



The Right to Work for Person with Disabilities In Indonesia: Legal Protection, Equality, And Social Ecology

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Abstract

The purpose of this study is to analyze the extent of the legal contribution to the inclusiveness of the work environment to overcome violations of the right to work. The type of research used in this paper is socio-legal research with a statutory approach. The number of workers with disabilities is still very low. This is because there is still stigmatization that places people with disabilities as a marginalized group. The ratification of the Law on Persons with Disabilities is the responsibility of the State after the ratification of the Convention on Persons with Disabilities. The government sets mandatory work quotas as affirmative action. The law also incorporates a social ecology approach ranging from accommodation, and support structures for an equal and inclusive work environment. The government also issued a policy to reward employers who promote and protect the rights of persons with disabilities in their work environment. While Indonesia has made progress, this policy has not been fully implemented at the local government level. A recommendation that needs to be developed is the need for audits of employers to ensure how much the right to work has been fulfilled.

Keywords: *The Right to Work; Persons with Disabilities, Equality; Social Ecology*

A. Introduction

Indonesia is currently effectively implementing national development, one of which is in the economic sector by creating jobs. This is done in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which is carried out in the implementation of total national development to improve the welfare of individuals and society in Indonesia. The overall development of Indonesia is carried out to increase the respect and self-esteem of workers in order to create a physically and mentally prosperous, justly prosperous and equal society.¹

Work is one of the activities in human life that allows humans to obtain welfare and even improve their standard of living. Everyone has the right to work, both in the private and government sectors. Through a job, everyone will produce something through their work and receive rewards in the form of wages.² Article 27 of the 1945 Constitution of the Republic of Indonesia states that "every citizen has the right to work and to a livelihood worthy of human beings". In addition, Article 28D (2) of the 1945 Constitution also states that "every person has the right to work and to be fairly and adequately remunerated and treated at work".

¹ Mahadiansar Mahadiansar et al, "Paradigma Pengembangan Model Pembangunan Nasional Di Indonesia" (2020) 17:1 J Ilmu Adm Media Pengemb Ilmu Dan Prakt Adm 78–79.

² Devrayno Devrayno & Yanatar Yanatar, "Hak Mendapatkan Pekerjaan Dan Perlindungan Hukum Tenaga Kerja Penyandang Disabilitas" (2022) 7:2 J Ilmu Huk Tambun Bungai 138–155.



Workers should have legal guarantees to fulfill their rights in the workplace, in which case it must be ensured that segregation or discrimination based on gender differences or physical limitations does not become a reason for differences in the workplace. The legal protection is created to enable the workers to obtain welfare, while paying attention to the interests and development of the business world.³ Legal guarantees are given not only to citizens who are physically and mentally perfect from birth, but better guarantees are given to those who belong to vulnerable groups who have physical limitations in their activities or are often referred to as persons with disabilities.

A person with disability is defined as a person who has physical, mental, intellectual or sensory limitations that prevent him or her from interacting and performing activities normally or effectively with other people or with his or her environment based on his or her equal rights (see Article 1 item 1 of the Law on Persons with Disabilities). The Government of Indonesia has ratified the UN Convention, namely Law No. 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities (CRPD Convention), and has also adopted Law No. 8 of 2016 on Persons with Disabilities (PWD Law).

Based on data from the Coordinating Ministry of Human Development and Culture of the Republic of Indonesia, the number of persons with disabilities in Indonesia in 2023 is about 22.97 million people or about 8.5% of the total population of Indonesia.⁴ Other data from the International Labour Organization (ILO) puts the number of people with disabilities at around 24 million, or around 10% of Indonesia's population. Since the beginning, there has been no valid data regarding the actual number of people with disabilities. Looking back, data from the Ministry of Social Affairs' Pusdatin in 2010 mentioned around 11.5 million people with disabilities. Meanwhile, in the same year, the Ministry of Manpower and Transmigration mentioned around 7 million people with disabilities.⁵ The Central Bureau of Statistics in the Thematic Analysis Report said that in 2019 there were around 21 million people with disabilities.⁶

³ Lia Andriani & Rifqi Ridhlo Phahlevy, "Legal Protection of the Rights of Women Workers in Sidoarjo Regency" (2022) 16:August Indones J Law Econ Rev.

⁴ Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan Republik Indonesia, "Pemerintah Penuhi Hak Penyandang Disabilitas Di Indonesia" (2023), online: *Situs Resmi Kemenko PMK RI*.

⁵ International Labour Organization (ILO), "Inklusi Penyandang Disabilitas di Indonesia" (2013), online: *Situs Resmi Int Labour Organ* <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_233426.pdf>.

