

EXPLORING EMPLOYMENT RIGHTS FOR INDIVIDUALS WITH DISABILITIES: A CROSS-NATIONAL COMPARATIVE ANALYSIS IN THE CONTEXT OF FAIR COMPETITION AND SUSTAINABLE DEVELOPMENT GOALS

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Abstract

People with disabilities are defined as people who show functional difficulties along with the obstacles present from the social environment so as to limit their participation in society. This research aims to provide insight for policy makers, practitioners, and organizations that care about the rights of workers with disabilities in developing and improving existing regulations and policies. This study uses a comparative legal research method that compares existing regulations in Germany, Canada, Australia, Japan, and the United States with existing regulations in Indonesia through a statutory law research approach and a conceptual approach. The novelty in this writing is to conduct a comparative study of the rights of workers with disabilities from 4 continents, especially with 6 different countries to create ideal regulatory and policy concepts that can be implemented in Indonesia. However, Indonesia itself has created a Disability Vocational Training Center (PPVD) which aims to empower disabled workers to welcome an inclusive Indonesia.

Keywords: Disable Worker; Workers' Rights; Disability Vocational Training Center (PPVD); Sustainable Development Goals (SDGs).

Abstrak

Penyandang disabilitas diartikan sebagai orang yang menunjukkan kesulitan secara fungsional bersama dengan adanya hambatan yang hadir dari lingkungan sosial sehingga dapat membatasi partisipasinya dalam masyarakat. Penelitian ini memiliki tujuan dapat memberikan wawasan bagi pembuat kebijakan, praktisi, dan organisasi yang peduli terhadap hak pekerja penyandang disabilitas dalam melakukan pengembangan dan memperbaiki regulasi maupun kebijakan yang telah ada. Penelitian ini menggunakan metode penelitian hukum komparatif yang membandingkan regulasi yang ada di Jerman, Kanada, Australia, Jepang, dan Amerika Serikat dengan regulasi yang ada di Indonesia melalui pendekatan penelitian hukum perundang-undangan dan pendekatan konseptual. Kebaharuan dalam penulisan ini yaitu melakukan studi perbandingan hak pekerja penyandang disabilitas dari 4 benua khususnya dengan 6 negara berbeda untuk menciptakan konsep regulasi maupun kebijakan yang ideal yang dapat diimplementasikan di Indonesia. Namun, Indonesia sendiri telah membuat Pusat Pelatihan Vokasi Disabilitas (PPVD) yang bertujuan untuk memberdayakan para pekerja disabilitas untuk menyambut Indonesia yang inklusif..

Kata Kunci: Pekerja Disabilitas; Hak Pekerja; Pusat Pelatihan Vokasi Disabilitas (PPVD); Sustainable Development Goals (SDGs)

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INTRODUCTION

A person with a disability is defined as a person who shows functional difficulties, along with social barriers, limiting his participation in society.¹ Thus, disability is a social concept that depends directly on the context in which the person lives, and this results from socially imposed barriers that prevent a person from developing freely. In this perspective, society plays a fundamental role at the center of discussion.² Persons with disabilities, as a rule, have equal rights and opportunities in the exercise of all rights and freedoms for all citizens, regardless of nationality, race, sex and social origin.³

Implement *The Convention on the Rights of Persons with Disabilities* (hereinafter referred to as CRPD) coupled with negative attitudes about persons with disabilities.⁴ This negative attitude starts early in life. For example, in Madrid, students with high school disabilities have been bullied about sports opportunities similar to other students.⁵ People with disabilities are one of the groups vulnerable to discrimination in terms of access to employment and employment rights. It should be borne in mind that the exercise of the rights of persons with disabilities in the field of labor relations: First, it is a set of processes aimed at achieving the objectives of such implementation, and therefore an element of the legal system should be an organic part of this system (this can only be achieved if, when the process of realization of the rights under study will be integrally based on a certain system of fundamental ideas, which any social process turns into a socio-legal process). Secondly, it regulates the use of various forms and methods of their objectification, the effectiveness of which will be achieved only if the realization of certain rights is built on the principles of the realization of the rights of persons with disabilities in the field of labor relations.⁶

The International Labour Organization (ILO) and the United Nations (hereinafter referred to as the United Nations) emphasize the importance of inclusion of persons with disabilities in the world of work to achieve the *Sustainable Development Goals (SDGs)*. Therefore, one of the main priorities of labor today is the provision and empowerment of trade union leaders, so that they truly have the ideal of fighting for the interests of workers, understanding laws and regulations in the field of labor, and implementing ILO provisions.⁷ In line with international wishes, through Law Number 8 of 2016

¹ United Nations, "Convention on the Rights of Persons with Disabilities," un.org, 2022.

² Mónica Pinilla-Roncancio and Nicolas Rodriguez Caicedo, "Legislation on Disability and Employment: To What Extent Are Employment Rights Guaranteed for Persons with Disabilities?," *International Journal of Environmental Research and Public Health* 19, no. 9 (2022): 5654.

³ Muftulla Khojabekov, "Employment Rights and Privileges of Persons with Disabilities," *TSUL Legal Report International Electronic Scientific Journal* 1, no. 1 (2020).

⁴ Noa Vilchinsky, Shirli Werner, and Liora Findler, "Gender and Attitudes toward People Using Wheelchairs: A Multidimensional Perspective," *Rehabilitation Counseling Bulletin* 53, no. 3 (2010): 163–74.

⁵ Carmen Ocete et al., "La Percepción de Los Alumnos de Secundaria y Bachillerato Hacia La Inclusión de Compañeros Con Discapacidad En Educación Física," 2017.

⁶ O A Dyachenko, "GENERAL LEGAL PRINCIPLES OF EXERCISE OF THE RIGHTS OF PERSONS WITH DISABILITIES IN THE FIELD OF EMPLOYMENT RELATIONS," *Social Law*, no. 2 (2021): 90–95.

