

**THE EFFORTS OF MANPOWER DEPARTMENT IN
MALANG TO FULFILL THE RIGHT OF DISABILITY
PERSON TO GET THE JOB ACCORDING TO THE JUSTICE
CONCEPT IN ISLAM BY MAJID KHADDURI**

THESIS

By:

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**SHARIA BUSINESS LAW DEPARTMENT
SHARIA FACULTY
STATE ISLAMIC UNIVERSITY OF
MAULANA MALIK IBRAHIM MALANG**

2017

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THESIS

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By:

Azmi Auliya'ur Rosidah

Student ID Number 13220125



**SHARIA BUSINESS LAW DEPARTMENT
SHARIA FACULTY
STATE ISLAMIC UNIVERSITY OF
MAULANA MALIK IBRAHIM MALANG**

2017

STATEMENT OF THE AUTHENTICITY

In the name of Allah SWT,

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**THE EFFORTS OF MANPOWER DEPARTMENT IN MALANG TO
FULFILL THE RIGHTS OF DISABILITY PERSON TO GET THE JOB
ACCORDING TO THE JUSTICE CONCEPT IN ISLAM BY MAJID
KHADDURI**

Is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 7th June 2017

Author.



Azmi Auliya'ur Rosidah

NIM 13220125

MOTTO

فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ

And when you have decided, then rely upon Allah¹



¹ QS. Ali Imron (3): 159

APPROVAL SHEET

After examining and verifying the thesis of Azmi Auliya'ur Rosidah, NIM 13220125, Sharia Business Law Department of Sharia Faculty of State Islamic University, Maulana Malik Ibrahim of Malang entitled:

**THE EFFORTS OF MANPOWER DEPARTMENT IN MALANG TO
FULFILL THE RIGHTS OF DISABILITY PERSON TO GET THE JOB
ACCORDING TO THE JUSTICE CONCEPT IN ISLAM BY MAJID
KHADDURI**

The supervisor states that this thesis has met the scientific requirements to be proposed and to be tested by the Thesis Board of Examiners.

Malang, June 06, 2017

Acknowledged by,

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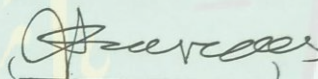
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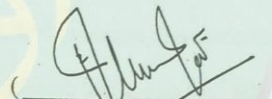
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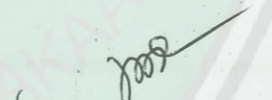
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perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 6 Juni, 2017

Author,

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TRANSLITERATION GUIDENCE

A. General

The transliteration guide which is used by the Sharia Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious" Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا =	unsigned	ش =	sy	ن =	n
ب =	b	ص =	sh	و =	w
ت =	t	ض =	dl	ه =	h
ث =	ts	ط =	th	ي =	y
ج =	j	ظ =	dh		
ح =	h	ع =	' (comma facing up)		
خ =	kh	غ =	gh		
د =	d	ف =	f		
ذ =	dz	ق =	q		
ر =	r	ك =	k		
ز =	z	ل =	l		
س =	s	م =	m		

The hamzah (ء) which is usually represented by and *alif*, when it is at the beginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (ˊ), as oppose to a comma (,) which replaces the “ع”

C. Vocal, long and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال beomes qâla

Elongated (î) vowel = î for example قيل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by "i", unless it is written as "iy" so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و for example قول becomes qawlun

Diftong (ay) = ي for example خير becomes khayrun

D. Ta' marbûthah (ة)

Ta' marbûthah is transliterated as “ṭ” if it is in the middle of word, but if it is *Ta' marbûthah* at the end, then it is transliterated as “h”. For example: الرسالة للمدرسة will be *al-risalaṭ li al-mudarrisah*, or if it happens to be in

the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example *فِي رَحْمَةِ اللَّهِ* becomes *fī rahmatillah*.

E. Definite Article

Arabic has only one article, “al” (ال) and it written in small letters, unless at the beginning of word while “al” in the phrase of *lafadh jalalah* (speaking of God) which is in the middle of a sentence and supported by *and* (*idhafah*), then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said....
2. Al-Bukhâriy explains in the prologue of his book....
3. *Masyâ’ Allâh kâna wa mâ lam yasya’ lam yakun.*
4. *Billâh ‘azza wa jalla*

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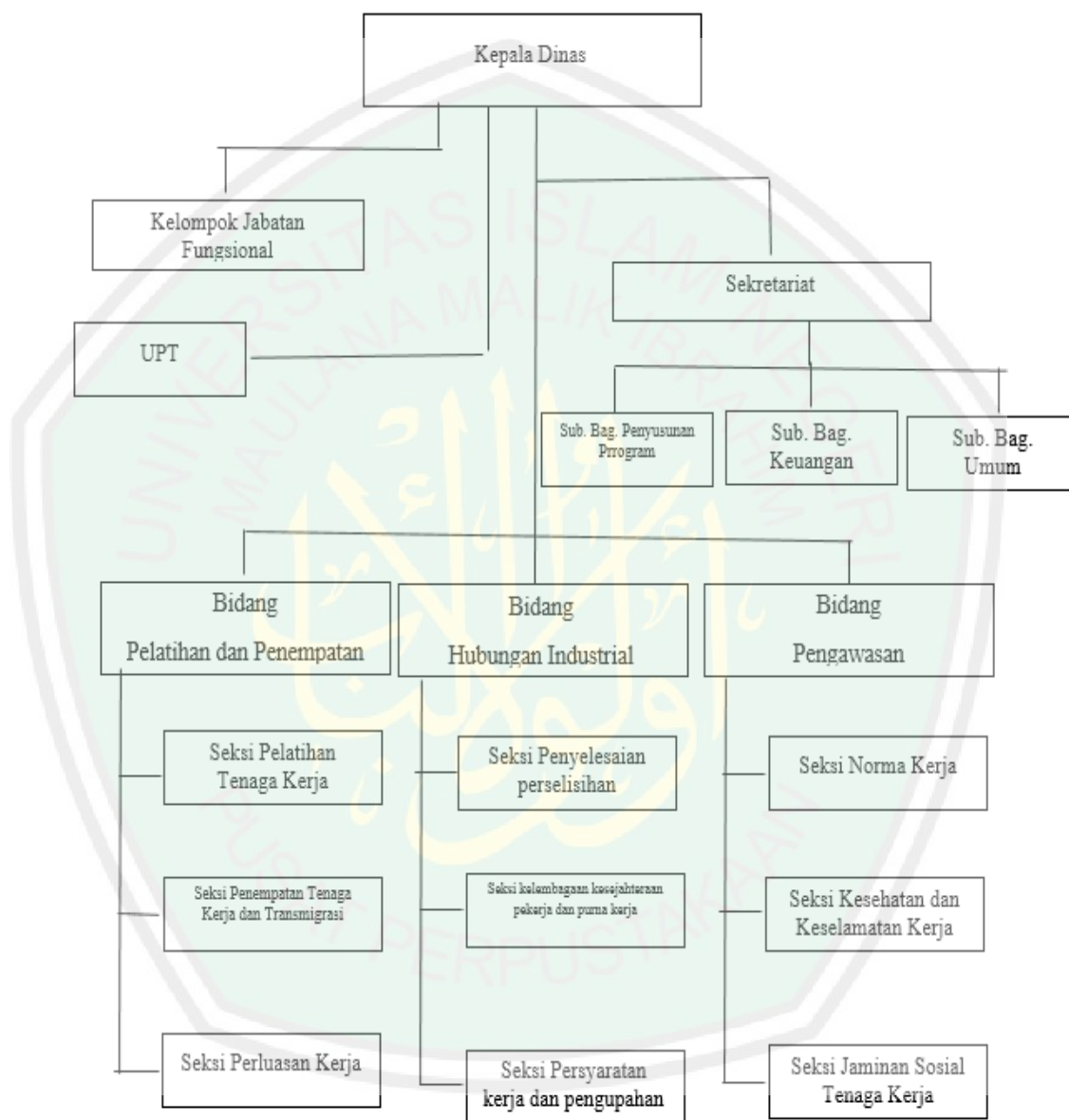
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Struktur Organisasi Dinas Ketenagakerjaan Kota Malang

ABSTRACT

Azmi Auliya'ur Rosidah, 13220125, *The Efforts of Manpower Department in Malang to Fulfill the Right of Disability Person to Get the Job According to the Justice Concept in Islam by Majid Khadduri*. Thesis, Sharia Business Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University of Malang.

Supervisor: Dra. Jundiani, S.H., M.Hum

Keywords: Manpower Department, Disability Person, Justice.

Structuring of labor is an integral part of national development. Every worker has equal rights and opportunities, the rights of disability person are regulated in Law no. 8 of 2016 and the Employment Act no. 13 of 2003, in this case synchronized with the justice of Islamic perspective according to Majid Khadduri.

Refers to the above background there are two problem formulations that are; *The first*, what is the effort and control of Manpower Department of Malang City toward the fulfillment the right of disability person to discovering the job? *The second*, how is the justice concept in Islam perspective of Majid Khadduri toward the efforts of Manpower Department to fulfill the right of disability person in Malang and supervision toward the company that takes in disability person?

To answer the formulation of problem, then the method used in this research is empirical juridical research with the approach of legal anthropology, method of subject determination using purposive sampling method. Using two data sources namely primary data and secondary data.

The results of this study, that the efforts have been made by the Department of Manpower has already agree with what has been explained regulation disability person and employment. But in terms of supervision is not yet fully. Efforts and supervision of the Manpower Department if viewed according to the concept of Islamic justice by Majid Khadduri, then the substantive justice has fulfilled justice, but if viewed from the side of procedural legal justice then the effort has not fully fulfilled.

الملخص

عزم أولياء الرشيدة، ١٣٢٢٠١٢٥، محاولة نوبة عمالة في مدينة مالانج على كفاية حقوق حائز السقام (disabilitas) في العمل بمنظور العدالة عند مجيد خضوري. بحث جامعي، كلية الشريعة، شعبة الحكم الإقتصادي الإسلامي، جامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. المشرفة: الدكتورة جندياني الماجستير.

الكلمات الرئيسية: نوبة العمالة، حائز السقام، العدالة.

وهيكلية العمالة جزء لا يتجزأ من التنمية الوطنية. ولكل عامل حقوق وفرص متساوية، تنظم حقوق الأشخاص ذوي الإعاقة في القانون رقم ٨ لسنة ٢٠١٦ وقانون العمل رقم ١٣ من عام ٢٠٠٣، في هذه الحالة متزامنة مع عدالة المنظور الإسلامي على وجه الخصوص وفقا لماجد خدوري.

والبحث عن هذا ينقسم إلى مشكلتين، الأولى هل المحاولة والملاحظة التي تطبقها نوبة عمالة في مدينة مالانج على كفاية حقوق حائز السقام (disabilitas) لتناول العمل؟. كيف نظرة فكرة العدالة الإسلامية عند مجيد الخضوري على محاولة نوبة عمالة في مدينة مالانج على كفاية حقوق حائز السقام (disabilitas) في تناول العمل والملاحظة من الشركة التي تستعيب حائز السقام؟

والجواب من ذلك المشكلتين يستخدم منهج القانونية التجريبية، ويستخدم نهج أنثروبولوجية الحكم (antropologi hukum)، والتعيين على الموضوع يستخدم purposive sampling. ويستخدم مصدرين، هما المصدر الأول (sumber data primer) والمصدر الثاني (sumber data skunder). (

والحاصل، أن المحاولة التي تطبقها نوبة عمالة في مدينة مالانج على كفاية حقوق حائز السقام (disabilitas) لتناول العمل تتفق على القانون. ولكن الملاحظة منها لم تطبق تماما. والمحاولة والملاحظة من نوبة عمالة في مدينة مالانج على كفاية حقوق حائز السقام (disabilitas) لتناول العمل عند نظرة فكرة العدالة الإسلامية لمجيد الخضوري تكون كافية في وجه العدالة الموضوعية (keadilan substantif)، وليست كافية في وجه العدالة القانونية (keadilan legal prosedural).

ABSTRAK

Azmi Auliya'ur Rosidah, 13220125, *Upaya Dinas Ketenagakerjaan Kota Malang Dalam Pemenuhan Hak Penyandang Disabilitas Terhadap Pekerjaan Menurut Konsep Keadilan Dalam Islam Majid Khadduri*. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim,

Dosen Pembimbing: Dra. Jundiani, S.H., M.Hum

Kata Kunci: Dinas Ketenagakerjaan, Penyandang Disabilitas, Keadilan

Penataan ketenagakerjaan merupakan bagian integral dari pembangunan nasional. Setiap tenaga kerja mempunyai hak dan kesempatan yang sama, hak penyandang disabilitas diatur dalam Undang-Undang No. 8 tahun 2016 dan Undang-Undang Ketenagakerjaan No. 13 tahun 2003, dalam hal ini disinkronkan dengan keadilan prespektif islam khususnya menurut Majid Khadduri.

Mengacu pada latar belakang di atas terdapat dua rumusan masalah yaitu; *pertama*, Apakah upaya dan pengawasan Dinas Ketenagakerjaan kota Malang terhadap pemenuhan hak penyandang disabilitas untuk mendapatkan pekerjaan? *Kedua*, Bagaimana tinjauan konsep keadilan dalam Islam menurut Majid Khadduri terhadap upaya Dinas Ketenagakerjaan untuk memenuhi hak penyandang disabilitas kota Malang dan pengawasan terhadap perusahaan yang menampung penyandang disabilitas?

Untuk menjawab rumusan masalah tersebut, maka metode yang digunakan dalam penelitian ini adalah penelitian yuridis empiris dengan pendekatan Antropologi hukum, Penentuan subjek menggunakan metode purposive sampling. Menggunakan dua sumber data yaitu data primer dan data sekunder.

Hasil dari penelitian ini, bahwa upaya yang telah dilakukan oleh Dinas Ketenagakerjaan sudah sesuai dengan apa yang sudah dijelaskan Undang-Undang ketenagakerjaan dan penyandang disabilitas. Namun dalam hal pengawasan belum sepenuhnya. Upaya dan pengawasan Dinas Ketenagakerjaan jika dilihat menurut konsep keadilan islam Majid Khadduri, maka secara keadilan substantif sudah memenuhi keadilan, akan tetapi jika dilihat dari segi keadilan legal prosedural maka upaya tersebut belum sepenuhnya memenuhi.

CHAPTER I

INTRODUCTION

A. Background of Problem

The state of Indonesia which based on the grand fundamental principles (Pancasila) and Constitution of Indonesian Republic 1945 to respect the dignity and prestige of human being. The human right as basic right that is inherent to the human self is not supernatural is universal, need to be protected, respected, and maintained, so that the protection of human rights and against vulnerable groups, especially of disability person. The respect, protection, and fulfillment of the rights of disability person are the State's obligation. It is defined in Human Right Act No. 39 of 1999, so that people have a responsibility to respect the right of disability person. Disability person during this time a lot of discrimination that resulted has yet to satisfy the implementation of the rights of disability person.

