

Upholding the Rights of Persons with Disabilities Through the Difference Principle

Miftakhul Shodikin^{1*}, Syofyan Hadi²

^{1,2}Universitas 17 Agustus 1945 Surabaya, Indonesia

* Corresponding Author: 1322300002@surel.untag-sby.ac.id

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Abstract

The right to work is a right for every citizen to earn a decent living for humanity. However, injustice is still often felt by people with disabilities who often face challenges in accessing this right. The difference principle asserts that inequality is only acceptable if it provides the greatest benefit to the most disadvantaged. This principle is an appropriate analytical tool to evaluate how employment policies in Indonesia have succeeded in minimizing the inequalities faced by persons with disabilities. Therefore, this research aims to explain the difference principle prioritizes the well-being of those who are most disadvantaged or marginalized. This study aims to analyze the legal issues through a normative legal lens, incorporating both statutory and conceptual analysis. Through normative analysis and deductive reasoning, the result of this research is that the regulation of the right to work for persons with disabilities is not yet optimal in accordance with the difference principle. Such as special quota policies that are not accompanied by strict sanctions, training, and job fairs that are still general and have yet to fully meet the unique requirements of individuals with disabilities. The inclusive recruitment process, which should be a must, is a phrase in the article that regulates the possibility (optional) instead of an obligation (mandatory). Meanwhile, the limited authority of the Disability Service Unit (ULD) in the employment sector and the weak institutional structure of the National Commission on Disability (KND), which is far from independent, include the barriers that individuals with disabilities encounter in accessing their right to employment.

1. Introduction

Employment rights for individuals with disabilities has become an important legal and social issue, in line with increasing global efforts to create inclusive and non-discriminatory work environments in modern society.¹ In Indonesia, legal guarantees pertaining to employment rights have been regulated in Law Number 8 of 2016 concerning Persons with Disabilities (Law No.8/2016). One of them is in Article 52 of Law No.8/2016 which states that there is a guarantee for persons with disabilities to obtain equal access concerning the perks and programs provided under the national social security employment system. Nevertheless, the practical implementation of these programs has been suboptimal. However, the implementation in the field has not been fully implemented properly.²

Especially in the labor market and job market in Indonesia, which is still characterized by great challenges for Individuals with disabilities. Concerning employment prospects, individuals with disabilities are often faced with systemic barriers. Many companies have not

¹ Nurinaya, "Perbandingan Kebijakan Indonesia Dan Australia Terkait Pemenuhan Hak Penyandang Disabilitas," *Journal of Government and Politics (JGOP)* 3, no. 1 (July 2021): 18-32, <https://doi.org/10.31764/jgop.v3i1.5352>.

² Nufi Alabshar et al., "Disabilitas Dan Kemiskinan Ekstrem Di Indonesia: Analisis Data Survei Sosial Ekonomi Nasional Tahun 2020," *Jurnal Kawistara* 14, no. 1 (May 13, 2024): 86-102, <https://doi.org/10.22146/kawistara.83519>.

provided an inclusive work environment, both in terms of physical and technological accessibility, which can support people with disabilities to work effectively. In fact, in accordance with Article 11 letter a of Law No.8/2016, disabled people have the right to work without discrimination. Furthermore, Article 53 paragraphs (1) and (2) of Law No.8/2016 mandates that the government, together with state-owned and regionally-owned enterprises, hire a minimum of 2% of people with disabilities, and private companies 1%. This quota rule is important for equal opportunities and reducing discrimination, but its implementation is constrained by lack of awareness, infrastructure, stigma, weak law enforcement, and resources. Law No.8/2016 does not stipulate clear sanctions for violations of this quota obligation, creating challenges for individuals with disabilities to join the workforce. In addition, employment agreements and industrial relations disputes are important aspects that must be considered with the labor rights of individuals with disabilities, particularly employment contracts for people with disabilities often fail to consider their specific needs.³

This is evidenced by the high unemployment rate for individuals with disabilities. As reported by the Central Bureau of Statistics in 2023, the total number of people with disabilities in Indonesia was around 22.5 million. Of this total, 17.74 million people or 78.8% are of working age. Among these working-age people with disabilities, only 44% or around 7.8 million people are employed, while the other 9.94 million people (56%) have unknown types of employment.⁴ Only around 5,825 individuals with disabilities are employed in the formal sector, with 1,271 people or 21.8% of them working in State-Owned Enterprises (BUMN), and another 4,554 people or 78.2% in private companies.⁵ This is less than 1% of the total number of people with disabilities who work, indicating that the vast majority, exceeding 99%, of people with disabilities are engaged in informal employment.

Persons with disabilities themselves require additional support or needs in accessing the world of work. For example, with special facilities and treatment so that they can participate optimally in the world of work.⁶ So that the limitations they have, be it physical, sensory, intellectual and / or mental, do not become a barrier to accessing equal opportunities in the world of work. Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that "Everyone is entitled to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice". In the context of workers with disabilities, this Article affirms that the state must provide convenience and special treatment in order to obtain equal opportunities and benefits. This of course means that the state is also obliged to provide affirmative action or special policies that allow persons with disabilities to obtain equal opportunities, especially in the world of work. In line with

³ Otti Ilham Khair, "Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja Di Indonesia," *Widya Pranata Hukum* 3, no. 2 (September 2021): 45-63, <https://doi.org/10.37631/widyapranata.v3i2.442>.

