

Legal Protection in Fulfilling the Right to Employment for Persons with Disabilities

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Abstract

This study explores the gap between normative legal protection and the actual implementation of employment rights for persons with disabilities in Indonesia's Civil Servant (ASN) recruitment. Although affirmative action policies mandate a minimum quota of 2%, representation remains far below the threshold. The core issue lies in inconsistencies between legal norms and technical practices, especially administrative and medical requirements that often prove discriminatory. Using a normative legal method with statutory and conceptual approaches, the research draws on laws and regulations concerning disability and civil service, alongside scholarly literature. Analysis employs systematic, grammatical, and teleological interpretation. Findings reveal ineffective implementation due to regulatory disharmony, restrictive medical standards, lack of reasonable accommodation, and weak oversight, all of which create structural barriers to equal access. This study contributes by linking legal protection frameworks with recruitment mechanisms—an area rarely examined—and proposes reforms including regulatory harmonization, a shift from medical to functional assessment, and stronger supervisory institutions. These measures are essential to ensure substantive equality and uphold employment rights for persons with disabilities in civil service recruitment.

Keywords: *Affirmative Action, Disability Rights, Employment Rights, Legal Protection, Inclusive Labor Policy.*

A. INTRODUCTION

People with disabilities are individuals who experience long-term physical, intellectual, mental, or sensory limitations, which may lead to difficulties in interacting with their social environment and participating in community life (Arianto & Apsari, 2023). This definition is also enshrined in Article 1(1) of Law No. 8 of 2016 on Persons with Disabilities, which underscores a paradigm shift from a medical model to a social model of disability—that is, the barriers faced do not stem solely from individual limitations but arise from social structures that are unaccommodating to differences in ability. In this context, people with disabilities are entitled to equal opportunities in all fields, including the right to employment without discrimination. However, to this day, the strong negative stigma in society often positions them as weak, deserving of pity, or dependent on assistance; this not only undermines their dignity but also reinforces the structural barriers that hinder their access to decent work.

The latest data shows that access to the workforce for people with disabilities in Indonesia remains highly unequal. According to the Central Statistics Agency (BPS), there are approximately 22.97 million people with disabilities in Indonesia, with about 17 million in the working-age population (15-64 years). Although this number is significant, only about 45% are employed, and the majority work in the informal sector, while only about 17% work in the formal sector. This means that the majority of people with disabilities face limited access to formal employment that provides legal protection, stable income, and decent career advancement opportunities.

Law No. 8 of 2016 legally guarantees that people with disabilities have the same right to work without discrimination and to receive reasonable accommodations in the workplace, and mandates employers to facilitate such access. This includes provisions for minimum quotas for workers with disabilities (such as 2% in government agencies and state-owned enterprises and 1% in the private sector) aimed at ensuring their representation in the formal labor market. This legal instrument reflects the state's commitment to the principles of human rights and non-discrimination, in line with the spirit of the Convention on the Rights of Persons with Disabilities (CRPD). However, the reality on the ground indicates that these legal guarantees have not yet been fully realized, particularly in formal employment selection processes such as the recruitment of Civil Servants (ASN). This condition indicates a gap between normative legal protection and its practical implementation, particularly due to the persistence of a medical model approach in administrative and health requirements within ASN recruitment.

Structural barriers in ASN recruitment for people with disabilities can arise from the very beginning of the selection process, such as administrative requirements that are insensitive to specific disability needs, restrictive medical requirements, a lack of adequate accommodations during testing and interviews, and a lack of physical and digital accessibility at selection centers. These barriers not only indicate technical shortcomings but also reflect a disconnect between affirmative policies and day-to-day bureaucratic practices, which often still uphold "normality" as the benchmark for an applicant's capabilities. This situation

can directly impact the low participation rate of people with disabilities in the ASN, despite it being mandated by law.

Social factors, additionally, such as public perceptions of the work capabilities of people with disabilities, also reinforce structural barriers. A dichotomous view of “normal vs. not normal” often results in low expectations regarding the professional capabilities of people with disabilities, thereby narrowing their opportunities to secure decent employment, including opportunities in the public sector. This highlights the need for a stronger theoretical approach in the research framework, specifically, reinforcing a social model of disability that emphasizes the need for changes in social structures and policies, rather than merely addressing individual discrimination.

