

Right to Work and Employment: Exclusion and Disadvantages Experienced by People with Disabilities

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ABSTRACT--- *This research aims to find out the exclusions and disadvantages experienced by people with disability in rich and poor countries and to find out whether the obligation of CRPD related to right to work and employment are unrealistically high, lacking in clarity and unlikely to drive helpful reform. This research will evaluate whether rich and poor countries are in the same position where person with disabilities in those two different worlds still experience exclusion and disadvantages and whether the requirements in CRPD to states parties in ensuring the right to work and employment are unrealistically high, lacking in clarity and unlikely to drive helpful reform. In order to obtain the result, the author use literature research method which analyse literatures, regulations and other documents related to the research. This research shows that it is true disabled person both in rich and poor countries still experience disadvantages and exclusion. Mostly, the disadvantages and exclusion that exist in both two different worlds are the lack of regulation about reasonable accommodation, dismissal and discrimination to certain type of disabilities. The obligation to ensure the right to employment and work might be quite complex but not unrealistically high. The unclear provision of reasonable accommodation in CRPD is true but does not mean all the demands regarding employment and work are unclear and does not drives a helpful reform.*

Keywords--- *Right to work; Human Right; Disability; Exclusion; Disadvantages*

I. INTRODUCTION

The world population made up with 15% of disabled people, both in poor and wealthy states have big rates of unemployment of disabled people (International Disability Alliance, 2015). Also, the employment rate of disabled people is still low compared to others (Burke *et al.*, 2013). Besides that, in international and national realm, disabled people experience exclusion and disadvantage in the labor market (Barnes, 2012) since the number of participation is still small in many states (Fasciglione, 2015). According to Fasciglione (2015) there are less than half people with disability who are in working age are economically inactive compared to people without disability. It implies there is employment gap occurs in many states in th world (Fasciglione, 2015).

The prejudice that exist in society that state people with disability are not willing to work might one of the reason of exclusion they experienced (Bonaccio *et.al.*, 2020). The prejudice is not true since according to Bonaccio *et.al* (2020) more than 60% of people with disability in US who are in working age that are unemployed prefer to

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be employed. In addition, the type of disability for instance mental disability and the costs to hire people with disability also contributes to the exclusion of people with disability in labour market (Strinlund *et.al.*, 2019). Furthermore, people with disabilities are often stay in the place that far from place where works are available, such as residential institution that makes them even more exclude in the participation to the work (Bell, 2019). Also, the lack of accessibility in the workplaces and public transport are several disadvantages (Burchardt, 2000) that disabled people experience. In order to overcome and increase the participation of people with disability in the workfield Convention on The Rights of Persons with Disabilities (CRPD) comes as a savior. CRPD is a binding international human rights convention and has been ratified by 181 countries across the world. CRPD under article 27 attempt to promote the inclusion of disabled people in the open, inclusive and accessible environment. Even if CRPD already exists and ratified by many countries, unfortunately it seems that disabled people still experience disadvantage not only in poor country but also in rich countries. It is also stated that the obligation under CRPD is really high, unclear and does not helpful.

This research will evaluate whether rich and poor countries are the same where person with disabilities in those two worlds still experience exclusion and disadvantages and whether the requirements in CRPD to states parties in ensuring the right to work and employment are unrealistically high, lacking in clarity and unlikely to drive helpful reform. In the first part of the results, the author will show the disadvantages and exclusion that person with disabilities experience in Sweden, Denmark, Uganda and Ethiopia. In the second part of the results, the author will elaborate states obligation under Article 27 and other articles that assist the implementation right to work and employment for disabled people and the clarity of reasonable accommodation provision for disabled people in the work field.

II. METHODOLOGY

This study used qualitative research method. This research used primary sources and secondary sources. Primary sources are convention and legislation while the secondary sources are journal articles, textbook or any other documents related to the research (Dobinson & Johns, 2007). The approach used is normative which provide analysis of the law (Dobinson & Johns, 2007) and any relevant documents related to the research (Webley, 2012).