⁴ Badan Pusat Statistik (BPS), "Statistik Indonesia (Statistical Yearbook Of Indonesia)" (Jakarta, 2023).

⁵ Badan Riset dan Inovasi Nasional (BRIN), "Naskah Kebijakan Peningkatan Hak Akses Ketenagakerjaan Bagi Penyandang Disabilitas (Rekomendasi Kebijakan Komite Nasional MOST-UNESCO Indonesia).," 2022.

⁶ Eyda Kurnia, "Perbandingan Melalui Pendekatan Hukum Terhadap Hak Penyandang Disabilitas Dalam Penyediaan Fasilitas : Indonesia, Amerika Serikat, Dan Mesir," *Jurnal Res Justitia : Jurnal Ilmu Hukum* 4, no. 2 (July 2024): 335-47, <https://doi.org/10.46306/rj.v4i2>.

this, vulnerable groups, although not explicitly formulated in legislation, are listed in Article 5 paragraph (3) of Law No. 39/1999 on Human Rights (Law No.39/1999) which states that every person belonging to a vulnerable group of society is entitled to receive more treatment and protection about their specialty. The Explanation of the article states that what is meant by vulnerable groups of society are, among others, the elderly, children, the poor, pregnant women, and people with disabilities.

Vulnerable groups in Law No.39/1999 can be understood as the “most disadvantaged” groups from the perspective of the difference principle. John Rawls describes this group as those who are at the lowest level of expectation in society. According to Rawls, those who are “most disadvantaged” in this context are not identified by fixed personal characteristics, such as race, gender, or nationality, but by their position in the changing economic and social structure.⁷ The most disadvantaged people are therefore those in the lowest social and economic positions in the structure of society. They have the most limited access to resources, opportunities, and social benefits, such as education, employment, healthcare, and political participation.

People with disabilities occupy a disadvantaged position in the economic and social structure of the world of work, as they face various barriers that are social, physical, and structural. Barriers such as stigma and stereotyping mean they are often perceived as less capable or unproductive, limiting their opportunities for employment, promotion, or significant roles in the workplace. Barriers such as stigma and stereotyping mean they are often perceived as less capable or unproductive, limiting their opportunities for employment, promotion, or a significant role in the workplace. As such, people with disabilities fall into the category of vulnerable and “least advantaged” groups in the social and economic structure.

The Difference Principle states that inequalities should be organized in such a way that they provide maximum benefit to those who are least advantaged. Under this principle, employment policies should be designed to provide greater access and opportunities to persons with disabilities as the most disadvantaged group, so that they can participate fully in economic and social life. This principle demands not only non-discriminatory policies but also policies that are proactive in addressing the structural barriers faced by people with disabilities. For example, companies should be encouraged to provide adequate accommodation and inclusive work environments, so that people with disabilities can work effectively and be equally rewarded.⁸ The application of the difference principle is important to Indonesia's laws and regulations that still prevent people with disabilities from fully enjoying their rights, especially their right to work. This research will explore the extent to which the difference principle is applied in the regulation of persons with disabilities in Indonesia, and how this principle can be used to improve existing policies.

This research refers to three previous studies related to the problems written in this study, namely the first; Journal written by Rhivent Samatara with the title “*Hak Pekerjaan Bagi Penyandang Disabilitas Dalam Perspektif Hak Asasi Manusia*”. Concluding that the regulation of labor rights for individuals with disabilities still has a gap between existing regulations and implemented implementation. The government still provides discriminatory legal protection

⁷ John Rawls, *Justice As Fairness : A Restatement*, ed. Erin Kelly (London: Harvard University Press, 2001).

⁸ Rawls.

which makes it very difficult for persons with disabilities to access job opportunities. The second journal was written by Ametta Diksa Wiraputra with the title "*Perlindungan Hukum Pekerja Penyandang Disabilitas di Indonesia*". Ametta emphasized that in the execution of legal protections for workers with disabilities, there are obstacles, including data on workers with disabilities that vary between agencies, and the implementation of quota fulfillment that has not been maximized. The absence of implementing regulations for Law No.8/2016 and the absence of technical guidelines that discuss the placement of workers with disabilities. Furthermore, the last research journal written by Muhammad Dahlan and Syahriza Anggoro with the title "*Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis*", with the conclusion that existing affirmative policies have not fully provided equal opportunities for people with disabilities are compromised, as medical and special formation requirements restrict them from applying for positions suited to their interests and academic background. The use of the disability medical model in public sector employment practices, in turn, impairs engagement and the formation of an inclusive working environment. This study's novelty lies in utilizing the difference principle as the central theoretical lens for assessing policies related to the right to work for people with disabilities. Different from previous studies, this research not only identifies gaps and obstacles in the implementation of affirmative policies and legal protection for persons with disabilities but also explores a fairer policy model, based on the principle of distributive justice from the difference principle initiated by John Rawls, to encourage truly inclusive employment opportunities.

Employment policies should be designed to provide greater access and opportunities to persons with disabilities as the most disadvantaged group so that they can participate fully in economic and social life. The Difference Principle demands not only non-discriminatory policies but also policies that are proactive in addressing the structural barriers faced by Persons with disabilities.