⁷ Cheryl Michelia Valerie Japian, "EKSISTENSI ORGANISASI BURUH INTERNASIONAL (ILO) (INTERNATIONAL LABOUR ORGANIZATION) DALAM MEMBERIKAN PERLINDUNGAN TERHADAP HAK-HAK PEKERJA BERDASARKAN KONVENSI ILO NOMOR 111 TAHUN 1958 TENTANG DISKRIMINASI DALAM PEKERJAAN DAN JABATAN DAN IMPLEMENTASINYA DI INDONESIA," *Lex Privatum* 9, no. 2 (2021).

concerning Persons with Disabilities (hereinafter referred to as the Law on Persons with Disabilities) the Central Government and Local Governments in the State of Indonesia are obliged to ensure a fair and non-discriminatory process of recruitment, admission, job training, job placement, job continuity, and career development for persons with disabilities and the obligation to employers to be obliged to pay workers employment of persons with disabilities with the same number of workers as workers who are not disabled to the same type of work and responsibilities.⁸

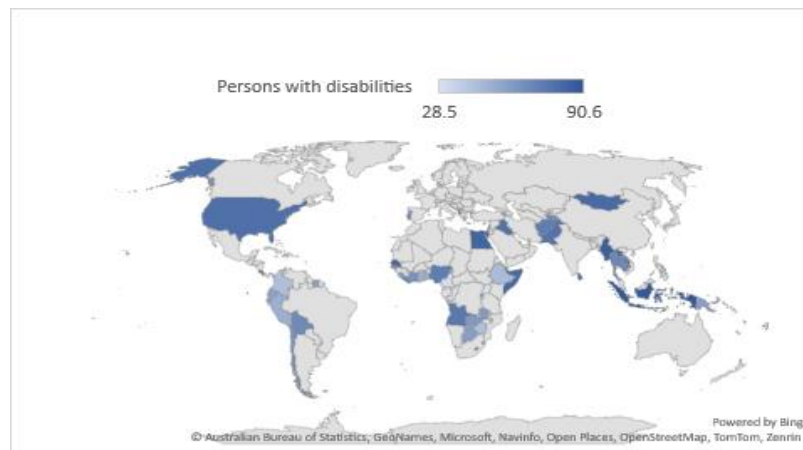


Figure 1. Map of the Distribution of Workers with Disabilities in the World

Source: (International Labour Organization, “Statistic and Database,” ilo.org, 2023 processed by the author).⁹

Fair competition declared in CRPD is one of the efforts driven to equalize the rights of workers with disabilities.¹⁰ This will refer to fair business competition, also has an important role in creating equal and decent employment opportunities for people with disabilities.¹¹ It can be seen from the data revealed in figure 1 that there are gaps in several countries in the world regarding the welfare of workers with disabilities. There are countries that privilege workers with disabilities who are supported by various legal regulations. There are also countries that do not pay special attention to people with disabilities to get decent work in the industrial world, all this data is always updated on the ILO website which is open to the public. In Indonesia, although there are regulations and policies that regulate the rights of workers with disabilities through the Law on Persons with Disabilities, they have not shown concrete results when implemented in the community.¹² In addition, in different countries, implementation varies and often faces similar challenges.¹³ In this regard, a country-to-country

⁸ Cholidah Cholidah, “Implementasi Komitmen Pembangunan Berkelanjutan Dalam Konstitusi Sebagai Wujud Pemenuhan Hak Ekonomi, Sosial Dan Budaya Di Indonesia,” *Yurispruden* 2, no. 2 (2019): 203–22, <https://doi.org/https://doi.org/10.33474/yur.v2i2.2746>.

⁹ International Labour Organization, “Statistic and Database,” ilo.org, 2023.

¹⁰ Francoise Benhamou, “Fair Use and Fair Competition for Digitized Cultural Goods: The Case of EBooks,” *Journal of Cultural Economics* 39 (2015): 123–31, <https://doi.org/https://doi.org/10.1007/s10824-015-9241-x>.

¹¹ Lili Marlinah, “Meningkatkan Ketahanan Ekonomi Nasional Melalui Pengembangan Ekonomi Kreatif,” *Cakrawala-Jurnal Humaniora* 17, no. 2 (2017): 258–65.

¹² Frichy Ndaumanu, “Hak Penyandang Disabilitas: Antara Tanggung Jawab Dan Pelaksanaan Oleh Pemerintah Daerah,” *Jurnal Ham* 11, no. 1 (2020): 131–50.

¹³ Matthew Saleh and Susanne M Bruyère, “Leveraging Employer Practices in Global Regulatory Frameworks to Improve Employment Outcomes for People with Disabilities,” *Saleh, M., & Bruyère, SM (2018)*.

comparison of disabled workers' rights regulations and policies can provide insight into best practices and opportunities to improve the inclusion of disabled workers, particularly in Indonesia.

There were several previous studies before this theme was examined, among others based on an article written by Brigida Hernandez published in an international journal entitled "*Employer Attitudes Toward Workers with Disabilities and their ADA Employment Rights: A Literature Review*". The results of Hernandez's research found that employers continue to show positive global attitudes toward workers with disabilities. However, they tend to be more negative when specific attitudes towards these workers are assessed. Although employers support the American Disability Association as a whole, employment provisions raise concerns. When appropriate support is provided, employers express positive attitudes towards workers with intellectual and psychiatric disabilities. Affirming previous reviews, employers with previous positive contacts have a good attitude towards workers with disabilities. Employers' willingness to hire applicants with disabilities still exceeds their actual hiring, although this gap is narrowing. Workers with physical disabilities continue to be viewed more positively than workers with intellectual or psychiatric disabilities.¹⁴ In line with the development and dynamics of workers with disabilities in Indonesia, this research will support the writing process in this article.