During this time, the regulation of disability person is regulated in Disability Act No. 4 of 1997, but this regulation has not been referred to human rights. The material in Disability Act No. 4 of 1997 more charity based and the fulfillment of the right of disability person is still rated as a social problem that due fulfillment of right as a social guarantee, social rehabilitation, social aid

and social welfare improvement. Disability person should get the same chance in an effort to develop itself through self-reliance as human dignity.

By the amendment of the Convention on the Right of Person with Disabilities Act No. 19 of 2011 on November 10, 2011 shows commitment and seriousness the Indonesian Government to respect, protect and fulfill the right of disability person that the ending expected to be able to increase the welfare of disability person. Thus, disability person have the right to be free from torture or cruel treatment, inhuman, degrading human dignity, exploitation freedom, violence and the treatment of wickedness, as well as the right to obtain the respect of his physical and mental integrity on the basis of equality with others, including the right to protection and social services within the framework of the independence, as well as in emergencies. Therefore, the Government is obliged to realize the right contained in the Convention, through the adjustment of legislation, including the guarantee. The fulfillment of the rights of disability person in all aspects of life such as education, health, employment, politics and Government, culture and tourism, as well as the utilization of technology, information, and communication.

The employment construction as an integral part of national development based on Pancasila and the Constitution of Indonesian Republic 1945, implemented to development of the whole person and the construction of society Indonesia entirely to enhance the dignity, dignity, and self-respect of manpower as well as to create the prosperous community, equitable, prosperous and equitable, either material or spiritual.

Each manpower has the right and equal opportunity to earn a decent livelihood and jobs without discriminating a gender, tribe, race, religion, and the flow of political interests and abilities appropriate manpower, including equal treatment towards the disabled.

Article 5 of Act No. 13 of 2003 stated that "*Every manpower have equal opportunities to get a job without discrimination*". This statement is the same in article 27 paragraph 2 and Article 28D paragraph 2 Constitution which the point is everyone has a job and a decent livelihood for humanity.

In Disability Person Act No. 8 the year 2016 referred to in Article 1 paragraph 2 that state the equality of opportunity is a State that provides opportunities and/or provides access to disability person to dispense the potential in all aspects of the organization of the State and society. In addition, mentioned in article 11 of Disability Person Act No. 8 the year 2016 mentioned get a job held by the Government, local governments, or private with no discrimination, earn the same wage manpower with the not disabled person in the same of work kindly and responsibility. It also gained a decent accommodation in work and not be dismissed for reasons of disability.

Article 14 of Act No. 4 of 1997 States that the State enterprises and the private sector provide opportunity and equal treatment to the disability person with the company employed in accordance with the type and degree of

disability, education, and ability, which amount is adjusted by the number of employees and/or qualifying company.²

Warranty work is given to all citizen without exception, either it is normal or disability person. Protection of employment opportunities for disability person is recognized in the Act No. 13 of 2003 on Labor (labor law), namely in the explanation article 5 and expressly in Article 28 that States, *"Employers must employ at least one (1) disabled person who meets the requirements of the position and the qualifications of the job at its company for each 100 (one hundred) people workers at the company"*.

It is accordance with the provisions of Disability Act No. 8 the year 2016 on article 53 paragraph 1 and 2 that the Government, local governments, State-owned enterprises, and Regions obliged to employ at least 2% (two percent) of disability person of the number of employees or workers. And private companies obligated to employ at least 1% (one percent) of disability person of employees or workers amounts.

According to the article, 27 of Disability Person Act No. 8 of 2016 mentioned that the Government and local government mandatory planning, organizing, and evaluation of the implementation of the homage, protection, and the fulfillment of the right of disability person.

²Hardijan Rusli, *Hukum Ketenagakerjaan berdasarkan UU No. 13/2003 tentang Ketenagakerjaan dan Peraturan terkait lainnya*, (Bogor: Ghalia Indah, 2011), p. 75.

In this case, the researcher want to synchronize with disability person right fulfillment practices in particular according to the Islamic perspective justice Majid Khadduri. Majid Khadduri classifying justice into several sections, in among; political justice, theological justice, philosophical justice, ethical justice, legal justice, justice between Nations, and social justice.

In terminology, justice means liken something with others, both in terms of value and in terms of size, so something is not one-sided and are not different from each other. The justice also means favor or cling to the truth. According to Ahmad Azhar Basyir, justice is putting something on the actual place or put something in the right proportions and give to someone something being right.³

Allah (SWT) says:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ

It's mean: *"Allah commands justice and the doing of good"*.⁴

Beginning from the description above background, the researcher wants to find out more about how disability person right compliance efforts to get the job by the Manpower Department of Malang City. This is important as a step to control the fulfillment of disability person right mandated by law as a

³ Ahmad Azhar Basyir, *Negara dan Pemerintahan dalam Islam*, (Yogyakarta: UII Pres, 2000), p. 30.

⁴ Q.S. An-Nahl (16): 90

manifestation of the embodiment of social justice for all the people of Indonesia.

Therefore, based on the discuss above so important to make research under the title “The Efforts of Manpower Department in Malang to Fulfill the Right of Disability Person to Get The job According To The Justice Concept In Islam by Majid Khadduri.” that tries to find out and explain of data from the institution that related to effort, supervision and practice about the right fulfillment of disability person. In addition, solution and recommendation toward this problem.

B. Formulation of Problem

Based on the background of the problem that explained above, there are formulations of problem that will discuss the next in this research. That is:

1. What is the effort and control of Manpower Department of Malang City toward the fulfillment the right of disability person to discovering the job?
2. How is the justice concept in Islam perspective toward the effort of Manpower Department to fulfill the right of disability person in Malang City and supervision toward the company that takes in disability person?

C. Objective of Research

Referenced to both of problem formulation as well as discussed above, thus the objective of this research as follow:

1. To know the effort and supervision of Manpower Department of Malang City in fulfillment the right of disability person in term of the job.
2. To know the justice concept in Islam perspective toward the effort of Manpower Department to fulfill the right of disability person in Malang City and supervision toward the company that take in disability person.

D. Benefits of Research

Based on the objective of research above, expected the research will be able to give benefits theoretically and practically in education around in spite of the community generally. The benefits are as follows:

1. Theoretically

The benefits that expected in this research as follow:

- a. Increasing the knowledge in manpower law term of the effort of Manpower Department of Malang City problem toward fulfillment the right of disability person to get a job. Giving scientific contribution for Sharia Business Law Department on Sharia Faculty in Maulana Malik Ibrahim State Islamic University.
- b. Giving literature to reader related the manpower law about the effort of manpower department problem toward the fulfillment the right of disability person to take in the job.

2. Practically

The findings practically of this research are as follows:

- a. Used to one of reference in the next research that related.

- b. Be able to become consideration and reader concept in to face the problem about the effort of Manpower Department problem of Malang City toward the fulfillment the right of disability person to take in the job.

E. Definition of Key Terms

1. Manpower Department of Malang City

Manpower and Transmigration Department of Malang City has main duty and function to execute the most of the household region in part of Manpower and Transmigration that included planning and executing of manpower along with the controlling by obligated of Mayor. To realize the implementation of region autonomy that saved actually or to realize the uniformity between the principle and practice of region autonomy implementation, the Government of Malang City through Major Regulation of Malang No. 44 of 2012 on Explanation of Main Duty, Functioning, and working procedures of Manpower and Transmigration Department.

2. Disability Person

According to the Indonesian Big Dictionary (Kamus Besar Bahasa Indonesia) disability is defined by the person who holds (suffering) things. While disability is Indonesia language word which comes from the English disability accretion (plural: disabilities) which means disability or incapacity. And according to Constitution No. 8 of 2016 on Disability Person article 1 that is everyone has physics limited, intellectual, mental in a long time to make interaction with the environment can get obstacle and

difficult to participate completely and effective with other countries based on the right equality of disability person.

3. Concept of Justice in Islam

In the Indonesian Big Dictionary (Kamus Besar Bahasa Indonesia), social justice defined as balance, not one-sided, no take sides, side with truth and hold to the truth.⁵ The Justice (*al-adl*) sourced Arabic and be able to found in Holy Quran, as many as 28 place that etymologically means middle.⁶ Define of '*adl* (justice) in Indonesian culture sources from Islamic. This word is an adoption from Arabic '*adl*. Justice (*adil*) means to liken something with others, either in terms of value or in terms of size, so something is not one-sided and are not different from each other. Justice means take a side or hold the truth.⁷ According to the Ahmad Azhar Basyir, justice is put something on the actual place or put something in the right proportions and give to someone something being the right. Al-Quran commanded to doing justice and obligate as follow of Allah (SWT) that's mean "*Allah commands justice and the doing of good*"⁸

Majid Khadduri explained that justice (*adl*) terminology is noun that abstract which comes from verb *adala* that's containing five means as follows:⁹

⁵ Depdiknas, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 2002), p. 8.

⁶ Muhammad Fu'ad Abd al-Baqiy, *Al-Mu'jam al-Mufahras li Alfaz Al-Qur'an al-Karim*, (Dar al-Fikr, Beirut, 1981), p. 448 – 449

⁷ Abdul Aziz Dahlan, et. all, (editor), *Ensiklopedi Hukum Islam*, Volume 2, (PT Ichtiar Baru Van Hoeve, Jakarta, 1997), p. 25

⁸ Q.S. An-Nahl (16): 90

⁹ Ahmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialptudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, (Jakarta: Kencana Prenada Media Group, 2009), p. 243.

1. Straighthen and seat in straightly, to amendment and change.
2. Escape, leave or avoid a path deviation toward the true way.
3. The same, balance, equality or similarity.
4. Making balance, proportional in a balance situation.
5. Probably is mean example or model a literal expression which is not directly related to justice.

F. Structure of Discussion

In order to the discussion on this research arranged in a regular and systematic way, then the discussion will become divided five chapters. As for the systematic discussion as follows:

CHAPTER I INTRODUCTION

The first chapter is chapter introduction as an introduction to finding new scientists. This chapter presents everything that became the basis of doing research, which includes a description of the background of problems, formulation of the problem, the objective of research and benefits of research.

CHAPTER II REVIEW AND RELATED LITERATURE

The second chapter is the concept of Transmigration and Manpower Department of Malang City, the disability concept and right of disability person, as well as the concept of Justice in Islam.

CHAPTER III RESEARCH METHOD

The third chapter discusses research method in among the type of research, the approach of research sources of law, the technique of data collection and data analysis.

CHAPTER IV FINDINGS AND DISCUSSION

This chapter discusses the problems of exposure examined then analyzed with the theory that already exists are in compliance or not with the concepts already described.

CHAPTER V CLOSING

The last part is in the writing of a research. This chapter describes the conclusion containing the points that have been examined in other words is the answer to a problem formulation expressed earlier of this research and the recommendation is all that can be applied to the existence of the research and the possibility of the existence of a thing that does not exist in this research can be done on the research further. Then the attachments that serve as amplifiers against this research that research is already done right.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

The author describes some previous research as a literature review to see the difference between research that has been done before with this research as a literature review, as for the study:

1. Andi Sulastri, (2015), in his thesis entitled " Tinjauan Hukum Terhadap Penyediaan Aksesibilitas Bagi Penyandang Disabilitas Di Kota Makassar". University of Hasanuddin. "The study discusses the mechanism of implementation of Law No. 4 of 1997 on Persons with Disabilities. Where in the rule is supported by Government Regulation no. 43 of 1998 on Efforts to Improve the Social Welfare of Persons with Disabilities. Both rules serve as legal umbrella for disability person to gain access rights.

Data analysis techniques used are qualitative descriptive techniques based on material and data related to the topic of discussion. From the results of this study can be summarized as follows: 1) the accessibility of accessibility in the city of Makassar is not fully run because only a few buildings and public facilities that provide accessibility for people with disabilities in the city of Makassar. 2) Efforts made by the Government of Makassar City in providing accessibility for persons with disabilities are reflected from the

buildings and public facilities provided by the Public Works Department as a representation of the Government of Makassar

2. Zulfah Latuconsina, (2014), in a journal entitled " Afirmasi Kebijakan Pemerintah dalam Fasilitasi Kerja bagi Penyandang Disabilitas." The study discusses the affirmative form of government policy in the facilitation of employment for persons with disabilities in Central Java Province, the perception of persons with disabilities to affirmative policy Government, and know the constraints faced in the affirmative implementation of government policy.

This type of research is sociological juridical by using descriptive approach. The results of this study show that: 1) minimum quota of work rights for persons with disabilities is not met. But the government is still trying to make it happen. This effort is realized through affirmative government policy in the facilitation of work for disability person by providing skills training, social assistance for disability person and the formation of Central Java Provincial Regulations on the fulfillment of the Rights of Persons with Disabilities which are so far still in the stage of the Draft Regional Regulation. 2) Persons with Disabilities Indonesia considers that the training provided by the government is deemed to be no longer appropriate with the development of the era and the needs of people with disabilities. The affirmative factor causing the prevailing government policy has not been able to run well due to the non-

compliance of the parties and the ignorance of the company regarding the existence of rules on minimum quota of work rights for disability person.

3. Nurul Fitria, (2014), in his thesis titled " Pemenuhan Hak Aksesibilitas Sebagai Wujud Kesamaan Kesempatan Bagi Mahasiswa Penyandang Cacat Dalam Proses Pendidikan (Studi Di Universitas Brawijaya Malang)." University of Muhammadiyah Malang. This study discusses the disability criteria of disability students who are accepted as students of UB disability as well as fulfillment of the right of accessibility by UB in realizing equal opportunity for student disability and what factors that support and obstruct UB in fulfilling the accessibility right for student disability . This research uses sociological juridical approach method. Conclusion of accessibility fulfillment based on Regulation of Minister of Public Works no. 30 / PRT / M / 2006, there are unmet accessibility such as special disability parking area and guiding block. However, the lack of physical accessibility in Universitas Brawijaya can be balanced with optimal service so that students with disability do not have any significant problems or difficulties in lecturing / education process. Suggestions, the need to make additions and improvements / improvements in accordance with existing regulations.