Studies on the fulfillment of the rights of people with disabilities have not only developed within the context of national law but also have garnered attention from international and religious perspectives. In countries with legal traditions influenced by Islamic values, such as Egypt, the principle of respect for human dignity serves as a crucial foundation for the protection of vulnerable groups, including people with disabilities. One of the major centers of Islamic studies that has had a significant influence on legal and social thought in the Islamic world is Al-Azhar University in Cairo. This institution has produced much thought emphasizing the principles of social justice, equality, and respect for individual capabilities without discriminating based on physical or social conditions.

From an Islamic values perspective, respect for people with disabilities is not merely normative but also is reflected in social practices during the early development of Islam. One frequently cited example is the story of Abdullah bin

Umami Maktum, a companion of the Prophet (Dahlan & Anggoro, 2021) (peace be upon him), who was visually impaired yet was entrusted with significant roles in society, including serving as a muezzin and leading the community on several occasions. This story demonstrates that physical limitations do not prevent someone from contributing to social and institutional life if they possess sufficient competence and integrity. In the study of Islamic education, this value is understood as a form of recognition of human equality before God and an affirmation that an individual's capabilities should be assessed based on their capacity and contributions, not merely their physical condition (Anshori dkk., 2026).

This principle is relevant to the modern approaches in disability studies, particularly the social model of disability, which emphasizes that the primary barriers faced by people with disabilities are not their physical or mental conditions, but rather social structures and policies that are not yet fully inclusive. In the context of modern law, this approach is reflected in various instruments protecting the rights of people with disabilities, which place the state as the party obligated to create an accessible and non-discriminatory environment. This aligns with the view that public policies must be designed to eliminate structural barriers that hinder the participation of people with disabilities in various sectors of life, including education, public services, and employment opportunities.

There is a lack of oversight and evaluation regarding the implementation of affirmative action policies, in addition to administrative and social barriers. Incomplete and invalid data collection mechanisms regarding the number of civil servants with disabilities, inconsistent reporting standards across agencies, and

limited institutional accountability are factors that slow down the implementation of these policies. Without a robust monitoring system and comprehensive evaluation mechanisms, the potential of affirmative action policies remains merely at the normative level and fails to produce tangible impacts for the intended groups.

The urgency of this research is further underscored when viewed within the context of unequal access to formal employment, which impacts the social well-being of people with disabilities. With the majority of people with disabilities working in the informal sector-which often lacks social security or stable income-their inability to enter the formal sector, such as the civil service, is not only a matter of employment injustice, but also contributes to the low quality of life and economic independence of this group. Thus, an evaluation of the effectiveness of legal protections and policy recommendations capable of overcoming these structural barriers is crucial to achieving true equality of employment opportunities. Therefore, this study not only examines the implementation of existing regulations but also offers a reinterpretation of administrative and medical requirements from the perspective of non-discrimination, as well as a critical doctrinal analysis of the disharmony between disability law and civil service regulations.

Research on the protection and fulfillment of the rights of persons with disabilities in the context of employment in Indonesia has grown rapidly over the past five years, particularly since the enactment of Law No. 8 of 2016 on Persons with Disabilities. Previous studies have highlighted various aspects, ranging from normative analysis and human rights approaches to evaluations of the

implementation of affirmative policies, such as minimum quotas for civil servants with disabilities. The first study emphasized the need for a paradigm shift from a medical model to a social model of disability, which views employment barriers not merely as individual limitations but as the result of interactions with structural barriers in the workplace. Findings indicate that while affirmative policies have been established normative, the administrative standards applied in the public sector remain discriminatory-for example, overly rigid health requirements-preventing people with disabilities from receiving equal treatment. However, this study does not examine the civil servant selection mechanisms in detail at each stage of recruitment, so its contribution is limited to the normative aspect. (Alief Addzakir dkk., 2024).

The second study evaluated government policies regarding the recruitment of civil servants with disabilities, using a normative legal approach with qualitative descriptive analysis. The findings reveal that although the government has established a minimum quota of 2% for people with disabilities, implementation on the ground still faces administrative and technical challenges, including a lack of adequate accommodations during the selection process(Duri & Luke, 2025). This study focuses more on general policies and has not yet thoroughly evaluated the effectiveness of legal protections, whether preventive or repressive, and thus has not been able to explain the structural barriers experienced by applicants with disabilities at each stage of the civil service selection process.

The third study highlights the harmonization of national regulations related to the rights of persons with disabilities in the labor sector. The analysis indicates a lack of alignment between Law No. 8 of 2016 and civil service regulations and

bureaucratic administrative standards, meaning that, technically, the implementation of the right to work does not yet fully reflect the principles of non-discrimination and equal opportunity (Duri & Luke, 2025). Although the rights of persons with disabilities have been recognized in principle, practices on the ground indicate that structural barriers remain, including non-inclusive administrative requirements, limited accessibility, and weak oversight.