III. RESULTS

Exclusion and Disadvantages in Work and Employment

In order to examine whether person with disabilities experience disadvantages and exclusion both in rich and poor countries, the paper took four countries which two are poor countries (Uganda and Ethiopia) and the other two are rich countries (Sweden and Denmark). The paper selected the countries based on the data from Global Finance Ranking on The World's Richest and Poorest Countries 2019 (Global Finance, 2020). According to data, Sweden is rank 18th, Denmark is rank 22nd, Uganda is rank 164th and Ethiopia is rank 167th.

1) *Rich Countries*

a) *Sweden*

The government of Sweden in ensure the right to work and employment for person with disabilities has already made a great achievement through giving support for personal assistance that offered by public employment

services (Committee on the Rights of Person with Disabilities, 2014a) but unfortunately disadvantages and exclusion for person with disabilities still exist. According to the Concluding Observation of CRPD Committee, the number of people with disabilities become unemployed rise 100 per cent as the result of insurance system and also in the terms of rate employment and wage there is serious gender gap exists between employed women and men with disabilities (Committee on the Rights of Person with Disabilities, 2014a) with distribution 40% women and 60% men employed (Disability Council International, 2014). Besides that, Sweden limits support from SIUS (Support Employment Program – Special Introduction and Follow-Up Support) which only unemployed person with disabilities can obtain SIUS consultants, consequently, it will be arduous for employed person with disabilities to improve their qualifications and career in the future (European Commission, 2011). Furthermore, people with psychosocial disabilities still difficult to keep the job due to the lack of reasonable accommodation and negative attitude from their colleague and employers (Lindqvist & Sepulchre, 2016). Even if Sweden has made progress by implementing support for personal assistant but Sweden still lack of measure to guarantee self-employment strategies for person with disabilities (European Commission, 2011). Thus, Disability Council encourage Sweden to strengthen the self-employment strategies and also quota system (Disability Council International, 2014).

b) Denmark

In fact, Denmark does not have Supported Employment program but there are several programs that contain characteristic of Supported Employment (European Commission, 2011). The CRPD Committee found that person with disabilities in Denmark gain exclusion and disadvantage due to the unclear obligation on employers to provide reasonable accommodation in labour market (Committee on the Rights of Person with Disabilities, 2014b). Besides that, person with learning difficulties possess low priority in the regional job centres and institution that offering service to resembling Supported Employment because it will be arduous to look for proper workplaces for them (European Commission, 2011). Furthermore, the flexicurity model in Danish labour market system makes person with disability are vulnerable to be dismissed due to their working capacity that related to their disability (Waddington *et.al.*, 2013).

2) Poor Countries

a) Uganda

Even if Uganda already implemented quota system (Van Reenen & Combrinck, 2012) and has Disability Act 2006 to ensure the rights of person with disability but unfortunately it does not really helpful since this regulation only address physical disability, it implies that other groups of disabled people are not take into account for accommodation (Nyombi & Kibandama, 2014). The CRPD Committee found that the chance for person with disabilities to obtain a job is still less especially for the young people with disabilities and also the dismissal of people who get an impairment during their employment (Committee on the Rights of Person with Disabilities, 2016a). The CRPD Committee also found that there is still lack of accessibility in the workplace and lack of access to training centres, job opportunities (Committee on the Rights of Person with Disabilities, 2016a) and education for person with disabilities (Nyombi & Kibandama, 2014).

Besides that, even Africa has African Charter on Human dan People' Rights and Protocol of African Charter on Human and People's Rights on the Rights of Persons with Disabilities which recognised right to work for people with disability but the practice of states in African are vary (Ebuenyi *et.al.*, 2019). Most of African states still keep the negative stereotype of person with disabilities (Van Reenen & Combrinck, 2012) or still held the medical model

of disabilities which reflect in the legislation of Uganda (Committee on the Rights of Person with Disabilities, 2016a). Also, the lack of facilities in vocational training due to the less funding from government (Nyombi & Kibandama, 2014) makes person with disabilities even harder to obtain job. Person with disabilities also experience disadvantages in self-employment since they are discriminated when request for loans, people assumes that borrowing money is dangerous and disabled people will face difficulties in returning the money on time (Nyombi & Kibandama, 2014).