⁶ Direktorat Analisis dan Pengembangan Statistik, *Buku I Analisis Tematik Kependudukan Indonesia (Fertilitas Remaja, Kematian Maternal, Kematian Bayi, dan Penyandang Disabilitas)* (Jakarta: Badan Pusat Statistik, 2023).



If the above data is related to working status according to the Thematic Analysis Report by the Central Bureau of Statistics, 21.65% are working. Meanwhile, based on data from the Ministry of Manpower in 2023, the number of people with disabilities who work can be seen in the table below.

Table 1. Disability Labor Force Data in 2023

Disability Classification	Gender			Grand Total
	Male	Female	No Information	
Physical Disability	206	126	19	351
Multiple Disabilities	9	2		11
Mental Disability	5	16		21
Sensory Disability	165	119	2	286
No Information	21	11	1	33
Grand Total	406	274	22	702

Source: Ministry of Manpower, 2023

The above data shows that the number of persons with disabilities who are employed is very low compared to the estimated population of persons with disabilities in Indonesia. The figure of 21.65% when using the data from the Thematic Analysis Report of the Central Bureau of Statistics, the number of persons with disabilities who are employed is in the range of 4.6 million out of a total of 21 million people. This situation illustrates that the position of persons with disabilities is still considered as a marginalized group or other groups with very limited access to the right to work.

Workers with disabilities often receive an unfavorable response in the form of rejection from the company, which believes that workers with disabilities cannot do their jobs like ordinary workers. Erlya and Ali revealed that most of the rejection is due to the low quality of human resources of workers with disabilities.⁷ Of course, the treatment of people with disabilities is not only seen in the constitutional aspect as stated in Article 28D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to work and to receive fair and just remuneration and treatment in employment relations". More than that, this constitutional right must be a trigger for the government and

⁷ Erlya Devitayanti & Ali Maksum, "Tantangan Implementasi Kebijakan Publik Terhadap Penyerapan Tenaga Kerja Disabilitas" (2023) 3:1 Brawijaya J Soc Sci 69–70.



companies or corporations to provide decent and equal human resource development for workers with disabilities. Of course, this is an opportunity and a challenge for national development.

Providing legal guarantees to workers is a fulfillment of the basic rights that are inherent and guaranteed by the Constitution, in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every citizen has the right to work and to a livelihood worthy of humanity". The importance of recognizing human rights for every human being must always be maintained through various positive laws in Indonesia. The recognition of the existence of human rights has an impact on the importance of efforts to provide protection of these rights in order to avoid potential losses that may befall the community itself.

The above background illustrates that there is limited access to the right to work, which affects the right to a decent livelihood for persons with disabilities. Problems in employment for persons with disabilities often take the form of segregation or discrimination. Segregation and discrimination occur in the context of the need to open employment and educational institutions, especially for physical welfare, so that these needs are not considered to provide opportunities for individuals who are unable to obtain their business rights. In fact, the right to work for everyone is a human right guaranteed by the Constitution. This becomes an important question to answer, how is the guarantee of legal protection of the right to work for persons with disabilities in Indonesia? The purpose of this research is based on a normative study of the Law on Persons with Disabilities in relation to the right to work and a decent livelihood. This research will analyze the extent to which the law contributes to social inclusion in the world of work to overcome violations of the right to work committed by companies or agencies.

To strengthen this research, it is necessary to reveal some previous studies as a comparison as well as study materials that strengthen this research. First, research by Alia Harumdani et al. revealed findings that people with disabilities dominate employment in the informal sector. Meanwhile, the 2% affirmation policy that is mandatory for the government and 1% for companies or corporations has not been fulfilled in the field. This condition illustrates that the implementation of the Law on Persons with Disabilities has not been fully optimized.⁸

⁸ Alia Harumdani Widjaja, Winda Wijayanti & Rizkisyabana Yulistyaputri, "Perlindungan Hak Penyandang Disabilitas Dalam Memperoleh Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan" (2020) 17:1 J Konstitusi 197.