Furthermore, in a reputable International Journal entitled "*Disability and employment: a comparative critique of UK legislation*" written by David Goss, Fiona Goss and Derek Adam-Smith in 2011. The research resulted in several things: first, it identified two dominant international disability paradigms, one originating in the United States and focusing on strong anti-discrimination and civil rights measures, the other originating in Europe and relying primarily on compulsory work quotas and extensive state intervention. The newly introduced Disability Discrimination Act 1995 in the UK (hereinafter referred to as DDA) looks to fall outside these two paradigms. DDA's anti-discrimination stance is constrained by restrictive definitions and qualification requirements that make it an unfavorable reflection of its U.S. counterpart, the Americans with Disabilities Act (ADA), while, by ignoring employment quotas, it deviates from the mandatory employer system. obligations are being developed in other EU countries. Secondly, the paper uses data from a UK study on employers' attitudes towards the work of people with disabilities to show that the likelihood of finding good practice is linked to the presence of specialist HR managers which in itself is associated with an increase in the workforce.¹⁵ There are several similarities in the object of comparison of regulations from several countries that have been summarized in this article and can support this article to be more comprehensive.

Lastly, in an accredited national journal written by Winsherly Tan; Dyah Putri Ramadhani with the title "*Fulfillment of Right to Work for People with Physical Disabilities in Batam City*". The research suggests that legal factors have not been fulfilled, namely the absence of implementing regulations in Batam City; Law enforcement has not played a maximum role because the relevant agencies do not yet have a structured program for persons with disabilities in obtaining their rights to work; the people of

Leveraging Employer Practices in Global Regulatory Frameworks to Improve Employment Outcomes for People with Disabilities. Social Inclusion 6, no. 1 (2018): 18–28.

¹⁴ Brigida Hernandez, Christopher Keys, and Fabricio Balcazar, "Employer Attitudes toward Workers with Disabilities and Their ADA Employment Rights: A Literature Review," *Journal of Rehabilitation-Washington*-66, no. 4 (2000): 4–16.

¹⁵ David Goss, Fiona Goss, and Derek Adam-Smith, "Disability and Employment: A Comparative Critique of UK Legislation," *International Journal of Human Resource Management* 11, no. 4 (2000): 807–21.

Batam City in viewing and responding to the existence of people with disabilities are still negative; and companies in Batam City assess people with physical disabilities is a person who has physical limitations and will have difficulty in working. People with disabilities also face various challenges in obtaining the right to work such as negative stigma from society; terms and conditions and work that does not provide an opportunity for them to work; the educational background of those who have not met the requirements of workers in Batam City; as well as the shame they experience with the limitations of their own physical condition.¹⁶ The similarity of the previous research with the title of this study is the point of view related to the fulfillment of the rights of workers with disabilities.

The novelty of this research is a comparative study of the rights of workers with disabilities from 4 continents, especially 6 different countries, this will produce constructive suggestions to create an ideal regulatory concept to be implemented by Indonesia. The research has several objectives, including: first, to analyze and compare regulations and policies on the rights of workers with disabilities in several countries, focusing on aspects of fair competition and its contribution to the achievement of *Sustainable Development Goals* (SDGs). Second, to identify countries with regulations that are easily accessible to persons with disabilities, as a reference for the development of more inclusive policies and practices. When, creating the right regulatory concept to be applied in Indonesia based on the comparative results of several countries that have better quantitative data in treating people with disabilities. This research can provide insight for policymakers, practitioners, and organizations concerned about the rights of workers with disabilities in developing and improving existing regulations and policies. The results of this study are expected to encourage further steps in achieving better inclusion and achieving sustainable development goals.

METHOD

This study used comparative law research methods.¹⁷ Metode Comparatives are defined and analyzed based on their similarities and differences compared to experimental and statistical methods as well as narratively.¹⁸ This method is used to compare regulations related to workers with disabilities in Indonesia with other countries, namely Germany, Canada, Australia, Japan, and the United States. This method will enable the identification of differences and similarities in legal approaches, protection of rights, and obligations of companies related to workers with disabilities in different countries.¹⁹ Based on the results of comparisons made with several countries.²⁰ this will produce a constructive concept as a form of advice that can be applied by the State of Indonesia.

The legal research approach used in this study is the statutory approach (*Statue Approach*) and conceptual approach (*Conceptual Approach*). The legislative approach is an approach that analyzes

¹⁶ Winshery Tan and Dyah Putri Ramadhani, "Pemenuhan Hak Bekerja Bagi Penyandang Disabilitas Fisik Di Kota Batam," *Jurnal Ham* 11, no. 1 (2020): 27–37.

¹⁷ Edzia Carvalho, "Issues and Methods in Comparative Politics: An Introduction," 2016.

¹⁸ Arend Lijphart, "Comparative Politics and the Comparative Method," *American Political Science Review* 65, no. 3 (1971): 682–93.

¹⁹ Charles C Ragin, *The Comparative Method: Moving beyond Qualitative and Quantitative Strategies* (Univ of California Press, 2014).

²⁰ Mark I Lichbach, "Social Theory and Comparative Politics," *Comparative Politics: Rationality, Culture, and Structure* 239 (1997).

rules and regulations that are directly related to the issue to be raised.²¹ The conceptual approach is an approach that comes from the views and doctrines discussed and will develop and create a new concept or idea that is useful for science.²² The population in this study is regulated workers with disabilities in Indonesia, Germany, Canada, Australia, Japan, and the United States. The sample to be used is laws, regulations, and court decisions that specifically regulate the rights and obligations of workers with disabilities in these countries.²³

There are several primary data that will be used in the process of writing articles, including:

1. Indonesian:
 - a. Law Number 8 of 2016 concerning Persons with Disabilities
 - b. Regulation of the Minister of Manpower Number 68 of 2019 concerning Persons with Disabilities in the World of Work
2. Germany:

Schwerbehindertengesetz (Persons in Distress Act) - the exact statute number depends on the version and amendments in force
3. Canada:
 - a. Accessibility for Ontarians with Disabilities Act (AODA) - entered into force on January 1, 2005
 - b. Canadian Human Rights Act - R.S.C., 1985, c. H-6
 - c. Employment Equity Act - R.S.C., 1985, c. H-6
4. Australia:
 - a. Disability Discrimination Act 1992 - No. 135, 1992
 - b. Disability Standards for Accessible Public Transport 2002 - No. 154, 2002
 - c. Disability Standards for Education 2005 - No. 86, 2005
5. Japan:
 - a. Act on Employment Promotion and Vocational Rehabilitation of Persons with Disabilities - Act No. 123 of 1960
 - b. Act on the Elimination of Disability Discrimination - Act No. 88 of 2013
 - c. Act on Mental Health and Welfare for the Mentally Disabled - Act No. 100 of 1987
6. United States:
 - a. Americans with Disabilities Act (ADA) - Public Law 101-336, 1990
 - b. Rehabilitation Act of 1973 - Public Law 93-112, 1973
 - c. Individuals with Disabilities Education Act (IDEA) - Public Law 101-476, 1990

²¹ Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, 2014).

