

**Joint Stakeholders' Submission on
THE RIGHTS OF THE PERSONS WITH
DISABILITIES**

(Responses to Recommendation Paragraph 108.34, 108.35, 108.36)

Submitted by Indonesian Disability Persons' Organizations

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Coordinated by OHANA (Indonesian Handicap Organization)

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I. Introduction

1. This report developed by Disability People Organizations (DPOs) in respond to the implementation of the Recommendation of UPR 2012 paragraph 108.134, 135 and 136.
2. The report was developed on the basis of meetings and discussions among DPOs in Indonesia, either on the national level or local level, among them are; DPOs workshop in Bogor on July 23, 2016 and in Jakarta on July 24, 2016; Meeting of National Coordination of People with Disabilities in Yogyakarta on August 3, 2016; DPOs National Workshop on formulating the UPR report on disability rights in Yogyakarta, August 15-17, 2016; Workshop on writing the report was conducted in Yogyakarta and organized by six DPOs on August 28-30, 2016, and; Public discussion conducted in Jakarta on September 15, 2016.

II. Responses to the Recommendation of the UPR 2012

A. Para. 108.134. Continue implementing programmes and measures for the rights of persons with A - disabilities

3. The Government of Indonesia has ratified the International Convention on Persons with Disabilities through Law No. 19 of 2011. Following up on the ratification, the Government revised Law No. 4 of 1997 on Persons with Disabilities by Law No. 8 Year 2016. Substantively, this law is quite progressive in ensuring the protection and fulfillment of the rights of disability, although there are some problems which are then associated with the implementation of the Act, including:
 - a. Law 8/2016 treated the disability as a social welfare that handled by the Ministry of Social Affairs, not by multi-sector bodies. This occurs, for instance, in the data collecting of disabilities number in Indonesia, which should be handled by the Central Statistics Agency (BPS), not only Social Affair.
 - b. Act still using the concept guardianship or custody for persons with psychosocial and intellectual disabilities, whereas CRPD affirms equality and equality of all persons with disabilities before the law.
 - c. Article 31 of Law 8/2016 mandated the establishment of the National Commission on Disability, an independent non-structural, to ensure the respect, protection and fulfillment of the rights of disabilities, including monitoring and implementation of disability rights. However, after the enactment of this Act, there is no clarity about the formation of the Commission.
4. Related to the Disability Action Plan, the Government of Indonesia united National Action Plan on the Disabilities into National Action Plan of Human Rights (RANHAM), thus forming 2015-2019 ratified by Presidential Decree No. 35 in 2015. However, the drafting of Action Plan did not involve civil society, particularly DPOs and RANHAM not confirm the existence of an independent body to monitor and supervise its implementation, unless the Joint Secretariat RANHAM, consisting of Ministry administering law and human rights issues,

Ministry administering social affairs, Ministry administering home affairs, and Ministry administering for national development planning.

5. In terms of indicators, RANHAM yet concretely using human rights based approach, but still refers to the implementation of the program, so it is not known exactly how much RANHAM the impact on the enjoyment of rights for disability groups.

Recommendation:

- a. Establishing the National Commission on the Disability Rights and ensuring the implementation of RANHAM with the independent body.
- b. Ensuring the participation of DPOs in the implementation of RANHAM, at national and local level, and including also in the monitoring of Government's policies and programmes related to the disability rights.

B. Para. 108.135 - Study the possibility to establish new measures to eliminate all discriminatory treatment against women with disabilities

6. Article 5 para. (2) Law Nr. 8 of 2016 on Person with Disability emphasizing the reproductive rights for the person with disability, including particular protections from the sexual violence. Article 125, 126 and 127 of the Law affirms the government obligation to provide special protections for the women and girls with disability, also to provide safe house for women and girls as the victim violence. The Law also affirms sanctions for those who obscure the fulfillment of the rights (Article 145).

7. However, there are certain discriminative regulations toward women with disabilities, such as article stipulated in the Law Nr. 1 of 1974 on Marriage; which says one of the requirement of divorce and polygamy is include if the wife having physical disability or uncured illness (Article 4 Para. (2)).

