

# Disability Models in Relation to the Right of Access to Buildings for Persons with Disabilities

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## Abstract:

The population of people with disabilities escalates in line with the increasing population worldwide. Anyone may experience disability during various phases of life, namely the birth, growth and aging phases. The nature and category of disability are also different. In terms of the nature of disability, there are disabilities of permanent and temporary nature. The diverse categories of disability also affect the needs of people with disabilities. For example, students with visual disabilities need Braille writing to understand the contents of the book read. Students with hearing disabilities, on the other hand, need hearing aids to understand the lectures attended. The question that arises is which the disability model relevant to the rights to access to buildings? To get an answer to this question, the research method to be used is the content analysis method.

**Keywords —persons with disabilities; access; disability: disability model**

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## I. INTRODUCTION

Movements that championed human civil rights in the 1950s, 1960s and 1970s highlighted the concept of disability from an alien topic to a vital topic that needed to be addressed, similar to the topic of racial or ethnic identity. Disability is a subjective thing because the condition of disability itself is perceived and interpreted differently by each party. The World Health Organization's (ICF) report provides an explanation through the International Classification of Functioning, Disability and Health (ICF) on the difference in terms between disability and impairment. ICF defines "disability" as an umbrella term for impairments, activity limitations and participation restrictions. Disability refers to the unfavorable aspects of the interplay between an individual with a health condition and their contextual factors, which encompass personal and environmental factors. On the other hand, a long-term impairment

pertains to a personal trait that constrains an individual's functional ability. For instance, paralysis in the legs could impede fundamental activities like standing, walking, or climbing stairs. However, it is the environmental obstacles that transform an individual with an impairment into a disabled person by hindering or restricting their ability to enjoy their rights to full participation in society. Inaccessible infrastructure such as buildings, roads, and transport systems, along with the lack of assistive devices, can create barriers that impede participation in education, training, employment, family, and community life. Negative attitudes, low expectations, as well as laws and institutions that do not support inclusion can also pose challenges to full participation.

## II. DEFINITION OF DISABILITY

The United Nations Convention on the Rights of Persons With Disabilities (CRPD) does not contain a specific definition of the term "disability".

Preamble (e) to CRPD states that disability is an evolving concept, which is the result of interaction between persons with disabilities with barriers to feelings and environments that limit full and effective participation in society on the basis of equality with others. Disability is the result of the interaction of an individual and the environment, which represents a measure of the negative impact arising from environmental factors on a person's ability to participate in that environment. Black's Law Dictionary defines the term "disability" as "a measurable state of physical or mental disability." Disability also means any obstacles in the performance of tasks, activities and roles at the expected stage in the physical and social context. In the context of United States legislation, the definition of disability is clearly described in *Kenneth McClarty v Totem Electric*. This case involved a plaintiff who was terminated by the defendant due to a hand injury that resulted in a temporary disability for six months. The issue that arises was whether the Court should use the definition of disability set out in the Americans with Disabilities Act 1990 (ADA 1990) or the Washington Law Against Discrimination 1949 (WLAD). In this case, the Court decided to refer to the definition of disability stated in the ADA 1990, which states that a person is considered to have a disability if the person has a physical or mental disability which substantially prevents one or more of his main activities, has a record of disability or is considered to have a disability. "The main activity of life" is described as "those activities that are of primary importance in everyday life." Following McClarty case, WLAD has been criticised for defining disability as "an existence of sensory, physical and mental disabilities" that is seen as an imperfect and overly simplistic definition.

In the case of *Chacon Navas v Eurest Colectividades SA*, the court defined disability as "a limitation resulting from physical, mental or psychological disability and prevents the participation of such individuals in professional life." In the case of *Ring v Dansk almennyttigt Boligselskab*, the Court of Justice of the European Union ruled that the definition of disability

applicable to the Equal Treatment in Employment Directive (Framework Directive 2000/78) shall be defined in line with the definition of persons with disabilities specified in CRPD, which means "including conditions caused by a medically diagnosed disease as treatable or incurable, and the disease is caused by physical disability, mental or psychological disorders, which if in interaction with various obstacles, may prevent the full and effective participation of the person concerned in professional life on an equal basis with other employees, and are long-term."