²² David Collier, "Understanding Process Tracing," *PS: Political Science & Politics* 44, no. 4 (2011): 823–30, <https://doi.org/https://doi.org/10.1017/S1049096511001429>.

²³ Robert K Yin, *Case Study Research and Applications*, vol. 6 (Sage Thousand Oaks, CA, 2018).

Furthermore, after the data is collected with the right methods and approaches, the data will be analyzed with several appropriate techniques. First, comparative analysis: Data collected through document studies, interviews, and observations will be analyzed comparatively.²⁴ Regulations related to workers with disabilities in Indonesia will be compared with regulations in other countries sampled by the study, namely Germany, Canada, Australia, Japan, and the United States. Differences and similarities in legal approaches, protection of rights, and obligations of companies will be identified and analyzed.²⁵ Second, qualitative analysis: Qualitative analysis will be used to interpret data obtained from interviews and observations.²⁶ Qualitative data will be categorized, encoded, and analyzed thematically.²⁷ This will help understand the experiences of workers with disabilities, the challenges they face, and the practices and policies that are effective in promoting the inclusion of workers with disabilities in each country. Third, through data triangulation: During data analysis, it is important to triangulate the data.²⁸ This means comparing and matching findings from a variety of different data sources, such as legal documents, interviews, and observations. By triangulating, it can strengthen the validity and reliability of research findings.²⁹

RESULT AND DISCUSSION

1. Regulation and Policies on the Rights of Workers with Disabilities in Various Countries Support the Principle of Fair Competition

The importance of implementing the principle of *Fair Competition* is a matter of concern to several countries, especially in terms of fulfilling the rights of disabled workers. The rights that this country should fulfill have become the world's attention since the international treaty on the rights of persons with disabilities has been made. Therefore, here are some countries that support the implementation of *Fair Competition* in the implementation of the fulfillment of the rights of disabled workers:

a. Indonesia

The Law on Persons with Disabilities has regulated the rights that can be owned by people with disabilities, one of which is the right to work. In contrast to the facts circulating in the community, in essence discriminatory attitudes in the recruitment process still often occur as stated by Nahar, as Deputy of Child Protection of the Ministry of Women's Empowerment and Child Protection, in a press release which states that in the recruitment process there are often discrimination attitudes that lead to the absence of adequate accommodation for people with disabilities in the world of work.³⁰ This is also

²⁴ Axel Marx, Benoît Rihoux, and Charles Ragin, "The Origins, Development, and Application of Qualitative Comparative Analysis: The First 25 Years," *European Political Science Review* 6, no. 1 (2014): 115–42.

²⁵ James Mahoney and Dietrich Rueschemeyer, *Comparative Historical Analysis in the Social Sciences* (Cambridge University Press, 2003).

²⁶ Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (sage, 1994).

²⁷ Anselm Strauss and Juliet Corbin, "Basics of Qualitative Research Techniques," 1998.

²⁸ John W Creswell and Vicki L Plano Clark, *Designing and Conducting Mixed Methods Research* (Sage publications, 2017).

²⁹ Uwe Flick, "Triangulation in Qualitative Research," *A Companion to Qualitative Research* 3 (2004): 178–83.

³⁰ N. R. Aditya and K Erdianto, "Penuhi Hak Atas Pekerjaan Bagi Penyandang Disabilitas," nasional.kompas.com, 2021.

certainly contrary to Indonesia's attitude and view towards people with disabilities. As is known that Indonesia has ratified the international covenant or CRPD which discusses disability rights as stipulated in Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the CRPD Ratification Law). Article 8 of the CRPD explains that the government will adopt policies aimed at raising awareness against stereotypes so as to promote awareness of the contributions of persons with disabilities. In addition, Indonesia together with other ASEAN members at the Summit in Singapore has made an important document that can be called the ASEAN Enabling Masterplan 2025, which in its contents discusses the rights of persons with disabilities both in political security and socio-cultural life. The purpose of the ASEAN Enabling Masterplan 2025 is to prove the commitment to disability inclusion and the presence of this masterplan document is in accordance with the principles in the CPRD and SDGs.

Apart from international law policies and rules regarding the application of the principle of Fair Competition for disabled workers, national law has also supported this. This is evidenced by Article 31 of Law Number 13 of 2003 concerning Manpower which states that every worker has the same rights and opportunities in choosing, getting or changing jobs in order to get a decent income both domestically and abroad. Therefore, people with disabilities are also part of Indonesian society so they have the same opportunities, positions, rights and obligations in all aspects of life and decent livelihood.

Legal recognition has also been strengthened by the presence of the Law on Persons with Disabilities which aims as a form of guarantee for an effort to promote, respect, protect, and fulfill the rights that already exist in persons with disabilities, which is clearly written in Article 3 of the Law on Persons with Disabilities. Then, Article 45 of the Law on Persons with Disabilities states that there is a responsibility of the government and local governments in ensuring a fair and non-discriminatory process of recruitment, admission, job training, job placement, job continuity, and career development to persons with disabilities. In this case, legally it has also agreed to the application of *Fair Competition* in granting employment rights to persons with disabilities.

b. Japan

In addition to Indonesia, Japan has also supported the concept of Fair Competition in exercising workers' rights to get equal opportunities for people with disabilities. In the form of legality that acts as a legal umbrella for persons with disabilities, it is regulated in the Right of Persons with Disabilities Act, 2016 which includes restrictions on categories of persons with disabilities. In addition, in the Law for Employment Promotion, etc. of the Disabled Persons (1960, Law No. 123) explains setting quotas for private and public sector companies in accepting persons with disabilities in their companies, which in 1998 was changed by setting quotas for public sector companies to 2.1% and private companies 1.8%. Then, if the company has accepted persons with disabilities in excess of the quota specified in the law, the government's role in this case is to provide allowances to cover accommodation costs with a nominal adjustment allowance payment of approximately ¥25,000/month to each person granted employment and paid by the state to employers who exceed the legal quota (with more than 300 full-time employees).³¹

In other written rules, the Japanese state also has a basic law that is used as a preliminary guideline for the regulation of persons with disabilities which is contained in the Disabled Persons Fundamental

³¹ Disabilitas: In Team, "Japan," disabilityin.org, 2022.