Second, Pamungkas' research revealed the fulfillment of the right to work for persons with disabilities in Karawang Regency. The results of his research reveal that limited access to employment is actually due to disharmonious regulations between the Law on Persons with Disabilities and local regulations in Karawang Regency which position persons with disabilities as social welfare problems so that the paradigm built by the local government is the paradigm of persons with disabilities as objects of compassion (charity programs) not as subjects with rights.⁹

Third, Jazim Hamidi's research revealed the disharmony between the Law on Persons with Disabilities and the Law on Ratification of the CRPD Convention. Meanwhile, in its application, the government's paradigm towards the fulfillment of social inclusiveness in the form of affirmative action is limited to compassionate glasses, not on equal and inclusive interests.¹⁰

Fourth, Ametta Diksa's research normatively mentions that legal protection for persons with disabilities involves affirmative action in the form of employment quotas, obligations for employers to create an inclusive work atmosphere and access, fair and non-discriminatory protection in the work environment, rewarding companies or corporations that are able to fulfill the right to work for persons with disabilities, establishing disability service units at the regional level, and criminal sanctions for employers who do not implement the provisions of the Law on Persons with Disabilities.¹¹

The preceding research highlights the conditions and practices observed in Indonesia. A comparison with other ASEAN countries shows that some have made notable progress in protecting the employment rights of persons with disabilities. The Philippines, for example, has advanced further than Indonesia by establishing a centralized focal point—the National Council on Disability Affairs (NCDA)—as well as regional-level Persons with Disabilities Affairs Offices (PDAOs). Thailand, similarly, has achieved significant progress in implementing labour rights for persons with disabilities. Its legal system has structurally integrated the CRPD Convention through the creation of a National Committee tasked with coordinating the efforts of relevant ministries, facilitating the active participation of civil society organizations, and involving disability experts in policy-making. Thailand has

⁹ Pamungkas Satya Putra, "Aksesibilitas Perlindungan Hukum Bagi Tenaga Kerja Penyandang Disabilitas Di Kabupaten Karawang" (2019) 31:2 *Mimb Huk* 206–219.

¹⁰ Jazim Hamidi, "Perlindungan Hukum terhadap Disabilitas dalam Memenuhi Hak Mendapatkan Pendidikan dan Pekerjaan" (2017) 23:4 *urnal Huk IUS QUIA IUSTUM* 653–670.

¹¹ Ametta Diksa Wiraputra, "Perlindungan Hukum Terhadap Pekerja Penyandang Disabilitas" (2020) 1:1 *Dharmasiswa* 34–45, online: <<https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss1/19>>.



demonstrated a clear commitment to disability rights by providing a broad array of supporting instruments. Meanwhile, countries such as Myanmar, Cambodia, and Singapore are still in the process of strengthening their structural and policy frameworks, making their progress, at present, comparable to that of Indonesia.¹²

B. Research Method

This research uses socio-legal research with a qualitative research approach. The focus of this research study is to examine legislation or policies related to the rights of persons with disabilities so that the normative research approach model uses a statutory approach.¹³ This legal study relies on secondary data obtained through a review of legal materials, including the Law on Persons with Disabilities, the CRPD Convention, and secondary legal sources such as policy reports from various institutions, research articles, and other relevant legal literature. The collection of these materials was conducted through document analysis or literature review, with a focus on regulations, institutional reports, and research findings concerning the rights of persons with disabilities. The study emphasises the careful selection and classification of legal materials relevant to this issue. The analysis was carried out using a descriptive-analytical approach, concentrating on legal frameworks, the evolution of practices, and the implementation of existing regulations. In addition, a prescriptive analysis was employed to develop arguments and provide assessments aimed at supporting continuous improvements in the Indonesian context.

C. Results and Discussion

1. Equality and Social Ecology

Tables All citizens, including those with disabilities, have the right to obtain employment and a decent livelihood. The Law on Persons with Disabilities has regulated affirmative action in providing employment quotas, namely a 2% employment quota in government institutions and a 1% quota in companies or corporations (vide Article 53 paragraph (1) and paragraph (2)).

As stated in the background, based on the records of the Coordinating Ministry for Human Development and Culture of the Republic of Indonesia in 2023. Persons with disabilities in Indonesia reached 22.97 million people or around 8.5% of the total population of Indonesia, with the largest number of disabilities in the elderly.¹⁴ While Erlaya and Ali's

¹² Derrick L Cogburn & Tina Kempin Reuter, *Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN* (London: Lexington Books, 2017).

¹³ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

¹⁴ Indonesia, *supra* note 4.



research findings reveal that the large number of people with disabilities correlates with the low quality of human resources which is influenced by the low level of education for people with disabilities.¹⁵ This figure is not supported by a strong database. To date, the government has no real data on the number of persons with disabilities who are employed or earning a decent wage. The lack of real data makes it difficult to conduct a clear mapping and evaluation of the extent to which these rights have been provided.

Real numbers are needed so that there is a clear and rigorous mechanism for auditing the performance of the government and private companies in fulfilling the right to work and decent wages. This requires government intervention to promote social welfare to ensure that persons with disabilities are not left behind by development progress. Efforts to equalize the right to work for persons with disabilities cannot be partial. It must be built in the form of a holistic and planned policy design (grand design), starting with equalization in the area of education as the fuel that drives the improvement of the quality of human resources.