2. Methods

This study is a legal investigation employing juridical-normative methods to identify legal rules, principles, or doctrines that address the existing legal issues, utilizing both primary and secondary data. The approaches used are statutory approach and conceptual approach.⁹

3. Results and Discussion

3.1. Regulation of the Right to Employment for Persons with Disabilities in National Law

The right to work and an adequate standard of living for persons with disabilities is at the core of universally recognized economic, social and cultural rights, including in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which Indonesia has ratified through Law No. 11 of 2005. The Covenant requires state parties to take progressive measures to ensure the right to inclusive and non-discriminatory employment, including for persons with disabilities. This right includes not only access to employment but also a work environment that is safe, accessible and supports the optimal development of the individual. The principle of non-discrimination, as enshrined in Article 2 of the ICESCR,

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Bandung: Prenada Media, 2020).

provides the moral and legal foundation to remove all forms of barriers experienced by persons with disabilities in the world of work.¹⁰

Furthermore, the relevance of the principle of non-discrimination is reinforced by the Convention on the Rights of Persons with Disabilities (CRPD), which requires state parties to ensure equal access to employment through affirmative policy arrangements, reasonable accommodation, and elimination of stigma and stereotypes. In this context, Indonesia has explicit international obligations to harmonize domestic regulations, such as Law No. 8/2016 on Persons with Disabilities, with the ICESCR and CRPD. However, real challenges are still evident in the implementation of these principles, particularly in the form of a lack of structured policies, inadequate accessibility infrastructure, as well as minimal oversight of non-discrimination practices in the workplace. Therefore, the analysis of the right to work should be geared towards how Indonesia can more effectively fulfill its international obligations, including concrete steps to ensure persons with disabilities are not only legally protected but also empowered in an inclusive and fair labor market.¹¹

The right to work for persons with disabilities is a clear reflection of the state's obligation to implement the principles of non-discrimination and substantive equality as outlined in the Convention on the Rights of Persons with Disabilities (CRPD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Indonesia, as a state party to these two instruments, has an international obligation to ensure that its national legislation reflects a commitment to the elimination of discrimination and the provision of equal opportunities for persons with disabilities.

In principle, national policies already recognize the importance of non-discrimination and substantive equality through various mechanisms, such as disability employment quotas and reasonable accommodation provisions. However, when compared to the standards set by the CRPD, these measures are not fully adequate. The CRPD, for example, demands proactive provision of physical and technological accessibility, strengthening of monitoring mechanisms, and ongoing advocacy to address social stigma. Unfortunately, many companies in Indonesia still do not fulfill these obligations, either due to lack of understanding or the absence of strict sanctions for violations. Thus, national policies should be strengthened with stricter law enforcement and incentives for companies that support workers with disabilities. In addition, the implementation of substantive equality requires a more holistic approach, including inclusive training, provision of accessible infrastructure, and removal of systemic barriers, so that Indonesia can truly fulfill its obligations under international law and provide real protection for the most vulnerable groups.

The right to work is mandated in the constitution in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every citizen has the right to work and a livelihood worthy of humanity". This article is a form of economic and social right that is considered fundamental to the welfare of every individual. This right includes not only

¹⁰ Ave Gave Christina Situmorang and Winanda Kusuma, "Implementasi Convention on The Rights of Persons With Disabilities (CRPD) Terhadap Akses Pekerjaan Dan Lapangan Kerja Bagi Penyandang Disabilitas Di Indonesia," *Utī Possidetis Journal of International Law* 4, no. 2 (June 14, 2023): 165-99, <https://doi.org/10.22437/up.v4i2.23674>.

¹¹ Situmorang and Kusuma.

the opportunity to get a job but also the guarantee that the job must be decent for humanity. The right to work means that every individual has the right to a job that provides fair remuneration and treats workers with dignity.

Implicitly, Article 27 paragraph (2) of the 1945 Constitution guarantees the right to work to every citizen without exception, including persons with disabilities. This guarantee is emphasized in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia by stating that "Everyone has the right to work and to receive fair and appropriate remuneration and treatment in employment". This article not only guarantees the right to work but also ensures that every worker, including persons with disabilities, is entitled to a "fair and decent" reward. In the context of workers with disabilities, the principle of "fairness" is very important as it requires that wages are distributed in accordance with the worker's contribution and capacity, without treating them unequally or exploiting the limitations of their disability.¹² In addition, the term "decent" in this context also refers to the importance of providing wages that are sufficient for the basic needs of persons with disabilities.¹³ This includes additional needs that may arise, such as accessibility, specific health care, or work support equipment. Fair pay should take these factors into account so that workers with disabilities can live in humane and dignified conditions.

Additional needs are indeed needed for workers with disabilities. These facilities and special treatment are so that they can participate optimally in the world of work. The limitations they experience should not be a barrier to accessing equal opportunities. Article 28H paragraph (2) of the 1945 Constitution states that "Everyone has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice". In the context of workers with disabilities, Article 28H paragraph (2) of the 1945 Constitution strengthens the principle of justice contained in Article 28D paragraph (2) of the 1945 Constitution by emphasizing that the state must provide convenience and special treatment to them. This of course means that, in addition to ensuring that wages and treatment in employment relations are fair and decent, the state is also obliged to provide affirmative action or special policies that enable persons with disabilities to obtain equal opportunities in the world of work.