Law (1970, Law No. 84- Majorca revised in 1993), the regulation also explains how the responsibilities of the nation, state public bodies, and regions in basic policies as a form of steps taken to improve the welfare of persons with disabilities. As a form of support for independence and participation in Japanese society, several legal umbrellas were created, such as Law for the Welfare of Physically Disabled Person (1949, Law No. 283), Law for the Welfare of Mentally Retarded Persons (1960, Law No. 37), Child Welfare Law (1947, Law No. 164), Law for Promoting of Research, Development and Distribution of Technical Aids and Equipments (1993, Law No. 38) and Social Welfare Services Law (1951, Law No. 45).

Based on data obtained through annual reports on the population, the number of people with disabilities who receive government programs is about 7.6% of the Japanese population with estimates to have several classifications of types of disabilities.³² The policy system implemented by Japan, which applies the disability record book policy system, where the book is obtained when a disabled person registers it first. Then, for the types of books issued there are three types, namely physical disability notebooks, special education notebooks for disabled children, and health benefit notebooks for mentally ill people as based on 1949, Law No. 283, 1960, Law No. 37 and 1947, Law No. 164. Based on these three books, it has a classification of the level of disability and symptoms experienced daily by people with disabilities. In addition to policies regarding record books, the Japanese government also provides insurance for people with disabilities, one of which is Long-term Care Insurance (LTCI). The launch of the LTCI policy is a form of the basic concepts of independence, social insurance, and a system that prioritizes users with the aim of helping the burden borne by families in social solidarity.³³

c. Spain

Regulations and policies governing ensuring workers' rights for persons with disabilities have also been implemented by several other countries besides Indonesia and Japan, and even some countries have shown that disability inclusion results in competitive benefits and long-term profitability for companies³⁴. One company that actually uses the labor of people with intellectual disabilities is the design studio La Casa de Carlota in Spain.³⁵ In research conducted by Luisa Alemany and Freek Vermeulen mentioned that with the help of the Asociación Española de Supported Employment (AESE) people with disabilities in Spanish territory can find and keep work. Based on this, researchers surveyed personnel executives at 57 companies that have employed people with disabilities, and the results obtained in the survey were that about 70% of personnel agreed that internally the company has improved significantly. In addition, in Europe venture capitalists are starting to consider environmental, social and governance aspects in making decisions on investment activities as reported by The European Venture Philanthropy Association in the results of the Investing for Impact Survey, which states that 36% of investment focus has begun to move on the use of disability.

³² Kantor Kabinet Jepang, "Laporan Tahunan Tentang Tindakan Pemerintah Untuk Penyandang Disabilitas (Ringkasan) 2020," cao.go.jp, 2020.

³³ Tamako Hasegawa, "Equality of Opportunity or Employment Quotas?—A Comparison of Japanese and American Employment Policies for the Disabled," *Social Science Japan Journal* 10, no. 1 (2007): 41–57.

³⁴ L. Alemany and F. Vermeulen, "Disability as a Source of Competitive Advantage," *Harvard Business Review*, 2023.

³⁵ Arminda Carbonell, "Estudio de Diseño La Casa de Carlota," armindacarbonell.com, 2022.

d. Germany

In support of the principle of Fair Competition for workers with disabilities, the German state has also ratified the CRPD as a form of promoting the full realization of human rights and fundamental freedoms for all persons with disabilities without discrimination. In the form of implementation of the ratification of the UN convention, Germany established a legally binding policy for employers in employing persons with disabilities. Then, the presence of a law that states that there is an obligation for employers both in public and private companies at least 20 people must be filled by persons with disabilities or it is also stated that five percent of all workers must be filled by persons with disabilities, and if this is not done there will be fines imposed on companies as written in § 160 SGB IX.³⁶

There are even other laws as a form of legal umbrella that can protect the rights of people with disabilities. The legal umbrella is divided into two, namely the federal legal umbrella and the legal umbrella based on Bavarian or state regulations. Some laws fall under German federal law, such as the *Allgemeines Gleichbehandlungsgesetz (AGG)* which aims to prevent or eliminate discrimination on the basis of race or ethnicity, sex, religion or belief, disability, age or sexual identity, *Behindertengleichstellungsgesetz (BGG)* which acts as a law that contains the equality and accessibility of persons with disabilities in various public sectors in order to avoid discriminatory, *Sozialgesetzbuch (SGB) Neuntes Buch (IX)* or can be referred to as a social code that discusses the rehabilitation and participation of persons with disabilities in determining their own destiny in public life, and finally *Arbeitsstättenverordnung (ArbStättV)* can also be called workplace regulations that discuss workplace ordinances in providing determination or consideration in employee safety and health. Meanwhile, for regulations made by the state of Bavaria, namely *Bayerisches Behindertengleichstellungsgesetz (BayBGG)* which has been uniform with *Behindertengleichstellungsgesetz (BGG)* as a rule that runs based on federal law. BayBGG discusses equality, integration and participation for persons with disabilities, which also has the specific objective of improving accessibility and mobility for persons with disabilities to forming representatives for the benefit of persons with disabilities at the city level.³⁷

e. Canada

Many countries have begun to prohibit discrimination on the grounds that it is not in accordance with applicable norms or specifically often occurs in the world of work. Although, in essence this has been regulated by a series of laws and regulations that have been compiled comprehensively for various circles of society as well as some substances specifically discussing disability. One of the countries with non-discrimination legislation that explicitly mentions disability is Canada. Canadian law prohibits discrimination on the basis of race, national or ethnic origin, color, religion, age, sex, sexual orientation, marital status, family status, disability, imprisonment for which the Iranian has been granted pardon as stipulated in the Canadian Human Rights Act (R.S., 1985, c. H-6), and in the Employment Equality Act (S.C. 1995, c. 44) which describes the imposition of equal employment for women, Aborigines, persons with disabilities, and members of visible minority groups.