Equal opportunity for persons with disabilities to obtain employment is a constitutional right of citizens, such as the right to work and the right to a decent livelihood as stipulated in Article 27 paragraph (2) of the 1945 Constitution. These constitutional rights are often associated with Human Rights (HAM), because they are considered fundamental rights that everyone has.

According to I Nengah, the constitution normatively contains the state's obligation to guarantee human rights and run the government based on the fulfillment of human rights. The idea is rooted in the spirit of building a democratic rule of law. Indonesia is one of the legal states that places human rights as an objective in the administration of the state.¹⁶ Consequently, the government must act actively in creating equality, balance of employment opportunities and social inclusion for persons with disabilities.

In ensuring a balance of opportunities, Article 1 of Law No. 8/2016 on Persons with Disabilities provides an understanding of respect, protection, fulfillment, and empowerment. As part of the citizens, persons with disabilities should not be seen as a marginalized group, but rather be given equal access and free from discriminatory treatment.¹⁷ Article 2 letter g of the Law on Persons with Disabilities states that the implementation and realization of the

¹⁵ Devitayanti & Maksum, *supra* note 7.

¹⁶ I Nengah Sudiarta, "Pengaturan Hak Asasi Manusia Dalam Sistem Hukum Nasional" (2024) 2:1 IJOLARES Indones J Law Res 25.

¹⁷ Majda El-Muhtaj, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, Dan Budaya* (Jakarta: Raja Grafindo Persada, 2008).



rights of persons with disabilities is based on the principle of equality. The article explains that the "principle of equality" refers to conditions in various social and environmental frameworks, such as organization, implementation, information, and documentation that are made to accommodate all people without exception, including persons with disabilities.

In the principle of equality, paradigm reforms towards persons with disabilities must be carried out immediately by changing the position of persons with disabilities from various policies that view persons with disabilities as objects of mercy (charity programs) to subjects of rights holders so that persons with disabilities can fight for equal rights and positions in various fields, including the right to work and a decent livelihood.¹⁸

In relation to accessibility and the opening of opportunities for persons with disabilities to get a job in the government sector is not an easy thing. Article 53 paragraph (1) of the Law on Persons with Disabilities states "The Government, Regional Governments, State-Owned Enterprises and Regional-Owned Enterprises are obliged to employ at least 2% of Persons with Disabilities from the number of employees or workers" and in paragraph (2) of the same article requires private companies to employ at least 1% of Persons with Disabilities from the number of employees or workers. The rights of persons with disabilities are legally guaranteed in the economic or employment field, but companies often provide very high requirements for persons with disabilities with very minimal access, making it impossible to fulfill these requirements for persons with disabilities.¹⁹

Article 28I paragraph (2) of the 1945 Constitution explains that, "everyone has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment". This provision can be one of the basic constitutional foundations for the realization of opportunities to equalize the problems that often occur today and have not found an effective way to solve them for Persons with Disabilities. This article can be the constitutional basis for the application of the laws and regulations under it to continue to provide space for uniformity for persons with disabilities.

Normatively, equal rights to employment are regulated in Article 11 of the Law on Persons with Disabilities, including the right to employment without discrimination by the government and enterprises or corporations, the right to receive the same or equal wages as

¹⁸ Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah (Disability Rights: Between Responsibility And Implementation By The Local Government)" (2020) 11:1 J HAM 132–133.

¹⁹ Hukumonline, "Butuh Regulasi Agar Penyandang Tunanetra Mudah Akses ke Perbankan" (2016), online: *Situs Resmi Hukumonline*.



non-disabled workers, the right to receive appropriate accommodation, the right not to be dismissed on the grounds of disability, the right to receive a return to work program, the right to fair, appropriate and dignified job placement, and the right to receive opportunities for career development.

This article opens as much space as possible for persons with disabilities to access the right to work and a decent livelihood. In order to achieve equality and inclusion in the workplace, we must first dispel the myths surrounding the inability of persons with disabilities to work. Stigma is a scourge that perpetuates these myths. The stigmatization of people with disabilities is rooted in structural dimensions, all of which are rigid with demands for high work standards. In fact, this dichotomous structural dimension not only creates exclusivity in the work environment, but also creates structural injustice for people with disabilities.

