

**IMPLEMENTATION OF CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN PROVIDING LEGAL PROTECTION FOR PERSONS WITH DISABILITIES IN INDONESIA**

*IMPLEMENTASI KONVENSI TENTANG HAK-HAK PENYANDANG DISABILITAS DALAM PENGATURAN PERLINDUNGAN HUKUM BAGI PENYANDANG DISABILITAS DI INDONESIA*

**Ni Putu Rai Yuliantini\***

Program Studi Ilmu Hukum Fakultas Hukum dan Ilmu Sosial  
Universitas Pendidikan Ganesha  
Jalan Udayana Nomor 11 Singaraja 81113, Indonesia

**Anak Agung Istri Atu Dewi, Ni Ketut Supasti Darmawan**

Program Studi Ilmu Hukum Universitas Udayana  
Jalan Pulau Nisa Nomor 13 Denpasar 80234, Indonesia

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**\*) Korespondensi:**

E-mail: raiyuliantini@gmail.com

**Abstract:** the purpose of this study was to analyze legal protection for persons with disabilities in Indonesia and the implementation of the convention on the rights of persons with disabilities in Indonesia. The approach used in this research was a qualitative approach with a descriptive analysis method. The type of research used normative juridical. Data collection techniques used literature study. The results of the study indicated that legal protection for persons with disabilities in Indonesia had been included in the constitution and several laws and regulations. The principles of equality and non-discrimination were contained in several instruments. The existence of special rights granted to persons with disabilities to be able to maintain their identity, characteristics, and traditions. Non-discriminatory treatment was equally important to achieve equal treatment. The implementation of the convention on the rights of persons with disabilities in Indonesia was evidenced by the ratification of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. Providing equal opportunities for persons with disabilities in all aspects of state and community administration, respecting, protecting, and fulfilling the rights of persons with disabilities, including the provision of adequate accessibility and accommodation aimed at protecting from neglect, exploitation, harassment, all discriminatory actions, and violations of human rights.

**Abstrak:** tujuan kajian ini adalah menganalisis perlindungan hukum bagi penyandang disabilitas di Indonesia dan implementasi konvensi hak-hak penyandang disabilitas di Indonesia. Pendekatan yang digunakan dalam kajian ini adalah pendekatan kualitatif dengan metode analisis deskriptif. Jenis penelitian yang digunakan adalah yuridis normatif. Teknik pengumpulan data menggunakan studi kepustakaan. Perlindungan hukum bagi penyandang disabilitas di Indonesia telah dimasukkan ke dalam konstitusi dan beberapa peraturan perundang-undangan. Prinsip kesetaraan dan non-diskriminasi tertuang dalam beberapa instrumen. Adanya hak khusus yang diberikan kepada penyandang disabilitas agar mampu mempertahankan identitas, ciri khas dan tradisinya, serta perlakuan non-diskriminatif sama pentingnya untuk mencapai perlakuan yang sama. Penerapan

konvensi hak-hak penyandang disabilitas di Indonesia dibuktikan dengan disahkannya Undang-Undang Nomor 19 Tahun 2011 tentang Pengesahan Konvensi Hak Penyandang Disabilitas. Memberikan kesempatan yang sama bagi penyandang disabilitas dalam segala aspek penyelenggaraan negara dan kemasyarakatan, penghormatan, perlindungan, serta pemenuhan hak penyandang disabilitas, termasuk penyediaan aksesibilitas dan akomodasi yang memadai ditujukan untuk melindungi dari penelantaran, eksploitasi, pelecehan, segala tindakan diskriminatif, dan pelanggaran hak asasi manusia.

## INTRODUCTION

Human rights are basic rights that are inherently inherent in the nature and existence of humans as beings of the one and only God and are His gifts. Human rights must be respected, protected, fulfilled, upheld and promoted for the sake of human dignity. The implementation of respect, fulfillment, protection, upholding and advancement of human rights is basically an obligation and responsibility of the state, especially the government. This is as mandated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of Law Number 39 of 1999 concerning Human Rights. The President has issued a plan to carry out the mandate in Presidential Regulation Number 75 of 2015 concerning the 2015-2019 Indonesian National Action Plan for Human Rights (RANHAM).

