

Legal Protection of Education Right for Person with Disability in Indonesia Compared to Islamic View

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Abstract- Man is a creature of God Almighty who has the same position on the Earth. The Republic of Indonesia is a State of law based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 which respects and upholds the human dignity so that the protection and promotion of human rights against vulnerable group especially persons with disability needs to be improved. It is can be seen in article 5 paragraph (1), article 11, article 20, and Article 28 I paragraph (2) of the Constitution of the Republic of Indonesia Year 1945. The problem in this research is, first, what is form of protection in an attempt to fulfill the right of education for persons with disability under the law in Indonesia? Second, how does the protection of the rights of education for persons with is ability according to Islam?. This research is the normative legal research (dogmatic), which is intended to find and formulate a legal argument through analysis of the problems examined. The approaches used in this study are statue approach and comparative approach to compare between the protection of the rights of education for persons with disability according to law in Indonesia and Islam. This research concluded that Indonesia basically has been paying attention to the rights of education for persons with disability through a variety of laws even though in practice the Government and educational institutions still impressed discriminatory against the rights of education for persons with disability. Based on information that writer got in the reception of students in universities through the SBMPTN year 2017 recently there were 38 participants from person with disability was accepted to study at the College of the total registrants applicants from person with disability as much as 226 participants.[1] An also based on socio-economic Survey (Susenas) year 2012, released data on persons with disability Indonesia is on the numbers 6,640,000 and less than percent can only graduate elementary school (SD).[2] Second, if compared with the rights granted by Islam against persons with disability, Islam has given it concern for educational rights for persons with disability. It is seen from the verses of the Qur'an, the Hadith, and the examples of Prophet Muhammad's attitude as well as which do not differentiate rights education based on the physical condition of people.

Key Words: Legal Protection; Right of Education; Persons with Disability; Indonesia; and Islamic Law

I. INTRODUCTION

Man is a creature of God Almighty who has the same position on the Earth. Every human being has the attached to his humanity. With the belief in the power of God as creator, the condition of disability experienced by some children is divine fact. This condition should not be a cause of loss of dignity of persons with disability, or be a reason not to align them with other citizens in all areas of life, whether political, economic, social and cultural. But in fact, persons with disability remains a group of the most vulnerable and marginalized within each community. Though internationally and the nationally, movement for human rights and development have been emerging, generally these groups are still in the last line to be able to enjoy it [3].

The Republic of Indonesia is a country based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 which respects and upholds the dignity of human beings so that the protection and promotion of human rights against vulnerable groups in particular persons with disability needs to be improved. This can be seen in article 5 paragraph (1), article 11, article 20, Article 28 I and paragraph (2) of the Constitution of the Republic of Indonesia Year 1945.

People with special needs or also known by the term "diffable" is derived from the word different ability or people with different abilities. The term is to change the disable label or disability which means disabled. Both of these words follow the sense given by the Social Work Dictionary is the reduction function permanently or temporarily, as well as the inability of a person to do something that the other person able to do as a result of physical or mental disability [4].

Then another definition appears in the Declaration of the rights of persons with disabilities expressed by the General Assembly of the United Nations with a resolution 3447 on 9th December 1973 in New York, in this Declaration stated that disability is any person who is not able to guarantee himself, all

or part of the normal individual needs and social life, as a result of their disability both are congenital or not, in terms of physical or mental ability [4].

Convention on the Rights of Persons with Disabilities (next abbreviated as CRPD), namely the Convention on the rights of Disabled / persons with Disability/, has been ratified by the Republic of Indonesia in the legislation of the Republic of Indonesia number 19 Year 2011 (next abbreviated as Act No. 19/2011) on validation of the CRPD. The CRPD is the international and national instrument of Human Rights in order to Respect, fulfillment and protection of the rights of persons with disabled in Indonesia (Development tools and Human Rights Instruments). The purpose of this Convention is to promote, protect and guarantee the equality of rights and fundamental freedoms for all persons with disability, as well as respect for the dignity of persons with disability as a part inseparable (inherent dignity) [5].

