

The Gap Between Legal Norms and Practice in Protecting Persons with Disabilities Against Employment Discrimination

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Abstract

This article discusses legal protection for persons with disabilities in the employment sector in Indonesia. Law Number 8 of 2016 provides a strong legal foundation through the recognition of the right to work, protection from discrimination, accessibility, and affirmative policies in the form of employment quotas. However, this legal protection has not been effectively implemented in practice. The main challenges lie in weak implementation, lack of synchronization between regulations and implementing policies, and the government's limited attention to the economic and educational aspects of persons with disabilities. As a result, persons with disabilities still face barriers in obtaining equal employment opportunities. Therefore, strengthening legal protection requires more effective implementation through policy harmonization, enhanced supervision, and the provision of reasonable accommodation to ensure equality in the workplace.

Keywords: *persons with disabilities, employment discrimination, legal protection, gap between norms and practice, legal synchronization.*

A. INTRODUCTION

The issue of disability constitutes one of the legal and social concerns that has attracted attention in development and human rights studies. From a human rights

perspective, persons with disabilities hold an equal position as legal subjects who are entitled to education, employment, and protection from discrimination (Samuel et al., 2012). This principle has been accommodated in various legal instruments, including Law Number 8 of 2016 on Persons with Disabilities, which explicitly guarantees the right to work and mandates affirmative policies in the form of employment quotas (Arif et al., 2025). However, empirically, legal phenomena indicate that persons with disabilities continue to face high unemployment rates, limited access to employment, and discriminatory practices both in recruitment processes and within the workplace (Maskuri et al., 2025). Data from the 2020 National Socio-Economic Survey (SUSENAS) also indicate that this group has a higher risk of poverty compared to non-disabled individuals, suggesting that existing legal protection has not yet been fully effective (Sodiqin, 2021).

A number of previous studies have examined legal protection for persons with disabilities from both normative and implementation perspectives. Emphasize the importance of recognizing equal rights for persons with disabilities within the human rights framework, positioning the state as the primary actor in ensuring the fulfillment of these rights (Budiman et al., 2025). Other studies show that regulations in Indonesia, particularly Law Number 8 of 2016, have normatively adopted the principles of distributive justice and equality as proposed by John Rawls and Ronald Dworkin, especially through provisions on equal employment opportunities and affirmative policies in the form of employment quotas. In addition, several empirical studies in Indonesia highlight the low participation rate of persons with disabilities in the labor market, which is influenced by structural factors such as low levels of education, persistent social stigma, and limited access to job training (FETI FATMAWATI, 2025).

Thus, previous studies have generally succeeded in illustrating the importance of legal protection for persons with disabilities and identifying various obstacles in its implementation. However, these studies tend to remain fragmented between normative and empirical analyses and have not fully integrated both into a comprehensive analytical framework (Arif et al., 2025). This indicates the need for further research that not only describes existing conditions but also analyzes more deeply the relationship between legal norms and their implementation practices in the context of protection against employment discrimination for persons with disabilities (Samuel et al., 2012) .

Despite these contributions, there remains a significant research gap that has not been thoroughly explored, namely an analysis that specifically connects disability employment legal norms with their implementation in practice in the context of protection against employment discrimination (Roessler et al., 2017). Most studies tend to stop at normative analysis or general descriptive accounts of implementation, without comprehensively explaining how the gap occurs, its underlying causes, and its implications for the effectiveness of legal protection (Febiana Rizki et al., 2025). Furthermore, there is still limited research that systematically links the concepts of “law in the books” and “law in action” within the context of disability labor protection in Indonesia.

Based on this gap, the novelty of this study lies in its integrative analysis of legal norms and implementation practices in protecting persons with disabilities from employment discrimination, by employing a conceptual approach that combines theories of justice (Rawls and Dworkin) and theories of legal effectiveness (Roscoe Pound and Brian Z. Tamanaha). This study does not merely examine the existence of legal norms

but also evaluates the extent to which these norms are implemented and function in social reality, including in fulfilling the standard of “reasonable accommodation” according to the diverse types of disabilities.

Accordingly, this study aims to analyze the gap between legal norms and implementation practices in the legal protection against employment discrimination for persons with disabilities, as well as to identify the factors influencing its effectiveness. The findings are expected to contribute theoretically to the development of more inclusive legal studies and to provide practical recommendations for strengthening policy and law enforcement in order to realize a fair and non-discriminatory employment system for persons with disabilities.

B. RESEARCH METHOD

This research employs a normative legal approach enriched with a limited socio-legal perspective. Normative legal research is used to examine law as a system of norms embodied in statutory regulations, while the socio-legal approach is utilized to understand the gap between legal norms (*das sollen*) and empirical realities (*das sein*) in the protection of workers with disabilities. The normative legal approach is conducted by examining the hierarchy of relevant laws and regulations, ranging from the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 2016 on Persons with Disabilities, to Government Regulation Number 60 of 2020. Meanwhile, the conceptual approach is applied to analyze legal principles such as substantive equality, non-discrimination, and legal protection as the foundation of the study. The socio-legal approach is carried out by analyzing socio-economic factors, including the economic and educational conditions of persons with disabilities.