8. In local level, numbers of adopted local regulations haven't yet firming the rights of women and children with disabilities. Based on the data provided by HWDI, only seven out of twenty four local regulations on disabilities are having the perspective of women with disabilities. While monitoring conducted by CIQAL stated that up until 2016, two out of five regencies/cities in Yogyakarta that already developed the local regulation on disabilities have eliminating the aspect of women and children protections 2016.¹

Reproductive Rights of Women with Disabilities

9. Based on the DPOs monitoring, there are many cases of women with psychosocial and intellectual disabilities are experiencing serious violation of rights such as receiving contraception, either tablet or spiral, without any consent.

¹ Local House of Parliament or DPRD is willing to eliminate the protection for women with disabilities, with argumentation that there's no need any specification for the women with disabilities because it is just the same as the men with disabilities. On the other side, Local Regulation on Disabled Person in South Sulawesi eliminate the aspect of women with disabilities with the arguments that it has been regulated on the Local Regulation on Women and Girls, whereas this sectoral Local Regulation does not regulate disabilities issues,

Many of them are forced to receive the program to prevent them to get pregnant. Moreover, the program is conducted in many temporary shelters, both public and private shelters, without any supervision and evaluation of the program. This violence is still continuously enforced because there are lack of understanding, awareness and capacity to cope with the problems of women reproductive health of the temporary shelters' management, family, neighborhood and other relatives. (*Monitored Jiwa Sehat [The Health Soul] Association, 2016*).

10. In the cases of women with foot disabilities (polio, wheelchair user, crutch user, bow-legged, etc.) when doctor or tologist check their pregnancy, it often that they were not given option to have USG. Paramedics are often making assumptions that women with disabilities in lower part of their body will never have vaginal birth. Whereas, from many other experiences of women with physical disabilities, if they get early USG check, they can explore many probabilities to have vaginal birth, and could have early physical preparation (*Assisted clients of the women with disabilities in SAPDA Yogyakarta Institute*).

Recommendation:

- a. To do monitoring and evaluation to these temporary shelters, increase the shelter's management capacity on handling the women with disabilities' reproductive rights, and halt all forms of force sterilization.
- b. Increasing abilities of paramedics in handling the needs of women with disabilities on reproductive rights.
- c. Emphasizing on the SOP of overall pregnancy checking for every pregnant women without considering their type of disabilities.

Sexual Violence against Women with Disabilities

11. Perpetrator of sexual violence against persons with disabilities oftentimes was not being legally proceeded. Parents whom not aware of the law enforcement system is causing many cases of sexual violence against women with disabilities is not reported to the police which effecting to the inaccuracy of the data available. This is compounded with the lack of concern by the upholder toward the cases of sexual violence against persons with disabilities.

12. Research of the Association of Women with Disabilities Indonesia (HWDI) in four regencies in Indonesia stated that the sexual violence against women with disabilities continue to occur, at least it caused by;

- a. Infirmity of the protection system and law upholders' awareness.
- b. Perpetrator is part of the family, which has power to not proceed the case. There is one case where the victim already gave birth for three times by the same perpetrator but there are no legal proceedings.
- c. Legal terms currently used are not in accordance with the needs of women with disabilities and children of the victim of violence.
- d. Lack of infrastructure and facilities for the disabilities, including the language interpreter, since the beginning of investigation until the trial, including translation of documents.
- e. Having difficulties in communications and the law upholders neglecting the cases.

f. Indonesian law does not recognize testimonies of persons with intellectual and psychosocial disabilities.

13. Discrimination against the women with leprosy disability is also alarming. Ultimately because of the existing stigma of person with curses, frightening, and the disgrace of society. This is causing women with leprosy disability is alienated from their social living. In Gowa, South Sulawesi, divorces are still happening when wife have a leprosy. While there is no serious efforts from the government to cope with the discriminations and stigmatizations toward them. (*Assisted clients of Indonesian Women with Disabilities Association, South Sulawesi*).

Violence and Discriminations against Children with Disabilities

14. Against children with disabilities, violence and offences occur because the lack of information dissemination and awareness raising done by the government for the parents. On the ground, unfortunately there are many violence and offences done by the parents, such as shackling. The government regulated the establishment of Forum on Communication on Family with Children with Disabilities (FKKADK) on the National Action Plan on Disabilities year 2009-2014, but up until now there are no government institution take the lead to activate the forum, while the budget line is available in each of Social Welfare Ministry. Practically, based on the monitoring conducted by DPOs, the forums are not ineffective implemented regularly.