b) Ethiopia

Ethiopia has implemented the quota system to ensure the right to work and employment for person with disabilities on an equal basis with non-disabled people (United Nations, 2015) but still the implementation of Ethiopia does not enough to guarantee the employment status for disabled people. The CRPD Committee found that Ethiopia still lack of the implementation of affirmative action to improve the employment of disabled people in private and public area (Committee on the Rights of Person with Disabilities, 2016b). The Committee also noted that vocational training opportunities still less for disabled people as well as less support and reasonable accommodation offered (Committee on the Rights of Person with Disabilities, 2016b). Negative stereotype also still exists in Ethiopia which bring bad impact to person with disabilities to obtain a job and keep the vacancies (Van Reenen & Combrinck, 2012).

Seeing what happens in Sweden, Denmark, Uganda and Ethiopia it is true that person with disabilities both in wealthy and poor states remain experience disadvantages and exclusion in the field of work and employment. In poor countries, person with disabilities experience inclusion and disadvantages due to the lack of measures from government, lack of access to job opportunities, access to work field, lack of facilities in vocational training due to the financial problem, dismissal to disabled people, discrimination in giving loans to the self-employment and negative stereotype about disabled people. Meanwhile, in the rich countries, their legislation still unclear about reasonable accommodation, discriminate several types of disabilities to join open labour market, income gap between women and men with disabilities, dismissal of disabled people and limited support for the development career in work.

The differences of exclusion and disadvantages that person with disabilities experience in rich and poor countries are not much. In wealthy states, several disadvantages that disabled people experience happens in the circumstances when they are already employed such as equal wage between man and women and their career development in the work field. Meanwhile in poor countries, disabled people still encounter negative stereotype and the lack of financial support from government to provide training skills, access to information and accessible workplace in the both public and private area which makes disabled people even harder to join labour market.

It might seem because poor countries are still struggling with their economics so it is justified to give less funding to ensure people with disabilities join in labour market, but it is not true. In reality, according to the research held by Kuznetsova and Yalcin in Sweden and Norway, even financial support is useful to assist the establishment for work trainings but it is not significant, also the interviewees from company they research stated that the funding they receive from government is not that much but very helpful to embody inclusive practices (Kuznetsova & Yalcin, 2017). Besides that, the company in Sweden do not ask for financial support from government since they consider they do not need much resources for only providing accommodation for disabled people in the workplace

(Kuznetsova & Yalcin, 2017). Thus, it implies lack of financial is not determining factors to ensure the inclusion of disabled people in labour market.

There are a lot of similarities of exclusion and disadvantages that experienced by person with disabilities in both poor and rich countries. The regulation of both poor and rich countries does not cover all types of disability or discriminate several types of disabilities to join open labour market. Also, disabled people in the workplace they still gain exclusion due to the lack of reasonable accommodation provided by the employers. Besides that, person with disabilities are vulnerable for dismissal due to their impairment and working capacity in both poor and rich countries. Furthermore, both rich and poor countries provide less support for self-employment, social-cooperatives and quota system to disabled people. In addition, the CRPD Committee found that Sweden, Denmark, Uganda and Ethiopia still lack of implementation to prevent and protect disabled people from exploitation and forced labour which could make disabled people more vulnerable to be held in forced labour (Committee on the Rights of Person with Disabilities, 2014a; 2014b; 2016a; 2016b).

The Demands of CRPD in Work and Employment

1) Unrealistically High Demands

Article 27 of CRPD acknowledge the rights of disabled people to work on equal basis with others, which encompass the right to the chance to obtain a living without restraint in work or approve that their rights to work must be enjoyed in the open, inclusive and accessible labour market (International Disability Alliance, 2015).

Article 27 regarding right to work and employment for disabled people require states to prohibit discrimination in all areas of employment; protecting the rights to favorable situation of work and to just, guarantee their rights to join union labour; support career advancement and employment opportunities; supporting self-employment, cooperatives, entrepreneurship; employing disabled people both in public and private sector which in private sector states shall take affirmative action; supporting work experience in the open labour market and supporting professional and vocational rehabilitation, return to work plan and job custody (Lord, 2010). In Article 27 (2) CRPD (2008) must guarantee and protect that person with disabilities are not held in slavery and forced labour.