In General, difable and disability remains a major problem in developing countries including Indonesia. They are part of the society's marginalized in the process of national development. They did not get the place and the position it deserves in the social life of the community. The community of difable in developing countries is just as the outsider in the overall development process. Difable community is one of the "user" or "users in all aspects of the good life in the city or in the village. However, the existence of migration significantly occurred in Indonesia, that difable who lived in the village in general tend to migrate to the city to get "access", whether it's access to education, employment as well as social and medical rehabilitation services [6].

In developed countries, the appreciation and recognition of the rights of the difable has been running well. It is can be seen by the existence of a functioning rule of law effective for protecting fundamental rights of difable such as accessibility of environment and buildings, providing jobs and a decent education, as well as social security for difable who suffered a disability serious enough or often referred to as "always patient". As in America, there is a federal law called the American Disability Act (ADA) which regulating and protecting the rights of difable in access to education, housing, employment, health, and social security.

If we look at the condition that happened in Indonesia, we are still seeing the large number of problem regarding the fulfillment of the rights of persons with disability. In this case the author focuses her attention on right of getting an education based on what is found generally not only in formal education but also in non formal education where persons with disability as remains as a marginalized group. Islam in this case as the majority religion in Indonesia also gave attention towards persons with disability through the verses of the Qur'an as a guidance for the whole Muslim in particular human beings from all times and all over the world.

Hence in this paper the authors want to know how the attention of Republic of Indonesia through its laws and how Islamic attention regarding rights obtaining education for persons with disability. So it will be known whether there are similarities between the country's attention and the concept of disability rights attention on the teachings of Islam.

II. RESEARCH METHOD

Based on the background which has been described above, this research is the normative legal research (dogmatic legal research) aimed to discovering and formulating legal arguments through the analysis of principal problems are examined. Legal materials collection technique in the study carried out by the study of librarianship. The approach used in this research are statue approach to analyze the legal rules relating to disability and comparative approach to compare the protection of education according to the law in Indonesia and Islamic law

III. RESULT AND DISCUSSION

A. *Legal Protection of Right of Education for Persons With Disability in Indonesian Law*

State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 (hereafter abbreviated with NRI Constitution 1945) very respect and upholds the dignity of human beings. As referring to human rights as fundamental rights that are attached to human universally need to be protected, respected, and maintained, so that the protection of human rights and against vulnerable groups, in particular the rights of person with disability need to be very aware. The Constitution of the Republic of Indonesia Year 1945 stated that "the State of Indonesia is a country of laws" based on the provisions contained in article 1 paragraph (3) of the Constitution of Republic of Indonesia 1945. The main purpose of the principle of State of law is to ensure the certainty of law, public order and the protection of the law to the whole people of Indonesia based upon truth and justice that exists in the life of society and the principle of fairness is one reflection of the implementation of human rights.

Human rights is basically a right possessed by every human being since they still in the womb until they was born and lives in the world until the end of their life. [7] In this case the Human Right have universally applicable as the basics of Human Right have been included in the Universal Declaration of human rights or DUHAM (Declaration of Human Right) [8] and has also been included in the Constitution of Republic of Indonesia year 1945 as contained in article 27 paragraph (1), article 29, article 28 paragraph (2), article 30 paragraph (1) and article 31 paragraph (1). Related to Human Right. Indonesia has a goal to protect the rights of each citizens without differentiating in terms of religion, race, language, tribe, culture or skin color and also in terms of their physical condition.

Respect, protection and fulfillment of the rights of persons with Disability is an obligation of a country. It is as defined in Act Number 39 of the year 1999 on Human Rights, with the existence of this law, society and the Government have a responsibility to respect the rights of persons with disability, as we know that persons with disability during this experience a lot of discrimination that result in not yet satisfy the rights of persons with disability.

Arrangements concerning persons with Disability had previously been regulated in Law number 4 year 1997 on Disability, but this arrangement considered has not been giving the perspective of human rights. The material contained in this legislation is more has charity based and the fulfillment of the rights of persons with disability is still rated as a social problem that its fulfillment are social security, social assistance, social rehabilitation, and the improvement of social welfare.