Several studies, furthermore, examining inclusion policies in the public sector indicate that positions for civil servants with disabilities often remain unfilled, and some selection criteria still fail to accommodate the specific needs of people with disabilities. This indicates a gap between affirmative regulations and the reality of recruitment practices, highlighting the need for a comprehensive evaluation of every stage of the selection process, from the registration web , administrative screening, basic competency tests, to interviews and health verification.

Previous studies, overall, have made important contributions to understand the protection of employment rights for people with disabilities and affirmative action policies, but most remain descriptive or normative, failing to examine the technical and operational aspects of civil service recruitment. The shortcomings of previous research are evident in the lack of empirical evaluation of selection mechanisms, limited analysis of the effectiveness of legal protections, and the absence of direct perspectives from applicants with disabilities.

There is a clear research gap: no comprehensive study has yet examined the protection and fulfillment of the right to work for people with disabilities within the context of civil service recruitment as a whole, including structural barriers and the implementation of affirmative action policies at every stage of the

selection process. This gap is critical to address because, without a holistic understanding, policy interventions will remain merely symbolic and fail to enhance the participation of people with disabilities in formal employment.

The integration of human rights perspectives, the social model of disability, and the value of justice within religious traditions thus provides a strong conceptual foundation for efforts to fulfill the rights of persons with disabilities in the public sector. This approach emphasizes that affirmative action policies, including in the recruitment of Civil Servants, are not merely a form of special treatment, but rather an instrument to achieve substantive equality for groups that have long faced structural barriers in accessing employment opportunities.

Based on the above background, this study raises several key questions. First, how is the legal framework governing the right to work for persons with disabilities in the civil service (ASN) recruitment process in Indonesia? Second, how is the implementation of disability quota policies in ASN recruitment, and to what extent have these policies been realized in practice? Third, what structural barriers, including administrative, medical, and accessibility-related factors, hinder persons with disabilities in accessing employment opportunities within the civil service system?

B. RESEARCH METHOD

This study employs a normative legal research method focusing on the analysis of legal norms contained in legislation, legal doctrines, and expert opinions. This method is used to examine the legal framework and protection of the right to work for persons with disabilities in civil service recruitment in Indonesia. The research applies a statutory approach to analyze the hierarchy and

consistency of laws with the principles of non-discrimination and human rights, as well as a conceptual approach to understand legal concepts such as equality, justice, non-discrimination, and reasonable accommodation. In addition, this study incorporates a case approach by examining relevant legal cases and practices related to discrimination and access to employment for persons with disabilities, particularly within the public sector. A comparative approach is also applied to compare regulatory frameworks and best practices from other countries in ensuring inclusive civil service recruitment systems. The primary legal materials analyzed include Law No. 8 of 2016 on Persons with Disabilities, Law No. 5 of 2014 on the Civil Service, Government Regulation No. 60 of 2020, and Ministerial Regulation No. 27 of 2021. Secondary legal materials consist of recent scientific journal articles, legal doctrines, books, and policy documents. This study also utilizes relevant court decisions and legal precedents that reflect the application of non-discrimination principles and the protection of disability rights in employment. The collection of legal materials is conducted through a literature review by selecting and categorizing materials based on relevance and authority. The analysis of legal materials is carried out qualitatively using legal reasoning techniques, including deductive reasoning to derive specific conclusions from general legal principles and analogical reasoning to interpret norms in situations where explicit regulations are limited, particularly in the context of reasonable accommodation in civil service recruitment. Through these approaches, this study aims to produce systematic and comprehensive legal arguments while identifying regulatory gaps and strengthening inclusive legal protection for persons with disabilities.

C. RESULT AND DISCUSSION

1. Legal Framework for the Labor Rights of Persons with Disabilities

The right to work is a constitutional right guaranteed under Article 27(2) of the 1945 Constitution of the Republic of Indonesia, which affirms that every citizen has the right to obtain employment and a decent livelihood (Ndaumanu, 2020). This provision serves as the normative foundation for the protection of the labor rights of persons with disabilities within the Indonesian legal system. Furthermore, Law No. 8 of 2016 on Persons with Disabilities reaffirms in Article 11 that persons with disabilities have the right to obtain employment without discrimination, receive equal pay, and receive reasonable accommodations in the (Hidayatullah & Noer, 2021) Article 53(1) mandates that the central government and local governments employ at least 2% of people with disabilities out of the total number of employees.