³⁶ IHK Ratgeber, "Menschen Mit Behinderung," ihk-muenchen.de, 2022.

³⁷ Bayerisches Staatsministerium für Familie, "Service Für Unternehmen Recht & Gesetz," arbeit-inklusiv.bayern.de, 2020.

f. United States

After Canada, which is part of a country with non-discrimination legislation or a country that explains it explicitly, there are countries that legislatively form non-discriminatory regulations with the principle of Fair competition that applies to people with disabilities, for example, the United States. The regulations promulgated by America are *Americans with Disabilities Act (ADA) - Public Law 101-336, 1990, Rehabilitation Act of 1973 - Public Law 93-112, 1973, and Individuals with Disabilities Education Act (IDEA) - Public Law 101-476, 1990*. The *Americans with Disabilities Act* describes the rule for companies that have 15 workers and can be deducted if it is true that the company does not participate in interstate trade relations so that federal rules do not apply to their employment policies and for employers who are categorized as small entrepreneurs are not regulated about the obligation to hire people with disabilities.

g. Australia

According to the results of *the Survey of Disability, Ageing, and Carers (SDAC)* published by the *Australian Bureau of Statistics (ABS)* shows that 1 in 6 people in Australia has a disability or precisely there are around 4.4 million people in Australia who are people with disabilities.³⁸ Although people with disabilities in Australia are only included in the smallest category with 18% of the total population, this does not make the Australian government turn a blind eye to the rights they have. Based on publications uploaded by the Australian Human Rights Commission, people with disabilities also have the same rights to work on an equal basis with others and are supported by an open, inclusive, and easily accessible environment for applicants with disabilities.

Therefore, as a form of strengthening the existence of policies regarding equality for workers with disabilities, regulations or rules are made that can support and become the legal basis for the existence of these policies. Based on the international legal framework or specifically written in Article 27 CRPD explains that there are types of rights disabled workers that must be protected and among them, the right to work on an equal basis with others, the right to fair and favorable working conditions, and the right to effective access to general technical and vocational training. Article 21 of the 2007 UN Declaration on the Rights of Indigenous Peoples addresses the social and economic rights of indigenous peoples with disabilities, including the right to non-discrimination in employment.

Then, as a national legal basis in the discussion of anti-discrimination laws at the commonwealth and state / territory levels which all discuss the prohibition of discrimination has been regulated in the *Disability Discrimination Act 1992* and *The Fair Work Act 2009*.³⁹ Through this regulation, it is known that there is protection for workers with disabilities who experience discrimination so that with the making of these two laws, employers may not discriminate against persons with disabilities in the field of recruitment, promotion, or termination of employment.⁴⁰ However, the effectiveness of legal remedies for disabled workers who experience discrimination in Australia may vary. Some individuals may experience barriers or challenges in accessing and navigating the legal system in finding ways to pursue legal remedies for acts of discrimination. This is due to several factors such as limited awareness

³⁸ Australian Institute of Health and Welfare, "People with Disability in Australia 2022," aihw.gov.au, 2022.

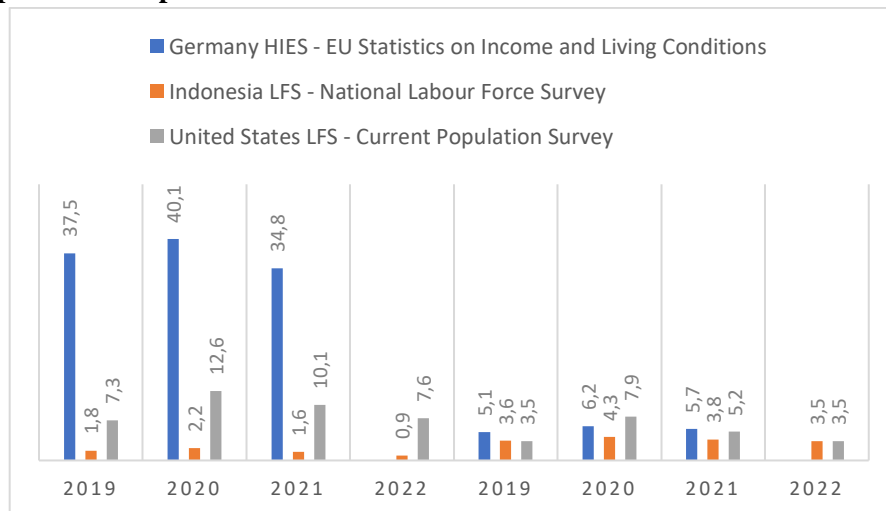
³⁹ Australian Human Rights Commission, "8 Legal and Policy Framework," humanrights.gov.au, n.d.

⁴⁰ Australian Human Rights Commission, "People with Disability and Employment," humanrights.gov.au, 2022.

of people with disabilities about the rights they have, financial barriers, and even the complexity of the legal process in resolving cases.⁴¹ In conclusion, although existing regulations in Australia provide a legal protection against discrimination against disabled workers, in its implementation it still needs further development and improvement, considering that there are still aspects that are lacking in achieving equality or *Fair Competition* for disabled workers.

2. *The Concept of Physical Accessibility in the Work Environment, the Right Recruitment and Selection Process to Be Applied in Indonesia*

Graphics 1. Comparison of the Welfare of Workers with Disabilities in 2019-2022



Source:(International Labour Organization, “Statistic and Database,” ilo.org, 2023 procesed by the author).⁴²

The convenience provided for persons with disabilities in realizing equality of opportunities that exist in all matters, including in terms of accessibility in buildings, public roads, landscaping and public cemeteries and accessibility to public transportation is a form of implementation of the presence of Government Regulation Number 43 of 1998 concerning Efforts to Improve Social Welfare of Persons with Disabilities and Decree of the Minister of Transportation Number KM 71 of 1999 concerning Accessibility for Persons with Disabilities and Sick People in Transportation Facilities and Infrastructure. The ILO's Guidelines on the management of persons with disabilities in the workplace provide assistance guidance to guide companies to implement positive strategies to address issues pertaining to persons with disabilities in the workplace. As stated by the Deputy for Coordination for Social Welfare Improvement of the Coordinating Ministry of PMK, Prof. Dr. Nunung Nuryatono, who said that the government's role is needed in intervening as a form of ensuring that people with disabilities are not left behind both in work and the construction of facilities and infrastructure.

