and recommendations from the research conducted.