In the context of civil service recruitment, this provision is reinforced by Law No. 5 of 2014 on the Civil Service, which emphasizes the implementation of a merit-based system—that is, selection based on competence and qualifications. However, critical analysis reveals potential inconsistencies. For example, the requirement to be “physically and mentally healthy” is often applied in a formalism manner without considering the principle of reasonable accommodation for persons with disabilities (Mangku dkk., 2022). This indicates that the issue is not the absence of legal protection, but rather the contradiction between disability law and technical recruitment standards.

This misalignment creates a situation where affirmative regulations (the 2% quota) clash with non-inclusive medical operational standards.

Implementation conditions on the ground show that many government agencies simply disqualify applicants with disabilities at the medical examination stage without assessing whether the type of disability can be accommodated through workplace adjustments or assistive devices. Thus, the conflict of norms in this context is not merely administrative, but doctrinal in nature: on the one hand, Law No. 8 of 2016 requires substantive equality and accommodation, while on the other hand, technical recruitment standards still operate on the basis of formalist health requirements.

2. Implementation of Quotas in Civil Service Recruitment

The implementation of disability quotas in civil service recruitment is regulated through Ministerial Regulation No. 27 of 2021, which provides an affirmative pathway for persons with disabilities. Normatively, this policy reflects the state's commitment to equal employment opportunities. However, empirical data shows a significant gap between legal norms and their implementation.

Data from the State Civil Service Agency (BKN) indicates that only approximately 0.14% of civil servants are persons with disabilities, far below the mandated 2% quota. This demonstrates that the policy has not yet translated into substantive access. Comparison Table of Civil Service Quotas for People with Disabilities and National Implementation.

Table 1
Comparison of Civil Service Quotas for People with Disabilities and National Implementation

| No | Aspect | Regulatory Provisions | Empirical Data (2021–2023) | Data Source |
|----|--|--|---|---|
| 1 | Quota for civil servants with disabilities | At least 2% of total employees (Law No. 8 of 2016) | Civil servants with disabilities: approximately 0.14% of the total national civil service | State Service Agency (BKN), 2021 |
| 2 | Policy Objectives | Equal employment opportunities | Implementation remains limited; many positions remain unfilled | Ministry of State Apparatus and Bureaucratic Reform, 2022 |
| 3 | Impact | Affirmative action | There is a significant gap between regulations and practice | BKN Annual Report & Policy Analysis, 2023 |

Source: <https://www.bkn.go.id/publikasi/statistik-asn/>

The gap is caused by several factors, including non-inclusive administrative requirements, rigid medical standards, and limited accessibility during the selection process. In practice, many applicants with disabilities are disqualified at the medical examination stage without proper consideration of reasonable accommodation.

The implementation of quotas is often treated, furthermore, as a formal obligation rather than a substantive commitment to inclusion. The absence of adequate accommodation mechanisms such as accessible testing facilities, assistive technologies, and adjusted evaluation methods reflects a failure to implement the principle of non-discrimination (Riyadi, 2021).

The failure to transform quota policy into a coherent and inclusive recruitment system is, thus, as much of an issue as under-representation. Effective implementation requires harmonization of regulations, improved institutional capacity, and stronger commitment from government agencies (Rahmadhani dkk., 2025).

The lack of coordination between policy-making bodies and implementing agencies, in addition, further contributes to the failure of quota realization, as disability quotas are often treated merely as administrative obligations rather than substantive inclusion strategies (Izulkha & Darmawan, 2023).

3. Structural Barriers and the Need for Regulatory Harmonization

The main structural barriers in ASN recruitment stem from regulatory disharmony, weak oversight, and the persistence of the medical model of disability. Although Law No. 8 of 2016 adopts a social model of disability, technical regulations still rely on rigid medical standards, creating a conflict of norms (Gusman dkk., 2022). This inconsistency reflects a deeper problem within the legal system, where higher-level regulations promoting non-discrimination are undermined by lower-level technical rules. As a result, affirmative action policies fail to achieve their intended purpose (Natasya dkk., 2025).

From a human rights perspective, the state is obligated to respect, protect, and fulfill the rights of persons with disabilities, including eliminating discriminatory policies and ensuring equal access to employment (Noviasari & Nurwati, 2020). This obligation is further reinforced through the state's duty to provide protection and fulfillment of right (Muhibbin & Hendriani, 2021).

However, weak enforcement and the absence of effective sanctions reduce the effectiveness of these obligations (Widadsyah, 2023).