Table 1: Previous Research

No.	Name/Year/Title/University	Similarity	Difference	Research Methodology
1.	Andi Sulastri, (2015), “Tinjauan Hukum Terhadap Penyediaan Aksesibilitas Bagi Penyandang Disabilitas Di Kota Makassar, University of Hasanuddin Makassar. Department of Law of State, Faculty of Law, Hasanuddin	Similar object	Focus on Providing Accessibility for Disability Persons	Type of research: empirical Data collection methods: primary (interview and observation) and secondary (documents, journals etc.), Data analysis technique: descriptive qualitative
2.	Zulfah Latuconsina, (2014), Afiriasi Kebijakan Pemerintah dalam Fasilitasi Kerja bagi Penyandang Disabilitas, Journal.	Similar object	The focus of Government Policy on Work Facilitation for Disabilities Persons	Type of research: sociological juridical Research approach: descriptive
3.	Nurul Fitria, (2014), Pemenuhan Hak Aksesibilitas Sebagai Wujud	Empirical research	Focus for Students with Disabilities	Type of research: empirical

	Kesamaan Kesempatan Bagi Mahasiswa Penyandang Cacat Dalam Proses Pendidikan (Studi Di Universitas Brawijaya Malang), Thesis. University of Muhammadiyah Malang		in the Education Process	Approach: sociological juridical Data collection methods: primary (field) and secondary (interviews, documents) Method of analysis: qualitative descriptive
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B. Conceptual Framework

1. Manpower Department

The term Labor Law is a new term in the field of Law Science in general and the field of Labor Law in particular, because the term arises from the consequences of the labor law itself and the development of national law based on the source of all sources of law namely Pancasila and the 1945 Constitution.

Employment law was formerly referred to as labor law. The use of the term labor, workers, and labor is basically to be distinguished. Based on the provisions of Article 1 number 1 of Law no. 13 of 2003 on Manpower (Statute Book of 2003 No. 39, Supplement to Statute Book of 2003 No. 4279, hereinafter abbreviated to Law No. 13 of 2003), is all matters relating to labor

in the time before, during and after the employment¹⁰. Based on the provisions of Article 1 number 2 of Law no. 13 In 2003, the workforce is anyone who is capable of performing the work to produce goods and/or services, either to meet the needs of themselves and for the community¹¹. Based on the provisions of Article 1 number 3 of Law no. 13 of 2003, the worker/laborer is any person who works by receiving wages or other forms of remuneration.

The notion of any person capable of performing work to produce goods and/or services, either to fulfill his own needs or to the public may include any person who works by receiving wages or other forms of remuneration or any person who works alone by not receiving wages or remuneration. Labor includes civil servants, formal workers, informal workers, and unemployed or unemployed people. In other words, the definition of labor is broader than the worker/laborer.¹²

Prof. Imam Soepomo, SH. To formulate that the Labor Law is a set of written or non-written rules concerning an event in which a person works on another person by receiving a wage. This means that the elements of the formula are the workers who work for others (employers) and the wage in return for the work. So what is stipulated in the labor law is primarily concerned with the rights, obligations, and restrictions for each related party.¹³

¹⁰ Devi Rahayu, *Hukum Ketenagakerjaan Teori dan Studi Kasus*, (Yogyakarta: New Elmatara, 2011), p.5

¹¹ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2007), p. 16

¹² Devi Rahayu, *Hukum Ketenagakerjaan Teori dan Studi Kasus*, p.6

¹³ Darwan Prinst, *Hukum Ketenagakerjaan Indonesia (Buku Pegangan bagi pekerja untuk Mempertahankan hak-haknya)*, (Bandung: PT Citra Aditya Bakti, 1994), p. 1

a. Principles and Purposes of Labor Law

The national development is implemented in the framework of the development of the whole Indonesian people and the development of the whole Indonesian society to realize a prosperous, just, prosperous, evenly, both material and spiritual society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In the implementation of national development of labor Has a very important role and position as an agent and a development goal.¹⁴

In the explanation of article 3 of Law no. 13 of 2003 states that the principle of employment development basically in accordance with the principle of national development, especially the principle of democracy Pancasila and the principle of fair and equitable. Employment Development has many dimensions and interconnections with various parties, namely between government, employers, and workers/laborers. Therefore, the development of manpower is carried out in an integrated manner in the form of mutually beneficial cooperation.

Employment development is organized on the principle of coherence with through functional coordination across central and regional sectors (Article 3 of Law No. 13 of 2003). Article 4 of Law no. 13 of 2003 states that the purpose of employment development is as follows¹⁵:

¹⁴ Devi Rahayu, *Hukum Ketenagakerjaan Teori dan Studi Kasus*, p.10

¹⁵ Hardijan Rusli, *Hukum Ketenagakerjaan berdasarkan UU No. 13/2003 tentang Ketenagakerjaan dan peraturan terkait lainnya, edisi kedua* (Bogor: Ghalia Indonesia, 2011), p. 5

- a) Empowering and making efficient use of manpower optimally and humanely;
- b) Creating equal opportunity and providing manpower (supply of manpower) that suits the need of national and provincial/ municipal developments;
- c) Providing protection to manpower for the realization of welfare; and
- d) Improving the welfare of manpower and their family.

Prosperous, just, prosperous and evenly distributed society, both material and spiritual, can not be achieved if the workforce and family are not prosperous.¹⁶

b. The Rights Of Labor

The Government has established a basic policy on labor rights in the form of Act No. 13 of 2003 on Manpower. Under the provisions of the Act, labor rights include:

- a) The right to equal treatment without discrimination. This right is regulated in Article 6 of Law No. 13 of 2003 on Manpower which reads "Every worker/ laborer has the right to receive equal treatment without discrimination from their employer". That is, Employers must give workers rights and obligations without looking of race, race, religion, sex, color, descent, and political flow.

¹⁶ Hardijan Rusli, *Hukum Ketenagakerjaan berdasarkan UU No. 13/2003 tentang Ketenagakerjaan dan peraturan terkait lainnya*, edisi kedua, p. 6

- b) The right to work training. This right is regulated in Article 11 of Law Number 13 of 2003 on Manpower which reads "Manpower has the right to acquire and/or improve and/or develop job competence that is suitable to their talents, interest and capability through job training.". And Article 12 Paragraph 1 Law No 13 of 2003 which reads "Entrepreneurs are responsible for improving and or developing their workers' competence through job training".¹⁷
- c) Right to choose work placement. This right is regulated in Article 31 of Law No. 13 of 2003, which reads "Any manpower shall have equal rights and opportunities to choose a job, get a job, or move to another job and earn decent income irrespective of whether they are employed at home or abroad".¹⁸
- d) Occupational protection rights. In the case of work protection, every worker / laborer in Article 86 of Law No. 13 of 2003 shall be entitled to protection consisting of: occupational safety and health, morals and morals, treatment appropriate to human dignity and values.
- e) Welfare Rights. Every worker / laborer and his / her family in accordance with Article 99 of Law No. 13 of 2003 shall be entitled to social security of the workforce.

¹⁷ During work in a company then every worker is entitled to a job training. Job training may be undertaken by employers internally or through government-owned training institutions, or private employment training institutions licensed

¹⁸ Every worker has the right to choose the desired workplace. There should be no coercion or threat from the employer if the employee's choice is not in accordance with the entrepreneur's wishes.

c. Authority of the Department Manpower

The Manpower and Transmigration Office of Malang City has the main duty and function to carry out part of the regional household affairs in the field of Manpower and Transmigration covering the planning and implementation of manpower and its control in accordance with the wisdom of the Mayor. To be able to realize the realm of regional autonomy that is really healthy or to realize the conformity between the principles and practice of the implementation of Regional Autonomy, the Government of Malang City with Mayor of Malang Regulation No. 44 of 2012 explains the Description of Duties, Functions and Working Procedures of the Department of Manpower and Transmigration .

Manpower and Transmigration Office of Malang is one of the regional apparatuses as the implementer of Manpower and Transmigration functions in real, dynamic and responsible regional autonomy. The authority in general from the Manpower Departement of Malang is:

- a) Handling and settling cases of public and worker complaints about violations of labor standards and labor regulations.
- b) Implementation of investigations on violations of work norms, Occupational Health and Safety (OSH) norms and social security norms of labor.
- c) Implementation of coordination with other fields and / or related institutions in order to enforce the law in the field of manpower.

- d) Implementation of guidance and supervision of employment, supervision of the norms of women, children, and persons with disabilities.

In this case, researchers are more focused on the task, principal, and function of the Office of Manpower Malang in the field of supervision. The task is:¹⁹

- a) Supervision on work norms, Health and Safety (K3) norms and Social Security Workers (Jamsostek) norms.
 - b) Implementation of facilitation in the field of guidance and supervision of manpower.
 - c) Implementation of coordination with other fields and/or related institutions in order to enforce the law in the field of manpower.
 - d) Implementation of guidance and supervision of employment.
 - e) Supervision of the labor norms of women, children, and persons with disabilities.
 - f) Supervision of placement agencies and labor training.
2. Disability Person and Their Right
- a. The Meaning of Disability

According to Indonesian Dictionary the person is defined by the person who bears (suffers) something. While disability is an Indonesian

¹⁹ Mayor of Malang Regulation No. 44 of 2012 on the Description of Main Duties, Functions, and Working Procedures of the Office of Manpower and Transmigration

word derived from the English word absorption disability (plural: disabilities) which means defect or disability.

According to Law Number 19 The year 2011 on the Legalization of the Rights of Persons with Disabilities²⁰, persons with disabilities who have long-term physical, mental, intellectual or sensory limitations in interacting with the environment and attitudes of the community may encounter obstacles that make it difficult to participate fully And effective on equal rights.

According to Law no. 8 of 2016 on persons with disabilities²¹ Article 1 is any person with long-term physical, intellectual, mental, and/or sensory limitations which in interacting with the environment may experience barriers and difficulties to participate fully and effectively with other citizens, based on Equality of rights. The diversity of persons with disabilities according to Article 4 of Law no. 8 of 2016 Various Persons with Disabilities include:

- a) Persons with physical disabilities.
- b) Persons with intellectual disabilities.
- c) Persons with mental disabilities.
- d) Persons with Sensory Disabilities.

²⁰ Act No. 19 of 2011 on ratified the Rights of Person with Disabilities (the state Gazette of 2011 No. 107, Additional of the State Gazette of the Republic of Indonesia No. 5251)

²¹ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

b. Rights of Disability Persons to Work

In the International Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities) which has been ratified by Indonesia in Law no. 19 of 2011 on Legalization of the Rights of Persons with Disabilities²² which regulates various rights that must be fulfilled by the state. These rights include the right to life, protection in risky and emergency situations, equal recognition before the law, the right to be free and safe, free of pain and cruel treatment, free from exploitation, violence and harassment, respect for privacy, Free to live independently, the right to access personal mobility, access to information, respect for home and family ownership, participation in public and political life, freedom of expression, and other economic, social and cultural rights such as the right to education, health, rehabilitation And habilitation and the right to work.

Regarding the rights of a worker, especially for disability person, which persons with disabilities can not be equated with someone with physical perfection. Because essentially the work is not only needed for someone who has a perfect physical but also needed for someone who has physical limitations because basically, humans need a job to meet the needs of his life.

²² Act No. 19 of 2011 on ratified the Rights of Person with Disabilities (the state Gazette of 2011 No. 107, Additional of the State Gazette of the Republic of Indonesia No. 5251)

In Law no. 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities there explain that the rights of disability person in terms of employment and employment are as follows²³:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; This includes the right to opportunity to finance life with freely chosen or accepted employment in the labor market and an open, inclusive and accessible work environment for persons with disabilities. States Parties shall protect and promote the fulfillment of the right to work, including those with disabilities during the period of employment, taking certain steps, including through legislation, to:
 - a) Prohibits discrimination on the basis of disability of all forms of employment, including conditions of recruitment, acceptance, and employment, prolongation of employment, career development and safe and healthy working conditions;
 - b) Protect the rights of persons with disabilities, on an equal basis with others, to obtain fair and favorable conditions of work, including opportunities and remuneration of equal value work, safe and healthy working conditions, including protection from harassment and reduce sadness.

²³ Act No. 19 of 2011 on ratified the Rights of Person with Disabilities (the state Gazette of 2011 No. 107, Additional of the State Gazette of the Republic of Indonesia No. 5251)

- c) Guarantee that persons with disabilities can exercise their right of association on an equal basis with others
 - d) Allows persons with disabilities to have effective access to a program of general technical skills and skills guidance, placement and skill services, and ongoing skills training
 - e) Promote employment opportunities and career development for persons with disabilities in the job market, as well as assistance in finding, obtaining, retaining and returning to employment
 - f) Promote the opportunity to have self-employment, self-employment, cooperative development, and start own business
 - g) Employing persons with disabilities in the government sector; Promote employment of persons with disabilities in the private sector through appropriate policies and measures that can include real action programs, incentives and other steps.
2. States Parties shall ensure that persons with disabilities are not in a state of slavery or service, and protected, on an equal basis with others, from forced or compulsory labor.

The rights are also set forth in Law No. 8 of 2016 concerning Persons with Disabilities²⁴ Article 11 which implies that each person with a disability has the right to work, entrepreneurship and cooperative includes:

²⁴ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

- a. Obtain work held by the government, regional or private government, without any discrimination.
- b. Obtain the same wages as non-disabled workers in the same types of work and responsibilities
- c. Obtain decent accommodation in employment
- d. Not dismissed for reasons of disability
- e. Get the program back to work
- f. Fair, proportional, and dignified work placements
- g. Gain opportunities in developing career ladder and all the normative rights inherent in it.
- h. Promote business, have self-employment, self-employed, cooperative development, and start own business.

In addition to the Regional Government shall guarantee and protect the rights of Persons with Disabilities as legal subjects to take legal action equal to others. The rights of persons with disabilities as a whole include rights in the fields of education, employment, health, social, art, culture, sport, politics, law, disaster management, shelter, and accessibility.²⁵

When it comes to the right to get a job, it can not be separated from a general responsibility and duties of the authorities, while the responsibilities and duties of the authorities according to the ILO (International Labor Organization) include:

²⁵ District Regulation of Malang City Number 2 Year 2014 on Protection and Empowerment of Persons with Disabilities, Article 2 point 3.

- a. The competent authority should include matters relating to disability within the general framework of economic and social regulations, taking into account national conditions and procedures.
- b. Periodically, the competent authorities shall review all the rules and regulations governing work, security to keep working, and reassurance of work in the public and private sectors, to ensure that they do not contain elements of discrimination against persons with disabilities.
- c. The same should also be done in relation to workers' social protection systems, including workers' compensation, to ensure adequate support so that no unnecessary barriers are inadvertently placed in the way of persons with disabilities in entering the workforce, work or
- d. The authorities should ensure that the above institutions provide good and high-quality service.
- e. The competent authority shall establish the criteria for determining what shall be done in the case of adjustments under the laws and national ordinances.
- f. The competent authority shall provide technical support, wage subsidies and other incentives to develop or facilitate the creation of employment opportunities and the right to remain employed for workers with disabilities, and notify employers of these incentives.

3. The Justice Concept In Islam By Majid Khadduri

a. The Meaning of Justice

Every aspect of justice there are several words and the most commonly used is the word '*adl*', there are also some synonyms, perhaps the most important are as follows: *qisth*, *qashdu*, *istiqamah*, *nashib*, *qishash*, and *mizan*. The Antonym of the word '*adl*' is not a modified '*adl*' utterance in its negative sense, as opposed to the word injustice for the English word justice, but an entirely different word and called *jawr*. There are also some synonyms of the word *jawr*, some of which are different shades of meaning such as *zulm*, *thughyan* (tyranny), *mayl* (tendency), *inhiraf* (deviation), and others.