The general objective of the RANHAM is to increase the respect, protection, fulfillment, enforcement and advancement of human rights for all levels of Indonesian society by the state, especially the government by taking into account religious, moral, customary, cultural, security values, public order, and the interests of the Indonesian nation in 1945. The specific targets include increasing understanding of the human rights of state apparatus and society, increasing the accessibility of persons with disabilities and other vulnerable groups to participate in the civil, political, economic, social and cultural fields.

Indonesia as a member of the United Nations has the obligation to implement various international human rights instruments that have been accepted by Indonesia, including the Vienna Declaration of 1993 and the Convention on the Rights of Persons with Disabilities which was ratified by Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Awaliyah *et al.*,

2020). This makes Indonesia part of a global society that is committed to making every effort to realize the elimination of all forms of discrimination and to ensure the participation of persons with disabilities in every aspect of life. Persons with disabilities have the same rights and obligations as the community non-disabled. The mandate of the Vienna Declaration and the Convention on the Rights of Persons with Disabilities emphasize that every country forms and implements a national action plan related to human rights.

The vision and mission of the President of the Republic of Indonesia as outlined in Nawacita contains nine priority change agendas in the context of realizing an Indonesia that is sovereign, independent and has a personality. The vision and mission also includes the President's policies in overcoming problems in the human rights field. Realization of the vision and mission as well as obligations and responsibilities, the government sees the need to perfect and continue the implementation of the 2011-2014 National Action Plan for Human Rights (RANHAM) and the National Action Plan for Persons with Disabilities 2004-2013 by integrating the values of justice, humanity, and the inclusiveness of vulnerable groups into one inclusive National Action Plan, namely the Indonesian National Action Plan for Human Rights (RANHAM).

The Indonesian people uphold human rights. This can be seen in Article 2 of the Law on Human Rights which states that the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent in and inseparable from humans, which must be protected, respected, and is enforced for the sake of enhancing human dignity, prosperity, happiness, and intelligence and justice (Mangku, 2020). Then in Article 3 it is stated (1) everyone is

born free with the same and equal human dignity and is endowed with reason and conscience to live in a society, nation and state in a spirit of brotherhood: (2) everyone has the right to recognition and assurance, protection and fair legal treatment and legal certainty and equal treatment before the law, and (3) everyone has the right to protection of human rights and basic human freedoms, without discrimination. The government has responsibilities in all aspects of people's lives and is universal in accordance with human rights.

The State of Indonesia already has laws and regulations relating to regulating persons with disabilities. In 1997, Indonesia issued Law Number 4 of 1997 concerning Persons with Disabilities. Then in 2016 Indonesia again replaced the law relating to persons with disabilities through Law Number 8 of 2016. There was a shift in the meaning from persons with disabilities to persons with disabilities, in Law Number 4 of 1997 concerning Persons with Disabilities, in Article 1 paragraph (1) referred to as disabled is any person who has a physical and mental disability, which can interfere or constitute an obstacle for him or her to do properly, which consists of: (a) physically disabled, (b) people with mental disabilities, and (c) physically and mentally disabled. Explained in Article 1 paragraph (1) of Law Number 8 Year 2016, that persons with disabilities are everyone who experiences physical, intellectual, mental, and sensory limitations for a long period of time who interacts with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens on the basis of equal rights. The Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights that are inherently universal in nature, need to be protected, respected and defended, so that respect, protection and fulfillment of human rights for vulnerable groups, especially persons with disabilities is the state's obligation.

The community has a responsibility to respect the rights of persons with disabilities as described in Law Number 39 of 1999 concerning Human Rights. So far, people with disabilities have experienced a lot of discrimination which results in not fulfilling the implementation of the rights of persons with disabilities. The regulation

regarding persons with disabilities does not have a human rights perspective. The content material in Law Number 4 of 1997 concerning persons with disabilities is more charity based and the fulfillment of the rights of persons with disabilities is still considered a social problem whose fulfillment policies are only in the form of social security, social rehabilitation, social assistance, and improvement of social welfare. Persons with disabilities should have equal opportunities in efforts to develop themselves through independence as human beings with dignity.