15. Children with *Cerebral Palsy* or CP; who unable to stand, unable to sit, and only stays inside their house, is not paid serious attention to be independent. Education and therapy provided by the government is not directly addressed to the their home. From the aspect of services, there is uncertainty on health facilities for their needs of therapy, and moreover this expensive service is not included in their Social Security Provider Agency (BPJS).

16. According to the survey of *Cerebral Palsy* Family Association or Wahana Keluarga Cerebral Palsy (WKCP) in 2013, treatment cost for children with CP in a month are:

	Mininum/ month(IDR)	Satisfying minimum requirement (IDR) / month (IDR)	Minimum necessary tools (IDR)
Doctor consultation	60.000	100.000	
Topomak, trileptal, nopenia medicines	600.000	1.200.000	
Therapies: - Physiotherapy - Sensointgrasi - Occupation	60.000x8 60.000x8	60.000x4 60.000x4 60.000x4 75.000x4	

-Tw			
Supporting tools for therapy:			
- wheelchair			1.200.000
- walker			600.000
- avo			400.000
- matrass			1.000.000
- backsleep			400.000
- bolster pillow			200.000
Total	1.620.000/month	2.320.000/month	3.800.000

Recommendation:

- a. Implementing the Law No. 8 of 2016 on Persons with Disabilities to eliminate discrimination against women, also revised number of discriminative laws dan regulations on women with disabilities.
- b. Cope the ultimate issue of women with disabilities in conflict with the law, such as providing legal aid for the persons with disabilities, spokes person and ensure the testimony of person with disabilities can be recognized before the law.
- c. Ensure all medical services and therapy for the children with disabilities, especially those with Celebral Palsy, included in the BPJS and giving priority services for them in every social security document arrangements.

C. Para. 108.136 - Strengthen access for persons with disabilities in all areas, particularly their political participation such as voting

17. Monitoring conducted by AGENDA² and IFES in three different areas (Aceh, Jakarta and Makassar) on 2015 concluded that political participation of the persons with disabilities in Indonesia is poor.ⁱ Generally, this poor rate is happening is because of the technical operational obstacles including data collection until the procurement of voting supporting tools. Other thing is the political perspectives and complicated bureaucracy in implementing the accessible and inclusive voting. There are many challenges in implementing the accessibility in the whole voting process including voter registration until the day of election for the persons with disabilities.ⁱⁱ

18. *First*, in the process of voters' registration, persons with disabilities often times missed from the list of voters. Data collection for the voter with disabilities failed to classify the type of disabilities which cause them unable to access the vote. For instance, on the 2014 legislative election there were limited braille vote

² See, Annex I for the profile of organization.

sheet available.³ *Second*, information dissemination is not in the form which accessible for the persons with disabilities, especially for the deaf and blind which cause they don't understand the information. On the other hand, not all of the elections' organizers implement the standard operational of accessibility in information dissemination on voting. *Third*, on the election process, persons with disabilities still having difficulties to enter the voting booths especially for those with wheels. And, the confidentiality of blind voters is not guaranteed because sometimes the party's bystander accompanied them.ⁱⁱⁱ On the 2014 election, it was found that the election staffs conduct the election with stopping by the house of those with disabilities, but in practice the party's bystander pick the vote. *Fourth*, there's minimum effort to fulfill the rights of persons with disabilities to be elected because of the unavailability of the access and proper accommodation in the selection requirement and the legislative election of KPU.^{iv}

Recommendation:

- 1) To create "Special Unit" within the election bodies' structure as the key of electoral institution. The unit will have tasks to ensure and to improve the technical needs in the electoral cycle including accessible information, providing accessible polling stations, socialization to all polling workers and staffs.
- 2) State has to infiltrate "disability rights perspective" in the laws and regulations, besides open more opportunities in advocating the establishment of politicians who have principles and vision on inclusive and disability rights in the Law on Political Parties.
- 3) The key stakeholders including the election organizers, political parties and politicians create "a special initiative" (disability specific action) to increase the political participation of persons with disabilities).
- 4) Create constructive collaboration between election bodies and disability person's organizations to ensure the accessibility of disability and inclusive election.
- 5) KPU have to make the classified data collection of the type of disabilities which will decide any support facilities needed and the availability of proper accommodation.
- 6) KPU have to provide medium for information dissemination (audio, text, sign language), voting infrastructure and proper accommodation in the form that accessible for the person with any type of disabilities. Also, to conduct political education for the persons with disabilities either through adopting policies or implementation of the government program on the ground.