In the opening of the National Coordination Meeting held on June 15, 2023, he mentioned that there is a principle that states that no person with disabilities should be left behind in the service programs made by the government.⁴³ As is well known, Indonesia has ratified the convention on the

⁴¹ The Royal Commission, “Overview of Responses to the Employment Issues Paper,” disability.royalcommission.gov.au, 2021.

⁴² International Labour Organization, “Statistic and Database.”

⁴³ T. H. Supanji, “Pemerintah Penuhi Hak Penyandang Disabilitas Di Indonesia,” kemenkopmk.go.id, 2023.

rights that should be obtained by persons with disabilities as a form of leveling attitudes towards all Indonesian citizens, as outlined in the CRPD Ratification Law. In addition, in its implementation, it has also been stated in the Law on Persons with Disabilities and the Indonesian government has ratified policies that can act as derivative rules of the law. Rules placed as derivatives in supervision of implementation limits include, namely Government Regulations on the Implementation of Social Welfare for Persons with Disabilities; Government Regulation on Adequate Accommodation for Students with Disabilities; Government Regulation on Reasonable Accommodation for Persons with Disabilities in Judicial Proceedings; Presidential Regulation on Terms and Procedures for Awarding and Respecting, Protecting, and Fulfilling the Rights of Persons with Disabilities; and Presidential Regulation on the Ratification of the Marrakesh Treaty for Facilitation of Access to Published Works for Persons with Blind, Visual Impairment, or Disabilities in Reading Printed Works.⁴⁴

Looking also at the report data published by the Central Statistics Agency (BPS) regarding the number of disabled workers in Indonesia in 2022, which reached 720,748 people from all workers in Indonesia, and this is also known to have increased by around 160.18% compared to the previous year which only amounted to 277.18 people. Then, if viewed in detail based on the area of residence, the majority of disabled workers come from rural areas, which is 389,224 people or equivalent to 0.64% of the total value of disabled workers in Indonesia, which means that disabled workers in urban areas are only 0.44% or 331,524 people.⁴⁵ Based on the acquisition of these data, it is known that there is no equality obtained by people with disabilities in obtaining their work rights. In a book released by BPS entitled Indicators of Decent Work in Indonesia in 2022, it is stated that disabled workers often get unfair treatment due to their shortcomings.

In essence, through the shortcomings of persons with disabilities, the state should make a policy that can provide opportunities for them to live independently and participate fully in life, as written in Article 9 of the CRPD. In the article, it is known that there are two types of accessibility that are very important in supporting life, namely physical accessibility related to providing access to facilities and infrastructure, and accessibility of information and communication related to ease of understanding documentation (baille) and aural information (sign language). Therefore, as a form of implementation of the part in the general principle of non-discrimination Article 2 of the CRPD it is appropriate to provide support and adjustment to persons with disabilities. In the form of reasonable adjustments, it is not mandatory to reduce performance or eliminate important functions in one's work.

In the implementation of the success of the accessibility concept to create a more inclusive Indonesia as done by Mario Gultom and Almas Nizar as owners of Cafe Sunyi. With the establishment of Cafe Sunyi can be used as a tool to fight the mindset or mindset of the community about the true meaning of humanity, which is generally known by the public that humanitarian activities are part of charity activities but in fact humanitarian activities are obligations that indirectly become a shared responsibility. As a form of prevention on one of the challenges that build trust in the disabled community, they approached several disability communities and learned sign language through the

⁴⁴ A. Sahbani, "Mengintip 9 Aturan Turunan UU Penyandang Disabilitas," hukumonline.com, 2020.

⁴⁵ C. M. Annur, "Jumlah Pekerja Disabilitas Indonesia Meningkatkan Pada 2022, Didominasi Laki-Laki," databoks.katadata.co.id, 2023.

Indonesian Sign Language Center. Through this, it makes them have a close relationship with some friends who have disabilities.⁴⁶

In addition, there is also a café associated by Kita Setara Foundation called Kito Rato coffee shop, in this case it has also provided evidence that many Indonesians are starting to care about people with disabilities in getting decent jobs for them. By prioritizing the achievement target, which is to empower people with disabilities, young adults who tend to lack competence so that apart from physical weaknesses that are often taken into consideration, the education and experience possessed by people with disabilities is the reason recruiters do not want to accept them. This problem makes Agus Nadi as the founder or *founder* of Kita Setara create an Indonesian disability business education as a forum to provide extra strength for people with disabilities in obtaining their rights.

Looking at the conditions in Indonesia itself, it is known that the majority of people with disabilities have not been able to live alone or still live dependently on others, and there is still a lot of poverty caused by their limitations. With the vision held by Kita Setara which is to provide equal opportunities so that they can form an independent person for people with disabilities. Followed by a mission carried out by Agus Nadi, as a socialpreneur, to turn one of the places into a learning center called Rumah Hidup Kira Setara by providing a curriculum made specifically for people with disabilities with each curriculum aimed at building confidence and competence which is also supported by skills.⁴⁷

Article 46 of the Law on Persons with Disabilities states that there is an obligation for the government, both central and regional, to provide an opportunity for persons with disabilities to attend skills training in both government and private work institutions and must be inclusive or easily accessible. The actions taken by Agus Nadi in providing training to people with disabilities have indirectly carried out the obligations that should be owned by the government. Therefore, as a form of observation, the central and local governments have also made various programs as a form of implementation of the mandate contained in it. This can be seen from one example of a program initiated by the Pekalongan City Government in improving the standard of living and participation of people with disabilities in the social economic sector together with the Department of Industry and Manpower (Dinperinaker) to create sewing training for people with disabilities. Then, this program was enthusiastically welcomed by Merry Maria as Chairman of the Physical Disability Association of Pekalongan City, according to her this could be a step to empower and encourage independence for people with disabilities.⁴⁸

Implementing the policies that have been carried out by Japan and Germany, Indonesia has also built a training and empowerment center for disability. For the first time in Indonesia created a Disability Vocational Training Center (PPVD) initiated by Anggie Yudistira, as Special Staff to the President of the Republic of Indonesia, together with the Dharma Wanita Persatuan (DWP) Advisor of

⁴⁶ S. Drupadi, "Sunyi: Kedai Kopi Harapan Untuk Penyandang Disabilitas – Alumni Success Story," ceritaprasmul.com, 2020.

