

## RIGHT OF DISABLED PERSON UNDER PERSONS WITH DISABILITIES ACT 2008: A CASE STUDY IN THE STATE OF PERLIS.

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Persons with Disabilities (PWDs) have equal rights like other normal people. Therefore, this study was carried out to identify the rights of PWDs under the Persons with Disabilities Act 2008 and its practice in the state of Perlis. Respondent for this research was ten people with disabilities who were selected through purposive sampling. Data were collected through interviews conducted with them. The results found that most of respondents are not aware of the existence of their rights under the Persons with Disabilities Act 2008. Besides that all the respondents agreed that these rights are not fully implemented in Perlis. Between the recommendations made by the respondents in this study is an ongoing effort to increase awareness and understanding throughout the community about the challenges they face and their needs. In addition, an organization which responsible for PWDs is required for the purpose of expressing an impeller their needs to the government to take actions that can help facilitate them to live as a normal person.

**Keywords:** People With Disabilities, Persons With Disabilities Act 2008, Right Of People With Disabilities.

### 1.0 Introduction

Disabilities People issue is no longer local issue, but it becomes world issue and because of that the United Nations from a Resolution No. 47/3 dated October 14, 1992 has been proclaimed 3rd December every year as the International Day of Disabled Persons (WHO). In response to the wishes and interests of the PWDs in Malaysia, on May 16, 1994, the Government of Malaysia has signed a proclamation that states that the Government of Malaysia is committed and ready to give full commitment in providing equal rights and opportunities for all PWDs in their efforts to improve the quality of life (Malaysian Department of Social welfare). On six July 2010, Datuk Seri Sharizat Abdul Jalil, (Former Malaysian Minister of Women, Family and Community) has represented the Government of Malaysia signed the instrument of ratification the Convention on the Rights of Persons with Disabilities (PWDs). As a result, Persons with Disabilities Act 2008 has been enacted for safeguarding and protecting the rights of PWDs in Malaysia.

### 2.0 Background of the Study

According to the World Health Organization (WHO), 15 percent or represents more than one billion people worldwide are PWDs. In Malaysia, the number of PWDs who are registered with the Social Welfare Department in 2011 was a total of 359.203 people (Malaysian Department of Social welfare). But the amount is estimated to be registered does not represent the actual number of PWDs in Malaysia and is expected to be larger because PWDs registration process conducted by the Department of Social Welfare is voluntary base.

Freedom of Human rights has been stated in the Federal Constitution and the various acts in Malaysia. For example, Article 6 prohibits anyone to force others into slave labor. This means no one is allowed to force others to work for him. Every man is free to move and do anything legally. This means that even if a person with disabilities also is being given protection under the law in Malaysia. Moreover, every person is entitled to move anywhere and have the property as much as affordable as long the property is acquired without breaking the law. Based on the provisions of the Constitution, equal rights granted to any person living in our country.

A right of PWDs in Malaysia has been recognized by introduction of Persons with Disabilities Act 2008. This Act was past by Parliament on 24 December 2007 and was gazette on 24 January 2008 and came into force on July 7, 2008 (Department of Social Welfare). Persons with Disabilities Act 2008 has given a new chapter for the people with disabilities when this act give a recognition to the rights of the PWDs and the welfare concept has been change to the concept of "right-based" (Department of Social Welfare). The act also allows PWDs to have the right equalization of opportunities and full participation in society on par with other members of society.

## **5.0 Problem Statement**

PWDs are entitled to enjoy their human rights as normal person such as the right to work, the right to enjoy public facilities and rights of equality before the law. As such, researchers have identified three major problems faced by the PWDs relative to the law. The first problem is about PWDs awareness of their rights under Persons With Disabilities Act 2008. Not many of them know the existence of protection against their rights under the Persons With Disabilities Act 2008. Generally, people are not aware the existence of the law because there is no reason for them to gain the knowledge. Furthermore the absence of information openness policy that drives them to take out about a law (Shaikh Mohamed Noordin, 2009). The failure of an individual to know the existence of laws can cause their rights being denied.