III. Specific Issues Related to Disabilities

³ Article 157 of Law No. 8 of 2012 on Election and/or/ it's derivatives regulation only regulate the assistance, but not clearly regulate access for all types of disabilities.

A. Education

19. Article 5 and 32 of the Law No 20 of 2003 on National Education System emphasize that citizen with disabilities (having physical and emotional rudiment) entitled to a special education, which shall be clearly elaborate on the National Education Ministerial Regulation No. 70 of 2009 on Inclusive Education. Unfortunately, the existance of above mentioned regulations is not assure the persons with disabilities could access the lower to higher level of education. The most fundamental problem of this cause began from the low level of awareness of society and the education providers to fulfill their rights, to the low implementation of the existing regulations.

Low Participation in Every Level of Education

20. Since 2009, Indonesian Government hasn't done the national census on number of children with disabilities and their participation in education. Data from National Survey on 2009 shows that their participation is still low; 46,32% for the age range 7-12 y/o, 29,75% for the age range 13-15 y/o, and 16,91% for the age range 16-18 y/o.^v

Inclusive Education

21. Limited number of School for the Special Needs (SLB) available and the potential of discriminative SLB has pushed the government to adopt the inclusive education policy stated on the National Education Ministerial Decree No. 70 of 2009. This regulation rules all aspects of inclusive education, the availability of assigned inclusive schools at the sub district level (Elementary and secondary level) in every district, providing experts until evaluation. Unfortunately, number of problems still occur;

- a. Either Ministerial Regulation No. 70 of 2009 or the Fixed Protocol (which was issued in certain areas) hasn't been well informed to the public. Not all of the districts have inclusive school.^{vi}
- b. Policies haven't changed how society and education provider's view of the persons with disabilities, which this led the concept and culture of inclusive education is not yet appear. Disabled students enrolled in the inclusive school continued to marginalized and labeled as the 'inclusive kids'.
- c. Education facilities and infrastructure such as physical accessibility in school or tools and medium for teaching and learning activities is not yet available. Ministry of Education also haven't modified the curricula into the comprehensive one, which makes the students learn through the unmodified curricula or through the curricula of the School with Special Needs teachers at the inclusive schools have lack of capacity to adopt the National curricula in order to suits or to fulfill or to accommodate the needs of students with disabilities.
- d. The most frequently reported problem is the limited number of teachers in the inclusive schools that have sufficient knowledge and skills on inclusive education or teaching student with various learning needs. Existing practice is that the inclusive teacher -also known as Special Assistant Teacher (GPK), are the teachers 'borrowed' from the School with Special Needs for teaching in twice a week, which is far from satisfying the student's need because many of these teachers is not really want to teach disabled students. Information delivered by the Parents with Autism Child Association and Cerebral Palsy Family Association or

WKCP stated that cost to provide GPK in many public and private schools is borne by the parents, while GPK provided by the government in the inclusive schools only handle students with particular learning difficulties such as the slow learners.⁴

Special Education

22. Special Education provided through the School with Special Needs (SLB) are still the main services for the disabled students and have been allocated higher funding by the government, compare with the inclusive education funding allocation. However, quality of the teaching and learning activities in SLB still need to be increased, either from the academic or vocational aspects to prepare the student for work.

23. Some of the issues that often arise are:

- a. The curricula that rarely modified. Revised curricula done by the Ministry of Education is not always followed by modification of SLB curricula. Individual Learning Program, program which should be owned by the students, prepared by the government is not always done by the school.
- b. There are lack of understanding about the rights of the children with disabilities and the correct method for the disabled students which cause the physical and sexual violence is still occur. The Indonesian Deaf Welfare Movement or GERKATIN record that almost in all of SLB, deaf students is forced to use oral language, while the use of sign language is not recognized even more forbidden in school. One of the reasons why this is happening is because limited number of teacher who are able to use sign language. Monitoring done by Solider (*Daily newspaper focused on the issue of disabilities in Indonesia*) journalist,^{vii} in some of SLBs in Yogyakarta the teachers shackle student's foot on chair because they think it is the best way to keep the students with autism and ADHD stay focus to their learning activities.
- c. Vocational skill is the important aspect of education in SLBs. For SLB with C Category for mental disabilities, curricula applied is 40% academics and 60% skills. Unfortunately, the high vocational component is not compensating with the aspect of field work or internship. This is causing the low opportunities provided by the employer for the SLB alumni. In Yogyakarta, couple of companies prefer to provide aid rather than provide them with jobs.
- d. Reproductive education is not yet part of the SLBs curricula in any of the inclusive schools. This condition creates serious problems on sexual violence against persons with disabilities, such as forced sterilization and incest, which still occur up until now. Indonesian Women with Disabilities Association or HWDI found in some public or