## **II. DEFINITION OF PERSONS WITH DISABILITIES**

Prior to the existence of CRPD, there were several definitions of "disabled persons" highlighted by authors and researchers abroad. Barnes in 1991 had defined "disabled people" in his writing as "those who suffer from imperfection, regardless of cause and suffer from disability as an obstacle to socializing." Hendriks, in his 1995 writing, defined "people with disabilities" as "people who face physical and mental challenges." In 2006, Leonardi et al. in their writings defined "people with disabilities" as "conditions of decline in function associated with illness, disorder, injury or other health conditions, that is, those experienced as deterioration, activity limits or restrictions of participation in the context of the environment." Literally, "disabled person" is defined as "a person with disabilities." The term is also given the meaning by Black's Law Dictionary as "a person who does not have the ability to perform some functions."

CRPD defines "persons with disabilities" as "those with long-term physical, mental or sensory disabilities who, when interacting with various obstacles, can prevent their full and effective participation in society on the basis of equality with others." The World Health Organization does not provide any definition for the terms "persons with disabilities" or "people with disabilities." The World Health Organization attributes the disability experienced by "persons with disabilities" or people with disabilities in connection with

difficulties. However, it was argued that not all people with disabilities experience the same difficulties. People with disabilities who experience more types of disability usually experience more difficulties.

In short, various terms and definitions are used to represent persons with disabilities. The definitions for the term “disability” and “persons with disabilities” are also different. This is because disability is a subjective matter, changeable and involves different situations that depend on the category of disability.

#### **IV. DEFINITION OF ACCESS**

In the past few decades, access to buildings and other facilities for persons with disabilities has become an important part of the political agenda. Most countries have promoted policies to create an accessible environment (accessible built environment). Black's Law Dictionary defines "access" as "an opportunity or ability to enter, approach and pass from or to a place or communicate."

Access is a path to bring life to consciousness (a way of bringing life to consciousness), a form of socially based action and a path that connects people with places. The term "access" is referred to in Article 12 of CRPD. However, the term is not defined in CRPD. In accordance with Article 12 of CRPD, States Parties shall take the necessary measures to provide access to persons with disabilities as support as may be required in the performance of their legal capacity.

CRPD also recognizes the rights of people with disabilities to access as follows:

- (i) access to benefits and retirement programs;
- (ii) access to cultural materials in an accessible format;
- (iii) access to television programmes, films, theaters and other cultural activities in an accessible format;

- (iv) access to places for performances or cultural services;
- (v) access to sports, recreation and tourist venues;
- (vi) equal access for children with disabilities to participate in gaming, recreational, leisure and sports activities, including activities in the school system;
- (vii) access to services offered by parties arranging recreational, tourism, leisure and sports activities; and
- (viii) access to international cooperation, including international development programmes.

Researcher found that while access to buildings is not specifically mentioned in CRPD, all access for persons with disabilities specified in CRPD require access to buildings. For example, access to financial facilities requires access to a bank building. Access to justice requires access to the court building. Access to education, on the other hand, requires access to school buildings. Access is also required by people with disabilities to hospital buildings to gain access to health.

CRPD also lists the steps to be taken by States Parties. Among them are developing, promoting and regulating the application of minimum standards and guidelines for the accessibility of facilities and services opened or made available to the public, ensuring that private bodies that provide facilities and services to the public have taken into account aspects of accessibility to persons with disabilities, providing training to stakeholders in respect of accessibility faced by persons with disabilities, providing signage in Braille writing and in an easy-to-read and understandable form in the building and at other facilities open to the public as well as providing forms of assistance including guidance to facilitate accessibility to buildings and other facilities.