Literally, the word '*adl*' is an abstract noun, derived from the word *adala* which means: first, straightening or sitting straight, amending or altering; Second, running away, departing or evading from the wrong path to the right path; Third, equal or equivalent or equal; Fourth, balancing or compensating, comparable or in a balanced state. Finally, the word '*adl*' or '*idl*' may also mean an example or such as, a literal expression that is indirectly related to justice²⁶

b. The Source of Justice

In Islam, Divine Justice is enshrined in divine revelation and virtue (the divine wisdom) communicated by the Prophet Muhammad to his

²⁶ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, (Surabaya: Risalah Gusti, 1999), p. 8

people. Revelation, manifested in the word of God, embodied in the Qur'an; While divine wisdom was revealed to the Prophet, expressed with the word of the Prophet himself and disseminated as Sunnah which came to be known as Hadith. Both the textual source or the authoritative source represent the embodiment of divine will and justice, providing the raw material for the experts, through the use of derivative reasoning sources, the third called *Ijtihad*, to establish *Shari'ah* and Faith.²⁷

In the Qur'an there are more than two hundred warnings against injustice and expressed in the form of similar words, such as *zulm*, *itsm*, *dhalal* and others. No fewer than a hundred expressions incorporate the notion of justice, in the form of direct words such as *adl*, *qisth*, *mizan* and others. The most important Qur'an references to justice are:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ

اللَّهُ نَعِيمًا يَعْظُمُكُمْ بِهِ ۖ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.”

The Qur'an and Hadith do not show specific doses to indicate what are the main elements of justice or how justice can be realized on earth. Therefore the task of formulating justice standards should be perceived by

²⁷ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 14

experts seeking to draw elements from a variety of authoritative sources, such as decisions and legislation contained in the works of *mujtahid*.²⁸

c. The Kind of Justice

Majid Khadduri classification justice in many kind, both of them; Political justice, theological justice, philosophical justice, ethical justice, legal justice, justice between nations, and social justice. However, according to the authors of some theories of justice, which corresponds to the discussion is legal justice and social justice. Because it deals directly with the legal aspects.

a) Legal Justice

Legal justice is justice that is in accordance with the law. According to the rules of etymology, justice is a legal (legal) term and literally means *jus* and *justum* which sometimes need complementarity, however the meaning of justice has been extended not only in legal but also other aspects. Therefore, law and justice may be similar, since some element of justice may be contained in the substance of a law, but the law may have or do not have justice as a goal, depending on whether a law is established to achieve justice or any other purpose. In Islam, the law (shari'at) is closely related to religion, and both are regarded as statements of the will of God and of justice, but instead the goal of religion is to define and determine the purpose of justice and others,

²⁸ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 15.

while the function of the Shari'ah is To indicate the way based on God's justice and other realizable goals.²⁹

The Shari'ah does not give specific measures to distinguish between fair and unjust acts. Therefore, moves to the Mujtahids to indicate the basic principles of justice that serve as a guiding line to distinguish between just and unjust acts. Although this principle is not brought together and correlated into a coherent theory of justice, it can be grouped into two categories, each covering a different aspect of justice. These aspects may be called substantive and procedural aspects.³⁰

The first category consists of elements of the aspect of justice contained in the substance of Shari'ah. But it is not a law, which is only a set of rules (regulatory rules) that determine how much of the substantial elements of justice. The legislator decide how much of a substantial element it contains both qualitatively and quantitatively. Shari'ah consists of laws drawn from the Qur'an and the Sunnah of the Prophet as well as from sources of derivatives (consensus and analogy) which are considered to contain a justice established by a divine legislator. Experts in a great debate about justice, showing the elements contained from justice that is contained in the Shari'ah³¹. Then this substantive aspect develops into substantive Justice.

²⁹ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 199

³⁰ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 200

³¹ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, hal. 199

The second aspect of legal justice is procedural aspect. It is possible that certain legal systems may greatly ignore elements of substantive justice, and although they have procedural rules carried out with certain measures such as coherence, regularity, impartiality, neutrality, Something we call formal justice. The legal process boundary, a well-known procedure for western lawyers, is identical to an aspect of formal justice. However, the procedural rules of justice vary from one legal system to another. But each system, even once accepted by the community concerned, must develop its own procedural rules, including their impartial application, in accordance with the customs and social habits of that society. The more advanced these procedural rules, the higher the quality of formal justice is expressed in the particular system of the law. When the rules are ignored or applied inappropriately, procedural injustice arises. Legal injustice (lawlessness) may also stem from a decision that is deemed to be contrary to the content or spirit of the law that is justice itself. But this type of tyranny, in a rigid sense, falls into the category of substantive justice³². Then this procedural aspect develops into procedural justice.

1. Substantive Justice

Substantive justice is an internal aspect of a law, the elements contained in a law are representations of "truths" and "mistakes". In

³² Majid Khadduri, *Teologi Keadilan Prespektif Islam*, hal. 199

the vocabulary of Islam, "truths" and "mistakes" are elements contained in a law called (*al-halal wa al-haram*) and then forming some general and specific rules of Islamic *shari'ah* (*Islamic corpus juris*). It is regarded as a truth that all obligatory behaviour must be just, because they are a statement of God's will and justice, and all forbidden behaviour are *dzalim*.³³

Shari'ah trying to protect collective interests of a community as the main object or the interests of individual believers? An examination of the public and private "rights and obligations" shows that the purpose of the shari'a is to protect the interests of the faithful as a whole, the interests of the individual are protected only insofar as they do not conflict with the common good. A condition that is meant is the Shari'ah that determines the ownership of wealth. Does Shari'ah first protect private or public interest? If private ownership is involved in a conflict with public ownership, which should apply?.

In legal theory, all wealth belongs to God, on the basis of which he has created all that is in the heavens and the earth. But, for the sake of human beings, God allows man to enjoy God's property and wealth. Thus, we can conclude God in principle is the owner of wealth and He has given to man the property rights. However, it is

³³ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p.200

not clear to us whether God has given it collectively or fashion to its distribution to humans.³⁴

2. Procedural Justice.

Procedural justice is an external aspect of the shari'a based on it, substantive justice is achieved. In other words, procedural justice can manifest when substantive justice has been achieved. This aspect of justice, which we often call formal justice, is manifested at the level of regularity, thoroughness and neutrality in the application of (Shari'at) applications. As a procedural form of justice, it seems unlikely to be as significant as substantive justice, but in reality no less important while the process is complicated and very complicated. Without them, the elements of justice would be academic values. Although few or nonexistent elements of justice are obtained in the law, an individual can gain satisfaction if the law is applied with regularity and not one-sidedness.³⁵

b) Sosial Justice

Social justice is justice consistent with norms and values, regardless of the norms and values embodied in the law, and the public is prepared to accept through its custom, passivity or other reasons. Contrary to the concept of justice. Divine justice, natural or rational justice, then social justice (usually included in distributive justice) is

³⁴ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 201

³⁵ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 199

substantially positive; More a product of human custom and experience than the sounds of reason. Aristotle makes the term "distributive justice", using it not in the social sense, but in terms of nomerik and quantitative. A qualitative understanding of the wider, which apparently demonstrated by modern writers, will be used later in this review.³⁶

For Muslim theologians and philosophers that justice is an abstract and idealistic concept, expressed in superior and perfect terms. They do not make serious efforts to see justice as a positive concept and analyze it from the point of view of existing social conditions. Ibn Khaldun, a historian and social theorist, used an inductive method with a more familiar measure, not only in his universal historical writing but also in a formulation of social and political theories.³⁷

Ibn Khaldun (728/1325 AD), has described a formulation of their social theories, He regards justice as the essential foundation of the same government, a "foundation of foundations." He treats justice on two levels. First the prophetic level, according to religion and law, and the other on the political level, derived from the customs and rules set by the kings, which we call with positive justice. The latter is not always fair, especially if it is contrary to religion and law, but although unlike prophetic justice, He thinks it is better than the injustices of Muslim rulers who do something against the law.³⁸

³⁶ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p.200

³⁷ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 213

³⁸ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 257

Abu Bakr Ath-Thurthusyi believed and believed that prophetic justice was not supported by a sense of public responsibility, encouraging the rulers to put justice into the world of practice, injustice seems more upright than justice. In other words, Ath-Thurthusyi suggests the possibility of a new form of justice in a society, in combination with prophetic justice, creates a social form of justice that is fundamentally positive, but it does not excavate the sources of some form New justice, and it does not explain how a public generates a claim which can oblige the rulers to put it into the practical world. The limitations of this reasoning must wait for changes in conditions when conscious thinkers for their need for further investigation of the nature of social justice.³⁹

An investigation into the field of shari'a on the social aspects of justice has been attempted. Ibn Taimiyah, by developing a concept of "*as-Siyasah asy-Syar'iyah*" (Political Law) as a supplement to the *Shari'ah*, and Najmuddin ath-Thufi, who proposed the principle of "*mashlahat*" (mashlahah) as a source of law, Other thinkers such as Ibn Khaldun to investigate broader sources of positive justice and to formulate new theories of social justice. Ath-Thufi and Ibn Taimiyah are the generations, ath-Thufi probably born in 657/1269 and Ibn Taimiyah in 661/1263. But because Ibn Taimiyah has treated a broader

³⁹ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 258

concept of positive justice, The scope and method will be more considered.⁴⁰

Ibn Taymiyyah's educational background and his familiar scientific interest in the surrounding events and conditions that led to the shift of the good fortune of Islam during the 7th / 13th century AD had a profound impact on the development of his views on law and religion, Only a product of a traditional method of textual interpretation, but also its struggle over practical issues at the time. With a combination of deductive-inductive methods, Ibn Taimiyah developed a concept of *as-Siyasah asy-Syar'iyah*, which adds to a view of justice drawn from the sources of texts (al-Qur'an and Hadith) and social sources (secular) . This is a journey of the classical doctrines of law and justice.⁴¹

Ibn Taimiyah tries to maintain a balance between idealism and deduction and induced realism, a realism based on sources of positive law, such as prese 'and custom, as long as it corresponds to the purpose of the *maqashid shari'ah*. In almost all of his writings, he attempted to present the principle of mashlahat (the public interest) of the faithful whom he believed to be the ultimate goal of Shari'ah. This goal can be achieved through *As-Siyasah Asy-Syar'iyah*.

The justice which Ibn Taymiyyah fought for to achieve it is, inevitably, a new concept, enshrined in *As-Siyasah Ash-Syar'iyah*,

⁴⁰ Majid Khadduri, *Teologi Keadilan Prespeftif Islam*, p. 260

⁴¹ Majid Khadduri, *Teologi Keadilan Prespeftif Islam*, p. 260

which we call social justice, for its purpose is to serve the public good. Since Islamic rule is a decadent, social justice is a suggestion that can rehabilitate power, more specifically Ibn Taymiyyah argues that social justice can bridge the gap between a ruler and his people (*Ar-Rawi wa Ar-Ra'iyah*) and ultimately advance the conditions - social conditions and heighten the power of Islam.⁴²

Ibn Khaldun's view of justice seems to stem from his own studies and experiences with the forces of execution against a society apart from the Islamic tradition.⁴³ According to Ibn Khaldun justice as a social concept in the context of a theory of society whose processes are determined by social factors that transcend the control of a human being. A concept of justice may be regarded as an apologia because of its inability to control the social forces and to repair the injustices emanating from them.⁴⁴ In other words, a scale of justice can not linger dependent on law and religion, but on other values.⁴⁵ It can be seen from how Ibn Khaldun divides the three types of countries that can be distinguished on the basis of their scales of justice.⁴⁶

First, the category of the state whose public order actually derives from the relevant sources, and the scale of its justice is enshrined in religion and law. Secondly, a state where its public order depends on

⁴² Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 262

⁴³ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 263

⁴⁴ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 264

⁴⁵ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 269

⁴⁶ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 269

the laws set by humans, and the scale of its justice consists of values that are purely secular, based on social norms or customs. Since these values do not come from law and religion, a scale of justice is not perfect, for only God and His Prophet provide a perfect and ideal standard of justice. Third, the category of countries whose public order consists of a mixture of secular and religious laws. This type of order prevailed in the Islamic countries after the transformation of the caliphate to the king's rule. Principally, rulers are bound by law and religion, but in practice they pursue self-interest, determined by social customs, conditions of state security and the ambitions of members of the royal family. This type of justice is not ideal and not purely rational, but it is a form of social justice or positive justice, consisting of norms and practices that have prevailed among Muslims.⁴⁷

From the description above it can be understood that basically the teaching and application of law in an effort to show that the achievement of justice is a key to rehabilitate social conditions. So this is not to explain a new concept of justice but to apply a standard of justice as it exists in its day.⁴⁸

⁴⁷ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 273

⁴⁸ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 281

CHAPTER III

RESEARCH METHOD

This research, the researcher tries to discuss the steps used in this research. Because this term is one of the points in the research that should be interested in avoiding failure in the conduct of research. The research method is a way of doing something by thinking carefully to reach a goal by searching, recording, formulation, and analysis to compile reports. The steps used is as follow:

A. Type of Research

According to the Soerjono Soekanto legal research divided two kinds. Normative law research and empirical law research.⁴⁹ The empirical law research focuses on the social life. It's mean the elements and structures by helping sociology science so that can the true means. The consequence of the existence is causing law effect by the fact in social life.⁵⁰ Therefore, the determining type of research based on the true choice. In other words, this research is used empirical law research that is the approach by looking at the reality in practice the extent to which legislation related to these issues is applied.⁵¹

⁵⁰Bahder Lohan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: CV. Mandar Maju, 2008), p.121

⁵¹ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, p.123-124

This research is used empirical law research or legal research. The goal of this research is to know the extent of law application in the community that measuring rod is society phenomenon law or social fact in the community. As a result of this research, the researcher directly way to doing a research in the field exactly employment agency (Dinas Ketenagakerjaan) and Social agency (Dinas Sosial) thus the researcher has data accurately and authentically.

B. Approach of Research

The approach used in this research is the approach of legal anthropology with normative explorative method.⁵² Legal anthropology is a branch of science that studies how the law as part of culture, working in the daily life of society.⁵³

In this study, the authors describe in detail and depth about a situation of the object under study, which is about the fulfillment of the right for persons with disabilities to get a job in the Office of Manpower Malang and the Department of Social Affairs.

In addition to using the approach of legislation and the concept of justice in Islam, researchers also use a conceptual approach,⁵⁴ which will be done

⁵² Bahder Lohan Nasution, *Metode Penelitian Ilmu Hukum*, p.123

⁵³ Hilman Hadikusuma, *Pengantar Antropologi Hukum* (Bandung: Citra Aditya Bakti, 2014), p.11

⁵⁴ Sulistyowati Irianto Dkk, *Kajian Sosio-Legal* (Jakarta: UI, Universitas Leiden, Universitas Groningen, 2012), p. 4.

when researchers do not move from the rule of law that exists by using the approach of employment.