⁴ Public and Private Inclusive Schools in Yogyakarta such as Tamansari elementary school, Budi Mulia elementary school and Tumbuh elementary school require parents of the children with disabilities to pay additional fee for guardian for the child with autism or down syndrome which cost 450.000 – 1.200.000 IDR/month according to the learning schedule in school. This provision is not applied for children diagnosed with slow learner or having difficulties in learning.

private temporary shelters still practicing the use of contraception for the shelter occupants whose having “sexual” desires without any consent.

Disabilities and Education Rights in Higher Education Institutions

24. National Education Ministerial Regulation No. 46 of 2014 on Special Education and Special Services (PKLK) in higher education institutions is not really well disseminated. These regulations ensure the accessibilities of persons with disabilities to higher education institutions. It regulates the accessibilities of the admission process, learning modifications, availability of accessible facilities and infrastructure, and the provision of the Disabilities Service Unit (PLD) establishment in every higher education institutions. But in fact, many higher education institution refuse to apply this regulation.

25. Experiences of PLD in Sunan Kalijaga State Islamic University in undertaking advocacy and assistance for the prospective students with disabilities shows that in the public higher education institutions enrollment selection process or SNMPTN, the accessibilities is not guaranteed; no alternative form of exam (braille or audio) and no assistance provided by the institution. PLD also still found rejection either by the institutions or faculties. Faculty of Psychology and Science in number on higher education institutions still resists to accept blinds with the argument of basic competence in respected faculty demand the students are able to look.

Recommendation:

- a. Disseminating and harmonizing legislations on education: National Education Ministerial Regulation No. 70 of 2009, National Education Ministerial Regulation No. 46 of 2014, Law No. 8 of 2016 on persons with Disabilities, as well as the Local Regulations in many areas to ensure the fulfillment of the education rights of the persons with disabilities and their participation in education.
- b. Inclusive education policy needs to be maximized and comprehensively implemented with the clear budget allocation to provide all support in every aspects, such as accessibility of school building and facilitates, learning medium and tools, developing curricula and inclusive learning method, raising quantity and quality of the teachers and education practitioners, inclusive education materials mainstreaming in Teachers Faculty, as well as developing evaluation and supervision mechanism toward accountability of inclusive schools and SLBs.
- c. Terminate the education dual-system with shifting the purpose of SLBs to be the resource center which support regular schools becoming inclusive schools.
- d. Driving the establishment of PLD in higher education institutions and providing human resources needed, such as interpreter for students with special needs.

B. Health Rights of the Persons with Disabilities

26. Health Ministerial Regulation No. 28 of 2014 on Implementation Guideline of Health Insurance Program ensure to provide mobility support

facilities for 150 diseases, except wheelchair, with maximum limitation of providing supporting facilities is once in five years.

27. Health Ministerial Regulation No. 5 of 2014 on Guideline of Clinical Practice for Doctors in Public Health Services is a power for the society to do advocacy and correspond with the situation on the ground. Even though there are less and limited health services in certain areas for the leprosy disability.^{viii}

28. Persons with disabilities cannot access Dues Receivers or PBI because they are not included in the Social Security scheme. Thus will strengthen the stigma that disabilities is a burden of other people; family and neighborhood.^{ix}

29. Persons with disabilities accessing Individual BPJS or BPJS Mandiri still need their family to pay the premium. While those who apply for Individual BPJS need to be employed formally and pay the premium by themselves. This is an inconsistency. BPJS also haven't yet covered whole needs including supporting tools. In Yogyakarta, local government provide the facilities.^x In Aceh, there are special card to access the disability services in hospital. In Cianjur, Wes Java, the local government issued County Health Insurance Card for psychosocial.

30. In Sukoharjo, Central Java, Regency Regulation No. 1 of 2012 which is always revised annually emphasizing the county health insurance that not include poverty category to be able to access the services. Persons with disabilities could received the services with the recommendation of Social Welfare Department.^{xi}

31. Ministerial Regulation on Health No. 75 of 2014 oblige the Community Health Center or Puskesmas to do home visit, but not under BPJS scheme. Persons with disabilities in temporary shelters are not enjoy the services. They have to go to hospital by themselves under the BPJS scheme. While number of people in each shelter can reach 800 persons.

