

THE PROTECTION OF ECONOMIC RIGHTS TOWARDS PERSON WITH COLOR BLINDNESS BASED ON INTERNATIONAL LAW

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Abstract - Improvement of economy and development are carried out by the Indonesian government in many ways. The spread of employment each year is a real example of performance by the Indonesian government for all Indonesian to improve welfare of their life. However, this way does not provide sufficient results against those who are categorized as person with color blindness (*daltonism*). As a state of law, government of Indonesia should uphold human rights in the society. However, in fact the case that led to deprivation of economic rights of people with color blindness to find employment is not in line with the real expectation. The purposes of this thesis are to explain the protection of economic rights against color blind people in Indonesia who are deprived of freedom in an effort to get a job; to identify and explain how international and national law governing economic rights people with color blindness in Indonesia and also to explain the legal sanction that can be applied. This research uses normative research (normative legal research). Normative research is a legal doctrinal research or legal research theory, which uses primary, secondary and tertiary legal resources including academic paper, research report, dictionary etc. The result shows that the condition in Indonesia related to the deprivation of economic rights against color blindness people in an attempt to find a job based on international conventions is considered as discrimination. Until the year 2016 there are about four international conventions have been ratified by the government of Indonesia to protect their economic rights. Since 1999 Indonesia has become a country that promotes the Convention on Elimination of All Forms of Racial Discrimination Convention through the Law Number 29 of 1999 to eliminate discrimination. In 2008 the Indonesian government enacted the Law Number 40 of 2008 on The Elimination of Racial and Ethnic Discrimination as a legal tool to apply criminal sanctions against the perpetrators of discrimination. It is suggested that in order to achieve national goals which protect all the people of Indonesia. The government of Indonesia is recommended to keep control and apply these laws in the society. By doing so human rights can be fully fulfilled and discrimination doesn't appears again. Then, government of Indonesia should consistent and aware of the importance of respecting other rights.

Keywords: Protection, Economic Rights, Color Blindness.

INTRODUCTION

As a developing country,¹ as well as one of the member of G20 countries,² Indonesia constantly improves the quality of life and economy of the entire community. Indonesia is a large country that has the fourth largest population in the world.³ Besides, Indonesia is also known as the second highest level of biodiversity country in the world after Brazil⁴ These facts indicate a high diversity of natural resources owned by Indonesia and become a source for the welfare of Indonesian society. Improvement of economy and development are carried out by the Indonesian government in many ways. The spread of employment each year is a

¹ Riang Nugroho D, *Kebijakan Publik untuk Negaranegara Berkembang*, Jakarta, PT Elex Media Komputindo, 2006, page. 92.

² Tim Edu Penguin, *Harapan Rakyat Kabinet Kerja JokowiJK*, Tangerang, Edu Penguin, 2015, page. 178.

³ See: Badan Pusat Statistik Sensus Penduduk 2010

⁴ Hitipeuw J Indonesia, *The World's Second Mega Biodiversity Country*. Cited Kompas, 16 May 2011.

real example performance by the Indonesian government for all Indonesia society to improve the welfare of their life. However, this way does not provide sufficient results against those who are categorized as person with disabilities, in this case is a person with color blindness (*daltonism*).

Based on Sindo News the number of people with color blindness in Indonesia is increasing every year. From the total population, there are 0,7 % affected by genetic disorders which patients are unable to distinguish a color gradation levels.⁵

Protection against daltonism aims to guarantee the basic rights owned by them and ensure equality of opportunities gained by jobseekers and equal treatment without discrimination on any all form in the public welfare.

According to Sunaryo daltonism or color blindness is a disease which is not curable and the disease gene from birth.⁶ Therefore it should be met and respected by all people. The facts show that there are many companies in Indonesia do not comply with the regulations to provide equal opportunities. For example there are many vacancies in Indomaret Bandung. This companies are looking for workers who are non color blindness. The job which is offered to public is cashier by which this job can be performed by any people including people with color blindness. However, in its website is obviously stated that the applicants must be free from color blindness.⁷ Then, the other vacancy is also available in Transjakarta. This company is looking for driver with certain requirement by which the applicant should be free from daltonism.⁸ Other cases also occur, in PT Morinaga Kino Indonesia seeking for security⁹ and many banks in Indonesia such as Bank Rakyat Indonesia,¹⁰ Bank BJB¹¹, and

⁵ "Lensa Kontak untuk Penderita Buta Warna", <http://nasional.sindonews.com/read/918495/162/lensakontakuntukpenderitabutawarna1414900211>, accessed on 5th August 2016 at 16.29 WIB.