C. Locus of Research

This research conducted in the employment agency (Dinas Ketenagakerjaan) Malang City at the integrated office (Perkantoran Terpadu) build B 3rd floor Mayjen Sungkono Street Arjowinangun and social agency (Dinas Sosial) at Raya Sulfat Street No. 12, Bunulrejo, Blimbing, Malang City. The locus election because the researcher needs an answer toward the problem either data or answer of interview result from some respondents.

The research carries out in Malang City because the employment agency and social agency are institutions have in relation to solving the fulfillment of the rights of disabilities to get a job in Malang City. Besides, it is close to the researcher home.

D. Method of Subject Determine

Using a purposive sampling method is taking of sample method based on the consideration certainty or characteristic that looking at relation with the research object to guarantee that the elements be included in the category.⁵⁵

Determination of the subject who was interviewed, selected based on certain criteria because the object of research is the fulfillment of the rights of

⁵⁵ Amiruddin and Zainanl Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2006), p. 106.

persons with disability in accepted the job, thus the best selected is the employee of employment agency of Malang City and social agency. The parties who become the respondent in among:

1. Division of control in the Manpower and Transmigration Department Mrs. Ida Sriwahyuni SH.
2. Division of control in the Social Departmen Mrs. Laili Qodariyah and Mrs. Putri Lolita Dian Sari

E. Sources of Data

In this research, there are two data sources that researcher used primary data and secondary data.

1. Source of Primary Data

Primary data in this research is collected from the first sources either individual or group which a data result such as an interview and Majid Khadduri's book. In this research, the information again from the Manpower and Transmigration Department of Malang City and social agency.

2. Source of Secondary Data

Source of secondary data is a source that gives an information or additional data that support of main data either book, journal, website or the result of scientific research has related to the problem. In addition, official documents from the government institution of correlated by research terms.

F. Method of Data Collection

To make it easier, this research using some method of data collection, in among:

1. Interview

The interview is a conversation by means of certain goals. The conversation has conducted by two parties i.e. interviewer that is proposing the written question to gives an answer or called by respondent. This method used an instrument to get data directly with the respondent, therefore more clearly of discussing the problem. In this term, the researcher directly to make conversation with the employment agency and transmigration and also social agency.

In interview technique the researcher using the kind of structure interview. It's mean the researcher presents the question to the respondent based on the question guide that prepared before. The function of the question guide as a control in order to process of the interview, not misdirection and to find out the problem more fairly until more easily to asked opinion and idea.

2. Documentation

Documentation technique is data collecting technique intangible in the form of written data and images. The source of written data can be notes, transcript, book, newspaper, job description, agenda, and the photo has related by the term of research.

Documentation is data to know it's appropriate or still has not met the efforts of the employment department and transmigration and social department with the literate and reference already. Consequently, the data obtained are authentic and objective to data analysis process.

G. Technique of Data Analysis

Data analysis processes to look for and arrange systematically of data obtained from a result of field interview and documentation, by the explore to units, arrange the system, elect where is the important and will be learned and make conclusion subsequently more easy to understand by self and other.

After all of the data collection, thus to analysis using data qualitative analysis by inductive method i.e. analysis of data based on the fact or real in the field then take it the conclusion based on the law of principle. Then, the researcher would be an analysis of data to enrich information as long as make lost the original data. Data analysis started by editing, classifying, verifying, analyzing, and closing. The explained as follows:

1. Editing

Is the first step in the data analyzing technique conducted by the researcher. This includes the completeness of data, the legibility of data, clarity of data, compatibility of data, and relevance of data as well as uniformity of data.⁵⁶ In this case, the researchers conducted research back

⁵⁶ Bambang Sugiono, *Metodologi Penelitian Hukum*, (Jakarta: Rajawali Pers, 1997), p. 129

over the data obtained from the field, both primary data or secondary data related to persons with disability rights compliance efforts in the Malang City for the purpose of knowing the completeness of the data and for compliance with the required data. So in this process is expected to lack or error data will be found. In the process of editing it, researchers combine fact field with existing theories. To produce the appropriate analysis.

2. Classifying

That is classifying legal materials the work early. Existing legal materials are classified according to the focus of the problem.⁵⁷ In this case, the researchers grouped into two results from the Department of Labor and outcome of Social Service.

3. verifying

That is rechecking of data already collected to find out the validity of data is really valid and in accordance with the expected researcher.

4. Analyzing

After completion of the process data based on steps above, the next process is the analysis. Analysis of raw material, namely analyzing the law that is classified in order to be easily understood.⁵⁸ As for the technique of

⁵⁷ Tim Penyusun. *Pedoman Penulisan Karya Ilmiah* (Malang : Fakultas Syariah UIN Maulana Malik Ibrahim, 2013), p.28.

⁵⁸ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* , 1st Edition, (3rd Published; Jakarta: PT Rajagrafindo Persada, 2006), p. 170

analysis used was qualitative, i.e. descriptive describes and interpret the returned data that has been retrieved. The results of this data collection contain quotes information, whether from interviews with informants either in Employment or Social Service Agency and field note documentation. Then the data is parsed back into the form of a sentence that is good and right so it will be easy to understand. This analysis would later use to gain an overview of the efforts of the Department of employment and Social Service. Beside that, also in the analysis based on the perspective of Justice in Islam.

5. Test Validity of Data

a. Perseverance / Observation

Search consistent interpretation in various ways in connection with a constant or tentative analysis process. Seeking a business limits the range of influences. Looking for what counts and what can not.

The researcher should conduct a thorough and detailed observation on an ongoing basis against prominent factors. Then he examines it in detail up to a point so that in the initial examination it appears that one or all of the factors studied are understood in the usual way. For this purpose the technique requires that the researcher be able to elaborate in detail how the tentative process of discovery and detailed review can be performed.

b. Triangulation

Techniques to check the validity of data that utilize something else. Beyond that data for checking purposes or as a comparison against that data. The most widely used triangulation technique is checking through other sources. Denzin (1978) distinguishes four kinds of triangulation as an examination technique that utilizes the use of sources, methods, investigators, and theories.

Triangulation with sources means comparing and checking the degree of confidence of information gained through different times and tools in qualitative research. In triangulation method according to Patton, there are two strategy that is checking data collecting data and checking degree of trust some data source with same method. Takang triangulation of investigators that is by using the researcher or other observer for the purpose of checking back the degree of confidence data. The theory of triangulation techniques according to Lincoln and Guba, based on the assumption that facts can not be examined the degree of confidence with one or more theories.

6. Closing

After the legal material presented and analyzed and then drawn conclusions from data that has been processed to obtain an answer. At this step, researchers had already found the answer from the results of research that has been done that was used to make the conclusion that then generates a picture in brief, clear and easy to understand.



CHAPTER IV

FINDINGS AND DISCUSSION

A. Profile of Manpower and Transmigration Department of Malang

The Manpower and Transmigration Department of Malang has main duty and function to implement the most household affairs region in the manpower and transmigration sector which include planning and execution of employment as well as controlling in accordance with the discretion of the Mayor. To realize the implementation of region autonomy that fairest or accordance between principle and practice of region autonomy, therefore the Government of Malang City through Major Regulation No. 44 of 2012 on Explanation of Main Duty, Functioning, and working procedures of Manpower and Transmigration Department has determined it as one of devices to implement the function of employment and transmigration in organizing regional autonomy are real, dynamic, and responsible.

The Manpower and Transmigration Department at the integrated office (Perkantoran Terpadu) build B 3rd floor Mayjen Sungkono Malang, telephone Number 0341-751534. Total employee per January 2014 as many as 41 civil servants.

Vision and Mission

Vision: created the competitive labor, transmigration success, harmony industrial relation, and labor protection toward the best services.

Mission: as for the Manpower and Transmigration Department of Malang as follows:

1. Foster and develop skills/competence and productivity of Labor which has competitiveness and expanding employment opportunities.
2. Realize harmonious industrial relations and tension in the work, and to improve the supervision and protection of labor;

B. The Effort of Manpower Department of Malang to Fulfillment the Right of Disability Person toward Employment Perspective Concept of Justice in Islam of Majid Khadduri

The effort and supervision of Manpower Department to fulfillment the right of disability person to gets job.

- a. The effort of Manpower Department to fulfillment the right of disability person to gets job.

By Juridical, disability person is understood as any person experiencing physical limitations, intellectual, mental, sensory and/or in a prolonged period of time which in interaction with the environment may encounter obstacles and difficulties to participate fully and effectively withcitizens of other countries based on equality.

As a vulnerable group in the middle of the society life, the State has a duty to provide legal rights while simultaneously giving protection of the rights of disability person and guarantee the fulfillment of those rights, as the embodiment of Indonesia as the country's state law *welfare state*.

Disability Person Act No. 8 of 2016 has released some of the rights of disability persons to be met, the rights of persons with disability are:

1. Disability person have a right:
2. Life;
3. Free from stigma;
4. Privacy;
5. Justice and legal protection;
6. Education;
7. jobs, entrepreneurship, and cooperatives;
8. Health;
9. Politics;
10. Religious);
11. Sport;
12. Culture and tourism;
13. Social welfare;
14. Accessibility;
15. Public services;
16. Protection from disaster;
17. Habilitation and rehabilitation);
18. Concession;

Among the rights of disability person are urgent for them to meet the daily need and their livelihood independently was the right to get a job, because it is a source of livelihood according the author. The right to get

jobs for disability person as described in article 11 of Disability Person Act No. 8 of 2016 that include:

1. Getting a job is held by the Government either local government or private without discrimination.
2. Getting the same wage and responsibilities with it is not disability person in the type of work.
3. Earn a decent accommodation in work.
4. Not dismissed by reason of disability
5. getting the program working again
6. Work placements are fair, proportional, and dignified.
7. Gets a chance in develop a career as well as normative rights attached to everything in it.
8. Modernizing the business, having self-works, entrepreneur, the development of cooperatives, and commencing self-business.

These rights will have no sense of anything for disability person if not embodied in concrete action, the Government is not only obliged to formulate the rights of disability person in the normative rules, in the formulation of the article of the law, but it also pursues the realization of its.

According to the author, the department who has the authority in realizing the rights of disability person to get jobs is the Manpower and Transmigration Department. Its main duty is the drafting and implement of policies of local governance in manpower and transmigration. To implement the main duties, the Manpower and Transmigration Department

has several functions, one of them namely has the functionality to implement the training activities and the worker placement which includes an extension, an increase in labor productivity and empowerment of employee training association, implementation of the cooperation with the relevant agencies in terms of labor placement domestic and international, the arrangement of the guidelines and monitoring the implementation of industrial relations which include the establishment of cooperation institutions, facilitation dispute, the welfare of workers and the requirements of the work, the preparation of guidelines and supervision of the implementation of the employment and workplace norms.⁵⁹

Manpower is an important aspect in economic development, because it is one of the factors of production retribution. In addition, unless the employment, the high-economic development also requires a conducive economic policies. In the field of training and work placement labor is a function of Manpower Department which not only focused and concentrated on an employee that has the perfection of the body but also for those who have specialized in need, physical or mental limitations, which it is already described in Disability Person Act No. 8 of 2016⁶⁰ that is everyone who experiences physical limitations, intellectual, mental, sensory and/or in a prolonged period of time which in interaction with the environment may

⁵⁹ Major Regulation of Malang No. 44 of 2012 on Explanation of Main Duty, Functioning, and working procedures of Manpower and Transmigration Department.

⁶⁰ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

encounter obstacles and difficulties to participate fully and effectively with citizens of other countries based on equality.

Disability person requires the jobs as a means to continue his life. It is the same those have perfect bodies. As one of the efforts that have been undertaken by the Social Department to help them prosper through the organization or place named *showroom*, which is serve as a place to sell or promote the products, one of it from disability person. There is a form of dress, cake, snack, massages, it is built because Social Department aimed to help them to survival⁶¹. Obviously, they want to look for a livelihood, utilizing their skills and contribute to the community. But it is differ to those who have a perfect body, disability person often face difficulties in seeking and obtaining employment. They also face attitudes that are less pleasant side of the company and colleagues who doubt their ability to work and assist the progress of a company.⁶² It is very contrary with the Employment Act No. 13 of 2003,⁶³ because in the legislation mentioned that any workforce has the opportunity and equal rights without discrimination to get a job and without there is discrimination from employers.

It is also in accordance with the above Act No. 13 of 2003 on Employment.⁶⁴ There is mentioned any workers/laborers are entitled to

⁶¹ Indah Sulianing Ati, Interview (Malang, 3 May 2017)

⁶² Yuni Ratnasari, *Perlindungan Hukum Bagi Pekerja Disabilitas Terhadap Memperoleh Pekerjaan*, (2016), h. 2

⁶³ Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

⁶⁴ Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

obtain equal treatment without discrimination from employers and it is also interrelated with the Disability Person Act No. 8 of 2016⁶⁵ that is ensuring the fulfillment the rights of disability person to develop themselves as well as utilizing the entire ability of appropriate talent and interest to enjoy, participate to contribute optimally, safely, freely, and dignity in all aspects of the life of a nation, State, and society. Time has proven that they can be entrepreneurial and highly productive employees. They can provide a valuable contribution to the company and the economy if no impediment is getting a job and the opportunities open to them, one of the difficult stages of selection reception workers.⁶⁶ It is further explained by Mam Ida as one of the officials of the Manpower Department, the difficulty of selection was due to several factors, one of them because due to vacancies that match the criteria of disability person which is not in accordance with the selection criteria of the company, for example, the company requires a minimum level of parts of IT (Information Technology) minimum education is Senior High School, but it is available the Junior High School.⁶⁷

The disability person is not a uniform group of human beings. They are experiencing physical disability, sensory disability, mental or intellectual disability in accordance with Disability Person Act No. 8 of 2016⁶⁸ Article 4. They were getting disability since birth either child, young,

⁶⁵ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

⁶⁶ Laili qodariyah, *Interview* (Malang, 10 May 2017)

⁶⁷ Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

⁶⁸ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

adult, still in school or work. The condition of disability them may have only a slight impact on their ability to work both participate in society, and even a major impact so that need support or help from others.⁶⁹

In fact, employs the disabilities person gives a positive impact, as well as help in social welfare for the nation while simultaneously addressing poverty. Entrepreneurs can also multiply the number of worker disability fixed by way of hiring employees who become the disability (e.g. due to accidents), given their work skills and job training that's been followed.

International Convention on the rights of persons with disability (Convention on the Rights of Persons with Disabilities) that have been ratified by Indonesia in Act No. 19 of 2011 on ratified of Convention on the Rights of Person with Disabilities.⁷⁰ It is regulated the rights that must be met by States parties. Those rights include the right to life, protection in a situation that is full of risks and emergency, an equivalent recognition before the law, the right to freely and safely, free from pain and cruel treatment, free from exploitation, violence and abuse, respect for privacy, free to live independently, the right to access the personal mobility, access to information, a tribute to have a home and family, participate in political and public life, the freedom to express, as well as the rights of economic, social and cultural rights such as education, health, rehabilitation and the right to work.