The sources of legal materials in this research consist of primary legal materials, namely statutory regulations, and secondary legal materials, including academic journals, books, policy reports, and statistical data such as SUSENAS and inclusive social protection reports. The analysis of legal materials is conducted qualitatively using a deductive method, which involves drawing conclusions from general legal norms to specific phenomena occurring in practice. To strengthen the analysis, statistical data are used as complementary evidence to provide an empirical overview of socio-economic inequalities experienced by persons with disabilities. These data are analyzed using a descriptive-narrative approach, enabling a contextual illustration of the relationship between applicable legal norms and their implementation in practice.

C. RESULTS AND DISCUSSION

1. Legal Protection for Persons with Disabilities at the Normative Level

Normatively, Law Number 8 of 2016 has adopted a human rights-based protection paradigm by positioning persons with disabilities as equal legal subjects. Provisions concerning employment quotas, reasonable accommodation, and state obligations indicate that Indonesian law has shifted from a charitable approach toward a human rights-based approach. Within the human rights framework, this reflects the application of the principles of non-discrimination, equality of opportunity, and the state's obligation to fulfill the right to work.

However, from a critical perspective, this normative design still contains structural weaknesses, particularly in terms of implementation and law enforcement. The quota policy stipulated in Article 53, for instance, is not

accompanied by measurable indicators of success or systematic evaluation mechanisms. This suggests that legal norms have not been fully designed as operational instruments, but rather remain declaratory in nature (Waddington, 2023)

Previous studies (Dahlan & Anggoro, 2021) emphasize that the weak implementation of affirmative policies is largely due to the absence of effective monitoring systems. This finding aligns with (Balcells-Balcells et al., 2019), who argue that without strong enforcement mechanisms, affirmative policies tend to have limited impact on increasing labor participation among vulnerable groups. Compared to practices in several countries, quota policies are typically integrated with incentive systems, disincentives, and strict compliance audits.

From a human rights perspective, this condition indicates that the state has not fully fulfilled its obligations to respect, protect, and fulfill. While the state has formally recognized rights through regulation, it has not been optimal in protecting individuals from discriminatory practices (protect), nor in ensuring the concrete realization of those rights (Liddiard et al., 2019). As a result, the law tends to function more as a normative symbol rather than an effective instrument of social change.

2. Socioeconomic Vulnerability as a Factor of Discrimination

Socioeconomic vulnerability is a fundamental factor that reinforces the marginalization of persons with disabilities in the labor market . High poverty rates, low levels of education, and limited access to basic services indicate that persons with disabilities experience structural inequality from the outset. From

a human rights perspective, this reflects a failure to achieve substantive equality, which requires consideration of the actual conditions of vulnerable groups.

Critically, employment policies in Indonesia still tend to adopt a formal equality approach, treating all individuals equally without accounting for the specific needs of persons with disabilities. This is evident in minimum wage policies that do not consider the extra costs of disability, thereby creating de facto economic injustice. Previous research (Febriyanti et al., 2025), shows that extreme poverty rates among persons with disabilities are higher than those of non-disabled groups. Meanwhile, (Kusmawati et al., 2024) highlight that low educational attainment is a primary barrier to accessing formal employment. These findings are consistent with Amartya Sen's capability approach, which emphasizes that inequality arises not only from unequal resource distribution but also from limited individual capabilities to access opportunities (Effendi et al., 2022).

Compared to countries that have implemented inclusive and integrated social policies, disability protection is not limited to employment but extends to education, healthcare, and social security in a comprehensive manner (Marlina et al., 2024). In Indonesia, however, fragmented sectoral approaches prevent policies from addressing root causes effectively. Moreover, the dominance of persons with disabilities in the informal sector indicates a failure of the legal system to adequately reach vulnerable groups. From a human rights perspective, this reflects weak state protection of the right to decent work, as

the informal sector lacks wage guarantees, job adequate social protection (Taniady et al., 2022).

Sumber: BPS Sumber: BPS (2022), Sensus Long Form 2020, dikutip dari CBM Global & Center for Inclusive Policy (2025).

Last education level	Percentage of people with	
	disabilities	Percentage of non-disabled people
1. Higher education	4,13	10,23
2. Senior High School	11,54	30,69
3. Junior high school	9,91	22,25
4. Elementary school	39,30	28,10
5. Did not finish elementary school/did not attend school	35,12	8,73
Total	100,00	100,00

3. Gaps in the Implementation of Employment Policies

The gap between legal norms and practices demonstrates a systemic implementation gap. The low labor force participation rate of persons with disabilities and their concentration in the informal sector indicate that existing policies have not effectively addressed structural barriers. Critically, one of the main factors is weak coordination between central and local governments in policy implementation. Research by (Mitra et al., 2017), identifies key barriers

such as limited access to education, social stigma, and insufficient workplace accommodation. This is reinforced by (Rahayu et al., 2025), who highlight the lack of effective oversight in the private sector.