⁶ Sunaryo, *Psikologi untuk Keperawatan*, Jakarta, Penerbit Buku Kedokteran EGC, 2004, page. 65.

⁷ "Lowongan Kerja Indomaret Bandung", <http://www.vialoker.com/2016/07/lowongankerjaindomaretbandung.html>, accessed on 1st August 2016 at 12.17 WIB.

⁸ "Transjakarta Buka Lowongan Supir Bus dan Kernet, Ini Syaratnya", <http://news.merahputih.com/megapolitan/2016/01/05/transjakartabukalowongansupirbusdankernetinisyaratnya/36910/>, accessed on 1st August 2016 at 13.33 WIB.

⁹ "Lowongan Kerja Security PT Morinaga Kino Indonesia", <http://www.loker.id/lawenforcementsecurity/lowongankerjasecurityptmorinagakinoindonesia.html>, accessed on 6th August 2016 at 10.17 WIB

¹⁰ "7 Posisi Lowongan Kerja Bank Bri Terbaru 2016", <http://www.masabas.com/2016/01/7posisilowongankerjabankbri.html>, accessed on 6th August 2016 at 19.10 WIB.

¹¹ "Lowongan Kerja Bank BJB", <http://bursakerjadepnaker.com/lowongankerjabankbjb.html>, accessed on 6th August 2016 at 19.10 WIB.

Bank Bukopin.¹² All these banks also require that jobseekers must be free from color blindness. All these cases indicate that the issue about daltonism now becomes serious issues in Indonesia that requires serious treatment from the government. Therefore, based on description of the background above, the researcher raise a number of issues to be discussed:

1. Is the requirement non color blindness on job seekers can be categorized as discrimination under international law?
2. How international and national law governing economic rights of the people with color blindness in Indonesia?
3. What are legal impact on institution that require non color blindness towards job seekers?

RESEARCH METHODOLOGY

To obtain information and explanation of everything needed a guideline research or research method, this is because using proper research method will obtain a valid data as well as to facilitate the conduct of this research on the issue. The research method used in this study are as follows:

Operational Variable

- a. **Job** is defined as an activities performed by humans. In a narrow sense, the term of job used for a task or job that produced a valuable work benefits in the form of money for someone.¹³
- b. **Social work** is an academic and professional discipline that seeks to facilitate the welfare of communities, individuals, families, and groups.¹⁴
- c. **Color blindness** is vision colors which not perfect. Color blindness can also be defined as a disorder of vision that caused by the inability of cone cells in the retina to capture a certain color spectrum.
- d. **Economic rights** are part of a range of legal principles based on the philosophy of human cultural and social obligations in which economic equality and freedom are preserved.¹⁵

¹² "PT.Bank Bukopin, Tbk Karir Juni 2016",
<http://www.infokarirterbaru.com/2016/06/ptbankbukopintbkkarirjuni2016.html>, accessed on 6th August 2016 at 19.34 WIB.

¹³ See: Indonesian Dictionary

¹⁴ Shuttlesworth, *Social Work and Social Welfare*, Cengage Learning, 2016, page. 31.

¹⁵ "What are Economic and Social Rights?",
<https://www.nesri.org/humanrights/economicandsocialrights>, accessed on 2nd July 2016 at 11.09 WIB.

The method used in this research is normative juridical. This research is also called the doctrinal approach or normative legal research. Normative juridical research stage through the study of literature.

DISCUSSION

a. Stipulation of Non Color Blindness on Job Seekers under International Law

Every person must respect and uphold the dignity and value of all men and women in order to achieve peace. The rights to employment is a privilege present in every person and should be respected by others. This particular rights is subject to the guarantee of various international conventions. Freedom from employment discrimination is specifically regulated in the International Labour Organization Convention Number 111 of 1958. This convention is concerned with discrimination in employment and occupation.

Although the obligation to respect and appreciate the rights to employment has been reflected in the Universal Declaration of Human Rights which embodies every other human rights convention, the fact remains that there are still issues that obstruct the upholding and respecting of others rights.

A prevalent social concern in Indonesia that of non color blindness for employment is in countless institutions. According to a study published by Sindo News, 0,7%¹⁶ of Indonesians suffer from color blindness; the number increased year by year, suggesting that more than one million people¹⁷ will struggle to find employment. This is a common problem occurring in Indonesia. The reason behind it is the absence of government regulation or indicator determining ability requirement of a job.