Based on data from the Central Bureau of Statistics in 2020 on the proportion of employment sectors for persons with disabilities, 45.92% of persons with disabilities work in the informal sector of work, spread across the agriculture, fisheries and forestry sectors. As many as 8.70% work in manufacturing and processing industries. Meanwhile, in other sectors, it is only in the range of 0.22% to 7%.²⁰ The low employment of people with disabilities is due to the deep-rooted myths that doubt the work abilities of people with disabilities. Furthermore, the level of participation of persons with disabilities in education is a critical determinant of their ability to access formal employment.

The regions of Sumatra and Sulawesi in Indonesia have been identified as areas with a high prevalence of disability, and notably, these regions also demonstrate low levels of participation in formal employment. This is largely attributable to the underrepresentation of persons with disabilities in the education sector.²¹ For example, in Jakarta, only about 10% of the workforce is employed in the formal sector, while the remaining 90% is engaged in the informal economy. The majority of these informal enterprises offer services such as massage therapy, bespoke tailoring, screen printing, and hotel cleaning. This trend underscores the urgent need to improve access to formal employment opportunities, which are essential for ensuring individuals have the means to build secure and prosperous futures.

²⁰ *Penyandang Disabilitas di Tempat Kerja: Kondisi dan Tantangannya di Indonesia sebagai Negara G20*, by Darmawan Prasetya et al (Jakarta, 2022) online: <<https://theprakarsa.org/wp-content/uploads/2022/07/Penyandang-Disabilitas-Tempat-Kerja-versi-revisi-hires.pdf>>.

²¹ Alin Halimatussadiyah & Chaikal Nuryakin, "Mapping Persons with Disabilities (PWDs) in Indonesia Labor Market" (2017) 63:2 *Econ Financ Indones* 18.



In contrast, the province of West Nusa Tenggara has made significant strides in promoting the professional integration of persons with disabilities into various formal sectors, including education, local government, consultancy, law, and civil service.²² Notably, recent progress has been observed in the city of Surabaya, which has implemented a 5% quota for applicants with disabilities in civil service recruitment.²³

To bridge this gap and break down stigmatization, the right approach is needed for the government and companies or corporations to maximize the employment potential of people with disabilities.²⁴ The model that needs to be introduced is the social ecology approach according to Karrie A. Shogren et al, each person has a unique profile of capabilities and limitations. Capabilities and limitations are intertwined with the demands of the surrounding social environment or as a process of interaction with the demands of the social environment. When a person is unable to meet the demands of their social environment, it is not by getting rid of the person but by preparing appropriate accommodations or modifications to the social environment to support the person to follow the demands of their social environment.²⁵

Gabriela Walker takes a more macro approach by following the social ecology model introduced by Bronfenbrenner. According to Walker, this approach should include the entire environment divided into four levels: the public sphere (social and political interaction), the life sphere (education and work interaction), the family sphere, and the personal sphere. These four levels are interconnected meta-systems that will support the success of the social, political and economic processes of people with disabilities.²⁶

²² Dumilah Ayuningtyas et al, “The Law on Persons with Disabilities: How Far Have We Gone? (Case Study in Indonesia)” (2022) 25:1 J Leg Ethical Regul Issues 1–19.

²³ Rachmadani Fatria Agung Gumelar & Martinus Sardi, “Indonesian Government Policy To Provide Employment Opportunities For Persons With Disabilities” (2021) 2:2 Media Law Sharia 156.

²⁴ *Kajian Disabilitas, Tinjauan Peningkatan Akses Dan Taraf Hidup Penyandang Disabilitas Indonesia: Aspek Sosioekonomi Dan Yuridis*, by Vivi Yulaswati et al (Jakarta, 2021).

²⁵ Karrie A Shogren et al, *Supported Decision-Making: Theory, Research, and Practice to Enhance Self-Determination and Quality of Life* (Cambridge: Cambridge University Press, 2019).

²⁶ Gabriela Walker, “Developing an Ecology of Disabilities Framework: Viewing Disability Inclusively” (2023) November:November J Res Innov Teach Learn 5.

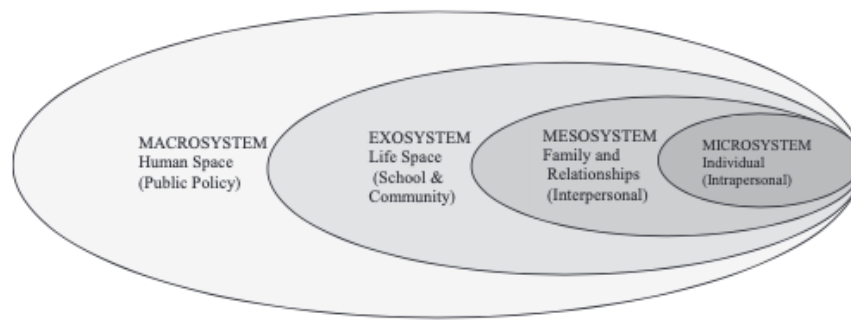


Figure 1. Gabriela Walker's Social Ecology of Disability Model

The social ecology model above illustrates the overall process of interaction that must be built into an inclusive policy framework. The four levels above are used to combine the right policies, structures and resources to maximize the potential of people with disabilities. Policy makers, including employers, should create an ideal and appropriate framework to place people with disabilities in the right position. The four levels can be integrated into two interaction environments, namely the private (personal and family) and the public (an ideal work environment that supports equality and equal social interaction).