Then with the legalization of Law Number 19 year 2011 about the legalization of the Convention of The Right of Persons with Disabilities on December 10th November 2011 showed a commitment and seriousness from the Government of Indonesia to respect, protect and fulfill the rights of persons with disability. With this regulation is ultimately expected to increase the welfare of persons with disability. Thus, persons with disability have the right to be free from torture or cruel treatment, inhuman, degrading human dignity, freedom from exploitation, violence and inappropriate treatment as well as the right to obtain the honor of their physical and mental integration based on equality rights with others, including the right to get protection and social services within the framework of independence, and in emergencies. Therefore, the Government is obliged to realize the rights contained in the Convention through adjustment of laws including guarantees the fulfillment of the rights of persons with Disability in all aspects of life such as education, health, employment, politics and governance, culture and tourism, as well as the utilization of technology, information, and communication [8].

In Law Number 4 year 1997 has asserted that people with disability are part of the community of Indonesia that had the position, rights, obligations and the same role in all aspects of life or livelihood as well as another citizens of Indonesia. Persons with disability are also entitled to obtain: (1) education in all the units, type, and level of education, (2) job and a decent livelihood in accordance with the type and degree of disability education and ability, (3) the same treatment in order to play a role in development and enjoy the results, (4) the accessibility in the framework of their independence, (5), Rehabilitation, social assistance and maintenance of adequate social welfare, and (6) the same rights to cultivate talent, the ability, and their social life.

Then, if seen from the content which is reflected in the preamble of the Constitution of the Republic of Indonesia Year

1945 containing the obligation of respecting human rights. Preamble of this Constitution animates the whole article in the body of Constitution especially with regard to the similarities of the position of citizens in law and government, the right to work and a decent livelihood, freedom of association and assembly, the right to issue the mind with spoken and written, freedom of religion and embraced to worship in accordance with their religion and beliefs, as well as the right to obtain education and teaching. Every human being has a permanent human rights without exception on what the position, rank, position, wealth even every level of education does not differentiate its human rights [9]. The fulfillment of basic human rights is becoming very important in the practice of everyday life especially in terms of the fulfillment of the rights of education.

Education as we know is a form of investment of nation, provision of life for human beings in the present and the future. Education directly or indirectly has a lot of influence on all aspects of life [10].

The purpose of State of the Republic of Indonesia with regard to aspects of education have also been included in the Preamble of constitution of Republic of Indonesia year 1945 which reads: *Protecting all Nations Indonesia and all the spilled blood of Indonesia and to promote the general welfare educate life of citizen and carry out the order of the world based on peace, and social justice.* To realize these goals, article 31 paragraph (1) set that every citizen is entitled to get education, described further in the article 31 paragraph (3) of the Constitution of Republic of Indonesia year 1945 that mandates to Government for trying and organizing a national education system that enhances faith and devotion to God Almighty and glorious morals in order the intellectual life of the nation which is set out in the Law.

Explanation and elaboration of right of education for persons with disability are enshrined in the Law of the Republic of Indonesia number 2 Year 1989 about National education system in article 8 paragraph (1) makes it clear that every citizen who has a mental or physical disorder and has the right to obtain education, and also article 11 paragraph (1) describes the educational level for persons with disability, education for persons with disability against the kind of education that includes formal training i.e. school. It is consists of general education, vocational education, *pendidikan luar biasa*, limited education, and religious education [11].

Before the reformation in year 1998 actually there are two regulations for the education of persons with disability, namely Law Number 2 year 1989 on National Education System and also Law Number 4 year 1997 concerning Persons with Disability. In the provisions of Law Number 4 year 1997 in section 6 number 1 explained that: "education for persons with disability is a unit of education level." Then, in year 1999 the Government legalize a law on Human Rights is increasingly asserting the Government's

commitment to protect human rights without exception. Article 42 of the Law Number 32 Year 1999 on Human Rights Stated that: "every citizen who persists, physically or mentally disabled they are receiving treatment, education, training and special services at the expense of the State, to guarantee a decent life in accordance with human dignity, improve self-confidence, and the ability to participate in the life of society, nation, and State".

