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ISSUE BRIEF FOR INDONESIA

THE

MARRAKESH TREATY

Assessment of Policy Opportunities for the Ratification and Implementation of the Marrakesh Treaty in Indonesia¹

¹This issue brief is based on a study conducted by Fajri Nursyamsi from the Indonesian Center for Law and Policy (PSHK) (Available only in Bahasa). This brief is a sequel to the first issue brief, which provides an overview of the Marrakesh Treaty in the Indonesian context.

Key messages:

The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled provides an international legal framework to allow the creation, distribution, and cross-border exchange of works in accessible formats such as braille, audio, e-books or large print for print disabled persons.

The Government of Indonesia is strongly committed to advancing the rights of persons with disabilities and is working towards ratifying the Marrakesh Treaty, which it signed in 2013.

It is recommended that the Marrakesh Treaty be ratified by a Presidential Decree rather than by legislation. This would allow for a more predictable and faster process, and clear identification of the government entity responsible for leading coordination and implementation.

The copyright law in Indonesia already contains exceptions and limitations of copyright to facilitate access to published works, not just for people who are blind or have vision impairments but also those with difficulties in reading (i.e. people with other print disabilities), in alignment with the Marrakesh Treaty.

However, further details and implementation mechanisms to ensure these copyright exceptions and limitations need to be elaborated by government regulations. It is recommended that the provisions, flexibilities and safeguards offered by the Marrakesh Treaty are fully utilized to maximise benefits for Indonesia.

There are a number of other relevant laws, bills, and government regulations, some of which are under development, that offer opportunities to incorporate or strengthen key elements of the Marrakesh Treaty.

Ratification and implementation of the Marrakesh Treaty require multisectoral engagement and collaboration. The importance of the Treaty and its key provisions and implementation modalities need to be understood by all key stakeholders concerned.

Introduction

Indonesia is one of only two countries in the Association of Southeast Asian Nations (ASEAN) to sign the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, when it opened for signature.¹ The signature demonstrates its strong leadership and commitment to advancing disability rights both at national and global levels. Since signing on to the Treaty, the Government of Indonesia has been making efforts to take the next step and ratify it, to formally become a Contracting Party.² The Marrakesh Treaty,³ adopted in 2013 and entered into force in 2016, aims to end a 'book famine',⁴ by facilitating access to published works for persons with print disabilities through establishment of a legal framework to allow the creation, distribution and cross-border exchange of material in accessible formats such as braille, audio, e-books, and large print.

The World Blind Union estimates that less than 10 percent of all books published are ever turned into accessible formats, with the number falling to less than 1 percent in developing countries.⁵ This 'book famine' severely restricts the right to information and knowledge for people with print disabilities, with serious human development consequences such as limiting education, employment, and social, cultural, and political participation.

Persons with print disabilities include those who are blind or have poor vision, or physical, learning or other disabilities that prevent them from effectively reading printed works. This can mean that they are not able to read or understand printed texts, hold a book or turn pages.

The ratification and implementation of the Marrakesh Treaty will significantly help advance the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in Indonesia, which Indonesia ratified in 2011, as well as implementation of Indonesia's Law on Persons with Disabilities (Law No. 8 of 2016).

Following a stakeholder consultation on the Marrakesh Treaty organized by UNDP Indonesia in partnership with the Government of Indonesia and community organizations for the blind in 2017,⁶ a study was commissioned by UNDP and carried out by a legal expert from the Indonesian Center for Law and Policy to support the government's efforts towards ratification of the Treaty.

The study assessed (1) treaty ratification options; (2) coherence among relevant laws and policies; (3) opportunities to strengthen or incorporate provisions relevant to the Marrakesh treaty in existing laws and policies; and (4) relevant key stakeholders.

Treaty ratification options in Indonesia

In Indonesia, there are two ways by which an international treaty can be ratified: by a Presidential Decree or by law. In the case of the Marrakesh Treaty, this brief recommends that ratification can be more appropriately carried out through the legal form of a Presidential Decree for the following reasons:

- Ratification through the development of a new law can take a prolonged period of time and requires approval from the Indonesian Parliament including associated processes.
- Ratification by a Presidential Decree requires the engagement of a single institution only, namely the government, as opposed to the Parliament, and is thus likely to be more predictable, less complicated, and have clearer accountability.