#### **V. DEFINITION OF ACCESSIBILITY**

The term “accessibility” is stated in CRPD. In the design concept, accessibility basically means the usability of a product by people with disabilities and specifically means that a product is acceptable, feasible and understandable to all people with a wide range of capabilities. In simple terms, accessibility means removing obstacles. Accessibility has been defined as the probability of participating in something desirable and closely related to parameters that affect the functioning of a human being in the environment. The term accessibility also refers to the ability to gain access, understand or approach a thing or a person. Accessibility not only means supporting persons with disabilities, but also guaranteeing that all benefits and responsibilities in this community life are available and can be shared with the majority of members of the community. Without accessibility, an individual cannot move from one place to another and live life as a normal human being because his movement is limited and his need for life cannot be achieved and fulfilled.

In the context of CRPD, preamble (v) recognizes the importance of accessibility to the physical, social, economic, cultural, health, educational, information and communication environment, to enable people with disabilities to fully enjoy all human rights and freedoms. Accessibility is also expressed as one of the general principles of CRPD in addition to other principles, namely respect for dignity, anti-discrimination, full and effective participation in society, equality in opportunity, equality between men and women as well as respect for the development of the capabilities of children with disabilities.

Article 9(1) of CRPD touches on the accessibility referred to in the preamble (v) of CRPD. This provision states that States Parties shall take appropriate measures to ensure that accessibility by persons with disabilities is equivalent to that of persons with disabilities, including identifying and disposing of barriers and barriers to accessibility that shall apply to buildings, roads, transport, external and internal facilities, information, communications and other services.

The existence of this provision as the only specific provision with respect to accessibility under CRPD shows that accessibility is an essential thing in guaranteeing the rights of persons with disabilities under CRPD.

It is found that accessibility has been expressed as a prerequisite for people with disabilities to live independently and any denial of access is a form of discrimination. In addition, States Parties have a responsibility to take all appropriate measures, among others is to ensure that the existing laws guarantee the rights of access for persons with disabilities to the physical environment, transportation, information and communication technology, as well as facilities and services open to the public.

## **VI. DISABILITY MODELS**

Starting as the basis of the early political and theoretical struggles of the late 1960s and early 1970s, disability study has been recognised as one of the academic disciplines in the class of its own. The theory of disability is divided into two main parts, which are the first theory that emphasizes that physical conditions affect the quality of life and the second theory that believes that disability is formed by social prejudice. The first theory mentioned above is named as the Medical Model, while the second theory is referred to as the Social Model. Subsequently, the Social Model became the foundation for the birth of the third theory, which is the Human Rights Model.

The history of disability study was initially focused on a more benevolent and personal Medical Model. Rhoda Olkin in a book has outlined the characteristics of the Medical Model as follows:

“Disability is seen as a medical problem which presents in an individual's body. Disability is a malfunction or failure of the body system that exists abnormally and pathologically. The goal of intervention in disability is healing, improving physical condition and and revitalization. People with disabilities are expected to live a life with different types of services offered to them and

spend time as patients or students trained by professional trainees.”

According to the Medical Model, persons with disabilities are considered a problem; the disability needs to be cured and cured; people with disabilities are considered not to be able to make their own decisions in the course of daily life; people with disabilities need to receive care from a professional; and it is impossible for people with disabilities to match the position of a capable person. This model explains that disability stems from the physical condition of a person who suffers from a lack or deformity of the limbs and senses, as well as requiring rehabilitation care and treatment. The Medical Model is also built on two assumptions that have an impact on human rights, that people with disabilities need shelter and welfare and disability will put a person with disabilities as not having the capacity as a normal human being.

Professional medical practitioners who rely on the Medical Model tend to treat humans as a problem that needs to be solved and often fail to take into account various aspects related to human life as a whole. The Medical Model also considers people with disabilities as things that need to be changed or repaired, and the conditions that may contribute to a person's disability are not things that need to be changed. The Medical Model is also seen to restrict and hinder the participation of people with disabilities to engage in socioeconomics and this condition can have a significant influence on the well-being and quality of life of people with disabilities. For example, in situations when a ramp is not provided for the passage of a wheelchair to the lecture hall, a person with a physical disability is considered unable to engage in learning at the university due to the disability that he suffered.