The second problem is about the implementation of the PWDs rights under Persons With Disabilities Act 2008. Some provisions under Persons With Disabilities Act 2008 provides for the rights of PWDs, such as access to public utilities, transportation, education, recreation and so on, but the question is whether these rights has been aware by the community or not? For example, almost all buses in Perlis did not have facilities for PWDs to gain access. This type of unawareness becomes a problem to the PWDs.

Thirdly is about the enforcement of the PWDs Act 2008. There a few questions has been asked especially about whom will lead or in charge the enforcement of this act? The issues are still debates and under Persons With Disabilities Act 2008, MAJLIS has been appointed to be care taker but the problem is about their empowerment. Do they have power to convict any person who breach the Persons With Disabilities Act 2008 or abuse the law? The answer is no, so the next question is who will be liable. For example, parking facilities for the PWDs are available in a supermarket, but if it is misused, who is responsible for taking the action? Hence the enforcement problem came into one factor of people failure to respect the rights of PWDs.

## **6.0 Research Question**

- 6.1 What are the rights of PWDs through the Persons with Disabilities 2008?
- 6.2 Are the rights of the disabled people protected in the state of Perlis?
- 6.3 What improvement measures to ensure that existing laws are observed and enforced?

## **7.0 Research Objective**

- 7.1 To study the rights of PWDs through Persons With Disabilities Act 2008
- 7.2 To study the practices of PWDs rights in the state of Perlis
- 7.3 To propose a recommendation to improve the law existing to protect the rights of PWDs in State Of Perlis.

## **8.0 Literature Review**

Every human being in this world is born with the right to enjoy life same as others. These rights came without any differentiated colour nor the completeness of the angle defect. Therefore, every human being should be given equal rights without any conditions.

### **The Development Of The Rights Of Persons With Disabilities In Malaysia**

The development of PWDs rights in Malaysia is closely related to the development of the rights of PWDs at the international level. The UN has approved a resolution No. 47/3 on 14 October 1992, which states every year on 3<sup>rd</sup> December, was declared as PWDs Days (Social Welfare Department of Malaysia). In this regard, the Malaysian Government also signed the Proclamation Full Participation and Equalization opportunities for PWDs in Asia and the Pacific on 16 May 1994 in conjunction with the United Nations Decade for PWDs in Asia and the Pacific, 1993-2002. The declaration gives an opportunity for PWDs in Malaysia to enjoy their life through improvement the quality of life, including adequate facilities and raise awareness among the community to give the same rights to them (Lau Poh Li, Ahmad Muhammad & Chew Fong Peng, 2011).

The importance of protecting the rights of PWDs continues developed by the UN when they recognized and adapted the Convention of the Rights of Persons with Disabilities on 13 December 2006. 147 countries have signed the Convention, including Malaysia which has signed it on 8 April 2008. Malaysia seeks to enhance the comprehensive and balanced development to all members of its community. Therefore, equal opportunities for PWDs are also emphasized in the implementation of Government policy. To proof the effort of this in November 2007, Persons with Disabilities Act was past in Parliament and gazette as persons With Disabilities Act 2008 on 24 January 2008. The Act aims to provide for the registration, protection, rehabilitation, development, and well-being of the disabled

### **THE RIGHTS OF DISABLED PERSONS IN MALAYSIA**

Freedom of human rights especially to enjoy a normal life irrespective of the position set out in the Federal Constitution and other variety act in Malaysia. Every human being is free to move and do anything since it is not against the law as set out in Article 5 of the Federal Constitution. In fact, Article 8 provides that everybody is given equal protection rights in law regardless of one's position. This means that even if PWDs, they were given protection under the law in Malaysia. In fact, through article 9 and 13 of the Federal Constitution, each person also has the right to move anywhere and have the property as much as you can afford since the property is acquired without breaking the law.