From a human rights perspective, this condition reflects the state's failure to fulfill its obligation to protect individuals from discriminatory practices by third parties, including employers. When companies fail to provide reasonable accommodation or refuse to hire persons with disabilities, the state should intervene through effective enforcement mechanisms. Compared to international practices, effective affirmative policies are typically supported by data-driven monitoring systems, transparent reporting, and sanctions with deterrent effects. In Indonesia, weak administrative sanctions result in low compliance, thereby undermining the enforceability of quota policies.

4. The Gap Between Norms and Practices as a Legal Synchronization Issue

The gap between norms and practices also indicates a lack of synchronization between regulations and sectoral policies. Although the law provides normative recognition of the rights of persons with disabilities, its implementation is not supported by consistent and integrated implementing regulations (Rakhmawaty & Vic, 2025). From a human rights perspective, this contradicts the principle of the indivisibility and interdependence of rights, whereby the right to work cannot be separated from the rights to education, health, and social welfare (Kulkarni & Lengnick-Hall, 2014). Limited access to education and basic services directly restricts opportunities to obtain decent

employment (Harasym et al., 2026). Research by (Utami et al., 2025), demonstrates that regulatory disharmony causes the law to lose its distributive function. Critically, this indicates that the law has not yet functioned as a corrective instrument capable of addressing structural inequalities. Additionally, social stigma against persons with disabilities further reinforces the gap between norms and practices (Addzakir et al., 2024). Despite legal guarantees of equality, negative perceptions in society and the workplace remain significant barriers. From a human rights perspective, this underscores that legal protection must be accompanied by broader social and cultural transformation .

5. A Human Rights–Based Integrative Approach

5.1 Harmonization of Regulations and Inclusive Recruitment

Critically, administrative requirements such as “physically and mentally fit” reflect normative bias within recruitment systems (Kusmawati et al., 2024). From a human rights perspective, this constitutes indirect discrimination, as it disproportionately excludes certain groups without reasonable justification. Comparative practices show that inclusive recruitment standards must involve adapted selection procedures and accessible facilities (Bailey et al., 2022). Additionally, fiscal incentives for inclusive companies can serve as an effective strategy to improve compliance.

5.2 Strengthening the Role of Disability Service Units (ULD)

Empirically, the main weaknesses of Disability Service Units (ULD) lie in limited institutional capacity and resources. Research by (Rosalina & Setiyowati, 2024), indicates that many ULDs have not functioned optimally as intermediaries between persons with disabilities and the labor market. From a human rights perspective, strengthening ULDs is part of the state's obligation to fulfill rights by ensuring access to supportive services that enable participation in employment. Without strong institutions, affirmative policies cannot function effectively (S. et al., 2024).

5.3 Reform of Oversight Mechanisms and Sanctions

Critically, weak sanctions indicate that the law lacks sufficient coercive power. In a human rights framework, accountability mechanisms are essential to ensure that rights are not only recognized but also enforced. Comparative findings (Widjaja et al., 2020), suggest that inclusivity audits can serve as an effective tool for evaluating corporate compliance comprehensively. This approach allows the law to function not only as a repressive tool but also as a corrective mechanism that promotes continuous improvement (Antunez et al., 2025). Furthermore, a paradigm shift from the charity model to the human rights model is essential. Without such a shift, legal policies will continue to be perceived as administrative burdens rather than as moral and legal obligations to ensure equality (Teborg et al., 2024).

D. CONCLUSION

This study shows that legal protection for persons with disabilities in Indonesia's labor sector has a strong normative foundation under Law No. 8 of 2016, particularly regarding the right to work, non-discrimination, and affirmative policies such as quotas. However, a gap persists between norms and practice due to weak implementation, unsynchronized regulations, limited oversight, and structural barriers such as low access to education, poverty, and the dominance of the informal sector. The core issue lies in ineffective implementation. Challenges also include weak political commitment, limited budgets, and inadequate enforcement of sanctions against discrimination. Strengthening oversight especially through the involvement of disability organizations and the Disability Service Unit (ULD) is crucial. The ULD needs to be developed into a strategic institution capable of effective job matching, as many current placements do not align with competencies. Local governments must also ensure sustainable budget support. The transformation of legal protection requires cross-sectoral collaboration through regulatory harmonization and inclusive recruitment, the optimization of the role of local government agencies, and oversight reforms accompanied by incentives and strict sanctions. The integration of legal and socio-economic policies is key to ensuring that protection is not merely normative, but effective and inclusive in practice.

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