The passing of Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities on November 10, 2011 shows the commitment and seriousness of the Indonesian Government to respect, protect and fulfill the rights of persons with disabilities. It is hoped that this will improve the welfare of persons with disabilities. Persons with disabilities have the right to be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and abuse, and the right to receive respect for their mental and physical integrity based on equality with others, including in it the right to get social protection and services in the context of independence, as well as in an emergency. The Government is obliged to realize the rights contained in the convention, through adjustments to laws and regulations, including ensuring the fulfillment of the rights of persons with disabilities in all aspects of life such as education, health, work, politics and governance, culture and tourism, and the use of technology information, and communication.

The amendment to the 1945 Constitution of the Republic of Indonesia the Chapter XA, regulates Human Rights (HAM), the addition of the Human Rights formula and guarantees of respect, protection, implementation and advancement in the 1945 Constitution not solely because of the desire to accommodate developments a view of human rights that is increasingly considered to be important as a global issue, but because it is one of the requirements of a rule of law. Constitutionally with the human rights formulation in the 1945 Constitution, the human rights of every citizen and population of Indonesia have been guaranteed (Basuki, 2012). The equal rights and obligations of all

citizens in all aspects of life and livelihood are a prerequisite for achieving social welfare for all Indonesian people (Ridlwani, 2013). One of the aspects of the human rights formula included in the 1945 Constitution is human rights related to social welfare. The Indonesian people have the view that human rights must pay attention to the characteristics of Indonesia and must also be balanced with obligations. It is hoped that these views can respect each other and respect for the human rights of each party.

The Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights that are naturally inherent in humans, are universal and lasting, are also protected, respected and defended by the Republic of Indonesia. The protection and promotion of human rights, including for vulnerable groups, especially persons with disabilities, also need to be improved (Utami, 2019). Since the beginning, Indonesia has respected human rights, especially for groups of people with disabilities.

The Indonesian nation officially declared Human Rights first compared to the United Nations (UN) Universal Declaration of Human Rights, because the Preamble to the 1945 Constitution of the Republic of Indonesia was officially promulgated on 18 August 1945 while the Universal Declaration of Rights UN Human Rights in 1948. This is a fact that shows to the world that the Indonesian nation, prior to the achievement of the UN human rights statement, in fact raised human rights in the country. In addition, since the beginning, the Indonesian nation has had a basic principle that has been rooted in the culture of the Indonesian nation (Mangku & Yuliantini, 2019). Based on the problems above, this article discusses: (1) legal protection for persons with disabilities in Indonesia; and (2) Implementation of the convention on the rights of persons with disabilities in Indonesia.

## METHODS

This article uses a qualitative approach with a descriptive analysis method. The qualitative approach was chosen because of its ability to gain a deep, authentic, and basic understanding of the phenomenon being observed. The type of research in the writing of this article is a

type of normative juridical research, which is a scientific research to find the truth based on the logic of legal science based on its normative side (Soerjono, 2015). The descriptive analysis method is used because the data and information collected focuses attention on the actual phenomenon or problem through the process of data collection, preparation, processing, and drawing conclusions. The results of all of these attempt to describe an objective empirical state of the phenomenon or problem being studied. While the data collection technique used is literature study. This was done because of the limitations of directly interviewing authoritative sources at the time of writing. The literature study referred to in the context of this article is the author's attempt to find, collect, and study written material in the form of books, journal articles, online news related to the phenomena and problems being studied.