The Medical Model has given professional medical practitioners great power to perform diagnoses using the criteria that disability is a matter that needs to be changed because it is considered normal in the view of society. However, since most people with disabilities will not recover

from disability, it is customary for professional medical practitioners who rely on this Medical Model to assume that people with disabilities as failure and shame.

The Social Model is a reaction to the Medical Model that assumes that disability can be repaired, such as a machine according to the norms of society. The Social Model came about after the publication of a document entitled ‘The Fundamental Principles of Disability’ in 1976 by the Union of the Physically Impaired Against Segregation (UPIAS), an organization that champions the rights of people with disabilities in the United Kingdom. Page 4 of the document states the following:

“In our view, it is society which disables physically impaired people. Disability is something imposed on top of the impairments, by the way of unnecessarily isolation and exclusion from full participation in society. Disabled people are therefore an oppressed group in society. It follows from this analysis that having low incomes, for example, is only one aspect of our oppression. It is a consequence of our isolation and segregation, in every area of life, such as education, work, mobility, housing and others.”

Based on the above excerpt, UPIAS has stated that society has caused people with physical disabilities to become incapacitated. UPIAS also emphasizes that disability is something that is placed on disability, which is through the way people with disabilities are unnecessarily isolated and excluded from full participation in society. According to UPIAS, this has made the persons with disabilities being identified as a group that is oppressed in the community.

The Social Model is a model that provides the difference between disability caused by biological factors and disability caused by obstacles in society. There are two main principles in the Social Model. First, this model is not a disclaimer of the importance or value of appropriate individual-based intervention, whether the intervention is medical, rehabilitative, educational or occupational. Second,

the Social Model is a further attempt to shift the focus on the functional limits of persons with disabilities to problems caused by environmental barriers, obstacles and cultural barriers. Compared to the Medical Model, this Social Model is seen as more disabled-friendly and does not marginalize the group from participation in society. For example, if the Social Model is used in education policy, when there are several students with dyslexia, the university management will instruct all lecturers to prepare and distribute lecture slides printed with clear writing to help students with dyslexia understand the contents of the lecture.

The Social Model has three main virtues. First, the Social Model has become an effective political agenda as it is easy to explain, understand and generate a clear agenda for social change. The analysis of the Social Model shows that several priorities are emphasized for social action, namely the removal of barriers (barrier removal), citizenship rights and anti-discrimination legislation. Secondly, the Social Model has become an effective instrument in the liberation of people with disabilities from the norms of society. Thirdly, the Social Model is psychologically effective in increasing the self-confidence of people with disabilities and building a positive collective identity.

This model also prioritizes change in society over medical or psychological correction of the individual. Emphasis has been placed on the responsibility of the community to help persons with disabilities to reduce the burden on persons with disabilities. Disputes between Medical Model advocates and Social Model advocates are frequent. This is because the Medical Model emphasizes an individual's physical or mental deprivation, while the Social Model focuses on limitations and prejudices that prevent the full participation of people with disabilities in society and access to healthcare.

Developed countries such as the United Kingdom and Japan have made the Social Model an important aspect in promoting the lives of people with disabilities to a higher quality level in order to

compete with other members of society. This is because the Social Model places a moral responsibility on society to eliminate the burden placed on persons with disabilities and enable these people to participate in society. The Social Model has a significant impact on government policy for both countries. For example, disabled-friendly facilities and infrastructure have been built and created extensively for the well-being and quality of life of people with disabilities. At the same time, the Social Model has been criticized for overemphasizing the barriers of society and structure and ignoring the experiences, interests and needs of people with disabilities in everyday life. However, the Social Model has become an important political agenda that justifies the notion that disability is indeed capable of being an effective and powerful force in influencing social policy.

The Social Model has led to the birth of CRPD. Initially, CRPD was enacted as one of the human rights conventions that replaced the Medical Model with the Social Model. The paradigm shift from the Medical Model to the Social Model is often cited as the main success of CRPD. However, CRPD legislators have gone beyond the context of the Social Model by organizing a convention based on a model called the Human Rights Model. Disability becomes a human rights issue because there is discrimination and negative stigma against people with disabilities in everyday life. For example, people with disabilities do not have equal rights to education, employment and health care in society. In addition, persons with disabilities are also isolated and excluded from the community who do not trust the ability of these groups to communicate, think and do their daily work. The Human Rights Model is not an alternative model to the Social Model, but it is a model that improves the Social Model and is an instrument for implementing CRPD.