The social ecology approach requires employers to develop policies and create an ideal and equal work environment. In government institutions, authorized officials in the personnel office must be able to create appropriate policy guidelines and be able to manage the diverse perspectives of civil servants (reorientation) or inspire partisanship and train them to be able to provide equal support to fellow civil servants with disabilities. Similarly, in companies or corporations, human resource development staff are fully responsible for creating a work environment that supports equality.

This approach is considered optimal; however, its implementation presents considerable challenges. It is based on two key factors: *personal competence* and *environmental demands*.²⁷ These factors often create a mismatch that perpetuates discrimination against persons with disabilities. *Personal competence* refers to the skills and work capabilities possessed by individuals with disabilities, while *environmental demands* relate to structural conditions that shape workplace culture and institutional expectations. A major barrier identified is the bureaucratic culture, which is characterized by hierarchical structures and rigidity—factors²⁸ that undermine the success of the social ecology approach. In the public sector, the State

²⁷ Virginia L Walker, Megan E Carpenter & Alexandra Reilly, *Handbook of Research-Based Practices for Educating Students with Intellectual Disability*, by Karrie A. Shogren et al (New York: Routledge Taylor and Francis Group, 2024).

²⁸ Aras Solong, *Budaya & Birokrasi*, by Asri Yadi (Yogyakarta: Deepublish, 2019).



Civil Apparatus Law (ASN Law) is not aligned with the Law on Persons with Disabilities or the CRPD. The ASN Law continues to emphasize medical prerequisites, maintains special formations, and enforces a quota system that is inherently discriminatory.²⁹ These structural conditions exemplify a bureaucratic system that remains non-inclusive of persons with disabilities.

To address these barriers, substantial efforts are required to transform traditional bureaucratic norms and workplace culture in order to facilitate the effective implementation of the social ecology approach. In the public sector, it is crucial to enhance the rights of persons with disabilities through the development of equitable and flexible performance management systems.³⁰ The Inclusive Indonesia Connection (*Konekin*) program, implemented by the Ministry of Villages, serves as a successful model in this regard. It has proven effective in promoting flexible employment opportunities for persons with disabilities. The advancement of flexible working arrangements represents a significant development that should be further reinforced within the framework of ASN performance management.³¹ It is imperative for the government to establish clear and definitive measures for designing a performance management system that is both inclusive and adaptable. This includes conducting personal competency assessments for individuals with disabilities and institutionalizing flexible work arrangements to ensure a fair and enabling work environment.

2. State Commitment to Legal Protection and Rights of Persons with Disabilities

Prior to the enactment of the Law on Persons with Disabilities, the government's protection of persons with disabilities was outlined in Law No. 4/1997 on Persons with Disabilities, which consisted of 31 articles. The rights of persons with disabilities according to Article 6 of Law No. 4 of 1997, such as protection in education, work and decent livelihood, equal treatment, the right to develop talents and social assistance. This law is considered irrelevant in the implementation of its tasks, because in general Law No. 4 of 1997 on Persons with Disabilities still contains a paradigm of mercy (charity program), which positions persons with disabilities as a social welfare problem.

The Law on Persons with Disabilities is an update of Law No. 4/1997 on Persons with Disabilities and a response to the ratification of the CRPD Convention. The ratification of

²⁹ Muhammad Dahlan & Syahriza Alkohir Anggoro, "Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis" (2021) 4:1 Undang J Huk 41.

³⁰ Komang Jaka Ferdian, Dodi Faedlulloh & Ibrahim Ibrahim, "Birokrasi, Disrupsi, dan Anak Muda: Mendorong Birokrat Muda menciptakan Dynamic Governance" (2021) 7:1 J Transform 123.