### **RIGHT OF PWDs UNDER PERSONS WITH DISABILITIES ACT 2008**

All PWDs is entitled to register with the Social Welfare Department of Malaysia which has been stated in section 21 and 22 of Persons with Disabilities Act 2008. When a person is registered as

PWDs, they will receive a card that entitles them to get all PWDs benefits (Section 25 of the PWDs Act 2008). Based on Persons with Disabilities Act 2008 there are certain rights of PWDs has been provided in Part IV included section 26 until section 40. These sections are divided into five chapters as follow:

Chapter 1 - Accessibility

Chapter 2 - Habilitation And Rehabilitation

Chapter 3 - Health

Chapter 4 - Protection of Persons with severe disabilities

Chapter 5 - Situations of Risk And Humanitarian Emergencies

### **Chapter 1 - Accessibility**

Chapter 1 contains seven sections starting from section 26 until section 32. All section provides the freedom of right to gain access all facilities and services available in Malaysia. Section 26 provides that PWDs has a right to gain access such facilities, services and public buildings as long as they do not endanger themselves. That means they could not be prohibited from using any existing facilities or to enter any premises as long as it is allowed by applicable laws. Section 27 also provides the right for PWDs to use any public facilities as other people. It means that the company who operating the public service should provide facilities that can provides comfortable for PWDs to use the public facilities. Although they live not as a normal person, they also have right to get education same with other people based on section 28. They cannot be denied or marginalized gaining access to quality learning and educational aid equal to a normal human.

Section 29 also provides rights to find jobs and services equivalent to a normal employee. Employers should provide equal space for the PWDs based on their own shortcomings. Employers must provide facilities to help PWDs to perform the duties as other employees in the workplace, and equal promotion and so on. PWDs also have the freedom to get and use information, communication and technology under section 30. It means that the government and the private sector should facilitate on communication modes and formats so that they can us it. An addition of section 31 and section 32 provides rights for PWDs to gain access cultural life and sports and recreation as a normal person.

### **Chapter 2 - Habilitation And Rehabilitation**

In this chapter, section 33 provides training and health care facilities required by PWDs to maintain their ability to be independent. This facility will also be extended to residential homes and other community support based on section 33.

### **Chapter 3 – Health**

In chapter 3, section 35 provides PWDs rights to get health facilities on par with other normal people. Section 36 also provides ongoing health care to prevent the occurrence of further disability. For agencies or non-governmental organizations which have institutional care for PWDs, each institution must employ therapists to help PWDs to recover their ability to manage their life as a normal human being.

### **Chapter 4 - Protection Of Persons with severe disabilities**

PWDs who have severe disabilities, they also get their lifelong protection pursuant under section 38.

### **Chapter 5 - Situations Of Risk And Humanitarian Emergencies**

When there is an emergency or natural disaster, PWDs are also entitled to assistance and protection as the equivalent of a normal person under section 40. Persons with Disabilities Act

2008 give a strong emphasis on the protection of rights for PWDs in Malaysia. A total of 15 sections lead to the protection of the PWDs quality of life preserved.

### **Practices Of PWDs Rights In States Of Perlis.**

From what researchers have done, there is no research has been found on PWDs rights practices in Perlis and it could even be said almost no research has been done at the level of Malaysia. However, there are few studies done to see the requirements and needs of the PWDs in Malaysia. Hasnah Toran , etl. (2009) has conducted a study about a relevant public support and barriers faced by students with disabilities in one of higher learning institution in Malaysia, they found that, although the Person With Disabilities Act 2008 has set aside the rights of PWDs should be respected, the people responsibilities to practice it very low. Almost all respondents in the survey agreed that due to lack of knowledge about the PWDs, people will not respect the rights of the disabled. Another study in 2010, Hasnah Toran, etl. stated that student willingness to help disabled students is very high because they understand the problems faced by disabled students. This means that awareness is important to ensure the rights of disabled people are being respected and get a proper attention.