Furthermore, the Marrakesh Treaty only makes available an additional supportive framework for the existing responsibility of the government to respect, protect and fulfil the rights of persons with disabilities, as set out in the Law on the Ratification of the Convention on the Rights of Persons with Disabilities (Law No. 19 of 2011), as well as the Indonesian Law on Disabilities (Law No. 8 of 2016). As the legal standing on disability rights already exists in Indonesia, ratification of the Marrakesh Treaty can be managed within the domain of the government, through a Presidential Decree.

Coherence between laws and policies

A review of alignment of relevant laws and policies in Indonesia with the Marrakesh Treaty did not find provisions that are contradictory to, or could hinder, implementation of the Treaty. However, while laws such as the Law on the Book System (Law No. 3 of 2017) and the Law on Persons with Disabilities (Law No. 8 of 2016) refer to access to books or information in accessible formats, they do not specifically address exceptions and limitations to copyright. Providing such specific reference in laws or regulations could strengthen coherence in legal and policy frameworks for effective implementation of the Marrakesh Treaty.

Indonesia's copyright law (Law No. 28 of 2014) may serve as the legal basis to apply the principles of the Marrakesh Treaty in various laws and regulations. The copyright law stipulates that facilitation of access to works for the blind and persons with vision impairment or limitations in reading (i.e. persons with print disabilities) is permissible and not regarded as copyright infringement, as long as the source is fully cited and the facilitation is not for commercial purposes (Article 44 (2)). It also states that further details on how this is implemented are to be covered by government regulations (Article 44 (4)).

It is therefore important that provisions, flexibilities and safeguards contained in the Marrakesh Treaty⁷ are fully incorporated into government regulations, to take full advantage of the Treaty for beneficiaries. For example, in addition to the exceptions and limitations to copyright already provided by the copyright law, the Marrakesh Treaty contains provisions that further expand access to books and printed materials. These include provisions to allow cross-border exchange and importation of accessible format works (including by digital transmission); a broad definition of 'authorized entities' (i.e. including not just the government but also libraries, community, NGOs and other organisations); and legitimate circumvention of technological protection measures (see footnote), among others. (Further details on the Marrakesh Treaty provisions can be found in the World Blind Union Guide to the Marrakesh Treaty.⁸)

On the other hand, the Treaty also contains optional provisions such as the commercial availability requirement and the remuneration requirement, which can impede access. The World Blind Union therefore recommends that countries avoid adopting these optional provisions as they are in conflict with the overarching objectives of the Treaty.⁹

For example, the commercial availability option prohibits the creation of accessible format copies if an accessible work is available on the market, but this can be difficult and time-consuming to identify, and the accessible work may not be in a format that is sufficiently accessible for those with differing disabilities. The remuneration option requires payment for creating, distributing or making available accessible format copies, which essentially means a double payment for use of the work or a tax on the right to read.

To ensure effective implementation of the Marrakesh Treaty, government regulations also need to take forward several critical dimensions after its ratification. This includes developing realistic implementation mechanisms and addressing monitoring and evaluation frameworks, resource allocations, capacity development of key stakeholders, protection of privacy, and engagement of blind communities and persons with disabilities. In the context of ensuring the broad engagement of stakeholders, it is recommended that a simple, accessible and user-friendly process is adopted to recognize 'authorized entities' so that organizations with limited capacity and resources, particularly community, civil society and local organizations, do not face barriers in taking on this role.¹⁰

Policy opportunities to strengthen or incorporate provisions relevant to the Marrakesh Treaty

The laws referenced above, and other laws, bills, and government regulations in Indonesia, some of which are under consideration, could offer further opportunities to strengthen or incorporate elements for improving access to published works for persons with print disabilities.