³¹ Cynthia Febri Sri Indarti, "Flexibility Working Arrangement Sebagai Agenda Reformasi Birokrasi Untuk Efisiensi Kerja" (2021) 7:2 Indones J Public Adm 146.



the CRPD Convention is a convention on the rights of persons with disabilities that has been ratified as a global and national human rights instrument that aims to respect, implement and guarantee the rights of persons with disabilities in Indonesia (development tool and human rights instrument). The purpose of this Convention is to promote, protect and ensure a balance between the essential rights and flexibility of all persons with disabilities as an inherent dignity.³²

The ratification of the CRPD Convention has had an impact on the development of public awareness in various regions, so the central and local governments need to ensure that through the implementation of this Convention, equal opportunities for persons with disabilities can truly be maximized and realized. In order to ensure that all human resource management policies and practices are free from discrimination, an effective approach to monitoring the work environment is required, one of which is the social ecology approach, which has also been adopted in the Law on Persons with Disabilities. Periodic company equality activity plans, based on the company's equality policy, reflect the company's commitment to a balanced work environment and inclusive work.

The International Labor Organization (ILO), in its guidelines on equality in the workplace, identifies several important conditions that companies must design in order to create an equal and inclusive work environment. First, fair recruitment and job design according to the characteristics of people with disabilities. Second, fair treatment in the form of equal wages and benefits, fair employment contracts, fair work management and evaluation, including those adapted to the conditions of persons with disabilities, training and career development, and promotions that are in accordance with the characteristics of persons with disabilities. Third, an equal and inclusive work environment in the form of work-life balance including relations with family life, fair and reasonable accommodation, protection from various acts of harassment and violence, and protection for persons with disabilities who are pregnant. These three guidelines are the concretization of a social ecology model that will integrate all social relations and interactions in the environment on a more macro level. Of course, the most important thing is the support of appropriate resources, impartial and fair structures, and wise judgment. Therefore, the successful implementation

³² Maria Christina Karen Paruntu, Friend Henry Anis & Elko Lucky Mamesah, "Penerapan Kebijakan Hak Aksesibilitas Dalam Undang- Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Di Indonesia" (2023) 12:2 Lex Priv 4.



of work equality and inclusiveness requires the cooperation and participation of government, business and employers.³³

The Law on Persons with Disabilities is a progressive and reformist step in shifting the paradigm and program approach to persons with disabilities from a paradigm of compassion (charity program) to a paradigm that equalizes persons with disabilities as subjects of rights holders. The paradigm shift is the first and crucial step because it is from the paradigm that an inclusive and equal policy framework will emerge. An inclusive policy framework will promote governance efforts in an equal work environment and support environmental interactions as in the social ecology approach.

In this case, it is the responsibility of the state (duty bearer) to respect, fulfill, promote and enforce the right to work and to a decent livelihood for persons with disabilities as stated in Article 27 of the Convention on Economic, Social and Cultural Rights (ESCR).³⁴ State responsibility is a normative consequence of the ratification of the CRPD Convention. From a sustainable development perspective, as documented in the Sustainable Development Goals (SDGs), one of the sustainable development goals is economic growth and decent work. This goal mandates every country to be able to provide decent and equal employment to support economic growth. Winshery Tan revealed that data from the Ministry of Manpower, in line with data from the Central Bureau of Statistics, shows that the number of workers with disabilities in the formal sector has increased, although not significantly, from 2017 to 2019. This shows that the government is committed to fulfilling access to the right to work for people with disabilities, although it is not yet fully optimal.³⁵

In terms of policy, the state has indeed tried to take responsibility for the right to work of persons with disabilities. This can be seen in the birth of Government Regulation No. 70 of 2019 on the planning, implementation and evaluation of respect, protection and fulfillment of the rights of persons with disabilities. However, based on the findings of Darmawan Prasetya et al, the orientation of local governments to the paradigm of equal rights for persons with disabilities has not touched 50% of the total number of provinces, districts and cities. According to the 2021 data, only 18 provinces with 65 districts or cities have reduced

³³ *Kesetaraan Dalam Praktik Perusahaannya: Panduan Praktis bagi Pengusaha untuk Mempromosikan Kesetaraan dan Mencegah Diskriminasi di Tempat Kerja di Indonesia*, by International Labour Organization (ILO), in *Buku 3* (Jakarta, 2013).

³⁴ Fikri Mauludi & Aprilina Pawestri, "Pertanggung Jawaban Negara Dalam Pemenuhan Hak Penyandang Disabilitas Menurut Hukum Internasional" (2022) 3:1 *J Huk Inicid Legis* 77.