According to the ratified International Labour Organization Convention Number 111 of 1958, each member country is obliged to pursue a national policy designed to eradicate all kinds of discrimination in employment and occupation.¹⁸ Definition of discrimination according to this convention is any distinction or exclusion which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.¹⁹ Although it has regulated on the equality of rights and position of every person in finding employment,

¹⁶ Lensa Kontak untuk Penderita Buta Warna, <http://nasional.sindonews.com/read/918495/162/lensakontakuntukpenderitabutawarna1414900211>, accessed on 5th August 2016 at 16.29 WIB.

¹⁷ See: Population of Indonesian based on Badan Pusat Statistik Data 2015

¹⁸ See: Article 2 International Labour Organization Convention Number 111 of 1958

¹⁹ See: Article 1 International Labour Organization Convention Number 111 of 1958

the convention, in its implementation in Indonesia, is still standing in front of a mighty hurdle.

In respect to employment, many people still believe color blindness as an illness; their belief is that it impairs one's ability to perform well in his or her work. This unfounded assumption discourages them from selecting him or her as an employee. According to Sunaryo, color blindness is a birth defect and thus cannot be cured.²⁰ People with color blindness experience difficulty in visualizing and determining colors,²¹ but this does not justify for occupation discrimination. It is the responsibility of the Indonesian government to erase this stigma. If its led to happen, it could become a ground for social distinction and exclusion that may further impede their chances.

The issue of demanding non color blindness as a prerequisite for employment is a form of discrimination condoned by the Indonesian government. There are three elements of discrimination as specified by the International Labour Organization Convention Number 111 of 1958:

1) Fact – Different treatment: “Any distinction, exclusion or preference”

Discrimination emerges when an individual (or a group) is excluded from an opportunity, preferred above others, or treated differently because of a personal character not related to the occupation, for instance:

- Preference: preferring physically attractive man and woman for a sales position, or favouring members of a certain religion during civil servant recruitment.
- Exclusion from opportunity: declining job applicants suffering from HIV or color blindness.

2) Cause – Prohibited discrimination bases

Dissimilar treatment is considered as an act of discrimination according to this convention if it is based upon one or more ‘prohibited bases of discrimination’ listed by the convention, which includes race, color, sex, religion, national extraction, political opinion, and social origin. In this particular case, color blindness is categorized as race with the argument that race, as defined by Horton and Hunt, is a group of people somewhat different from other groups in a

²⁰ Sunaryo, *Psikologi untuk Keperawatan*, Jakarta, Penerbit Buku Kedokteran EGC, 2004, page. 65.

²¹ Poret, S., Jony, R. D., & Gregori, S, *Image Processing for Color Blindness Correction*. *Science and Technology for Humanity*, 2009 IEEE Toronto International Conference. Toronto, Canada, 26 – 27 September 2009.

combination of inherited physical characteristics. Race is also substantially determined by popular social definition.²²

3) Effect – Inequality in employment or occupation

If difference in treatment instigated by any ‘prohibited discrimination bases’ results in inequality or harm, then it is discrimination.

Different treatment which does not stem from the prohibited discrimination bases but relates to the subject of the job is not deemed as discrimination.

b. Application of Regulations Governing the Economic Rights of People With Color Blindness In Indonesia

Workers are an extremely vital factor of production of firms as they influence on the firms activities. For that reason, firms act rather cautiously in recruiting workers and prefer on those with quality and able to work maximally for them. A color blind person, in the perspective of some, among them entrepreneurs, is still seen as someone who is unable to work well. Indeed, many still believe a color blind person as a physically disabled individual who cannot work well. Again, this unproven belief places doubt in the minds of entrepreneurs, who then feel reluctant to employ such person in spite of the existence of regulations concerning this matter.

Below are several regulations issued by the Indonesian government serving as a legal foundation on the preservation of economic rights:

1. International Covenant on Economic, Social and Cultural Rights ratified by the Government of Indonesia through Law Number 11 of 2005

The duty of the State as indicated by this convention is to undertake the necessary steps to protect rights, promote respect and observance of human rights and freedom. Then, realize that every individual has duties to other individuals and the community to which he belong, which is include of person with visual impairment towards color, as the Indonesian government itself acknowledges that individuals with disabilities are also citizens of Indonesia.²³ This convention goes on to declare the freedom of every individual to acquire a job of his or her own choosing, as mentioned in Chapter 4 Article 6 (1): “The States Parties to the present Covenant recognize the rights to work, which includes the rights of everyone to the opportunity to gain his living by

²² “Pengertian Ras Menurut para Ahli”,
<http://www.pengertianahli.com/2013/11/pengertianrasmenurutparaahli.html>, accessed on 20th August 2016 at 11.04 WIB.