Outside Malaysia, Trinklin & Hall (1999) in their research stated that disabled students face an obstacle during their study based on four sources which are physical environment, the process of admission to centers of higher education, access to information during learning and a low level of awareness between students and university staff . Konur (2000) supports Trinklin & Hall finding when he found that disabled students in the United Kingdom (UK) face the problem of discrimination at all levels of study from the admission process until graduation. Although in the UK there are Discrimination Disabilities Act of 1995, but the issues of practice still could not be able to do based on the two studies that have been done above. However Chris J. Jackson, Furnham and Kate Willem Andrian (2000) also conducted a study in the UK to see how far employers are willing to change the rules in the recruitment process based on "Disability Discrimination Act 1995". The results of their study found that the employers who involved in the study agreed to change their selection process so that the process will be done according to the requirements of "Disability Discrimination Act 1995." But the study only focused on the attitudes, knowledge and willingness employer to change according to the act and do not see the reality of practice in their organization.

For the conclusion, even though there is a law that has been made to protect PWDs right, people awareness in this matter still being a main obstacle for PWDs to enjoy their right and being respected.

### **7.0 THE IMPORTANCE OF RESEARCH**

The importance of this study generally gives effect to the two parties, the stakeholders and the PWDs itself. This research will provides some benefits to parties who manage the PWDs as well as the PWDs itself. Hopefully this study will help the Government and other agencies in relation to with PWDs such as Social Welfare Department, the Department of Labour and the Ministry Of Health to identify the weaknesses of the law and to formulate policies and create the appropriate policies effecting PWDs. At the same time, the study also examined the persons with Disabilities Act 2008 in protecting the rights of PWDs. Therefore the result will help them to understand the situation and problems face by PWDS. The findings also could increase the legal work in academia in particular for the scope of the group or the less attention.

## **9.0 RESEARCH METHODOLOGY**

Legal studies often involve two approaches i.e., doctrine to legal problems, issues or questions of theory and doctrine, while the second approach is a socio-legal study involving social problems and issues and questions relative to the Community (Anwarul Yaqin, 2007). The researchers chose to use both of these approaches in combination i.e., doctrine and socio-legal studies. Under the doctrine study, researchers will use a combination of both methods which are philosophy studies and analytical and critical studies. In this study the philosophy approach used to see the needs and interests of laws about PWDS, while analytical and critical studies study involved evaluation and inspection of a thing to understand or explain and ended from the same (Anwarul Yaqin, 2007).

Through the socio-Legal Research, case study will be used to help researchers to understand an issue that is complex and can add experience and strengthening knowledge as a result of passed research. It is used in a research involving the analysis of situations of a number cannot be done (Louis Cohen, 2011). According to Yin, (1994) case study methods used to review real phenomena in the context of making interpretations through exploration, and get a better understanding about a case. Through the case study, researchers can study about PWDS knowledge about their rights through Person With Disabilities Act 2008 and what is practiced in the State of Perlis. The scope of the study will involves law in Malaysia that includes the Federal Constitution and Persons With Disabilities Act 2008.

According to Uma Sakaran (2003) sampling is a process of selecting an adequate number of population to be reviewed so that the study and understanding of the nature or characteristics of the sample is able to represent the population. Purposive sampling has been used in this study for a reason to get the answer to the research objective from a specific group and it will help to reduce costs and time (Uma Sakaran, 2003). Ten respondent who is PWDS will be selected in the State of Perlis. In this study, interview will be used to collect information for the study.

Data collection will be made through two methods, which is library research and the interview. Through the library research, primary data and secondary data are collected. Besides the collection of data obtained through library, resources from the Internet are also obtained through the website of the Government and non-governmental organizations (NGOs). Primary data also will be obtained through the interviews conducted on respondents comprising PWDS. Structured interview method has been used following the information needed by researcher. The information has been identified by researchers to fulfill the requirement of this study (Uma Sakaran, 2003). A set of questions which focus on the information needed will be built and this question will be forwarded to the respondent during the interview.