Article 28H paragraph (2) also emphasizes that persons with disabilities should not be treated equally without considering their special conditions, but must be given special treatment in order to truly achieve equality and justice for all, including vulnerable groups such as persons with disabilities in the world of work. In line with this, Law No. 13/2003 on Manpower specifically regulates persons with disabilities by guaranteeing the provision of job training and protection for workers with disabilities. This is stated in Article 19 of Law No. 13/2003 which states that "Job training for workers with disabilities is carried out by taking into account the type, degree of disability, and ability of workers with disabilities concerned". Meanwhile, Article 67 paragraph (1) of Law No. 13/2003 states that Employers who employ

¹² Alabshar et al., "Disabilitas Dan Kemiskinan Ekstrem Di Indonesia: Analisis Data Survei Sosial Ekonomi Nasional Tahun 2020."

¹³ Karinina Anggita Farrisqi and Farid Pribadi, "Perlindungan Hak Penyandang Disabilitas Untuk Memperoleh Pekerjaan Dan Penghidupan Yang Layak," *Jurnal Pekerjaan Sosial* 4, no. 2 (February 1, 2021), <https://doi.org/10.24198/focus.v4i2.36862>.

workers with disabilities are obliged to protect in accordance with the type and degree of disability. The protection as intended itself is for example the provision of accessibility, provision of work tools, and personal protective equipment tailored to the type and degree of disability.

Furthermore, it is regulated in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law). Article 67 Paragraph (1) of the Job Creation Law emphasizes that employers should protect workers with disabilities. In addition, the phrase “protect in accordance with the type and degree of disability” means that employers must not only protect but must also be adjusted to the type and degree of disability.¹⁴ This statement relates to the fact that people with disabilities are not a uniform group of people. It is stated by the International Labor Organization that there are persons with disabilities who experience physical disabilities, sensory disabilities, intellectual or mental disabilities. Meanwhile, people with disabilities themselves get their conditions also vary, some have disabilities since birth, or as children, adolescents, or adults while still attending school or working. Their disabilities may have little impact on their ability to work and participate in the community or may have such a large impact that they require more support or assistance.

Article 67 Paragraph (2) of the Job Creation Law states that the provision of protection as referred to in Article 67 Paragraph (1) of the Job Creation Law is implemented in accordance with statutory regulations. This means that in terms of the protection of workers with disabilities, Law Number 8 of 2016 concerning Persons with Disabilities (Law No. 8/2016) applies. Indonesia has shifted the paradigm of persons with disabilities from compassion to a perspective of empowerment and equality. The paradigm shift began with the establishment of Law No.8/2016 which introduced the term “persons with disabilities” which replaced “persons with disabilities”. The term disabled first appeared in Law No. 4/1997 on Persons with Disabilities. Linguistically and socially, the term “disabled” places individuals with disabilities in a position that is considered less or different than the dominant “normal” standard. The term “handicapped” itself has a negative connotation as if the individual has irreparable flaws. While the use of the term “disability” in Law No.8/2016 refers to a person's functional limitations in interaction with the environment, thus highlighting the role of society and infrastructure in creating better accessibility, rather than just focusing on the individual.

Law No. 8/2016 emphasizes that the responsibility to ensure equality of access is not solely the duty of persons with disabilities, but rather the shared duty of government, society, and the private sector to create a welcoming and inclusive environment. This includes the provision of physical accessibility, reasonable accommodation in the workplace, and educational support that is appropriate to the needs and range of disabilities. The division of various disabilities itself is mentioned in Article 4 paragraph (1) of Law No. 8/2016 that “The variety of disabilities includes persons with physical, intellectual, mental and sensory disabilities”. In addition, the recognition of rights for persons with disabilities is explained in

¹⁴ Ayesha Tasya Izulkha and Monica Virga Darmawa, “Implementasi Perlindungan Hukum Terhadap Buruh Penyandang Menurut Undang Undang Nomor 6 Tahun 2023,” *Jerumi: Journal of Education Religion Humanities and Multidisciplinary* 1, no. 2 (December 2023): 206–11, <https://doi.org/10.57235/jerumi.v1i2.1275>.

Article 5 paragraph (1) of Law No. 8/2016 which includes rights such as the right to life, the right to be free from stigma, the right to privacy, the right to justice and legal protection, the right to education, the right to work, entrepreneurship and cooperatives, the right to health, political rights, religious rights, sports rights, cultural and tourism rights, social welfare rights, accessibility rights, public service rights, protection rights from disasters, habilitation and rehabilitation rights, concession rights. The fulfillment of rights for persons with disabilities is important, one of which is to ensure equality of opportunity in various aspects of life, including the right to work. The right to work is part of human rights that guarantees equality and dignity.¹⁵ Access to employment enables persons with disabilities to live independently, contribute to the economy, and reduce social dependency.¹⁶

The right to work is part of human rights that guarantees equality and dignity. Access to employment enables persons with disabilities to live independently, contribute to the economy, and reduce social dependence. Article 11 letter c of Law No.8/2016 affirms the right for persons with disabilities to obtain reasonable accommodation in employment. Reasonable accommodation in employment, which includes modifications to the work environment, assistive devices, and adjustments necessary for persons with disabilities to work effectively. These accommodations are important to ensure that they can contribute optimally, regardless of the physical or mental barriers they may face.