²³ See: Law Number 4 of 1997 on Person with Disabilities

work which he freely chooses or accepts, and will take appropriate steps to safeguard this rights”.

2. The Elimination of All Forms of Racial Discrimination ratified by Government of Indonesia through Law Number 29 of 1999

Indonesia, with its Pancasila and 1945 Constitution, is a legal state that upholds human dignity and value and guarantees that every citizen is equal before the law. Therefore, all forms of discrimination must be prevented and prohibited. Based upon this consideration, Indonesia ratified the convention into a national law that binds all of its citizens. This convention ensures that all Indonesian citizens can choose jobs consistent to their respective skills and the requirements of the jobs themselves. This is clearly confirmed in Article 5 (e) (i).

3. Convention on the Rights of Persons with Disabilities ratified by the Government of Indonesia in 2011 through Law Number 19 of 2011

This regulation was formed with the intention to advance, protect, and guarantee the equality of basic rights and freedoms for all people with disabilities, in addition to respect their dignity as an inseparable part. The protection of freedom of employment even in the condition of disability is mentioned with clarity in Article 27 (1) of this convention.

4. International Labour Organization Convention Number 111 of 1958 ratified into Law Number 21 of 1999

This convention is the fundamental convention of the ILO. This convention obliges state members to pursue legislations prohibiting all discrimination and exclusion on any basis including of race or color, sex, religion, political opinion, national or social origin in employment and repeal any legislation that is not based on equal opportunities. The protection of economic rights for color blindness person is present in the convention, although it does not specifically address to color blindness person. In its ‘concerning’ part, the convention refers to the Declaration of Philadelphia which declares that all human beings, irrespective of race, creed or sex, have the rights to pursue both their material well being and their spiritual development in conditions of freedom and dignity, and of economic security and equal opportunity.²⁴

²⁴ See: International Labour Organization Convention Number 111 of 1958

c. Legal Impact on Institutions that Require Non Color Blindness Toward Job Seekers

The deprivation of others freedom on the basis of race and ethnicity are regulated in Law Number 40 of 2008 on Eliminate Discrimination Base on Race and Ethnic. This law binds judges during legal process to ensure the rights of personal liberty. As has been frequently repeated above, the act of requiring non color blindness for job applicants by institutions is a form of discrimination. In Indonesia, the act of discriminating others is a criminal offence, which means that there are legal repercussions that can condemn the offenders, both individuals and legal entities which, in the context of this research, are firms.

The aforementioned regulation indeed do not mention the words ‘institutions’ or ‘firms’ explicitly; nonetheless, both are represented by the word ‘corporation’. Corporation, in this particular instance, denotes a group of individuals and/or well organized wealth in the form of a legal entity or non legal entity.²⁵ If proven guilty, the manager of the corporation will be sentenced to jail and criminal fine. Fines intended for corporations are three times larger than those for individuals;²⁶ it is also possible that additional penalties in the form of the revocation of business license or the revocation of corporate legal entity status be imposed on discrimination performing corporations.²⁷

CONCLUSIONS

Based on the description of the research results and discussion, it can be concluded that the issue of ‘stipulating non color blindness to workers’ is a great concern in Indonesia and is a form of discrimination. Countless people are disadvantaged as a result of this policy. Such policy is made by institutions searching for workers as there are neither regulations nor control from the government, thus recruiters are free to determine and choose workers at their own discretion.

This research found that Indonesia has long been committed to open up opportunities to those with disabilities which, in this case, are color blind people to acquire employment freely without any restriction or differentiation. However, the fact remains that the regulations are not implemented as intended by the lawmakers. As of this writing, the

²⁵ Article 1 (7) Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination

²⁶ Article 21 (1) Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination

²⁷ Article 21 (2) Law Number 40 of 2008 on the Elimination of Racial and Ethnic Discrimination

Indonesian government has ratified four international conventions concerning the provision of freedom to persons with disabilities in obtaining employment.

It is common knowledge that law exists where society exists, and this particular issue is certainly not an exception of that rule. Institutions performing differentiation on the “basis of discrimination” are subject to penalties maintained in Law Number 40 of 2008. The law, which concerns the elimination of racial and ethnic discrimination, specifies that offenders can be sentenced to imprisonment, fines, and even additional penalties such as the revocation of business license in the case of corporation initiated discrimination.

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