Data analysis process is the most important process in all research. This process will organize, structuring and interpreted data to obtain an overview and the actual perception of the respondents (Louis Cohen, 2011). Data in this study is obtained through two methods which are documents analysis and interview methods. According to Othman Lebar (2009), data collection and data analysis in qualitative research, should be run at the same time to ensure the result consistent. Through documents review, all data and information relating to the study will be collected at the same time interviews processed. The Data will be analyzed using specific analysis method or also known as content analysis. Content analysis is a systematic process in delivering information to researchers about a thing (Noraini Idris, 2010).

## 9.0 Findings

There are ten respondents involved in this study, six respondents' are women and four others were men. A total of eight respondents had the physical problem and two were suffering from deafness. In terms of their level of education, six respondents have "Sijil Pelajaran Malaysia", two graduate students from vocational and a graduate student from Higher Institution. List of respondents according to the code, gender and type of disabilities has been set out in table 1.

TABLE 1: Code, Gender And Type Of Disabilities

Code	Gender	Type of disabilities
R1	Woman	Physical
R2	Woman	Physical
R3	Woman	Physical
R4	Man	Physical
R5	Man	Physical
R6	Woman	Physical
R7	Man	Physical
R8	Woman	Physical
R9	Woman	Deaf
R10	Man	Deaf

All responses that have been collected from respondent has been arranged by category. The categories derived from this study include all chapter under Part IV Persons With Disabilities Act 2008. The category is accessibility, habilitation and rehabilitation, health, protection of persons with severe disabilities and situations of risk and humanitarian emergencies. These findings are discussed by categories.

### Accessibility

Eight of the respondents did not know the existence of their rights under Persons With Disabilities Act 2008. They just heard on TV about the existing of Persons With Disabilities Act 2008 but not disclosed by the act. R1 and R7 heard the information from television during the celebration of PWDs Day at the national level but do not know the whole contents of the Act.

Respondents who have a physical problem stated that the infrastructure in Perlis are not easily to gain access so the problem affecting their daily activities. According to R5, R6 and R7, lack of specified by their absence includes path or ramp for wheelchairs, special signage, special places for the PWDs passes through, the absence of elevator in half of the building, and the toilet is not friendly use by them. R3 states that those facilities available in business premises around the city of Kangar do not meet the Building by-laws. The lack of physical infrastructure not only encrypts their movement, but it is also dangerous for them. All the respondents urged the Government to take measures so that they can easily enter the premises and buildings. R2 and R4 who have their own vehicles, saying that there are no special parking spaces for PWDs are available resulting them to walk far away from the entrance of the building especially Bank and post office. All respondents recognized that the Government particularly the Kangar Municipal Council has to provide parking facilities for them.

All respondents agreed that public transportation in Perlis did not meet the requirement of PWDs needs and they hope that the public transportation operator in Perlis to takes action to

fulfill their needed. They suggest that all buses in Perlis should provide facilities such as low ladder so that they can use it especially for those who have no leg.

All respondents agreed on educational facilities provided by the Government is good. There are a few schools in Perlis had introducing classes for PWDs. Nowadays higher education Institution also received the inclusion of PWDs as a student. Only R5 suggested that higher education institution fees for PWDs and their children should be repealed.

All respondent agree that job opportunities for them are quite limited. They understand the problem about lack of job opportunities in Perlis but they expect that employer should be more caring to them by giving them appropriate tasks as proposed by R8:

"Majikan ambil la OKU bekerja untuk jaga kaunter atau telefonis yang tak payah pakai tenaga."

"Employers take la PWDs worked at the counter or being a telephone operator which not using a lot of energy. "

They also suggested that they should be given opportunities such as financial assistance to start their own business. If they can work on their own, they will no longer depend on the Government.

From the point of information access, they still cannot use the technology these days. The constraints due to their own weaknesses also contributed to their ability to use information technology today. R9 and R10 barely can get the information presented verbally due to hearing loss. In terms of recreational and sports facilities in Perlis, most of them are satisfied because they can access the areas easily. According to R2, R3 and R4, there are no activities in terms of competition or sports tournament involving PWDs. They suggested that more events or sporting events for PWDs being organized by government.