³⁵ Winshery Tan, "Kondisi Tenaga Kerja Penyandang Disabilitas : Tantangan Dalam Mewujudkan Sustainable Development Goals" (2021) 16:1 *Rechtidee* 25.



the policy framework for persons with disabilities to local regulations. In fact, of the 7.9 million workers with disabilities in 2021, more than 50% are in rural areas.³⁶

The above data shows the current condition and situation of the state's responsibility in policy making. The challenge today is how the central government can encourage local governments to make local regulations that can fulfill the rights of persons with disabilities. The existence of policies in each region will make a positive contribution, as well as being able to increase the number of workers with disabilities in the region. In addition to the challenges posed by governmental institutions, the judicial paradigm also represents a significant obstacle, as it continues to demonstrate bias against workers with disabilities in certain cases. A notable example is *Martinus Masa Dorita v. PT Musim Mas*. In this case, Martinus, a worker who became disabled following a workplace accident, was subjected to multiple job rotations without adequate analysis of the barriers he faced in performing his duties. The company ultimately deemed him unproductive due to his physical condition, which led to the prospect of termination. The Supreme Court's ruling in favour of PT Musim Mas in the ensuing industrial relations dispute underscores the judiciary's failure to uphold justice for workers with disabilities.³⁷

Ratification of the CRPD Convention is a convention on the rights of persons with disabilities that has been ratified as a global and national human rights instrument that aims to respect, implement and guarantee the rights of persons with disabilities in Indonesia (development tool and human rights instrument). The purpose of this Convention is to promote, protect and ensure a balance between the essential rights and flexibility of all persons with disabilities as a matter of inherent dignity.

The Law on Persons with Disabilities regulates affirmative action as a form of guarantee of access to employment. Through the regulation of Article 53 of the Law on Persons with Disabilities, it gives obligations to all government institutions, both central and regional, BUMN, BUMD and private companies to provide quotas for persons with disabilities to work in them. Affirmative action is needed as a progressive step to force the government and companies or corporations to map job access and work fields that are in accordance with the characteristics and abilities of persons with disabilities.

³⁶ Prasetya et al, *supra* note 20.

³⁷ Ayunita Nur Rohanawati, Sahid Hadi & Taufiq Rahman, "A Legal Barrier to the Enjoyment of the Right to Work for Workers with Disabilities" (2023) 14:2 J HAM 162.



The Law on Persons with Disabilities also emphasizes reward and punishment mechanisms. Articles 138 to 141 contain a reward mechanism, which is more specifically regulated in Presidential Regulation No. 67 of 2020. Meanwhile, provisions for criminal sanctions are regulated in Article 144 and Article 145. These two provisions are a form of good legal protection that has a positive impact on employers from the government and companies or corporations. However, to date, no data has been found on the mechanism for imposing criminal sanctions on employers who do not comply with the right to work for persons with disabilities. Is this lack of data a positive sign? This has to be seen holistically, because it is possible that the absence of data is the effect of power relations in the world of work that silence workers with disabilities.

The Law on Persons with Disabilities provides a legal framework for the protection of the rights of persons with disabilities. However, it is essential that this recognitive legal policy be supported by adequate budgetary allocations to strengthen access to education and employment.³⁸ It is incumbent upon the government to compile comprehensive and accurate data on the prevalence and severity of disabilities. Such data forms the basis for designing and implementing effective programmes aimed at improving educational outcomes, expanding access to free education, ensuring the availability of qualified teachers, providing vocational training, offering incentives to institutions and corporations, and allocating employment quotas within the formal sector.

D. Conclusion

Indonesia has made progress in fulfilling the state's responsibility to respect, fulfill, and enforce the right to work for persons with disabilities concretely through the ratification of the CRPD Convention, which resulted in the Law on Persons with Disabilities, its translation into Government Regulation No. 70 of 2019 as an implementing regulation, and the more concrete regulation of the allocation mechanism in Presidential Regulation No. 67 of 2020. All these policies have considered the social ecology approach as the right approach to maximize the employment potential of persons with disabilities. However, it has not been fully accommodated at the regional policy level, so it is necessary to encourage regional governments to immediately draft regional regulations on the rights of persons with disabilities. The analysis of the policy on persons with disabilities that needs to be a concern as well as a recommendation is first, there is no audit report on government institutions and

³⁸ Siti Nurhayati, "Social Inclusion For Persons With Disabilities Through Access To Employment In Indonesia" (2020) 2:1 Prophet Law Rev 16.



corporate institutions or corporations on the fulfillment of affirmative action obligations. Second, there is no sanction mechanism for government institutions and enterprises or corporations that do not fulfill the right to work for persons with disabilities. Consequently, to enhance policy consistency and support the development of equitable and inclusive performance management, further research is needed to explore field-based findings. Such research is essential for generating sustainable policy recommendations aimed at strengthening the rights of workers with disabilities in Indonesia.

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