## RESULTS AND DISCUSSION

### Legal Protection of Persons with Disabilities in Indonesia

The Republic of Indonesia is a state based on law. The 1945 Constitution stipulates that the Republic of Indonesia is a constitutional state (*rechtsstaat*) as evidenced by the provisions in the preamble, body and explanation of the 1945 Constitution (Melissa, 2013). The theory of equality before the law in the Amendment to the 1945 Constitution is included in Article 27 paragraph (1) which states that all citizens have the same position in law and government and are obliged to uphold the law and government without exception. This is the recognition and guarantee of the equal rights of all citizens in law and government. The theory and concept of equality before the law is the basis for protection for citizens to be treated equally before law and government. Equality before the law is one of the most important principles in modern law. This principle is one of the pillars of the Rule of Law doctrine which also spreads to developing countries such as Indonesia. It can be stated that the principle of equality before the law is a manifestation of the rule of law (*rechtsstaat*) so that there must be equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*) (Mulyadi, 2007). The inherent element implies equal justice under the law and obtaining equal justice before the law.



The principle of rule of law teaches that communication and social interaction consisting of various elements of the community interact and transact to achieve common goals and ideals. The order of life and communication between individuals in a community refers to the agreed rules of the game and is used as a reference for the parties in conducting relationships and legal actions. On the basis of this concept, there is no arbitrariness carried out by law enforcers or justice seekers. This can give birth to a civil society in which individuals as people or citizens have the same and equality before the law.

The principle of equality before the law is a guarantee for achieving justice (law). Without the absence of parties who can be separated when involved in the law enforcement process. Legal protection guarantees are implied in the principle of equality before the law, namely guarantees not only getting the same treatment but will also bring logical consequences that the law will not give privileges to other legal subjects. Because if this happens it will violate the principle of equality before the law and will encourage discrimination before the law.

The concept of equality before the law has been introduced into the constitution, the highest recognition in the system of statutory regulations of the country. This principle means that the meaning of equality before the law is for the same case (crime). In reality, there is usually no equal treatment and that causes the rights of individuals to obtain justice (access to justice) being neglected. Different treatment in criminal acts of corruption, for example, causes the neglect of individual freedom. This means, legal certainty is neglected.

The principle of equality before the law must always be upheld for the sake of the rule of law and the judicial system. Because it is an obligation of a state law obliged to guarantee the human rights of its citizens. In this context, no one should immediately impose a sentence in order to enforce the law by violating this principle. Do not let anything happen to give punishment (judgment) outside the existing rules or system. The escalation of discrimination against groups of persons with disabilities increasingly fierce, human beings are then made aware of the importance of recognizing that they are human beings equal to other human beings, equal in rights and free in making choices.

There are special rights for groups of people with disabilities (Fadhli, 2014). Special rights are not privileges, but these rights are given so that people with disabilities are able to maintain their distinctive identity, characteristics and traditions. Therefore, the principles of equality and non-discrimination are very important in human rights (Riyadi & Nurhidayat, 2012). Special rights as well as non-discriminatory treatment are equally important to achieve equal treatment.

The principle of equality and non-discrimination from a regulatory perspective are contained in several instruments both at international and regional levels which are designated for a particular region, namely Africa, America (North America, South America and the Caribbean), Asia, and Oceania (South Pacific) sub regional (such as Southeast Asia) and national (limited to the country concerned). Provisions on equality of rights and non-discrimination in the international context are contained in the UN Charter Article 1 paragraph (3), explained that the United Nations (UN) organization and its members have the objective to establish international cooperation for solve international problems in the economic, social, cultural or humanitarian fields, as well as in efforts to promote and promote respect for human rights and basic freedoms of all human beings regardless of race, sex, language or religion.

In Article 55 letter (c) the UN Charter mandates that the United Nations promote respect for human rights throughout the universe as well as their realization and basic freedoms for all, without distinction of race, sex, language or religion. The classic document of the Universal Declaration of Human Rights (UDHR), Article 2 states everyone has the right to all rights and freedoms contained in this declaration without any exception, such as differences in race, color, sex, language, religion, politics or other views, origin or society, property rights, birth or other status. Furthermore, no distinction is allowed on the basis of political, legal or international position of the country or region from which a person comes, whether from an independent country, guardianship territories, colonies or from areas under other sovereign boundaries. And Article 6 reads everyone is equal before the law and has the right to the same protection of the law without discrimination. All are entitled to equal

protection against any form of discrimination contrary to this Declaration and against any incitement that leads to discrimination.