32. Violation of the Law No. 18 of 2014 on Mental Health is still occur. Deprivation of liberty such as shackling creates unfavorable condition for their mental health development.

Shackling^{xii}

33. Indonesian government prohibit the act of shackling since 1979, but up until now the act is still happening on the ground. Once Ministry of Health arranges a program to prohibit the act of shackling, but it's unsuccessful. Approximately, 57.000 people in Indonesia are experience being schakled or even still on shackle. Basic Health Research Survey stated that 14% of families who have member with mental health problem are doing shackle.

34. Mental Health Law emphasizing the shackling is prohibited, but the regulation is not supported by facilities and measures -such as village level services, eliminating stigma, consultation services, etc., to stop the act. Related to the shackling in the social temporary shelters, there is no regulation available to authorize monitoring and evaluation of the shelters, even though for the establishment of the shelters needs a license from the local government. Two of the private-run shelters which use shackling as their treatment is Bina Lestari Shelter located in Brebes, Central Java and Jasono Alternative Medicine located in Cilacap, also Central Java.^{xiii}

35. Indonesian Government has planned the MoU on Handling Persons with Mental Disabilities between four ministries and two Police Institutions and BPJS

on May 2016. This MoU aimed to stop the act of shackling with tagline “Stop Shackling Movement 2017.” But up until now there is no concrete action frame agreed and published. On the other side, the civil societies are not invited to participate in the process of the establishment of the program.

Recommendation:

- 1) Centralizing and correcting the data of Persons with Disabilities (Article 22 Law No. 8 of 2016), as well as include them in the health and social security scheme without including the poverty category.
- 2) Providing physical and non-physical accessible accommodation (disabled people friendly environment), and proper infrastructures in whole health service facilities in village, *Puskesmas* and hospital.
- 3) Synergizing psychosocial and intellectual disability services in public hospitals and ensure the mental hospital services are in accordance with the principles of CRPD.
- 4) To adopt a regulation on licensing, monitoring, evaluation and sanction of private and public shelters on the basis of interest and rights of the persons with disabilities.
- 5) Ensure the participation of DPOs and civil society on the program of “Stop Shackling Movement 2017” and ensure all the actions of the program could be implemented on the ground.

C. Economy

36. Indonesia have policies where the central and local governments, central and local state-owned enterprises or BUMN and BUMD employment have to compulsory fulfill at least 2% of employees with the persons with disabilities,^{xiv} but the quota is not exhausted. This is because the job offered is not in accordance with their skills, no proper and accessible accommodation, and unfavorable working environment with their needs and competence. Ministry of Social has provide 300 seats as public servant, but only 20 people accepted because of inaccessible recruitment process and no feasible accommodation.

37. Article 50 of Law No. 8 of 2016 on the Persons with Disabilities strengthens the Article 28D para. (2) of Constitution 1945. But in practice, the mute still find difficulties in accessing information in their working environment (sign language, running text, etc.).

38. Eventhough it is guaranteed on the Article 9, 29 and 30 of the Law No. 21 of 2011 on Financial Services Authority of Indonesia, persons with disabilities still find difficulties to access all banking services, primarily for the blind and person with intellectual disability because of the signature authorization. For Instance, according to the DPOs, up until now the BCA and Mandiri Bank still refuse persons with disabilities to open a bank account.

39. Eventhough employment were guaranteed for the disabled person through many regulations, the violence toward they who passed the recruitment process are still occur, such as intimidation for those with polio by making them to do physically strenuous works that makes them forcedly dismissed and provided severance unilaterally (without negotiation).^{xv}

Recommendation:

- a. Implement the quota system for disabled person and ease the access of job recruitment according to their type of disabilities.
- b. Implement the Law No. 21 of 2011 on Financial Services Authority Indonesia, especially to guarantee the principle of non-discrimination, accessibility and proper accommodation to access banking services.
- c. Provide economy empowerment services that fulfill principle of equality, accessibility and proper accommodation according to their type of disabilities.
- d. Acknowledgement of the chosen profession, provide facilities for the profession chosen including business permits and certifications.