### **Habilitation And Rehabilitation**

All respondent did not understand right on habilitation and rehabilitation. They also did not know whether there is a rehabilitation centre for the PWDs in the Perlis. They were also not informed the existence of and procedures for admission to a rehabilitation centre for the PWDs.

### **Health**

All respondents agree that health facilities provided by the Government are very good and special care has been given to them. R8 says:

*"Kakitangan hospital Kangar sungguh baik dan bersopan, malah saya ditegur kerana tidak menunjukkan kad OKU sebab senang mereka nak bagi layanan segera"*

"The Kangar hospital Staff impeccable and courteous, even I am being reprimanded for not showing my PWDs cards to them for getting instant service"

### **Protection of Persons with severe disabilities**

All respondents did not know about the rights of protection against severe defects because they are not exposed to friends who suffer from severe disability. But they are quite surprised and



happy with the existence of the protection gave to PWDs who suffer from severe disability under the Persons With Disabilities Act, 2008.

### **Situations of Risk And Humanitarian Emergencies**

Most of the Respondents stated that they provided assistance just as other people. R4 and R7 said that while Perlis facing floods during 2010, they are given the same treatment as the flood victims.

#### **10.0 Discussion**

All PWDs get equal protection by law. Persons With Disabilities Act 2008 has given space to each PWDs to enjoy their quality of life as other normal people. Therefore it is the responsibility of the Government and society to meet the rights of PWDs under the Act. The results found that most of respondents are not aware of their rights under Persons with Disabilities Act 2008. So they should been given enough space to get the knowledge and furthermore the result also show to us that the freedom to get the information still unavailable.

Based on the results, PWDs still could not access a few service and facilities available in the State of Perlis. For example R1 said that he has a problem to gain access buildings and physical infrastructure because it still at an acceptable level. Most of the business premises in the State of Perlis did not build according to the specifications of the PWDs-friendly. In fact, public transportation facilities such as bus do not provide access to the PWDs. In right for education, there are already five secondary schools had open classes for PWDs. This classes has opens space and wider the opportunities to those students who have insufficient from the point of mentally and physically to get a proper education. The main problem in Perlis is job opportunities. Perlis is agricultural states and their income more base on agricultural business. That means Perlis is not an industrial state, so job opportunities are limited. The same problem applies to PWDs in the employment sector; the number of employers who hired disabled workers is still low. Several respondents report that they are not employed simply because they are PWDs.

Base on all discussion, researchers think that PWDs still did not know and understand the role of the Persons With Disabilities Act 2008. So they are not fully aware of their rights. Besides that, all the respondents agreed that these rights are not fully implemented in Perlis.

#### **11.0 Suggestion and Conclusion**

Conclusions that can be made based on the findings and discussions, the main problem faced by PWDs is their failure to obtain information and knowledge about their rights under the Persons With Disabilities Act 2008. The low awareness of society about the existence of PWDs rights also makes it difficult to protect the rights of .PWDs

Mostly respondents in this study suggest that there must be ongoing effort to increase awareness and understanding throughout the community about their rights and needs. Therefore, some recommendations for improvements proposed as follows:

1. The Government, through the State Of Perlis should hold more activities among the community with PWDs so that the information concerning the rights of PWDs could be delivered and being understands by the community.

2. To create state special committee to enforcing the provisions of the law specifically in Persons With Disabilities Act 2008.
3. To provide more opportunities in businesses such as retail space quota for PWDs at every new business premises.
4. Government should improve their delivery system so that PWDs can get more information especially about their right.
5. Government or Financial Institution should give more opportunities on financial loan for PWDs to started business.
6. Government and NGO should organized more activities such as sport event for PWDs.

As a conclusion, more work needs to be done in introducing and enforcing Persons With Disabilities Act 2008. Researchers also hope that through this study, there will be more studies to come especially for the improvement in respecting the rights of PWDs as well as better enforcement through the Person With Disabilities Act 2008

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## LAW

Malaysian Federal Constitution

Persons With Disabilities Act 2008