⁶⁹ Putri Lolita Dian Sari , *Interview* (Malang, 03 May 2017)

⁷⁰ Act No. 19 of 2011 on ratified the Rights of Person with Disabilities (the state Gazette of 2011 No. 107, Additional of the State Gazette of the Republic of Indonesia No. 5251)

The government has decided the main policy about the rights of manpower in Act No. 13 of 2003 on Employment.⁷¹ Based on the certainty of Act before, the rights of manpower includes the right to get the same treatment without discrimination, the right to get job training, the right to choose the workplace, the right to work protection, and the right of welfare.

Talking about the right problem to get a job, then cannot run from a responsibility and generally task of the authority parties. As for the responsible and task of the authority side according to the ILO (International Labor Organization) include to the authority parties must be suggested to obtain the strategic of disability person management in the work place by the businessman as a national wisdom to develop the work chance for disability person in private and government sector. The authority party must be imported something that related with disability in general framework of rules in economic and social term with considered the situation and national ordinances. But in this term, Manpower Department of Malang has the obligation in normative only. For example, in the work, waging the social guarantee, overtime, day off, and its protection.⁷²

Periodically, the authorities should review all rules and conditions governing the employment, guarantee to keep working, and guarantees of return to work in Government or the private sector, to ensure that the

⁷¹ Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

⁷² Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

regulations did not contain elements of discrimination against to the disability person.

The authorities should facilitate the efforts of employers in managing the issue of disability in the workplace, also in terms of the acceptance of the workers, guarantee to still work or return to work. This can be done by helping them identify employment exchange services, technical advisors, the Centre of rehabilitation and other support services are good, organized both by government agencies and private. Can also suggested the establishment of a Committee on safety and health, workers assistance program, a unit of industrial relations and the Committee on equality in accordance with the circumstances and national legislation. In terms of knowing the service job fair online Social Department make collaboration with the Manpower Department.⁷³

Refer to the responsibility and duties of authorities according to the ILO (International Labour Organisation) authorities must provide technical support wage subsidies and other incentives to develop or facilitate the creation of employment opportunities and the right to keep working for workers with disabilities and inform entrepreneurs about the existence of these incentives. The authorities here, the author has conducted interviews with Social Department of Malang which helped money Rp. 200,000 per

⁷³ Ida Sri Wahyuni , *Interview* (Malang, 31 December 2016)

month for allowance to every persons who attend training conducted by the Secretary of Social Department.⁷⁴

In giving advice to the job fair and other related services, the authorities must involve the organisations of employers and in cooperation with them, to ensure that such services are adequate and effective. They must also involve the Organization of employers for participating and sponsoring campaigns-awareness about disability and employment.

The most anyone has already grafted in the main duty of the Manpower Department of Malang, as follows:

1. Controlling to the occupation norm, the norm of health and safety occupation as well as the norms of Labor Social Security (Jamsostek).
2. Facilitation of Implementation in the areas of coaching and supervision of employment.
3. Implementation of coordination with other fields or related institutions in order to law enforcement in the field of employment.
4. Implementation of coaching and supervision of employment.
5. Supervision of norms women labors, children and the disabled.
6. The supervision institution of placement and training workforce.

In practice, the Manpower Department efforts of Malang runs less than optimal, because of several factors, that is the type of work that does not possible, for example, the company was in need of workers who are experts in the field of computers, apparently, the same time there was no

⁷⁴ Laili qodariyah, *Interview* (Malang, 10 May 2017)

disability workers skilled in computer terms, sometimes caused the level of education, for example, the company need workers who already have a senior high school certificate, it turns out that is available is a worker who has a junior high school certificate.⁷⁵

Based on the results of field research, efforts made by the Manpower Department of Malang to fulfill the rights of disability person in obtaining the jobs are as follows:⁷⁶

1. Encourage and provide recommendations

This first effort, the Manpower and Transmigration Department of Malang just give advice and suggestions to the company which is in the jurisdiction of Malang to implement the legislation in force in the field of employment, that is Act No. 13 of 2003 on Employment, to involve workers ' disability in its business activities. The companies are recommended to do the above as a Carrefour, supermarket, Indonesian Citizenry Bank (Bank Rakyat Indonesia), and Alfamart.

2. The construction and Dissemination of laws.

The second attempt was conducted by the Manpower Department of Malang to fulfill the rights of the disabled, disabilitas i.e. through the construction and dissemination of laws by means of collecting existing companies in the city of Malang once every three months, by giving the rules of employment.

⁷⁵ Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

⁷⁶ Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

3. Coordinate with the Department of Social

a) The third Effort conducted by the Department of Manpower is to coordinate with the Department of Social in looking for the potential of disability person by:⁷⁷

- 1) Disabilities disability data collection are scattered in the Malang.
- 2) Early detection starts from 0 years old, there are certain conditions which are already we can see the distinctions, perhaps from e.g. disability we can see directly except for example tuna netra, there appears to be some and maybe some new moon can be identified, such as tuna and tuna netra runngu we will see a response might be if a new age-the age of birth we are also difficulties because the baby's response in General might be the same reply that disability-disable new-born such as physically then there's also the relationship of mental reproduction, namely in from birth it already we can see, for example, like the cases of hidrocephalus, abnormalities in the face, the shape of the head can already be detected since the beginning of the new after that there is a profound clinical asesment.
- 3) Asesment, that is doing research on the background of the problem toward disability person, do occur in the pre or post-birth period at the time of child birth or pregnancy, It could also be a special attention, so once it gets to the stage of parenting how to the potential of what could be developed.

⁷⁷ Putri Lolita Dian Sari, *Interview* (Malang, 03 May 2017)

- 4) Special therapy, such as occupational therapy like *selefeldpolosi* so that their body is not rigid. There are also direct us help against the accessed to residence, formal educational institutions.
 - 5) Accompaniment, that is committed against persons with severe disability, usually mentoring is done in collaboration with activists of disabilities experts in Malang. After that, it skills training for those who can still be developed.
 - 6) Empowerment and Skills training, implemented as a massage for blind (tunanetra), cooking (tataboga) training and sewing for deaf (tunarunggu), there is also a mental rehabilitation included cooking as well as training and other handcraft and the other depending on the potential that can be developed with their condition.⁷⁸
- b) Employment Agency coordinate with the Social Service in job information.

Department of Employment coordination efforts with the Social Service of the second is sharing information about job vacancies as articulated by Laili Qodariah:

“mungkin ada BUMN la itu mereka minta data ke kita dengan kriteria seperti ini kita dikasih tahu kira-kira ada tidak penyandang disabilitas dan minta data, selain itu terkait rehabilitasi kita motivasi untuk mampu

⁷⁸ The program is continuing and cannot only implemented just some months, although that activity takes place one month but the whole can not be separated. So that later there till the end of the grant's skills, internship or when there is no activity it will be given mentoring, Social Department have the showroom which functions for exhibiting products at the same time sell or market. In the showroom were mostly there from citizen-assisted of Social Department that disability person. Inside there is one organization, there is a room for massage blind (tunanetra) so small-scale of disability blind (tunanetra) of Social Department may already get training there, could be its internship would be worked in there, which the system is regulated by the Department of Employment, such as LSM Pamitra, Perkuni and also the foundations of Bakti Luhur. Many of them cooperate with Social Department, and the results of their work are also accommodated by the Social Department.

bersaing, seperti kemarin Alfamart atau Bank Mandiri, kita kasih data atau sms whatsapp kalau kita masih punya nomernya ke mereka para penyandang disabilitas yang penting kita motivasi harus mau ikut, yang penting disusun aja kapan maunnya, harus mampu bersaing kan kepinginnya punya hak yang sama dan disamakan dengan lainnya kalau misalnya mereka harus melalui tahapan-tahapan penyaringan prosesi administrasi semuanya ya kita berikan kepada Dinas Ketenagakerjaan, kalau untuk masalah sistem online kita bekerjasama dengan Universitas Brawijaya kalau tidak salah, mereka membuatkan web untuk promosi hasil produk mereka, untuk pelatihan sendiri para penyandang disabilitas mereka menerima laporan seperti itu, kabetulan yang ditangani Dinas Sosial yang dalam kategori pendidikannya itu SMA kebawah, tetapi kalau misalnya SMA mereka itu punya basic IT mereka sudah punya kemampuan sendiri itupun bisa bekerja untuk saat ini, paling ada 5 orang yang sepengetahuan saya mereka bisa akses melalui IT kalau toh mereka butuh bantuan ada temen-temen dari Universitas Brawijaya, UMM atau Universitas Negeri Malang mereka akan membuatkan untuk aplikasinya, kalau ada lowongan pekerjaan ada itu tuna rungu wicara yang canggih-canggih, mereka malah bilang "buk ada lowongan buk" mereka bilang kesaya.⁷⁹ Dalam hal ini Dinas Ketenagakerjaan berfungsi sebagai penyalur informasi atau sebagai fasilitator saja.⁸⁰

"there may be BUMN (Indonesian State-Owned Enterprises) that they ask data to us with criteria such as this we are given roughly know there are not disability person and requested data, in addition to our rehabilitation-related motivation to compete, like yesterday, Alfamart or Bank Mandiri We give data or sms whatsapp if we still have number to them (disability person) an important we give motivation in order should to join, which is important make a drafted early when they want, should be able to compete because we have the same rights and likened to the other. If they have to go through stages of filtering a procession of Administration all of it we give to the Department of Manpower. If our online system we carry out collaboration with the University of Brawijaya if not mistaken, they create website for the promotion of their products, for the training of themselves of disability person, they receive a report like that, coincidence that handled Social Department in the category of education was under Senior High School, but if their Senior High School that have basic IT, they already had their own abilities that can work for the moment, most people who have 5 to my knowledge they can access through IT if they need help there are friends from Brawijaya University, State university of Malang, and Muhammadiyah University of Malang. they will make to the application, if there are any job vacancies there were deaf a sophisticated speech, they instead say "mom, there are vacancies" they said to me. In

⁷⁹ Laili qodariyah, *Interview* (Malang, 10 May 2017)

⁸⁰ Ida sri wahyuni, *Interview* (Malang, 31 December 2016)

this case the Manpower Department serves as provider information or as a facilitator only”.

So coordination has been carried out by the Manpower Department and Social Department in terms of sharing information was limited to employment facilitators and providers. Social Department as a providers of disability person, just give the motivation to the disability person, so that they are able to compete in the workforce and they hope to have the same rights and likened to the other if they have to go through stages of filtering the selection. Whereas in terms of the administration selection of Sosial Department hand it over to the Manpower Department, if the job vacancy in online type then Social Department make collaboration with the University of Brawijaya, Malang State University and Muhammadiyah University of Malang to get access.

When in the reality, that it still found companies are not yet fully hiring the workers of disability person, It's not fully the fault of the Manpower Department, caused the control of constitution is not only duty of the Manpower Department, but also the duty of all sectors.

- b. Supervision of Manpower Department toward Fulfillment the Rights of Disability Person to Discover a Job.

Disability person is the community who has special needs and requires a special way to handle them, because they have difficulties in their daily life to get good access either access of health, education, or access in

accepting the job. So that, in any case the disability person requiring special treatment and supervision in all aspects of life.

Specificity that is given to disability person is a constitutional right, therefore it should be implemented and the government must pursue the fulfillment. In addition, their existence is also reserved by constitution. In terms of employment, they are in the protection of Manpower Department.

Manpower Department is one of the instruments of Government that has the authority in terms of meeting the needs of disability person in terms of jobs. Besides having the main duty to meet the rights of disability person, the Manpower Department also has the function to control how the conditions of the practice in the field. As stated in law No. 13 of 2003 on Labor⁸¹, mentioned that entrepreneurs who employ disabled workforce required to provide protection in accordance with the type and level of the defect. Giving a protection as referred to is implemented in accordance with the legislation in force.

In article 11 of Disability Person Act No. 8 of 2016 mentioned that they have a right to secure a job, including:

1. Getting a job is held by the Government either local government or private without discrimination.
2. Getting the same wage and responsibilities with it is not disability person in the type of work.

⁸¹ Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

3. Earn a decent accommodation in work.
4. Not dismissed by reason of disability
5. getting the program working again
6. Work placements are fair, proportional, and dignified.
7. Gets a chance in develop a career as well as normative rights attached to everything in it.
8. Modernizing the business, having self-works, entrepreneur, the development of cooperatives, and commencing self-business.

The rights of disability person above does not finish with the only written in the article of the constitution, but it will be meaningful for disability person when met and there are agencies that oversee the implementation. One of the goals of the constitution is according to the utility theory, that should bring happiness to human beings, this can only be achieved if the commandment of the constitution is implemented and supervised its implementation so that it does not happen upon the constitution.

The supervision to the rights of disability person especially did by Manpower Department of Malang as follows:⁸²

1. Controlling to the occupation norm, the norm of health and safety occupation as well as the norms of Labor Social Security (Jamsostek).
2. Facilitation of Implementation in the areas of coaching and supervision of employment.

⁸² Tasks, principal and functions of the Department Manpower Malang

3. Implementation of coordination with other fields or related institutions in order to law enforcement in the field of employment.
4. Implementation of coaching and supervision of employment.
5. Supervision of norms women labors, children and the disabled.
6. The supervision institution of placement and training workforce.

In the supervision, The Manpower Department of Malang do not distinguish between workers of disability person and workers who have physically perfect. But in fact, disability person could not be equated with workers who have the perfect physique.

Mostly, disability person can be employed are physical disability person, sensory and motory for mental disability person, so far still not be worked. The existence of a controlling, it is very important to avoid something that is not want or arbitrariness of either party.

The supervisions conducted by the Manpower Department are as follows:⁸³

1. The Manpower Department has the authority to oversee labor in terms of working hours, social security, waging, overtime, day off and its protection, the investigation of whether salary is in compliance the UMR, the day off already given are correct or not, also investigated whether the data is correct or not, This surveillance is done to labour in General, not only for disability person, but also the manpower has body perfect.

⁸³ Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

2. The Manpower Department of Malang also have the authority if the disability person not employed in accordance with their ability, the Manpower Department only has the authority to mutation, appealed or changed the disability employee to work based on their skill, and the Manpower Department only to facilitate disability in order could work in the company.

While in practice, there are still companies who do not have hiring the disability person, Manpower Department does not provide sanctions, because Employment Department only cultivate, did not provide sanctions because the sanctions is an attempt, and Manpower Department already feel thankful when there are companies that accommodate disability, because of worried when there is sanctions, feared the companies have no empathy and unwilling to accept workers disability, because of sanctions is the last effort.⁸⁴

The constitution of Republic of Indonesia No. 21 of 2003 on ratified International Labor Organization Convention No. 81 concerning Labor Inspection in Industry and Commerce⁸⁵ that the function of employment supervision system should be:

1. Ensure of law enforcement about the working situation and the supervision of manpower and regulation that relates the time work,

⁸⁴ Ida Sri Wahyuni, *Interview* (Malang, 31 December 2016)

⁸⁵ The constitution of Republic of Indonesia No. 21 of 2003 on ratified International Labor Organization Convention No. 81 concerning Labor Inspection in Industry and Commerce, (the state Gazette of 2003 No. 91, Additional of the State Gazette of the Republic of Indonesia No. 4309)

wages, safety, health, and welfare, the children and young manpower and the problems that have related.