⁴⁷ F. Syuralpha and A. N. Indrajaya, "Kita Setara: Nurturing Indonesia's Disabled Community through Disability Curriculum Business Study," aim2flourish.com, 2022.

⁴⁸ Tim Komunikasi Publik, "Dinperinaker Segera Fasilitasi Pelatihan Kompetensi Penyandang Disabilitas," pekalongankota.go.id, 2023.

the Ministry of Religious Affairs (Kemenag) of the Republic of Indonesia and made the establishment of PPVD as an event in cooperating with progress on the abilities or competencies of people with disabilities. The background of the formation of PPVD is to achieve inclusive equality and extension in getting a job so that it is known that PPVD has links in capturing jobs in agencies, companies, MSMEs and communities that openly accept people with disabilities as workers.⁴⁹ In addition, the rules that apply precisely in Article 53 paragraphs (1) and (2) of the Law on Persons with Disabilities have explained that there are guarantees in terms of providing work for persons with disabilities, both carried out by the government and private parties. Therefore, in essence Article 53 paragraphs (1) and (2) states that there is an average mandatory percentage of receipts for the number of disabled workers that must be absorbed by companies under the auspices of the central government, regional governments, State-Owned Enterprises, and Regional-Owned Enterprises or under the auspices of private companies. If you look at the percentage value, it is known that it opens up space for people with disabilities to enter and work in state-owned companies.

In addition to what is contained in the Law on Persons with Disabilities, President Jokowi also firmly supports the provision of decent opportunities for people with disabilities in the living space of the nation and state. Based on the direction directly ordered by the president, the government maximally implements the contents of the mandate contained in the Law on Persons with Disabilities. Although, in the facts on the ground there is an obligation to always contradict what people with disabilities aspire to, especially in 'red-plated' or private companies. However, in this case the government must continue to strive to perfect the mandate contained in the law.

In addition, seeing the government's sacrifices in carrying out the mandate contained in the law is not in accordance with job opportunities for people with disabilities in companies under the auspices of SOEs. It is proven that there are still state-owned companies that cannot hire people with disabilities even though in essence they have an obligation to provide jobs to people with disabilities. In a journal written by Susiana and Wanda entitled "Fulfillment of the Rights of People with Disabilities in Getting Jobs in SOEs" explained that in their research conducted on 4 (four) state-owned companies in Aceh, namely PT Angkasa Pura II, PT PLN, PT Kimia Farma, and PT BRI, only PT BRI has employed people with disabilities.⁵⁰

Although Erick Thohir as Minister of SOEs has explained that SOEs will provide a comfortable space for people with disabilities, in reality there are still many challenges that need to be faced by people with disabilities in getting jobs in SOEs.⁵¹ Some things that become challenges, including discrimination such as limited job opportunities caused by only a few positions / types of work that can be occupied by disabilities, lack of access to education and training, limited information available in the job market and the presence of negative stigma from the community that reduces public confidence in their abilities.

⁴⁹ B. Andrios, "Perluas Akses Pendidikan Difabel, Kemenag Sinergi Dengan Pusat Pelatihan Vokasi Disabilitas," kemenag.go.id, 2023.

⁵⁰ Susiana Susiana and Wardah Wardah, "Pemenuhan Hak Penyandang Disabilitas Dalam Mendapatkan Pekerjaan Di BUMN," *Law Reform* 15, no. 2 (2019): 225–38.

⁵¹ A. R. Hakim, "Curhatan Disabilitas Ke Erick Thohir, Pernah Gagal Masuk BUMN," Liputan6.com, 2022.

Therefore, the concept of physical accessibility to the environment and the right selection process to be applied in Indonesia is to mandate a governing law because it is also known that the function of the law is as a regulator of society, or it can also be a *tool of social engineering*. Apart from the existence of supportive regulations, the need for collaboration in government tasks in maximizing disability rights is still under-empowered and there needs to be proper supervision and followed by strict sanctions if the implementation is not as expected. Moreover, this has been expressly stipulated in Article 143 of the Law on Persons with Disabilities regarding the prohibition of anyone to prevent persons with disabilities from obtaining the right to work, accessibility rights, public service rights, and other rights. That way the government's position is stronger to implement concepts that can facilitate accessibility by coordinating with other parties in improving the quality of accessibility, which in addition to taking further action against entrepreneurs or parties who do not carry out orders properly.

CONCLUSION

In terms of support for the implementation of the *principle of Fair Competition* for the provision of regulations and policies on the rights that should be owned by workers with disabilities, several countries have supported. Regulations and policies regarding the rights of disabled workers have been regulated under international and national law. Some countries that have provided support for the equal rights that must be owned by disabled workers, such as Indonesia, Japan, Spain, Germany, Canada, America, Australia, and several other countries. These countries began to agree on the equality that disabled workers should have, starting with the CRPD international agreement.

In addition, from providing equal rights to workers with disabilities, of course, the government needs to improve physical accessibility in the environment for their convenience. The concept of building physical accessibility in the work environment, the recruitment and selection process of disabled workers that is suitable for use is the concept of equality with the principle of *Fair Competition* which is certainly balanced by the coordination of several related parties. By creating PPVD as an implementation of policies that have been carried out by Japan and Germany in creating inclusive equality, which is certainly a step as forming coordination that can make progress in the implementation of rights for people with disabilities.

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