Then in terms of education for persons with disability are also contained in Law Number 20 year 2003 on the national education system Jo. Law Number 2 year 1989 which explaining Article 1 number 1: "education is a planned and conscious effort to bring an atmosphere of learning and the learning process so that learners are actively developing their self potential to have the spiritual power of the religious, selfcontrol, personality, intelligence, morals, as well as skills their needed, society, nation and State ". Article 32 paragraph (1) of Law Number 20 Year 2003 regarding Special Education which reads: "special education is education for learners who have difficulty in following the process of learning because of physical abnormalities due to emotional, mental, social and or have the potential intelligence and special talent".

Law Number 20 Year 2003 about National Education System already has some rules related to the rights and obligations of persons with disability. This is described in article 5 paragraph (1) that: "every citizen has the same rights to acquire quality education". Article 5 paragraph (2) that: "all citizens with physical disorders, emotional, mental, intellectual, or social have the right to obtain special education".

With the existence of this Law, triggered the emergence of a regulation of the Minister of education Number 70 Year 2009 about the inclusive education. It is one of the ways that is done by Government to fulfill rights for persons with disability. Inclusive education is a strategy that aims to reduce, and trying to eliminate the constraints and barriers in accessing education for persons with disability. Model of inclusive education has been discussed during the World Conference on Special Needs Education in June 1994. Through this Conference, the Ministers of education of the world declared *Salamanca Statement* that recognizes the special characteristics which belongs to each child, guarantee the rights of every children to obtain education, recommends that the educational system is designed to be able to accommodate the needs and characteristics of the child that vary widely, encouraging education services for children with special needs inclusively at regular school, and confirms that the inclusive education is the most effective way to reduce discriminatory attitudes. The principle of inclusive education is if there is possible, all children should learn together without any difficulties or differences that may exist on them [12].

Then the Law Number 20 year 2003 about National Education System set up that national education systems must be able to ensure equitable educational opportunities, increase the quality and the relevance and efficiency of educational management and efficiency to deal with the development of the world. In the provisions of article 5 paragraph (1) of Law number 20 year 2003 National education system has been arranged that each citizen has the same rights to obtain quality education, article 5 paragraph (2) regulated that citizens who have abnormalities of physical, emotional, intellectual, and mental or social reserves the right to obtain special education. Law Number 8 year 2016 about Persons with Disability also explain that persons with disabilities are also entitled to obtain a quality education on all education level, type and level of education as set in the provisions of article 10 (a) Law Number 8 year 2016 about persons with Disability.

As known before, that regulation i.e Law Number 4 year 1997 concerning the disabled is still in the form of mercy (charity based) and the fulfilment of the rights of persons with disability is still rated as a matter of social problem which is the fulfilment of rights is in the form of social security, rehabilitation and improvement of social welfare. Then by the promulgation of Law number 8 of year 2016 on Person with Disability, then put every individual of person disability to get the guarantee of respect, promotion, protection and fulfilment of human right from the State. Person with disability seated as a subject that is as individuals who have rights and obligation, so that the organization of social welfare for persons with disability is not only in the form of social rehabilitation and social security but also in the form of social empowerment and social protection. Empowerment and social protection is intended to strengthen the rights of persons with disability to become a tough and independent individuals through training, mentoring, increased access to social marketing, advocacy and legal aid and others.

Then, about legislation of Law number 8 year 2016 about Person with Disability explain the right of education for person with disability in article 10 which includes:

- a. Get a quality education at the education unit in all types, paths, and level of education in inclusive and special education. Inclusive education is education for learners with disabilities to learn together with the learners not disability in regular school or college. While the special education is education that simply providing services to students with disabilities using a special curriculum, special learning process, guidance and nurturing with special teacher s and did in special place.
- b. Have the same opportunity to become educators or educational personnel in educational units in all types, paths, and level of education.
- c. Have the same opportunity as quality education providers in education unit in all path, type and level of education
- d. Obtaining decent accommodation as learners.