According to the Human Rights Model, the problem of disability arises due to the absence or lack of response of states and civil society to the differences experienced by people with disabilities.

Similar to the Social Model, the Human Rights Model does not focus on the physical disability experienced by people with disabilities, but it focuses on the barriers in society, which is the designation of normal and abnormal members of society by society. Therefore, countries are responsible for addressing socially oriented barriers in ensuring full respect for dignity and equal rights for all human beings. There are three main principles that underlie the concept of human rights in the Human Rights Model, namely the principle of dignity, the principle of equality and the principle of inclusiveness and participation, which separately and jointly provide human rights guarantees to people with disabilities.

Dignity is defined as the basis of human existence in terms of self-esteem and individual respect for the other individual. The principle of dignity is clearly stated in the purpose of CRPD, which is to promote, protect and guarantee that people with disabilities can enjoy all human rights and basic freedoms equally and fully and promote respect for their dignity. For example, the local authority's directive that mandates the provision of wheelchair routes to enter a food premise can provide the perspective that the whole community respects the existence of the persons with disabilities as members of the community who have the dignity and self-esteem like other members of the community.

The principle of equality involves the elimination of any differences and different treatments and concerns the changing environment and institutions, services and policies and programs to ensure that equal treatment can be achieved. This principle is applied in Article 5 of CRPD which requires States Parties to recognize that all individuals are equal before the law and are eligible to be protected and benefited under the law without any discrimination. States Parties shall prohibit all discrimination on the grounds of disability and guarantee equal and effective legal protection against discrimination involving people with disabilities. States Parties shall also take all necessary measures to ensure reasonable adjustments are in place in order to

promote equality and eliminate discrimination. For example, the school's efforts to provide ramps for students with wheelchairs are a step to ensure that equality is enjoyed by persons with disabilities to gain access to education, just like other people.

It is found that the principle of equality has made the Model of Fundamental Rights a relevant and backable model to safeguard the interests and rights of people with disabilities, including the rights of access to buildings for persons with disabilities.

The principle of inclusiveness states that each individual has the full right as a member of society. Article 24 of CRPD applies the principle of inclusiveness to the rights of persons with disabilities, i.e. States Parties agree to recognize the right of persons with disabilities to education by providing an inclusive education system. In order to guarantee such rights, States Parties shall ensure that persons with disabilities are not excluded from the education system due to disability, persons with disabilities can have access to inclusive and quality primary and secondary education on the basis of equality with others and persons with disabilities are given reasonable adjustments and necessary support. The principle of inclusiveness is also emphasized in the field of employment, i.e. States Parties should recognize the right to work for people with disabilities on the basis of equality, including the right to the opportunity to choose employment and to be accepted in the job market, as well as the right to an open, inclusive and accessible working environment for people with disabilities.

On the basis of the principle of inclusiveness, Article 32 of CRPD also places an obligation on States Parties to recognize the importance of international cooperation in realizing the purpose of CRPD by taking a number of measures. Among them, ensuring that international cooperation, including international development programs, is inclusive and accessible to persons with disabilities. In this regard, it is clear that the principle of inclusiveness plays an important role in ensuring the full participation of persons with disabilities in society under CRPD based on the Human Rights Model by, among other things, ensuring the

accessibility by persons with disabilities to education, employment and development programmes at the level of international cooperation.

In summary, there are three disability models highlighted in this article, namely the Medical Model, the Social Model and the Human Rights Model. The Medical Model and Social Model are two models that existed earlier than the Human Rights Model and have also led to the birth of the Human Rights Model. Based on this, the Medical Model and Social Model should not be marginalized from the conceptual framework under this article. However, the scopes of Medical Model and Social Model are limited. The Medical Model focuses only on the physical or mental deprivation of an individual. The Social Model, in turn, focuses on limitations and prejudices that restrict the full participation of people with disabilities in society and access to health care. Among these three models, the Human Rights Model is one of the most comprehensive models and is supported by three main principles, namely the principle of dignity, the principle of equality and the principle of inclusiveness and participation. These three key principles have been clearly stated in CRPD. For that reason, the Human Rights Model is the most relevant model in protecting the rights of people with disabilities, in particular the right of access to buildings.