In Article 11 letter d of Law No.8/2016, persons with disabilities are entitled to protection from dismissal or termination of employment solely because of their disability. This will certainly prevent discrimination in employment termination policies and provide a sense of security for persons with disabilities at work. If persons with disabilities lose their jobs due to accidents or other conditions that make them temporarily unable to work, they are entitled to a return to work program as mentioned in Article 11 letter e of Law No.8/2016. This program aims to facilitate persons with disabilities to return to the workforce after undergoing rehabilitation or retraining. Persons with disabilities have the right to a job placement that matches their capacity, is fair, proportional, and respects their dignity as individuals. This placement must consider their abilities and potential without discrimination, and avoid degrading treatment.¹⁷

Other employment rights mentioned in Law No.8/2016 include in terms of the recruitment process, employers are required to carry out the recruitment process in accordance with proper rules, namely by providing assistance during the exam, providing tools and forms of tests that are in accordance with the conditions of persons with disabilities, and providing sufficient processing time. In addition, persons with disabilities must be placed in accordance with their interests, talents, and abilities (Article 47). In job placement, employers also need to pay attention to several aspects, such as an orientation period, flexible workplaces to suit

¹⁵ Aprilina Pawestri, "Hak Penyandang Disabilitas Dalam Perspektif HAM Internasional Dan HAM Nasional," *Era Hukum* 2, no. 1 (2017), <https://doi.org/doi.org/10.24912/era%20hukum.v15i1.670>.

¹⁶ I., Istifarroh and W. C. Nugroho, "Perlindungan Hak Disabilitas Mendapatkan Pekerjaan Di Perusahaan Swasta Dan Perusahaan Milik Negara," *Mimbar Keadilan* 12, no. 1 (November 2019): 21–34, <https://doi.org/10.30996/mk.v12i1.2164>.

¹⁷ Dilli Trisna Noviasari and Nurwati Nurwati, "Perlindungan Tenaga Kerja Disabilitas Dalam Perspektif Hak Asasi Manusia," *Borobudur Law Review* 2, no. 1 (February 28, 2020): 16–29, <https://doi.org/10.31603/burrev.3921>.

various disabilities, rest periods, and flexible work schedules. In addition, it is important to provide assistance during the performance of work and special permission or leave for medical purposes (Article 48).

In addition to the above, reasonable accommodation is needed to build an inclusive work environment, where the needs of people with disabilities can be met without compromising efficiency and productivity.. This is stated in Article 50 paragraph (1) of Law No.8/2016 which states that “Employers are obliged to provide reasonable accommodation and facilities that are easily accessible to workers with disabilities”. The term “reasonable accommodation” is defined in Article 1 point 9 of Law No. 8/2016 as modifications and adjustments that are appropriate and necessary to ensure the enjoyment or exercise of all human rights and fundamental freedoms for persons with disabilities based on equality. This definition is in line with that contained in the Convention on the Rights of Persons with Disabilities (CRPD), which defines “reasonable accommodation” as modifications and adjustments that are necessary and appropriate, without imposing disproportionate or undue additional burdens, to ensure the enjoyment or exercise of all human rights and fundamental freedoms by persons with disabilities on an equal basis with others.

The concept of “reasonable accommodation” in Law No. 8/2016 covers all types of disabilities, including physical, intellectual, mental and sensory. This means that employers must make the necessary adjustments to ensure that individuals with disabilities can enjoy their rights fully and equally. For example, people with physical disabilities who have impaired mobility require physical accessibility such as ramps, handrails, wheelchairs, or infrastructure designs that support their mobility in the work environment. If companies do not provide sufficient physical accessibility, people with physical disabilities will find it difficult to move around and access basic facilities such as workspaces or toilets, which hinders their ability to work optimally. On the other hand, people with mental and intellectual disabilities face more challenges related to social support and specialized training. People with mental disabilities, such as those with mental illness or psychiatric problems, need support from professionals, such as companions, counselors, or special trainers to help them do their jobs well. Reasonable accommodation for persons with mental disabilities includes access to psychosocial support that helps them manage emotions or behaviors in the workplace. Similarly, people with intellectual disabilities, who have limitations in understanding new information or skills, require slower training and adaptation in work systems, as well as support from supervisors or coworkers who understand their needs. Meanwhile, people with sensory disabilities, such as the visually or hearing impaired, require assistive devices that can support them in their activities, such as adaptive canes, guideways, hearing aids, or sign language interpreters, in order to interact with coworkers or follow instructions efficiently. For people with multiple or multiple disabilities, who have two or more types of disabilities, reasonable accommodation is even more complex, as they require a wide range of assistance that must be tailored to their combination of disabilities.

This concept of “reasonable accommodation” is in line with international standards, particularly those contained in the CRPD. Article 27 of the CRPD stipulates the right of persons with disabilities to work and to reasonable accommodation in the workplace, which includes modifications to the work environment, flexible working hours, use of assistive technology,

and appropriate training or learning. Thus, this concept does not only apply to certain types of disabilities, but to all types of disabilities, considering that each type of disability has specific needs that must be accommodated so that they can participate effectively in society and the world of work. Law No.8/2016 also stipulates administrative and criminal sanctions for employers who do not provide reasonable accommodation. However, in the context of special quotas, this situation is less firm, because until now there are no clear sanctions for employers who fail to meet the set quota percentage.