The social model emphasizes that barriers arise from inaccessible systems rather than individual limitations, requiring inclusive policy reforms and equal access to employment opportunities (Setiawan dkk., 2024). This perspective is further strengthened by the need to remove structural barriers within recruitment systems(Salsabila dkk., 2025). In addition, reasonable accommodation must be implemented systematically to prevent structural injustice in recruitment processes(Puspitosari dkk, 2022).

The principle that individuals should be assessed based on competence rather than physical condition is, furthermore, strengthened by Islamic values of equality and justice (Nafisa dkk., 2025). Strengthening oversight mechanisms and institutional coordination is therefore essential to ensure the effective implementation of quota policies and inclusive recruitment systems(Annisa dkk., 2025).

Table 2
Comparison of Disability Employment Policy: Indonesia and Egypt

| No | Aspect | Indonesian | Egypt |
|----|--------------------------------|--|--|
| 1 | Legal Framework | Law No. 8 of 2016 guarantees non-discrimination and reasonable accommodation | Law No. 10 of 2018 ensures disability rights and employment protection |
| 2 | Constitutional BasisObjectives | Article 27(2) of the 1945 Constitution | Article 81 of the 2014 Constitution |

| | | | | | |
|---|----------------|--|------------|--|----|
| 3 | Quota Policy | Minimum 2% (public sector) | (public) | Minimum (companies) | 5% |
| 4 | Approach | Moving toward model | social | Still influenced by medical model | |
| 5 | Implementation | Gap between regulation and practice | regulation | Weak enforcement despite higher quota | |
| 6 | Main Barriers | Administrative, standards, lack of accommodation | medical | Cultural stigma, weak supervision, limited accessibility | |
| 7 | Enforcement | Weak monitoring and sanctions | and | Sanctions exist but not effective | |

***Source:** Processed from Indonesian and Egyptian laws and regulations and the author's analysis (2026).*

Both Indonesia and Egypt have established legal frameworks to protect the employment rights of persons with disabilities as seen from a comparative perspective yet both face significant challenges in bridging the gap between statutory mandates and actual workplace integration. Although Egypt applies a higher quota of 5%, its effectiveness remains limited due to weak enforcement mechanisms and the persistence of the medical model of disability. This indicates that increasing quota percentages alone does not necessarily lead to better inclusion.

A shift toward a social model of disability and an emphasis on reasonable accommodation have, in contrast, begun to emerge in Indonesia. However, rigid administrative and medical requirements still hinder the implementation of inclusive recruitment systems. Therefore, the primary issue in Indonesia lies not in the lack of regulation, but in the inconsistency between legal norms and bureaucratic practices.

Based on this comparison, the most relevant approach for Indonesia is not merely to increase the quota, but to strengthen regulatory harmonization, improve oversight mechanisms, and ensure the effective implementation of reasonable accommodation. Without these efforts, affirmative action policies risk becoming symbolic and failing to achieve substantive equality in civil service recruitment.

D. CONCLUSION

This study demonstrates that the legal framework governing the right to work for persons with disabilities in Indonesia is normatively well-established, particularly through constitutional guarantees and Law No. 8 of 2016, which emphasizes non-discrimination and reasonable accommodation. However, the findings reveal that the primary issue does not lie in the absence of regulation, but rather in the inconsistency between legal norms and their implementation in civil service (ASN) recruitment.

The implementation of disability quota policies has not yet achieved substantive equality, as evidenced by the significant gap between the mandated 2% quota and its realization in practice. Structural barriers, including rigid administrative requirements, medical-based assessments, and limited accessibility, continue to restrict the participation of persons with disabilities in the public sector. This condition reflects the persistence of the medical model of disability, which contradicts the social model approach adopted in the legal framework.

Regulatory disharmony and weak oversight mechanisms, furthermore, contribute to the ineffective enforcement of affirmative action policies. Although the state holds the obligation to respect, protect, and fulfill the rights of persons

with disabilities, these obligations are not fully realized due to the absence of consistent policy integration and enforcement mechanisms. As a result, quota policies often remain symbolic and fail to produce meaningful inclusion. The comparative perspective with Egypt further confirms that increasing quota percentages alone is insufficient without strong institutional enforcement and inclusive recruitment systems. Therefore, the most appropriate approach for Indonesia is to strengthen regulatory harmonization, improve oversight mechanisms, and ensure the systematic implementation of reasonable accommodation at every stage of the recruitment process. Achieving substantive equality for persons with disabilities in civil service recruitment, ultimately, requires not only normative legal protection, but also a transformation of bureaucratic practices, institutional capacity, and societal perspectives toward a more inclusive and non-discriminatory system.

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