The principle of non-discrimination is also found in the International Covenant on Economic, Social and Cultural Rights. Article 2 paragraph (2) reads states parties to this covenant promise to ensure that the rights contained in this covenant will be enforced without any distinction such as race, color, sex, language, religion, political opinion or other opinion, national or social origin, ownership, descent or other status. Meanwhile, in the context of the national law of the country of Indonesia, apart from the ICCPR which has been ratified by Law Number 12 of 2005, the principle of non-discrimination is also contained in several laws and regulations, including the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, Law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

The 1945 Constitution which is the Indonesian constitution as previously described in Articles 28 D and 28 I confirms that Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law and has the right to be free from discriminatory treatment. Law Number 39 of 1999, which is one of the barometers of respect, protection and fulfillment of human rights in Indonesia Article 3 paragraph (3) mandates that everyone has the right to protection of human rights and human freedoms, without discrimination. In regulating persons with disabilities, the State of Indonesia already has laws and regulations relating to this matter. In 1997, Indonesia issued Law Number 4 of 1997 concerning Persons with Disabilities. Then in 2016 Indonesia again replaced the law relating to persons with disabilities through Law Number 8 of 2016. There was a shift in the meaning persons with disabilities in Article 1 paragraph (1) Law Number 4 of 1997 concerning Persons with Disabilities, in is called a disabled person is any person who has a physical and mental disability, which can disturb or constitute an obstacle, which consists of: (a) physically disabled, (b) mentally disabled, and (c) physically and mentally disabled. But in Article 1 paragraph

(1) of Law Number 8 Year 2016, it is explained that persons with disabilities are everyone who experiences physical, intellectual, mental and sensory limitations for a long period of time can experience obstacles and difficulties to participate.

### **Implementation of Convention on the Rights Persons with Disabilities in Indonesia**

The Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights that are inherently universal in nature, need to be protected, respected, and maintained. Especially respect, protection and fulfillment of human rights for vulnerable groups, especially persons with disabilities are the state's obligation (Maftuhin, 2016). The state of Indonesia guarantees the rights of persons with disabilities to be treated equally before the law.

Respect, protection and fulfillment of the rights of persons with disabilities are the obligations of the state (Septiana & Effendi, 2020). This is also confirmed in Law Number 39 of 1999 concerning Human Rights, so that society has the responsibility to respect the rights of persons with disabilities. So far, people with disabilities experience a lot of discrimination which results in not fulfilling the implementation of the rights of persons with disabilities. So far, the regulation regarding persons with disabilities is regulated in Law Number 4 of 1997 concerning Persons with Disabilities, but this regulation does not have a human rights perspective. The content material in Law Number 4 of 1997 concerning persons with disabilities is more charity based and the fulfillment of the rights of persons with disabilities is still considered a social problem whose fulfillment policies are only social security, social rehabilitation, social assistance, and social welfare improvement. Persons with disabilities should have the same opportunity to develop themselves through independence as human dignity (Nursyamsi *et al.*, 2015). A better legal product is needed to uphold the welfare of persons with disabilities.

The passing of Law Number 19 Year 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities) on November 10, 2011 demonstrates the

commitment and seriousness of the Indonesian Government to respect, protect and fulfill the rights of persons with disabilities is expected to improve the welfare of persons with disabilities (Ridlwani, 2013). Persons with disabilities have the right to be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and abuse, and the right to receive respect for their mental and physical integrity based on equality with others. Including in it the right to get protection and social services in the context of independence, as well as in an emergency (Widinarsih, 2019). Through adjustments to laws and regulations, including ensuring the fulfillment of the rights of persons with disabilities in all aspects of life such as education, health, work, politics and governance, culture and tourism, and the use of technology information, and communication (Hardjanti, 2016). Therefore, the Government is obliged to realize the rights contained in the convention.