Implementation of the fulfillment of the rights of education for persons with disability is further regulated in article 40 to Article 44 of the Law number 8 year 2016 as follows:

1. The Government and local authorities had obligation to (Article 40):
 - a. Organize or/ and facilitate education for persons with disability in each line, type, and level of education in accordance with those powers, which are conducted in the national education system through inclusive education and special education.
 - b. Insert the child with disability into 12-years compulsory education program
 - c. Give priority to children of person with disability to attend school at a location near of their residence.
 - d. Facilitate persons with disability who do not get formal education to get certificate of primary education and secondary education through equality program.
 - e. Providing scholarships for smart students with disability whose parents could not afford to finance their education.
 - f. Providing tuition for the children of persons with disability who cannot afford to finance their education.
 - g. Facilitate the establishment of Disability Services Unit to support the holding of inclusive education in primary and secondary levels (article 42)
 - h. Facilitate educational institutions in providing decent Accommodation (article 43)

 2. The Government and the local governments in organizing and or facilitating inclusive and special education as mentioned in point 1. a they have to facilitate persons with disability to learn the basic skills needed for selfsufficiency and full participation in education, social development . Basic skills are include (article 41):
 - a. Writing and reading skills of Braille characters to tuna netra
 - b. Orientation and mobilization skills
 - c. Skill of support system and guidance for fellow persons with disabilities
 - d. Communication skill in form, facility, and formation argumentatively and alternatively.
 - e. Sign language skill (including indonesia sign language, or Bisindo) and development of linguistic identity and community of Tuna Rungu.

 3. Disability Services Unit as explained in point 1.g has function to (Article 42):
 - a. Improving the competence of educators and educational personnel in regular schools in dealing students with disabilities.
 - b. Providing mentoring to learners with disabilities to support the learning process,
 - c. Developing compensatory programs, i.e. alternative tasks given to learners with disabilities as one form of adaptation in the learning process and evaluation
 - d. Providing media and tools needed by learners with disabilities.
 - e. Conduct early detection and early intervention for learners and potential learners with disabilities.
 - f. Providing data and information on disabilities.
 - g. Providing consultation services, and
 - h. Developing cooperation with other institutions or parties in an effort to improve the quality of education of learners with disabilities.

 4. Every venue of higher education has obligation to facilitate the establishment of Disability Services Unit that has function to (article 42):
 - a. Improving the competence of educators and educational personnel in College in handling and treating learners with disabilities.
 - b. Coordinate any work unit in College in order to the fulfillment of the special needs of learners with disabilities.
 - c. Monitoring and evaluating the implementation of proper acomodation.
 - d. Providing counseling services for learners with disabilities.
 - e. Conduct early detection to learners who identified disability
 - f. Referring learners with disability to the doctor, psychologist, or psychiatrist, and
 - g. Providing socialization understanding disability and inclusive education system to educators, educational personnel and learners.
- The Government and loc [4] al government facilitate the establishment of Disability Services Unit in college. Higher education units which do not form Disability services will get sanctions are in the form:
- a. Written reprimand.
 - b. Dismissal of education activities
 - c. Suspend of education activities permission.
 - d. Revocation of education activities permission.
- Provisions on the mechanism of administrative sanctions as provided by regulation of the Government (article 42).
- B. Protection of Right of Education for Persons with Disability in Islamic Law*
- Term used in the holy Qur'an to mention terminology disable is refer to *Summun, Bukmun, Umyun* and *a'roj* with the meaning of the word re deaf, dumb, blind and lame which are often used to describe negative behavior, are said to be appropriate with the social conditions of the pre-Islamic society. One feature of the community before the advent of

Islam is their penchant for going to war based solely on the tribal spirit, aggressive behavior and patterns of life that always moved. [4]

Vocabulary which has meaning physical imperfections be an indicator that the person with disability is lower class groups. The habit of fighting in the Arab pre-Islamic society strives for strength and physical perfection as it pertains to the ability of the war. So with the condition of disable persons have no appropriate place. Then it is also in line with the assumption that disable group is in second class because they do not align with someone who have normal physical and perfect physical. Therefore, it is reasonable then when in many places the Qur'an using four vocabularies above in many negative contexts [13].