Protection for persons with disabilities in the sphere of employment is essential to ensure that they have equal opportunities to contribute to the world of work, achieve economic independence and feel valued as productive members of society. One of the supports for persons with disabilities to do a good job is a special quota for persons with disabilities. The special quota program mentioned in Article 53 of Law No.8/2016 is one of the affirmative policy instruments designed to ensure fairer access and representation for certain groups, including persons with disabilities, in various fields of life, especially in the world of work. The special quota system is an important policy in creating equal opportunities for persons with disabilities in the world of work. Article 53 paragraph (1) of Law No.8/2016 regulates the obligation of the Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises to employ at least 2% (two percent) of persons with disabilities from the number of employees or workers. Meanwhile, Article 53 paragraph (2) of Law No.8/2016 regulates the obligation for private companies to employ at least 1% (one percent) of persons with disabilities from the number of employees or workers.

Meanwhile, the implementation of special quotas faces inconsistencies between Law No. 8/2016, Law No. 13/2003, and the Job Creation Law. Although Law No. 8/2016 mandates companies to employ persons with disabilities through quotas, this provision is not emphasized in Law No. 13/2003 or the Job Creation Law, which focuses more on flexibility and simplification of labor regulations. This creates legal dissonance, where affirmative policies regulating disability quotas tend to be neglected in practice.¹⁸ The Job Creation Law prioritizes reducing barriers for companies and simplifying employment administrative processes, without giving serious attention to fulfilling the disability quota that should be an obligation for both the public and private sectors. This inconsistency has the potential to weaken the state's efforts to create an inclusive work environment, even allowing for covert discrimination against persons with disabilities. Therefore, the synchronization of regulations between Law No. 8/2016 and Law No. 13/2003, as well as the strengthening of policies in the Job Creation Law, is essential so that the quota provisions for persons with disabilities are not only normative but can also be implemented effectively and sustainably. Strengthening oversight, implementing stricter sanction mechanisms, and reviewing conflicting or inconsistent articles must be carried out so that this affirmative policy can truly be realized in the workforce.

¹⁸ Novia Ayu Dwi Rachman, Endang Indartuti, and Nunuk Rukminingsih, "Evaluasi Peraturan Daerah Kota Surabaya Nomor 7 Tahun 2002 Tentang Pengelolaan Ruang Terbuka Hijau Di Taman Prestasi Kota Surabaya," *Jurnal Penelitian Administrasi Publik Universitas 17 Agustus 1945 Surabaya* 4, no. 2 (March 23, 2019).

Special attention must be paid to issues pertaining to people with disabilities in Indonesia, particularly those pertaining to their rights' preservation and fulfillment. According to Article 131 of Law No. 8/2016, the National Disability Commission (KND) must be established as a separate, non-structural organization in order to carry out the respect, defense, and realization of the rights of people with disabilities. Then, through Presidential Regulation of the Republic of Indonesia Number 68 of 2020 concerning the National Disability Commission (Perpres No.68/2020), the KND was officially established and is present to ensure that the rights of persons with disabilities are recognized, protected, and implemented in various aspects of life.

KND is independent and directly accountable to the President. This institution plays a strategic role in ensuring that the rights of persons with disabilities in Indonesia are protected and fulfilled. Article 4 of Presidential Regulation No. 68/2020 explains that the duties of the KND include monitoring, evaluation, and advocacy to respect, protect, and fulfill the rights of persons with disabilities. In terms of carrying out these duties, Article 5 of Presidential Regulation No. 68/2020 mandates that the KND's functions include planning activities, monitoring and evaluation, advocacy, and implementing cooperation. The KND must oversee and ensure the implementation of policies and programs that are, of course, related to the fulfillment of the rights of persons with disabilities, including the right to obtain employment. This right is guaranteed in Law No. 8/2016, which provides legal protection for persons with disabilities to obtain equal employment opportunities without discrimination.

As an external supervisor, KND is tasked with ensuring that all rules and policies supporting the right to work for persons with disabilities are implemented properly and without discrimination. This includes monitoring the recruitment process, evaluating the work environment, as well as reporting and addressing various forms of discrimination that may be experienced by persons with disabilities. This role aims to ensure that persons with disabilities not only have access to the workforce but can also work in an environment that is equitable, safe, and supportive of their personal development. KND plays a role in providing improvement recommendations to government agencies and related companies to create a more inclusive work system.

3.2. An Analysis of the Difference Principle in the Context of the Regulation

The theory of justice by John Rawls states that justice is the first principle of the social order that must be prioritized above all else, with two main principles that should serve as the foundation for designing a just society.¹⁹ Then John Rawls developed two main principles that should serve as the foundation for designing a just society. The first is the equal liberty principle, which states that every individual has an equal claim to fulfill their basic rights and liberties that are compatible and of the same kind for all, as well as equal political freedoms guaranteed by fair values. The second principle states that there are social and economic inequalities can be justified based on two conditions: (a) attached to offices and positions that are open to all under conditions of fair equal opportunity, and (b) the greatest benefit for the least advantaged members of society.²⁰

¹⁹ Rawls, *Justice As Fairness : A Restatement*, 159.