The Law on Public Information Disclosure (Law No. 14 of 2008) regulates the fulfilment of the right to information for every citizen, including persons with disabilities. The principles used in this law do not yet cover the format or form of information, because it is still limited to the principle of disclosure, the principle of exclusion of information, and timeliness. Therefore, it is suggested that a new principle be added, which states that any information that can be accessed must also be in an accessible format for persons with print and other disabilities.

The Law on the Book System has a provision specifically referring to persons with disabilities who are "entitled to convenience of reading books in accordance with needs" (Article 9). It is recommended that its government regulation, currently under development by the Ministry of Education and Culture and limited to educational books, clearly stipulate further details on how this provision will be implemented, in close coordination with the Ministry of Law and Human Rights, which is also drafting a regulation on providing access to published works for persons with print disabilities.

The Law on Deposit of Printed and Recorded Works (Law No. 4 of 1990) requires publishers to submit published works for the collection of national and regional libraries. There may be a potential scope for the national libraries to serve as a mechanism to also receive and manage soft copies of printed works from publishers. It would make it easier to create accessible format copies for persons with print disabilities, although that would require legal amendments or new regulations with clear mechanisms and stakeholder engagement.

The Law on Libraries (Law No. 43 of 2007) requires libraries to have a diverse collection including those from transliteration (e.g. producing written materials in braille) and transmedia (e.g. converting printed works into audio formats), which can facilitate active engagement of libraries, particularly national libraries, as a key stakeholder to implement the Marrakesh Treaty and promote access to printed works in accessible formats.

Finally, there are opportunities presented by the Law on the National System of Research, Development and Application of Science & Technology (Law No. 18 of 2002), which is currently under consideration for amendment, and by the Bill on Creative Economy, which is under deliberation and defines media-based products including print media as one type of creative economy. As both of these address the role of Government to protect copyright, it is vital to include provisions on copyright exceptions and limitations to allow the production and distribution of accessible format works for persons with print disabilities, in line with the Marrakesh Treaty.

Relevant key stakeholders

The preceding sections make the case that creating a strong enabling legal environment and policy coherence for the effective implementation of the Marrakesh Treaty will require an understanding and engagement of various government, public, private and civil society stakeholders, or a ‘whole-of-society’ approach.

The following stakeholders can play an important role to support the implementation of the Marrakesh Treaty and/or disability rights. Therefore, they are encouraged to be part of the collective effort to advance the principles of the Treaty, relevant laws, policies and regulations.

Government institutions	<ul style="list-style-type: none"> • Ministry of Law and Human Rights • Ministry of Social Affairs • Ministry of Education and Culture • Ministry of Research, Technology and Higher Education • Ministry of National Development Planning (BAPPENAS) • Ministry of Communication and Information • National Commission on Human Rights (Komnas HAM)
Libraries	<ul style="list-style-type: none"> • National libraries • Regional libraries in provinces • School/Islamic school libraries • University libraries • Special libraries
Research institutions	<ul style="list-style-type: none"> • University research institutions • Community research intuitions
Civil society	<ul style="list-style-type: none"> • Blind people’s organizations • Organizations representing people with disabilities
Private sector	<ul style="list-style-type: none"> • Authors, editors, publishers
	<ul style="list-style-type: none"> • Media

Additional resources

- UNDP Indonesia, Mitra Metra, PSHK, WBUAP, EIFL (2017). [Issue Brief for Indonesia on the Marrakesh Treaty](#) (Also available in braille, [Bahasa](#) and [talking book](#)).
- UNDP, WBUAP, EIFL (2017). [Infographic on the Marrakesh Treaty](#).
- UNDP, WBUAP, EIFL (2017). [Issue Brief for Asia-Pacific on the Marrakesh Treaty](#) (Accessible formats are available in [audio](#), [plain text HTML](#), [accessible WORD](#), and [electronic braille](#))
- UNDP WBUAP (2015). [Our right to knowledge: Legal reviews for the ratification of the Marrakesh Treaty for persons with print disabilities in Asia and the Pacific](#). (Also available in braille, [audio](#), [electronic braille](#), and [DAISY](#) (Digital Accessible Information SYstem))

For more information:

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Sources

¹ The other ASEAN country that signed the Marrakesh Treaty is Cambodia.