Concerning to persons with disabilities, God Almighty did mention in one of the verses of the Qur'an in Surah al-Fath verse 17:

لَيْسَ عَلَى الْأَعْمَى حَرْجٌ وَلَا عَلَى الْأَعْرَجِ حَرْجٌ وَلَا
 عَلَى الْمَرِيضِ حَرْجٌ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ، يُدْخِلْهُ
 جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ وَمَنْ يَتَوَلَّ يُعَذِّبْهُ
 عَذَابًا أَلِيمًا ﴿١٧﴾

17. No blame or sin is there upon the blind, nor is there blame or sin upon the lame, nor is there or sin upon the sick (that they go not for fighting). And whosoever obeys Allah and His Messenger (Muhammad Sllalloho Alaihi Wasallam). He will admit him to Gardens beneath which rivers flow (Paradise), and whosoever turns back, He will punish him with a painful torment.

Asababun Nuzul of this verse is the anxiety of people who have physical limitations, either because of a physical disability, and either because of physical disabilities or due to illness of the obligation of *Jihad* command directed to the group of hypocrites (*munafik*) who reluctantly struggled despite their physical condition allows. Because of the threat of al-Quran to group that didn't want to fight and *Jihad* in the way of God, a group of people who physically has the limitations became afraid and complained to the Messenger to get the best way what they should take [4].

Ibn kathir explained that the verse mentioned above in several *syar'i* reasons allowing persons with disability to not participate in the war. Among the reasons that there are permanent, such as the blind, lame, there are also extended the temporary nature of such pain that attack a few days later healed again. Then the temporary pain is similarly with permanent pain until it healed [13].

Mustafa al-Maraghi explained the same thing with the opinion of Ibn Katsir that there is no sin for someone who has

excused (*uzur*) if they didn't join the fight and watch the war together with believers when they encounter their enemies, because of their disabilities on them as well as other causes that prevent them to follow the war like blind, lame and other diseases [14].

M. Quraish Shihab explained that these verses exclude some groups by declaring there is no sin on the blind, when not meet the invitation also over the lame person i.e. disabled and thus also not over the sick with any kind of sickness [15]. According to him the verse does not use redaction exceptions i.e. not stated that unless the blind and so on. This matter suggests that since the beginning they unencumbered to go to war, so this group is not a group that is excluded. However, the statement that there is no sin have the meaning that their presence is also not forbidden, due to the presence of those who have excused (*uzur*) little or a lot can help and give impact to the Muslims [15].

From some of the opinions above concerning verse 17 of surah al-Fath is understood that in principle al-Quran is not discriminate persons with disabilities but instead give special treatment against a person who is physically confined, they have the land of worship, as well as contributions in the broad social activities and can provide benefits against fellow human beings. This verse also contains the merits of Islam against the disabled group. In this case the Qur'an does not measure a person's ability only on physical ability. Therefore, there is no normative or theological background in Islam to tolerate discriminatory action against anyone, including persons with disability.

In the language of the Qur'an, the level of devotion (*taqwa*) that became the benchmark of the glory of a person, regardless of social status, physical perfection, skin color, race and nationality of person. The verse above gives legitimacy to the principle of equality was taught Islam to distance from the class system or other social strata. Thus, the existence of disable group recognized socially by Islam as part of the *Ummah* in general as well as having the same rights and obligations of fellow Muslims [4].

Tafsir of holy Qur'an has not been paying special attention related disable issues. Waryono Abdul Ghafur mentioned there are two possibilities that cause problems of disabilities submerged in history, especially in the study of interpretation (*penafsiran*). First, Islam looked neutral towards the disabilities; with fully equate disable as other human beings. Islam emphasizes character development and charitable good deeds, rather than seeing one's physical problems. And also Hadith of Prophet Muhammad which means: "Actually, Allah will not look at the likeness or shape, position and possessions of you, but He look to the heart and deeds". That's how Islam emphasizes the importance of charity or good deeds [16].