2. Giving information about the technic problem to the businessman and employee about the effective way to obey the constitution.
3. Announcing to the government about the abuse of authority especially was not regulated in the constitution.

After looking the some explanations of the constitution of Republic of Indonesia No. 21 of 2003 on ratified the International Labor Organization Convention No. 81 concerning Labour Inspection in Industry and Commerce, There are some things that haven't been done by the Manpower Department of Malang in conducting surveillance i.e. related guarantee law enforcement regarding working conditions, labor protection and regulations regarding working time, waging,safety, health and welfare, child labor as well as young people and other issues related, in this case the Manpower Department has yet to guarantee law enforcement are totality, because according to the Manpower Department the judgment of the sanctions is a last effort, and the Manpower Department less guarantee law enforcement against to disability person with does not distinguish how to perform fulfillment of rights.

In essence, the controlling conducted by the Manpower Department of Malang to disability person to fulfill the rights in getting a job, only the norm, to the problem of implementation in the real working conditions of the Manpower Department there is no difference between people with

special handling or not, so that the controlling of the Manpower Department of Malang by the author lacking in providing oversight and full service towards the disability person and did not accordance with the legislation of the Republic of Indonesia Nomor 21 Tahun 2003 tentang Pengesahan *Ilo Convention No. 81 Concerning Labour Inspection in Industry and Commerce* however, disability person could not be equated with normal people in terms of providing facilities to them.

C. The efforts and supervision of the Manpower Department of Malang Towards the fulfillment of the rights of Disability Person based on the Islamic Justice under Perspective of Majid Khadduri.

Majid Khadduri explains, literally justice (*adil*) is the abstract noun, derived from a verb '*adala* that containing at least five meanings:⁸⁶

4. Straightening, amendment, or change.
5. Escape, leave or avoid a path that went astray toward a path that is straight and true.
6. Equality.
7. Create balance, proportion or are in a situation of balance.
8. May also means an example, a literal expression which are not directly related to justice

Majid Khadduri also said, the Qur'an and the Hadith often warn the faithful against fanaticism and oppression warned that fulfill their

⁸⁶ Ahmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialptudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, (Jakarta: Kencana Prenada Media Group, 2009) p. 243

obligations within the most important must be have justly. In the Quran there are more than two hundreds warning against injustice and expressed in the form of similar words, such as *zulm*, *itsm*, *dhalal* etc. Not less than one hundred expressions that incorporate the notion of Justice, whether in the form of direct words such as, '*adl*, *qisth*, *mizan* and others.⁸⁷ References in the Qur'an about justice the most important are:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ﴿٥٨﴾

It's mean: surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice, surely Allah admonishes you with what is excellent, surely Allah is seeing, hearing.⁸⁸

Majid Khadduri classifying justice into several sections, among others; political justice, theological Justice, philosophical justice, ethical justice, legal justice, justice between Nations, and social justice. However, according to the researcher from some of the theory of Justice, which is in accordance with the discussion of the legal and justice is social justice. Because have related directly with this aspect of the law.

The role and efforts made by the Manpower Department of Malang to meet the rights of disability person obtain jobs. The first, the researcher will be clarification into two, namely:

- a. Viewed from the legal justice according to Majid Khadduri.

⁸⁷ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 14

⁸⁸ QS. An-Nisa' (4): 58

As explained in chapter II that legal justice is divided into two, namely legal distributif and legal procedural, legal Justice is in accordance with the law. According to the etymology of the rules, justice is a legal term (the law) and literally means the *jus* and *justum* that sometimes need to complement each other, regardless of how the meaning of Justice has expanded not only in the aspect of the law (legal) but also in other aspects.

Efforts to fulfill the rights of disability person in order to obtain the work done by the Manpower Office, if judged by the substantive justice theory of Majid Khadduri, the efforts of the Manpower Office can be said in order to realize justice, but judging from the side of procedural justice it has not been able to realize justice.

Law no. 13 of 2003 on Employment⁸⁹ Article 4 explains that the purpose of employment development is:

- a. Empowering and making efficient use of manpower optimally and humanely.
- b. Creating equal opportunity and providing manpower (supply of manpower) that suits the need of national and provincial/ municipal developments.
- c. Providing protection to manpower for the realization of welfare and

⁸⁹Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

- d. Improving the welfare of manpower and their family.

Moreover , Any manpower shall have the same opportunity to get a job without discrimination and Every worker/ labourer has the right to receive equal treatment without discrimination from their employer.

In addition, in the form of legal norms of the Manpower Office of Malang City poured the legal norms in the task, principal and function:

- a. Implementation of facilitation in the field of guidance and supervision of labor
- b. The implementation of the Labor Reporting Service ;
- c. Handling and settling cases of public and worker complaints about violations of labor standards and labor regulations
- d. Conducting investigations on violations of work norms, Occupational Health and Safety norms and social security norms of workers
- e. The implementation of coordination with other fields and/or related institutions in order to enforce the law in the field of manpower;
- f. Implementation of guidance and supervision of labor;
- g. Supervision of the labor norms of women, children, and persons with disabilities
- h. Supervision of placement agencies and labor training

From the above explanation, the legal norms conducted by the Manpower Office of Malang City have fulfilled substantive justice

because in the legal norms, it is clear that the Manpower Office of Malang City still has partiality to persons with disabilities, by paying attention to the work norms of persons with disabilities, both in terms of Wages, working hours, work placements, leave and safety and health, so in terms of norms it has fulfilled the justice of substance according to Majid Khadduri.

According to Majid Khadduri, substantive justice according to Majid Khadduri is a justice whose aspects are contained in the substance of Shari'ah, comprising laws drawn from the Qur'an and the Sunnah of the Prophet as well as from sources of derivatives (consensus and analogy) Which is considered to contain a justice set by a legislator (the legislator).

Talking about justice, it will not be separated with the same rights between one with another without discrimination and without distinction of sex, race, color, religion, and physical form. This is also related to any decisions made by a legislator, a lawmaker or a so-called legislator should in making the rules not to make rules that in favor of a particular group, or to oppress a certain group, so that the legal product issued raises An imbalance that causes the occurrence of injustice, and this is strictly prohibited in the Qur'an, because Islamic Shari'ah strongly recommends to be fair to anyone, even more so a leader must give a sense of justice to his people, because as a leader is given A great trust for his people and will be accounted for in the hereafter. As explained in Sura An-Nisa 'verse

58 it is important to convey a message and an appeal to lawmakers to make the product as fairly as possible.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ

إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۚ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.⁹⁰

In the commentary of Ibn Katsir described in the Word of God: *wa idzaa hakamtum naasi an tahkumu bil 'adli* ("And [enjoin you] if establishing law among men, so that ye will judge justly.") It is the command of Him to establish the law among Human being justly. To that end Muhammad bin Ka'ab, Zayd bin Aslam Syahr bin Hausyab said: "Verily this verse is revealed to the umara, namely the law breakers among men."⁹¹

After seeing what has been done by the government in the making of legal norms in Law No. 13 of 2003 on Manpower and Law no. 8 year 2016 concerning Persons with Disabilities as the basis for performing the duties, functions and functions of the Manpower Office of Malang City as a basic effort to protect persons with disabilities and to fulfill the rights of disability person in particular the right to receive employment, the legal

⁹⁰ QS. An-Nisa' (4): 58

⁹¹ <https://alquranmulia.wordpress.com/2016/02/08/tafsir-ibnu-katsir-surah-an-nisaa-ayat-58/>
diakses pada tanggal 27 Mei 2017 pukul 14.30 wib.

norm of the government has already taken sides and has been perceived Fair in the making of law, does not stop at legal norms only, when a norm is there it will be more felt if the process of implementing the law is also in accordance with what has been written.

If seen from procedural justice, the efforts that have been done by the Manpower Office of Malang City have not been able to realize justice, because it is mentioned in the Law no. 13 of 2003 on Employment⁹² Article 28 stating that Employers must employ at least 1 (one) person with disabilities who meet the job requirements and job qualifications of his company for every 100 (one hundred) workers in his company. And affirmed also in the Act no. 8 of 2016 concerning Persons with Disabilities⁹³ article 53 paragraph 1 and 2,

“Regional Government, State-Owned Enterprises and Regional-Owned Enterprises shall employ at least 2% (two percent) of Persons with Disabilities from the number of employees or workers. And private companies are required to employ at least 1% (one percent) of Disabled Persons from the number of employees or workers.”

However, in fact the Manpower Office of Malang City, when there are companies that do not employ persons with disabilities, the Manpower Office only appeals and advises the company to act in accordance with applicable law, when there are companies that are not in compliance with the Manpower Act Act does not provide specific sanctions , So in this

⁹² Employment Act No. 13 of 2003 (the State Gazette of 2003 No. 39, Additional of the State Gazette of Republic of Indonesia No. 4279)

⁹³ Disability Person Act No. 8 of 2016 (the state Gazette No. 69, Additional of the State Gazette of the Republic of Indonesia No. 5870)

case the lack of firm action in the process of application of the applicable law, so that between the substance of law and the reality of law happened inequality, which resulted in less legal implementation in accordance with existing legal ideals. This is very detrimental to the morning of people with disabilities in fulfilling the needs of life, and prosperity. After seeing the process undertaken by the Department of Manpower of Malang then according to the concept of Majid Khadduri's absence has not fulfilled procedural justice.

What is meant by procedural justice according to Majid Khadduri is justice that has the rules of procedure carried out with certain sizes such as coherence (reasonable), regularity (regularity), impartiality (impartial, neutral), which is something we call formal justice, manifested At the level of regularity, thoroughness and neutral in the application of (application) Shari'at. The more advanced these procedural rules, the higher the quality of formal justice is expressed in the particular system of the law. When the rules are ignored or applied inappropriately, procedural injustice arises.

Injustice in Islam commits an act that is hated by God, as described in QS. Ash-Shuraa verses 39-43:

وَالَّذِينَ إِذَا أَصَابَهُمُ الْبَغْيُ هُمْ يَنْتَصِرُونَ ﴿٣٩﴾ وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ ﴿٤٠﴾ وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَٰئِكَ مَا عَلَيْهِمْ

مَنْ سَبِيلٍ ﴿٤١﴾ إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ

أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ ﴿٤٢﴾ وَلَمَنْ صَبَرَ وَغَفَرَ إِنَّ ذَلِكَ لَمِنْ عَزْمِ الْأُمُورِ ﴿٤٣﴾

“And those who, when tyranny strikes them, they defend themselves, And the retribution for an evil act is an evil one like it, but whoever pardons and makes reconciliation - his reward is [due] from Allah . Indeed, He does not like wrongdoers. And whoever avenges himself after having been wronged - those have not upon them any cause [for blame]. The cause is only against the ones who wrong the people and tyrannize upon the earth without right. Those will have a painful punishment. And whoever is patient and forgives - indeed, that is of the matters [requiring] determination.”⁹⁴

From the verses of the Quran the Fikih Rule also explains that every decision of the government must give benefit to its people

تَصَرَّفُ الْإِمَامُ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالصَّلَاحَةِ

“Policy of a leader to the people dependent on welfare”

This rule implies that any action or policy of leaders concerning and regarding the rights of the people is linked to the welfare of the masses, and is aimed at bringing about a good. For the leader is the bearer of the mandate of the people and for that he is appointed as leader and must also pay attention to the benefit of the people.⁹⁵

⁹⁴ QS. As-Shuraa: 39-43

⁹⁵ Imam Musbikin, *Qawa'id Al-Fiqhiyah*, (Jakarta: PT Raja Grafindo Persada, 2001) p.124

While, the supervision to fulfill the rights of disability persons in order to obtain the work done by the Manpower Office, viewed from the main task and function, if it is collided with substantive theory of justice then the function is appropriate, but when looking at its practice, in the supervision procedures performed by the Service Employment has not been able to establish justice for disability person when viewed from the concept of procedural legal justice according to Majid Khadduri, this is because in practice the Employment Service likens controls, both to persons with disabilities and to workers who have perfect physical. And the fact that people with disabilities can not be equated with workers who have perfect physical. And this is very contrary to the legal norms in Law no. 8 of 2016 concerning Persons with Disabilities, which are mentioned in article 2 on the implementation and fulfillment of the rights of persons with disabilities based on special treatment and more protection.

b. Views of the social justice according to Majid Khadduri.

In the discussion of social justice according to Majid Khadduri, he takes from the numerous previous scholar's opinions, because for theologians and Muslim philosopher that justice is a concept that is abstract and idealist, expressed in terms of superior and perfect. They are not trying to seriously look at Justice as a positive concept and analyzing it from the social conditions that exist.⁹⁶

⁹⁶ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 258

Ibn Taymiyyah was aiming at an inquiry in the field about the social aspects of Sharia Justice has been achieved by developing a concept “*as-Siyasah asy-Syar’iyah*” (*Political Law*) as a supplement toward Sharia, and Najmuddin ath-Thufi, who proposed the principle of goodness (*mashlahat*) as a source of law.

By a combination of methods of deductive-inductive, Ibn Taymiyyah developed a concept *as-Siyasa Al-Syar'iyah*, which adds a view of Justice drawn from sources of texts (the Qur'an and the Hadith) and social (secular). This is a journey from classical doctrines of law and justice.⁹⁷

Ibn Taymiyyah tried to maintain a balance between idealism and realism as well as deduction induction, a realism based on the sources of positive law, for example prese and customs, as long as it accords with the objectives of Sharia. In nearly all his writings, he attempted to present the principles of *mashlahat* (public interest) of the faith which he believed as the ultimate purpose of Sharia. This goal can be achieved through *as-Siyasah asy-Syar'iyah*.

The Justice who fighting for Ibn Taymiyyah to achieve it, inevitably is a new concept, enshrined in the *as-Siyasah asy-Syar'iyah*, which we call social justice, because its aims are to serve the public interest. Because of the power of Islam is a decadent, then social justice is a suggestion that

⁹⁷ Majid Khadduri, *Teologi Keadilan Prespeftif Islam*, p. 264

can rehabilitate power, more specifically the Ibn Taymiyyah held that social justice can bridge the gap between a ruler and citizenry (*ar-Rawi ar-Ra'iyah*) and finally advancing the social conditions and heightens the power of Islam.⁹⁸

From the explanation above, the effort and the supervision carried out by the Manpower Department of Malang if viewed *As-Siyasah Asy-Syar'iyah* then any action or decision made by the State must comply with the objectives with the goals (*Maqashid*) Sharia and presented by the principle of *mashlahat* (public interest) of the faith which believed as the goals of Sharia. This goal can be achieved through *as-Siyasah Asy-Syar'iyah*. In fact, the *maqashid* (the goals) have not been fully implemented into one of the instruments of the State responsible for updating the applicable regulations or laws that apply. So the benefit for disability person less felt because of the lack of assertiveness from the department of the duties and functions of the Manpower Department itself.