Several actions that state can take to ensure person with disabilities in employment are providing supported employment, supported employment and supporting self-employment and social cooperatives. Supported employment purpose to improve the skill and self-esteem of person with disabilities through give them training (Lawson, 2008). In supported employment, person with disabilities are helped through the process of employment by the job coach who will help them to find an occupation, training and uphold employment by accommodation and personal support (Gottlieb *et.al.*, 2010). Self-employment and social cooperatives are is one of the options when disabled people cannot join labour market, thus states need to give them support regarding technical assistance and funding and states shall ensure person with disabilities are not discriminated to request financial credit (International Disability Alliance, 2013). Social cooperatives in here means to manage lower-cost banking services as well as financial services shall be accessible for disabled people (International Disability Alliance, 2013).

In order to fulfil the right to work and employment for disabled people in Article 27, states also needs to fulfill another obligation from other articles in CRPD that relevant and helpful for the implementation Article 27 for instance, Article 4, Article 8, Article 9, Article 5, Article 16, Article 24, Article 26 and Article 31. Article 8

regarding awareness-raising is obliged states to increase public awareness including embark and manage public campaign to promote awareness regarding the positive perception and acknowledgement of skills and abilities of person with disabilities in open labour market (Lord, 2010). Article 4 regarding general obligation of state parties, it requires state to take affirmative action to guarantee the right to equality and create, adopt or abolish laws that discriminate person with disabilities in the workplace (Msipa, 2016).

Article 9 regarding Accessibility is obliged states to remove barriers that impede the full enjoyment of person with disabilities both in public and private sector (Lord, 2010). Companies or employers and states need to improve their regulation and take positive action to facilitate person with disability in the workplace (Lord, 2010) such as the buildings, transportation, information and roads (Waddington *et.al.*, 2017). Article 5 regarding non-discrimination principle, states are obliged to provide reasonable accommodation. In the terms of work and employment, it is not only the responsibility of states to provide reasonable accommodation but also the employers. Employers might be under the responsibility to create an adjustment of the working situation in order to assure that employees with disability are not in disadvantage situation compared to others (Lisberg, 2017). There is perception exists that providing reasonable accommodation for disabled people in workplace is costly and difficult but that is wrong (International Disability Alliance, 2015). According to the research conducted by United States Department of Labour showed that 56% of employers that provide information concerning to reasonable accommodation stated that the accommodation that employees with disabilities demands are absolutely free of cost (International Disability Alliance, 2015).

Article 27 does not oblige states to create quota systems, but anticipate in Article 5 to establish affirmative action one of the ways is through quota system (International Disability Alliance, 2013). As we seen in the first part that several countries and CRPD Committee have suggested to implement and improve support for quota system to ensure the rights of employment for disabilities. But on the other hands quota system is quite problematic. Quota system regarded as type of positive discrimination (Lawson, 2008). Positive discrimination means the implementation the regulations based on which people of disadvantages groups are needed to show a lower qualification than that required to others people (Lawson, 2008). In Europe, quota system and Anti-Discrimination law are contradictory approaches of person with disabilities for integration of labour market, quota system held the concept of abilities limitation and less believe in the principle of capability of disabled people, they think that person with disabilities are incompetent to compete for job in open labour market (Fuchs, 2014). Prevention strategy like quota that aims structural discrimination is one of the main problems to the equalization of chance for disabled people (Innesti *et.al.*, 2016). Most of employers prefer to pay the levy rather than hiring disabled people (European Commission, 2011). So far, quota systems only conform to limited range with the concept of equal opportunity and equal access for disability social model (Fuchs, 2014).