D. Legal Protection

Legal Competent and the Psychosocial Disability

40. Article 433 – 462 and Article 1320 para. (2) of Private Law regulate the guardianship or *curatel*, including for the person with psychosocial disability whose considered as person with legal incompetent, without any trial process. Law on Mental Health emphasizing the determination of “incompetent” decided by the psychiatrist, not by the court.

41. Status of legal incompetency has caused coercion on choosing health service options for person with psychosocial and intellectual disabilities because the services are provide by family or guardian, not by themselves.^{xvi}

42. In the Law No. 16 of 2011 on Legal Aid emphasizing legal aid are for every person, which include persons with disabilities. Unfortunately, there are no further explanations on providing legal service facilities needed by disabled people such as sign language interpreter, translator and also accessible facilities and infrastructure. In Makassar, teacher in SLB are forbidden to assist disable person and police has negative response when they asked to prepare interpreter (*Assisted case of the Indonesian Women with Disabilities Association or HWDI South Sulawesi*).

43. Article 53 *jo.* Article 178 of Criminal Procedure Law require the existence of interpreter assigned by the presiding judge. In practice, cases of disability almost fall on early process in police because the role of interpreters are limited only in the court.

Legal Rights of the Women with Disabilities as the Victim of Sexual Violence

44. Indonesia Police Chief Regulation No. 10 of 2007 on Organization and Working Procedure of the Women and Children Service Unit or UPPA in Indonesia Police Offices regulates a special unit under the Criminal Resort Function named Special Services Room Unit for girls in conflict with the law (victim, witnesses or suspect). However, these regulations haven't yet emphasizing the rights of girls with disabilities, which cause their needs, is uncover in the services.

45. All this time, due to communication difficulties; unavailability of sign language interpreter and lack of knowledge of the law upholder have cause

women with disabilities oftentimes can not be a witness or report their case. This is the primary obstacle to resolve cases of violence into legal process.

46. Law No. 23 of 2004 on Elimination of Domestic Violence haven't yet specifically accommodate women with disabilities, including aspect of criminal law and it's procedure. Women and girls with disabilities still be treated the same as the other victims.

47. Research conducted by the Indonesian Women with Disabilities Association or HWDI on October – December 2015, there are 85 cases of sexual violence against disabled persons in 22 provinces, with the typology: 35% (36 cases) against mentally disabled, 7.08 % (6 cases) against blind disability, 27.06% (23 cases) against mute disability, 8.24% (4 cases) against physically disabled, 10.59 % (9 cases) against double disabilities, and 4.71 % (4 cases) against unknown types of disabilities.

48. From the cases above mentioned, there are 32 cases were not addressed by the law upholder due to many reasons, some of which are; the victim feels shame and scare to submit a report and only tell the story to their relatives, new cases appear during the interview, unknown perpetrator and lack of evidences or witnesses as a result of communication difficulties, victims can not see, proving difficulties, which ended up with the termination of the case by the police.

49. This research is also reveal main problems of legal services for the persons with disabilities:

- a. Unavailability of sign language interpreter;
- b. Unfriendly legal procedures for the disabled person;
- c. Law upholder behavior is not sensitive enough to serve persons with disabilities which caused the victims are unserved and even not willing to trust the victim's testimony;
- d. The law is still interpreting as textual things, which deter the rights of persons with disabilities either as victim, witness or suspect. Law apparatus still use traditional ways to handle persons with disabilities;
- e. Lack of knowledge and understanding of the law apparatus toward persons with disabilities and their rights; supporting facilities, sign language, inaccessible building, disabled person as witness, lack of information dissemination on law to disabled person, and legal processes which does not have the disability perspective.

Recommendation:

- 1) Guarantee the equality before the law for the persons with disabilities through the related law and policy changing, eliminate discriminate rules and practices as it included in Private Law, Mental Health Law, and regulation on guardianship, also replace with the “supportive decision making” as stipulated in CRPD.
- 2) Increase knowledge, awareness and ability of the law upholder toward disabled person in conflict with the law, especially disabled women and

girls, also to guarantee availability of facilities and infrastructure, accessibilities, including the sign language interpreter.

Endnote:

ⁱ *Political Participation of Persons with Disabilities in Indonesia, General Election Network for Disability Access*, (AGENDA/PPDI, JPPR, IFES), 2015

ⁱⁱ *National Report: Observation Results on Electoral Access for People with Disabilities in Five Local Election in Indonesia*, General Election Network for Disability Access (AGENDA) JPPR-PPCI-PPUA PENCA-IFES August 5th, 2012.