## **VII. CONCLUSION**

In conclusion, Human Rights Model is the most relevant model to be used as a conceptual framework to guarantee the rights of access to buildings for persons with disabilities. The Human Rights Model is the most relevant model because the Human Rights Model is supported by three main principles, namely the principle of dignity, the principle of equality and the principle of inclusiveness and participation. These three key principles have been clearly stated in CRPD.

The first principle, which is the principle of dignity, is set out in Article 1 of CRPD on the purpose of CRPD, which is to provide assurance

that people with disabilities can enjoy all human rights and promote respect for their dignity. The second principle, which is the principle of equality is set out in Article 5 of CRPD, which is the recognition that all individuals are equal before the law, the prohibition of all forms of discrimination on the grounds of disability and the guarantee of protection under the same law. The third principle, which is the principle of inclusiveness and participation, is set out in Article 24, Article 27 and Article 32 of CRPD, recognizes the rights of people with disabilities to an inclusive education system, the right to an open, inclusive and accessible working environment for persons with disabilities and the assurance that international cooperation, including international development programmes, is inclusive and accessible for persons with disabilities. These three principles guarantee the rights of people with disabilities to various aspects of life, including the right of access to buildings for persons with disabilities.

There is no evidence to suggest that the Human Rights Model is the best model to serve as a conceptual framework for the rights of people with disabilities. However, the abovementioned three key principles have been clearly applied in CRPD. Therefore, the Human Rights Model is the most relevant model to serve as a conceptual framework to protect the rights of people with disabilities, in particular the rights of access to buildings for persons with disabilities.

In addition, the Medical Model and the Social Model are two models that existed before the Human Rights Model. However, the scopes of these two models are limited. The Medical Model focuses only on the physical or mental deprivation of an individual. The Social Model is based on limitations and prejudices that prevent the full involvement of people with disabilities in society and access to healthcare. Due to these limited scopes, the Medical Model and Social Model are no longer relevant as the best model to protect the rights of people with disabilities, in particular the right of access to buildings. However, neither of these models can be excluded from the conceptual



framework under this article. This is because the Medical Model and Social Model triggered the birth of the Human Rights Model.

Researcher also found that the definitions of the terms that matter, namely "persons with disabilities" and "disability" are different and not uniformly defined. These differences occur because there are different and conflicting understandings of the meaning and concept of disability at the international level. Furthermore, disability is a subjective and diverse matter and depends on the situation and the category of disability. The researcher also found that the terms "access" and "accessibility" are not uniformly defined in any international law. The definition for all such terms is important to provide a clear understanding of the rights of people with disabilities access to buildings. The absence of definitions for all the abovementioned terms stems from the absence of a single disability model that is internationally recognized as the best model of disability. The understanding and reference to one of the most relevant models of disability is the main and important thing to facilitate the definition of important terms as stated above. The definition of these terms also facilitates the application of the law relating to the rights of people with disabilities, in particular the right of access to buildings.

Researcher also found that CRPD does not contain a specific definition of the term "disability." However, "disability" is explained in the preamble (e) to CRPD as an evolving concept, which is the result of interaction between persons with disabilities with barrier of feelings and an environment that limits full and effective participation in society on the basis of equality with others.

In summary, there are two important points. The first point is that CRPD contains one specific provision, which is Article 9 which states in detail with respect to accessibility. This shows that accessibility is vital and emphasized in CRPD. The second point is that CRPD is an international law that protects the rights of people with disabilities and contains three principles set out in the Human

Rights Model. These two points show that Human Rights Model is the most relevant model of disability in guaranteeing the rights of people with disabilities, in particular the right of access to buildings.

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