The second factor which led to the lack of study on this issue is the lack of reviewer or the interpreters that emerged from among persons with disabilities. As the study of classical scholar in the field of creed (*akidah*), mysticism (*tasawuf*), philosophy (*fihsafat*), or *Hadith*. This is comparable with the classic scholars studies about women that many shows that there is bias or impressed discriminate. Of course this issue is because the reviewer or the interpreter woman is extremely rare in the history of Islam, particularly after the Prophet Muhammad. [16]

In the Islamic monocracy human rights are not only recognized but also fully protected. Therefore, in this connection, there are two very important principles, namely the principle of the recognition of human rights and the principle of the protection of those rights. Those principles explicitly outlined in the Qur'an such as in surah al-Israa' verse 70:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَبْرِ
وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ
عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ﴿٧٠﴾

70. And indeed We have honoured the Children of Adam, and We have carried them on land and sea, and have provided them with At-Taiyibat (lawful good things), and have preferred them above many of those whom We have created with a market preferment.

The sons of Adam here are a human being as a descendant of the Prophet Adam. The verse above clearly express the glory of the human in the text of the Qur'an called the *karamah* (glory). Mohammad Hasbi Ash-Shiddieqy divide the *karamah* into three categories namely (1) the personal glory or *karamah fardiyah* (2) community glory or *karomah ijtimaiyah* (3) political glory or *karomah siyasiyah* [14]. In the first category, human beings are protected in the matter of their personality and their wealth. In the second category, "status of human equality is fully guaranteed" and in the category when monocracy Islam put the political rights and guarantee the rights entirely for every citizens, because the position of human beings in the Holy Qur'an is called "*Khalifah* of God on the Earth" [14].

The proclamation of the holy Qur'an through its verses contains the principles of recognition and protection of human rights as fundamental rights which God gave to them. Recognition and protection of those rights in monocracy Islam emphasized on three things, namely (1) the human equation, (2) human dignity, and (3) human freedom. In the human equation as already described in paragraphs ago Quran have been delineated and set a status or the same position for all human. Therefore, the holy Qur'an was opposed to and rejected

any form of treatment and attitude that may destroy the principle of equality, such as discrimination in all areas of life, feudalism, colonialism, and other [17].

About human dignity is closely related to *karamah* or the glory that God gave to him. God created man with a dignity that is very different from another creature. Human has attributes or physical and spiritual supplies which are not available on other creatures.

One of features that gives dignity and glory to human is the human ability to think and use their mind like an attribute that only human have it. With the spiritual and physical structures like that, human naturally or distinctly have dignity and glory that must be recognized and protected.

One of the principles of recognition and protection with regard to the dignity has been outlined in the Quran surat al-Isra

' verse 33 [18] :

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ
وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطٰنًا
فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا ﴿٣٣﴾

33. And do not kill anyone whose killing Allah has forbidden, except for a just cause. And whoever is killed wrongfully (Mazluman intentionally with hostility and oppression and not by mistake), We have given his heir the authority (to demand Qisas, Law of Equality in punishment or to forgive, or to take Diya (blood money). But let him not exceed limits in the matter of taking life (i.e. he should not kill except the killerv only). Verily, he is helped (by the Islamic law)..

What is meant by "the right reasons" in the verse is the reasons that justified by Islamic law such as *qishas* which is a form of punishment in Islamic criminal law [19]. The right to life and the right to protection for life are closely related to the safety of the human and their freedom. About human freedom in monocracy Islam there are five freedoms that recognized as basic of human rights. Five kinds of freedom are as follow: (1) freedom of religion, (2) freedom of thought and opinion as "the opinion of their mind", (3) freedom to own property, (4) freedom to try and have his job and (5) the freedom to choose a place of residence. Five kinds of freedoms not only recognized but also have to protect by the state according to the Qur'an and sunnah [17].

Then freedom of thought, give opinion and different opinions are included in the category of universal freedom. The Qur'an verses pretty much ordered a man to think. He was one of the essences of the teachings of Islam. The teachings of Islam that based on mind, as defined by Prophet Muhammad "*al-diinu 'aqlun*", which means "religion (Islam) is the reason" because appropriate with rational characteristic.

All the teachings in Islam from the concept of God until idea about hereafter (*akhirat*), all can be absorbed and digested by using idea. Position of idea in Islam is very appreciated, so it is one of the sources in the Islamic law as third source of Islamic law.

Freedom of thought is one of human nature (*fitrah*) or original character. Included in this sense is human using his mind for thinking of science. In the history can be found a reality that only Islam which from the beginning support every human to study and use his mind to develop science. The Qur'an itself contains a lot of information as the foundations of science offered to man for thought and developed with his mind [20].