ⁱⁱⁱ Legislative Election on 2014, 15 voting places in Mojosari, Banguntapan, Bantul (Yogyakarta) on TIPP-UKDW (2014) on the “Report of Legislative Election Monitoring 2014: Campaign, Silent Period, Voting and Counting Vote in Special Region of Yogyakarta Province”, pg.54.

^{iv} TIPP-UKDW (2014), on the “Report of Legislative Election Monitoring 2014: Campaign, Silent Period, Voting and Counting Vote in Special Region of Yogyakarta Province,” pg. 54.

^v Social Economic National Survey result of National Statistical Agency on 2009

^{vi} National data on the inclusive schools is not yet available. But the province level data in Central Java have inclusive schools. For instance, Purworejo only have 2 inclusive schools. Source: <http://www.bpdiksus.org/v2/index.php?page=sekink&cari=21>

^{vii} See, <https://www.solider.or.id/>

^{viii} Report of Indonesian Independent Leprosy Association or PerMaTa in Kupang, West Nusa Tenggara on 2016 stated that there is misdiagnosis toward 7 patients with Leprosy; spotting has been diagnosed with allergy and ulcer has been diagnosed with diabetes, this is led to the incorrect recipe which cause permanent disabilities.

^{ix} Law Nr. 24 of 2011 on Social Security Provider Agency; Indonesia Government Regulation No. 76 of 2015 on the Amendment of Indonesia Government Regulation No. 101 of 2012; Social Ministerial Decree No. 146/HUK/2013 on Determination of Criteria and Data Collecting of the Poor and the Unable.

^x Governor of Yogyakarta Regulation No. 51 of 2013 on Health Insurance for the Persons with Disabilities is implemented with the Governor Decree which

stated names and data of the persons with disabilities who are entitled to receive services.

^{xi} Members of Regional Health Insurance or Jamkesda will be encouraged as members of BPJS PBI which will be funded by the Level II/Regency Budgetline. Budgetline allocation in Health Department for the Health Service Provider or PKK I (in Puskesmas) and III (in Regional Hospital); encouraged I Jamkesda for the persons with disabilities so they do not need to obtain Social Welfare Department to use the services. Therapy services for children with disabilities can be done twice a week, for free, and guaranteed by Jamkesda.

^{xii} Shackle: is the act of physical deprivation which mainly done for those who have psychosocial disabilities. Physical deprivation can be in a form of hand or foot cuffing with wood beam, chain, or put into isolated room. This act can be lasted for weeks until decades even more for a lifetime. Shackled person shall eat, drink, sleep, urinate and defecate on the same place. Shackling can be done by the family in their home, by the private or public shelter management, or in the traditional medicine stalls. In the context of Indonesia, shackling could be happened because of; a) almost no access of proper medical, social and economic services for the person with psychosocial disability; b) this also caused by the lack of information dissemination for public on the issue of psychosocial disabilities; c) stigma on mental health problems which cause the family feels ashamed to cope with the problems; d) medical services, medicines with the low-side effect is not available on the level of Puskesmas/village. While, most of the people who were shackled is on villages. In order to be able to access medics, the victim should go to hundreds kilometer regency hospital. Even if it available in Puskesmas or village, it will be the high-side effect drugs and plentiful tablets, which person with mental health problem will refuse to use it; e) social services such as rehabilitation, assistance for education and jobs, is not available at all; f) Public or private psychosocial shelters in Indonesia are still using the prison approaches. The occupants are isolated and not allowed to go outside. Inhuman treatment such as shaving hair is a common even for the women with psychosocial disabilities; g) myths that person with mental health disabilities is caused by mysticisms.

^{xiii} *Monitoring Data of Galuh Foundation in Bekasi, West Java and Human Rights Watch on 2015*

^{xiv} Article 53 of the Law No. 8 of 2016 on the Persons with Disabilities.

^{xv} Cases handled by the lawyer Heppy Sebayang LL.B., lawyer for the persons with disabilities, happened on 2009.

^{xvi} Article 21 para. (3) Law on Mental Health emphasize that persons with mental health disabilities is incompetent for a decision making. Medical decisions can be taken by husband, parent, children sibling, guardianship, authorized official as conformed by the laws. Article 4 of this Law regulate the one who authorized to take medical decisions of people with mental health are the doctors or doctors who provide health services by that time. This article is contradict with the Private Law which emphasized on the decision of the court.