²⁰ Rawls, 42-43.

The first principle, equal liberty, encompasses aspects such as freedom in politics, freedom of speech and expression, and the right to practice religion. The second principle, part (a), is referred to as the equal opportunity principle, and part (b) is called the difference principle, which is based on the principle of inequality that can be justified through controlled policies, as long as it benefits vulnerable groups in society.²¹ Therefore, Rawls argues that economic and social inequalities are permissible as long as those inequalities provide the greatest benefit to the least advantaged members of society. In other words, the social structure must be arranged in such a way that it benefits all layers of society, especially those in the weakest positions, and this is what is referred to as the difference principle.

According to Premchand, the Difference Principle is one of the core principles of Rawls' theory of justice.²² This principle allows social and economic inequalities only if those inequalities improve the welfare of the disadvantaged. In other words, if there are policies or social arrangements that cause differences in the distribution of wealth or social status, such policies can only be justified if they help improve the position of the most vulnerable groups. Thus, in Rawls' view, he opposes the notion that a fair distribution of wealth is an equal distribution. On the contrary, he emphasized that inequality is only acceptable if it benefits everyone, especially those in the weakest positions. In terms of employment, individuals with disabilities are one of the vulnerable groups referred to by Rawls. Its relevance to ensuring the right to work for disability, the difference principle proposes that employment policies should be designed to reduce the disparities faced by individuals with disabilities in accessing jobs. For example, people with disabilities often face accessibility barriers and discrimination in the recruitment and placement process. According to the difference principle, this must be addressed through affirmative policies that provide special support to them, so that they can have equal opportunities in the job market.

The difference principle proposed by John Rawls emphasizes the importance of inequalities that can be justified if those inequalities benefit the least advantaged. Through this principle, Rawls seeks to create a just social structure, where existing inequalities are regulated in such a way as to maximize the welfare of the weakest group in society through the implementation of affirmative action or positive discrimination. These social structures and institutions function to regulate and control inequalities so that these inequalities can benefit the most disadvantaged groups. Thus, the author feels that this principle is very suitable as a compatible analytical tool to evaluate the extent to which employment policies in Indonesia have succeeded in minimizing the inequalities faced by persons with disabilities.

Physical, mental, or intellectual limitations experienced by individuals with disabilities can pose significant challenges for them in competing in the job market.²³ The difference principle itself emphasizes the importance of improving the living conditions for those who are in the least advantageous positions. People with disabilities often belong to groups that

²¹ Pan Mohamad Faiz, "Teori Keadilan John Rawls," *Jurnal Konstitusi* 6, no. 1 (April 2009): 136-49, <https://doi.org/10.2139/ssrn.2847573>.

²² Lakshmi Premchand, "Social Justice and Rawl's Difference Principle," *Essex Student Journal* 9 (2017), <https://doi.org/10.5526/esj17>.

²³ Galuh Wahyu Kumalasari, "The Indonesian Disability National Commission As a Strategic Policy In Fulfilling The Right Of People With Disability," *Diponegoro Law Review* 2, no. 2 (October 30, 2017): 300, <https://doi.org/10.14710/dilrev.2.2.2017.56-67>.

face significant barriers in accessing decent employment. Rawls argues that social justice must ensure that social structures support the redistribution of resources to improve the welfare of all, especially those in greatest need. In relation to the right to work, this means creating policies that not only provide job opportunities but also ensure a workplace that is friendly and supports diversity, especially for people with disabilities. The difference principle emphasizes that social and economic inequalities are acceptable as long as those inequalities benefit the most vulnerable groups in society.²⁴ In this case, persons with disabilities are among the groups vulnerable to unequal access to employment, thus they need to be given specific provisions in employment policies. One of the special policies implemented to guarantee the right to work for persons with disabilities is the regulation of special quotas for persons with disabilities in the field of employment. The special job quota for persons with disabilities is regulated in Article 53 paragraph (1) of Law No. 8/2016, which mandates that the Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises must employ at least 2% (two percent) of persons with disabilities from the total number of employees or workers. Meanwhile, Article 53 paragraph (2) of Law No. 8/2016 mandates that private companies must employ at least 1% (one percent) of persons with disabilities from the total number of employees or workers. This quota policy quite illustrates the difference principle as it is a form of affirmative action or positive discrimination designed to address the disparity in job access often faced by persons with disabilities. With the existence of special quotas, it is hoped that persons with disabilities can be more easily accepted in the job market, as well as obtain guaranteed rights to employment for persons with disabilities, as stipulated in the constitution and laws. However, the success of this policy depends on its alignment with the needs of companies and support from the government. The difference principle always encourages policies not just to meet minimum requirements, but policies must be designed to ensure that people with disabilities can access better opportunities, in line with the difference principle's aim to promote the welfare of the most marginalized in society. Although the quota obligation serves as a form of opportunity redistribution aimed at improving the position of persons with disabilities in society, especially in the employment sector. The provision regarding special quotas for persons with disabilities regulated in Article 53 paragraph (1) of Law No. 8/2016 is not necessarily sufficient to address inequality for persons with disabilities. A legal obligation is an obligation imposed by law or legislation. Failure to fulfill obligations can result in legal consequences, including administrative sanctions, criminal sanctions, or civil sanctions. In other words, the obligation for companies regarding the special quota for disabilities in the workplace is related to the fulfillment of the rights of persons with disabilities. However, the legal obligation in Article 53 paragraph (1) of Law No. 8/2016 is not accompanied by legal consequences for companies that do not provide job opportunities to persons with disabilities or do not implement the mandate of the aforementioned Article. This is certainly problematic because on one hand it imposes an obligation, but on the other hand, there are no legal consequences.