⁹⁸ Majid Khadduri, *Teologi Keadilan Prespektif Islam*, p. 269

CHAPTER V

CLOSING

A. Conclusion

The results of research and analysis that have been described in the previous Chapter, it can be concluded as follows:

1. The effort and control of Manpower Department of Malang City toward the fulfillment the right of disability person to discovering the job.
 - a. The Efforts of Manpower Departmen to fulfill the right of persons disability to get the job:
 - a) Encourage and provide recommendations
 - b) The construction and Dissemination of laws.
 - c) Coordinate with the Department of Social
 - b. The control of Manpower Departmen to fulfill the right of persons disability to get the job:
 - a) The Manpower Department has the authority to oversee labor in terms of working hours, social security, waging, overtime, day off and its protection, the investigation of whether salary is in compliance the UMR, the day off already given are correct or not, also investigated whether the data is correct or not, This surveillance is done to labour in General, not only for disability person, but also the manpower has body perfect.
 - b) The Manpower Department of Malang also have the authority if the disability person not employed in accordance with their ability,

the Manpower Department only has the authority to mutation, appealed or changed the disability employee to work based on their skill, and the Manpower Department only to facilitate disability in order could work in the company.

2. The efforts and supervision of Manpower Department in Malang to fulfill the right of disability person to get the job according to the justice concept in Islam by Majid Khadduri

- a. Legal Jusctice

The efforts Manpower Departmen to fulfill the rights of disability person in to get the job, if be observed by Majid Khadduri's substantive justice theory, the efforts of the Manpower Departmen can be said in order to realize justice, but be observed from the procedural justice it has not been able to realize justice.

- b. Sosial Justice

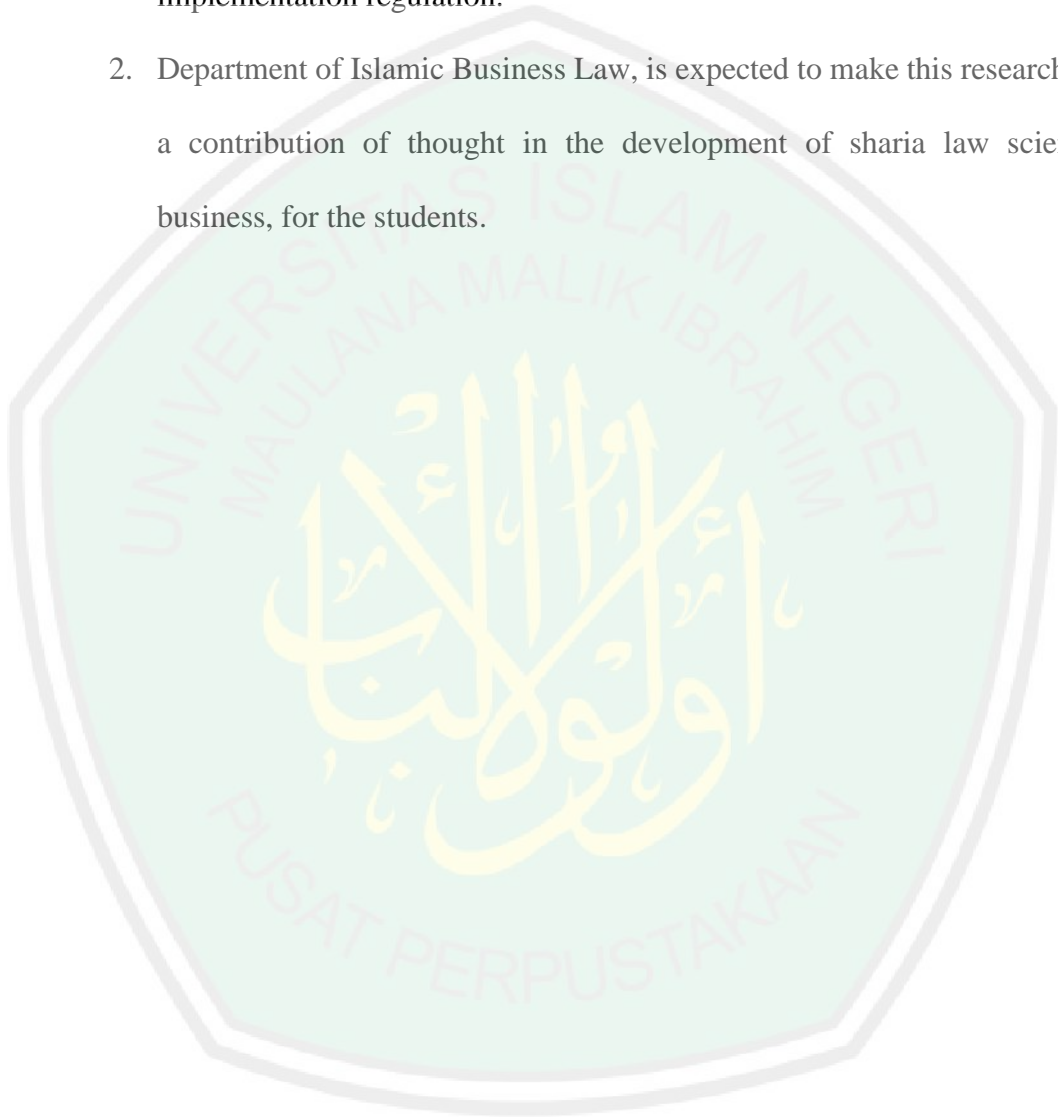
The efforts and supervision conducted by the Manpower Departmen in Malang City has not been served mashlahat (public interest), the maqashid has not been fully achieved and the benefit for Disability person less can be felt because the Manpower Department is less firmness to respond.

B. Suggestion

1. To the Manpower Department should efforts and supervision conducted to fulfill the rights of disability persons should be distinguished, since persons with disabilities are not persons who can be treated equally as

normal people, so there must be distinctions and special restrictions in handling them and to further provide firmness to companies that do not implement regulation.

2. Department of Islamic Business Law, is expected to make this research as a contribution of thought in the development of sharia law science business, for the students.



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APPENDIX

A. Interview Result

Name : Ida Sri Wahyuni SH

Job : Supervision Departmen in Manpower Departmen

1. Apakah Dinas Ketenagakerjaan memiliki kewajiban hukum untuk mengawal agar penyandang disabilitas mendapat pekerjaan?

“Dinas Ketenagakerjaan hanya mnghimbau, dan menganjurkan perusahaan untuk bertindak sesuai dengan Undang-Undang yang berlaku, dan pada kenyataannya banyak perusahaan yang sudah melaksanakan apa yang yang telah diamanatkan oleh Undang-Undang, seperti Carrefour, BRI, perusahaan nasional dan rokok.”

2. Apa saja upaya yang ditempuh oleh Dinas Ketenagakerjaan agar penyandang disabilitas memperoleh pekerjaan?

“Meberikan pembinaan dan sosialisasi masalah Undang-Undang dan peraturan, dengan cara mengumpulkan perusahaan setiap 3 bulan sekali (dengan dikasih aturan-aturan ketenagakerjaan yang terbaru, jika ada)”.

3. Apa saja hambatan yang dihadapi Dinas Ketenagakerjaan dalam mempersiapkan penyandang disabilitas sebagai tenaga kerja?

“Bahwasannya belum semua perusahaan melaksanakan apa yang telah diamanatkan Undang-Undang, dikarenakan beberapa faktor salah satunya karena maslah jenis pekerjaan yang tidak memungkinkan, ,misalnya perusahan sedang membutuhkan pekerja yang ahli dalam bidang komputer, ternyata pada saat itu pekerja disabilitas tidak ada yang ahli dalam hal komputer, kalau di carrefour terkadang di bagian memotong daging, tapi kadangkala disabilitasnya juga yang pilih-pilih terhadap jenis pekerjaan tertentu.”

4. Apakah semua tipologi penyandang disabilitas bisa dipekerjakan?

“Tergantung jenis pekerjaaan, hanya saja yang saya tahu selama ini disabilitas mental belum dipekerjakan, “

5. Kalo tidak dapat dipekerjakan upaya apa yang harus dilakukan oleh Dinas Ketenagakerjaan?

“Dinas Ketenagakerjaan ber koordinasi dengan Dinas Sosial,”

6. Setelah penyandang disabilitas bekerja, apakah Disnaker berwenang untuk mengawasi pemenuhak hak-haknya sebagai tenaga kerja di lapang?

“Iya, dalam hal jam kerja, pengupahan, jaminan sosial, lebur, cuti dan perlindungannya, pemeriksaan tentang apakah gaji udah sesuai UMR , cuti nya sudah diberikan benar apa tidak, juga diperiksa apakah data nya benar apa tidak? Akan tetapi pengawasan ini dilakukan kepada tenaga kerja pada umumnya, tidak hanya bagi penyandang Disabilitas.”

7. Apakah seluruh perusahaan di kota Malang sudah melakukan rekrutmen pekerja penyandang disabilitas?

“Belum tercapai, karena yang mengawal UU bukan Dinas Ketenagakerjaan saja, tapi semua sektor, tidak tercapai itu disebabkan lowongan yang sesuai kriteria disabilitas tidak ada, misal membutuhkan bagian IT ini minial SMA, ternyata ada nya SMP, jika dilihat secara keseluruhn belum, akan tetapi sebagian sudah melaksanakan, Dinas Ketenagakerjaan hanya mengawasi perusahaan swasta, karena yang melapor adalah perusahaan swasta karena negara tidak melapor ke Dinas Ketenagakerjaan.”

8. Dalam hal apakah Dinas Ketenagakerjaan menjalin kerjasama dengan Dinas Sosial dalam upaya pemenuhan hak dan pengawasan penyandang disabilitas untuk menerima pekerjaan?

“Ketika ada perusaahaan yang membutuhkan kerja maka Dinas Ketenagakerjaan meberitahu ke Dinas Sosial.”

9. Bagaimana respon Dinas Ketenagakerjaan jika mengetahui penyandang disabilitas ditempatkan/ dipekerjakan di tempat yang tidak sesuai dengan kemampuan ?

“Hanya memutasi, menghimbau atau Meroling pegawai disabilitas tersebut ke pekerjaan yang lebih sesuai dengan kemampuan, Dinas Ketenagakerjaan hanya memfasilitasi agar disabilitas bisa bekerja ke perusahaan.”

10. Berapa prosentasi penyandang disabilitas dimalang? Dan berapa prosentasi penyandang disabilitas yang dapat menerima pekerjaan maupun yang tidak dapat menerima pekerjaan?

“Belum tahu karena data tidak akurat, dikarenakan ada yang perusahaan melapor dan ada perusahaan yang tidak melapor.”

11. Apa tindakan hukum yang dilakukan Dinas Ketenagakerjaan terhadap perusahaan yang tidak memperkerjakan penyandang disabilitas?

“Dinas Ketenagakerjaan tidak memberikan sanksi, karena Dinas Ketenagakerjaan hanya membina, tidak memberikan sanksi karena sanksi merupakan upaya terakhir, dan Dinas Ketenagakerjaan sudah merasa bersyukur ketika ada perusahaan yang menampung disabilitas, karena takutnya ketika ada sanksi maka takutnya perusahaan tidak empati dan tidak mau menerima pekerja disabilitas, karena sanksi merupakan upaya terakhir.”

Ida Sri Wahyuni SH

B. Interview Guide

1. Apakah Dinas Ketenagakerjaan memiliki kewajiban hukum untuk mengawal agar penyandang disabilitas mendapat pekerjaan?
2. Apa saja upaya yang ditempuh oleh Dinas Ketenagakerjaan agar penyandang disabilitas memperoleh pekerjaan?
3. Apa saja hambatan yang dihadapi Dinas Ketenagakerjaan dalam mempersiapkan penyandang disabilitas sebagai tenaga kerja?
4. Apakah semua tipologi penyandang disabilitas bisa dipekerjakan?
5. Kalo tidak dapat dipekerjakan upaya apa yang harus dilakukan oleh Dinas Ketenagakerjaan?
6. Setelah penyandang disabilitas bekerja, apakah Disnaker berwenang untuk mengawasi pemenuhan hak-haknya sebagai tenaga kerja di lapang?
7. Apakah seluruh perusahaan di kota Malang sudah melakukan rekrutmen pekerja penyandang disabilitas?
8. Dalam hal apakah Dinas Ketenagakerjaan menjalin kerjasama dengan Dinas Sosial dalam upaya pemenuhan hak dan pengawasan penyandang disabilitas untuk menerima pekerjaan?
9. Bagaimana respon Dinas Ketenagakerjaan jika mengetahui penyandang disabilitas ditempatkan/ dipekerjakan di tempat yang tidak sesuai dengan kemampuan ?
10. Berapa prosentasi penyandang disabilitas dimalang? Dan berapa prosentasi penyandang disabilitas yang dapat menerima pekerjaan maupun yang tidak dapat menerima pekerjaan?

11. Apa tindakan hukum yang dilakukan Dinas Ketenagakerjaan terhadap perusahaan yang tidak memperkerjakan penyandang disabilitas?



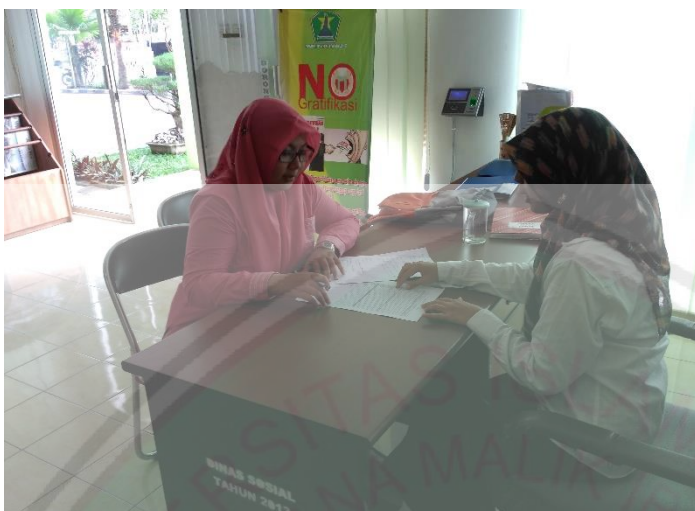
C. Interview Photo



Showroom in Sosial Departmen



Petugas Dinas Sosial bagian penjaga showroom



Author with officer Social worker social rehabilitation field, Mrs Putri Lolita Dian Sari Spd.



Author with Ida Sri Wahyuni Supervision Departmen in Manpower Departmen



Author with Laili qodariyah, head of rehabilitation section and social services for elderly and persons with disabilities.

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