In the monarchy Islam, freedom of thought, freedom of opinion and freedom for different opinions can be said as freedom that containing intellectual values owned by each person, then as spouse of that freedom is the freedom to own property that contains the values of the material values.

C. Legal Protection of Education Right for Person with Disability in Indonesia Compared to Islamic View

Islamic teachings do not distinguish and do not discriminatory against all human rights no exception for persons with disability. In principle the Qur'an do not discriminate but instead give special treatment against person who is physically confined, they have the land of worship, as well as contributions in the broad social activities and may provide benefits against fellow human beings. In the language of the Qur'an, belief (*taqwa*) which became the benchmark one's glory, regardless of social status, physical perfection, skin color, race and nationality of a person.

The right of education for persons with disability is related to the goals of Islamic law are contained in the *Maqosid Sharia* as described by as-Syatibi consisting of five objectives, namely *hifdz al-Maal* (keeping the treasure), *Hifdz An-Nafs* (Keeping self/life), *Hifdz Al-Deen* (keep the religion), *Hifdz Al-Aql* (reason-keeping), and *Hifdz an-Nasl* (keeping the offspring). About human freedom in the Islamic monarchy there are five freedoms that can be regarded as basic human rights. Five kinds of freedom there are: (1) freedom of religion, (2) freedom of thought and opinion as "the result of mind", (3) the freedom to own property, (4) the freedom to try and have his job and (5) the freedom to choose place of residence. Five kinds of freedoms not only recognized but also mandatory for the State law to protect according to Qur'an and Sunnah. [17]

The recognition of human rights which are not discriminatory also stated as the goal of Indonesia as contained in Constitution of Indonesia UUD NRI 1945 in chapter XA about Human Rights, there are 10 articles, article 28A to Article 28J. From 26 provisions in chapter XA, there is one article that arrange special protection for persons with disability, namely in article 28 h of paragraph (2) which States that:

"Everyone has the ease and special treatment to obtain the same benefits and opportunities in order to achieve equality "

The provision contained in this article is still common because it uses the word "everyone" or with other word means no limit on anyone who enters in the group targeted by such article is no exception with person with disability. Then specifically guarantees the right of education also set up specifically in chapter XIII concerning culture and education, namely in article 30 paragraph 1 to 5. Indonesia in this case appears to have a more assertive spirit to protect right of education. It is shown by the existence of legislation that set regarding the right of person with disability namely Law Number 8 of the year 2016 about person with disability including any provision sanctions for institutions which do discrimination against persons with disability including right to access education. Moreover the right of education for persons with disability are also contained in the law of human rights and the law of national education system.

Concept of the protection of the rights of education for persons with disability if we compare between the concept of protection of the rights of education for persons with disability between Indonesia and Islam, they are equally give warranties on right of education. It is can be seen from its Constitution of Indonesia UUD NRI 1945 then further also contained in various laws. Whereas in the concept of Islam contained in the basic religion of Islam i.e. the Qur'an and Hadith.

IV. CONCLUSIONS

Based on the discussion that authors describe above, it can be get the conclusion that: the first, basically Indonesia as Law State has given its attention as efforts to fulfill the rights of education persons with disability through laws from preamble and article of Constitution of Indonesia year 1945 which has been paying attention to human rights, and also attention of Indonesia concerning right of education contained in the Law number 20 years 2003 on National Education System Jo Law Number 2 year 1989 about National Education System, and also Law Number 8 Year 2016 about Persons with Disability that gives attention to the rights of higher education for the persons with disability. Despite its attention has already mentioned in various laws regulations, in practice the government and institutions are still discriminatory against the rights of education for persons with disability.

Second, right to obtain education for persons with disability is also protected by Islam. Actually, Islam does not differentiate the right of every human by their physical condition only. But, Islam look at their believes (*ketaqwaan*). In this matter, The Holy Qur'an gave exception for persons with disability to not follow war (*Jihad*). This exception is given as special treatment of Islam for persons with disability. Right to obtain education is related to right to give opinion and right to give mind. Right to obtain education is also supported by Islam with command to develop knowledge for all human.

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