Article 16 regarding freedom from torture or cruel, inhuman or degrading treatment or punishment, disabled people especially person with psychosocial or intellectual disabilities are vulnerable to be held in forced labour or slavery and exploitation due to the perception about their mental capacity (Office of the United Nations High Commissioner for Human Rights, 2012) and that action often related to the torture and inhuman treatment. Thus, states are required to take measures to prevent all types of exploitation, violence and abuse such as adopting legislation, improve monitoring, giving education or information to protect disabled people (United Nations Conventions on the Rights of Persons with Disabilities, 2008). Article 24 regarding right to education, education

is really important for disabled people because it could help them easier to enter open labour market and develop their skills (WHO & World Bank, 2011). It can be seen in Finland where disabled people with educational background is higher than who does not have and even exceed the average wage of population of total working-age (OECD, 2008). Thus, states are required to take any necessary measures to enhance the inclusion of disabled people in education system and enabled disabled people to learn about life and social skills (United Nations Conventions on the Rights of Persons with Disabilities, 2008). One of the ways might provide education programs with the way to enter labour market shall be established that contains of general subjects such as Math and Social Science, on how to behave in labour market as well as the norms and regulation in workplace (Borghouts-Van De Pas, 2010).

Article 26 regarding habilitation and rehabilitation, vocational training rehabilitation is considered as the mainstay of right to work and the first phase that disabled people left behind in opportunities correlated to access improvement in employment (Office of the United Nations High Commissioner for Human Rights, 2012). Thus, CRPD demands countries to establish vocational training and rehabilitation that favorable and inclusive for disabled people (Office of the United Nations High Commissioner for Human Rights, 2012). Also, CRPD and ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (1985) obliges states to establish vocational rehabilitation which shall be available to all type of person with disabilities. Article 31 regarding statistics and data collection, CRPD requires states parties to cooperate with employer's organization and trade unions in the application of Article 31 to collect data, statistics, decide targets and indicators for the private area (International Disability Alliance, 2013). So, states know the rate of unemployment and underemployment of disabled people, thus states can plan powerful and targeted programs to support person with disabilities in employment (Office of the United Nations High Commissioner for Human Rights, 2012).

Obligation under article 27 and other relevant articles that assist to ensure right to employment for disabilities are quite complex but not that high. The demands of CRPD to state parties just reflect the needs of disabled people in reality. Moreover, the successful practice in Sweden has proven that if it is unrealistically high it is impossible to states to implement the obligation, but the practice in Sweden is the evidence that the demands of CRPD is not unrealistically high.

2) *The Clarity of CRPD*

The provision about reasonable accommodation in CRPD in the terms of work and employment is lack in clarity, as the result, according to Ferri and Lawson it creates four issues. First, no guidance exists about the method to provide reasonable accommodation and obligation of employers to consult to their workers with disabilities regarding what type of accommodation shall be established (Ferri & Lawson, 2016). Second, it is about the information that employers are needed to possess before they generate the duty to provide reasonable adjustment and this issue create ambiguousness and confusedness within the legislation of state parties (Ferri & Lawson, 2016). Third, there is unclear guidance about the obligation to provide reasonable accommodation for disabled workers who are self-employed (Ferri & Lawson, 2016). Fourth, there is no guidance about how far the employer's landlords are obliged to approve the demands to adjust the property to provide reasonable accommodation for workers with disabilities (Ferri & Lawson, 2016).

3) *Unlikely to Drive Helpful Reform*

The provision about reasonable accommodation for disabled people in work and employment might be unclear and create confusedness in state party's legislations but it does not mean that CRPD unlikely to drive helpful reform. Article 27 and all articles in the CRPD are very helpful for states to know what kind of obligation and mechanism they shall take to ensure the right to work and employment for disabled people.

IV. CONCLUSION

Seeing the disadvantages and exclusion that occurs in Sweden, Denmark, Uganda and Ethiopia confirm that it is true disabled person both in poor and rich countries still experience disadvantages and exclusion. Mostly, the disadvantages and exclusion that exist in both two worlds are the lack of regulation about reasonable accommodation, dismissal and discrimination to certain type of disabilities. The obligation to ensure the right to employment and work might be quite complex but not unrealistically high since a good practice of the implementation has existed in Sweden. The unclear provision of reasonable accommodation in CRPD is true but does not mean all the demands regarding employment and work are unclear, compared to another human rights treaty, CRPD provides more detail concerning mechanism to ensure the rights to work and employment. Thus, it drives a helpful reform for states to ensure the rights of person with disabilities.

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