The adoption of the term disability according to (Prasetyo, 2014) has implications for the policy orientation of the Government of Indonesia, among others: (1) participating as a country that signed The Convention on the Rights of People with Disabilities in 2004 and ratified it in Law Number 19 of 2009 concerning the Ratification of the Convention on the Rights of Persons with Disabilities; (2) promote public participation in advancing the rights of persons with disabilities by removing barriers, both physical and social, to public sources such as education and health facilities. Physical barriers that are starting to be removed can be observed with the start of the number of public buildings that have inclined planes and lifts in braille. However, it must continue to be improved because public transportation access is still not in favor of people with disabilities; (3) involvement of persons with disabilities organizations in the formulation of public policies. This is in line with the principle of “nothing us, without us” as part of the person-centered approach to understanding the needs, problems, hopes, visions, aspirations, and potentials from the perspective of people with disabilities themselves; (4) the elimination of segregation (separation) with inclusion, namely including or inviting people with disabilities as part of the community itself who must be taken into account and their needs are considered.

The scope of regulation in this law covers the fulfillment of equal opportunities for persons with disabilities in all aspects of state and community administration, respect, protection and fulfillment of the rights of persons with disabilities, including the provision of accessibility and adequate accommodation. The implementation and fulfillment of the rights of persons with disabilities is aimed at realizing a higher quality, fairer, physically and mentally prosperous, and dignified standard of life for persons with disabilities. In addition, the implementation and fulfillment of rights are also aimed at protecting persons with disabilities from neglect and exploitation, harassment and all discriminatory acts, as well as human rights violations (Gustomy, 2020). It is hoped that the Indonesian government can consistently uphold human rights for persons with disabilities and realize the agreed policies.

Fulfillment and protection of the rights of persons with disabilities are all actions and activities to guarantee and protect the constitutional rights of persons with disabilities in accordance with human dignity and to avoid acts of violence and discrimination. The objectives of protecting and fulfilling the rights of persons with disabilities include: increasing the level of welfare, quality and survival and independence of persons with disabilities is: (a) increase the social and economic resilience of persons with disabilities, (b) increase the capacity, concern and responsibility of the Provincial Government, the business community and the community in institutional and sustainable protection and fulfillment of the rights of persons with disabilities, and (c) improve the quality of life and livelihoods of persons with disabilities.

The Indonesian government's action to ratify this Convention is a reflection of Indonesia's responsibility as a part of the world community in promoting and protecting human rights for all, including persons with disabilities. Some of the provisions of the Convention relating to the civil rights of persons with disabilities must be realized immediately. It is hoped that the economic, social and cultural rights of persons with disabilities, including the provision of unfulfilled access in various fields, can be realized gradually in accordance with the availability of national resources. Indonesia are obliged to realize the rights contained in the



Convention, through adjustments to the laws and regulations, laws and administration of each country, including changing laws and regulations, customs and practices that are discriminatory against persons with disabilities, both women and children, ensuring the participation of persons with disabilities in all aspects of life such as education, health, work, politics, sports, arts and culture, as well as the use of technology, information and communication.

## CONCLUSION

Legal protection for persons with disabilities in Indonesia has been included in the constitution and several laws and regulations. The principles of equality and non-discrimination are contained in several instruments. The existence of special rights granted to persons with disabilities to be able to maintain their identity, characteristics and traditions as well as non-discriminatory treatment is equally important to achieve equal treatment. The implementation of the convention on the rights of persons with disabilities in Indonesia is evidenced by the ratification of Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. The Indonesian government has an obligation to realize the rights contained in the Convention, through adjustments to the laws and regulations, laws and administration of each country, including changing laws and regulations, customs and discriminatory practices against persons with disabilities, both women and children, ensuring the participation of persons with disabilities in all aspects of life such as education, health, work, politics, sports, arts and culture, as well as the use of technology, information and communication, so that every a disability must be free from torture or other cruel, inhuman, degrading treatment, free from exploitation, violence and ill-treatment, and have the right to receive respect for his mental and physical integrity on the basis of equality with others. This includes the right to get social protection and services in the context of independence, as well as in emergencies.

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