² See WIPO Contracting Parties to the Marrakesh Treaty at http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=843

³ See <http://www.wipo.int/treaties/en/ip/marrakesh/>

⁴ The World Intellectual Property Organisation (2016). The Marrakesh Treaty – Helping to end the global book famine. Available at <http://www.wipo.int/publications/en/details.jsp?id=4077&plang=EN>

⁵ The World Blind Union (2016). Millions of People are Denied Access to Books and Printed Materials - WBU Press Release for World Book and Copyright Day. Available at <http://www.worldblindunion.org/English/news/Pages/Millions-of-People-are-Denied-Access-to-.aspx>

⁶ 'Leave no one behind,' UNDP aims to champion the rights of visually impaired people in Indonesia. Available at <http://www.id.undp.org/content/indonesia/en/home/presscenter/articles/2017/08/31/leave-no-one-behind--undp-aims-to-champion-the-rights-of-visual.html>

⁷ See Helfer, L.R. et al. (2017). The World Blind Union Guide to the Marrakesh Treaty: Facilitating Access to Books for Print-Disabled Individuals. Oxford University Press.

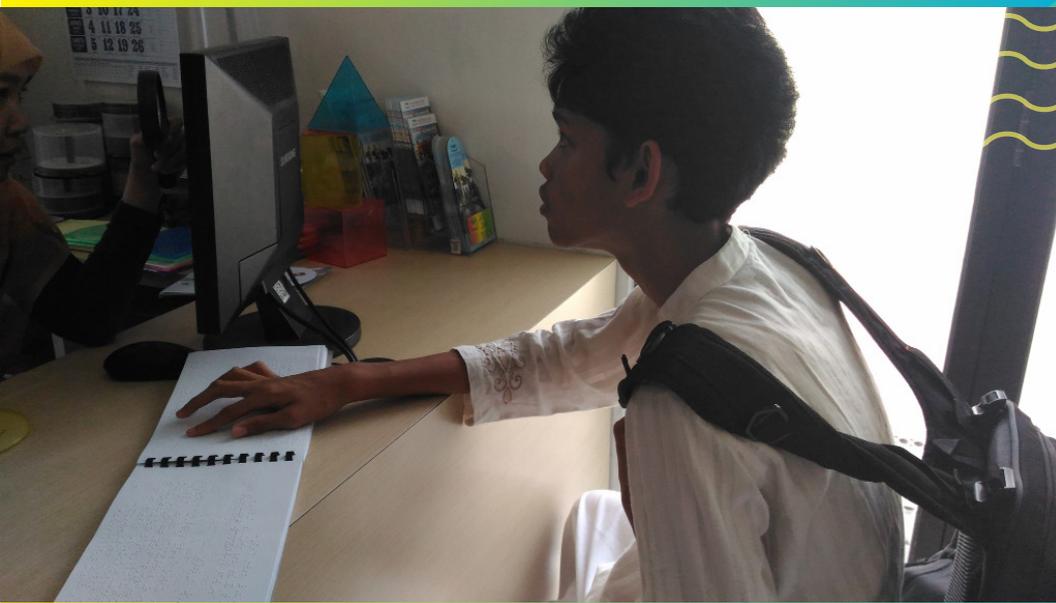
⁸ Ibid., p48.

⁹ Ibid., p48, 50, xix, and xxiv.

¹⁰ Ibid., p27.

Footnote

² Technological protection measures (TPMs) are a form of digital rights management, also known as a 'digital lock'. TPMs can hinder access to accessible formats, such as a text-to-speech function on an electronic reader. Countries that have laws that prohibit circumvention of TPMs will need to ensure that their laws have an exception or other accommodation for beneficiaries of the Marrakesh Treaty.



1. Mitra Netra's client listening to audiobook (Digital Talking Book) in CD format
(Photo by: Yayasan Mitra Netra)



2. Mitra Netra's client reading a Braille book
(Photo by: Yayasan Mitra Netra)



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