²⁴ Rawls, *Justice As Fairness : A Restatement*, 51.

The law should provide legal certainty for all members of society without exception.²⁵ The guarantee of legal certainty must also ensure job opportunities for persons with disabilities. However, the absence of sanctions for companies that neglect this obligation makes access to employment for persons with disabilities difficult. As a result, people with disabilities are often more vulnerable to poverty due to limited job opportunities. The importance of a strict sanction in regulating this quota can be seen from the perspective of the difference principle. The difference principle emphasizes that inequality can only be justified if it benefits the least advantaged or most vulnerable groups in society. In this case, the regulation of sanctions against companies that do not provide job opportunities for people with disabilities should reflect efforts to improve the position of the most vulnerable in the labor market.

From the perspective of John Rawls' theory of justice, this criticism becomes more relevant. In Rawls' difference principle, inequality in society must be arranged in such a way that the greatest benefits are given to those who are most vulnerable. In this case, people with disabilities are the group most vulnerable to discrimination in the workplace. Without an effective law enforcement mechanism, including clear sanctions, employment quotas for persons with disabilities fail to provide real benefits to them. The absence of such sanctions can be seen as a failure within the regulatory framework itself, as it cannot ensure that the benefits of the quotas are truly received by the group of persons with disabilities.

Law enforcement mechanisms, such as fines, do not have enough potential to encourage companies to fulfill their obligations. Rawls, in his theory, emphasizes the importance of ensuring that public policies not only benefit the majority but also improve the welfare of the most marginalized groups. In this context, financial penalties for companies that do not comply with disability quota obligations can be considered an indirect step in achieving justice for people with disabilities. Although the funds collected can be used to finance skill training programs for people with disabilities, this can be seen as a more reactive step and does not sufficiently guarantee sustainable structural change. For example, skill training programs funded in this way might not directly address the specific needs of people with disabilities or guarantee their access to decent jobs with appropriate accommodations.

In Rawls' view, the difference principle requires more proactive and substantive actions to rectify inequalities, not just by providing compensation after the fact. Therefore, tax incentives for companies that not only meet quotas but also demonstrate inclusive recruitment practices and provide accommodations in the workplace may be more in line with the Difference Principle. Tax incentives can encourage companies to make deeper systemic changes, such as adjusting recruitment policies, providing inclusive training, and creating a more disability-friendly work environment, that directly benefits people with disabilities, rather than just through training funds that may be uneven or poorly targeted. Thus, although financial penalties can serve as a corrective measure, a more direct alternative such as incentives for companies that create more inclusive working conditions and provide accommodations tailored to the needs of persons with disabilities aligns better with Rawls'

²⁵ Winshery Tan, "Kondisi Tenaga Kerja Penyandang Disabilitas: Tantangan Dalam Mewujudkan Sustainable Development Goals," *Jurnal Rektidee* 16, no. 1 (2021), <https://doi.org/https://doi.org/10.21107/ri.v16i1.8896>.

broader vision of social justice, which is to create sustainable welfare and improve conditions for the most marginalized.

Analysis of the implementation of employment quota policies for persons with disabilities often focuses on the symbolic aspect, assuming that with the existence of quotas, the opportunities for persons with disabilities to work will automatically increase. However, this assumption has several weaknesses when viewed through the lens of John Rawls' theory of justice, particularly in the context of deeper principles of redistribution and equality of opportunity. The employment quota policy for people with disabilities, although important as a first step, is not sufficient to address deeper inequalities. Rawls' theory emphasizes that social justice cannot be achieved merely through symbolic inclusion such as quotas, but through the real redistribution of opportunities. Quotas alone do not address other structural issues such as employer bias, social stigma, and workplace accessibility. Therefore, although quotas can help, without further adjustments to the social and physical factors that hinder, this policy will not be effective. Positive discrimination, such as prioritizing recruitment or tailored education for people with disabilities, can be a solution to ensure fairer opportunities.

Quota systems, although designed to provide greater opportunities for people with disabilities, often do not suffice to overcome deeper structural barriers in the workplace. One of the most influential factors is employer bias. Many employers unconsciously still hold negative views about the abilities of people with disabilities, often doubting their productivity or ability to adapt in the workplace. Physical accessibility of the workplace also poses a significant barrier. Although there is an obligation to provide workplaces that are accessible to people with disabilities, the reality is that many workplaces are still not fully adequate. Social stigma against people with disabilities also continues to worsen the situation. The broader social stigma about disabilities often leads to people with disabilities being regarded as "different" or less capable compared to their non-disabled peers. Although quotas can facilitate their acceptance in the workforce, this stigma can still create barriers in social interactions and career advancement.

The lack of enforcement of disability quota obligations can lead to non-compliance with CRPD principles, which not only require the state to provide job opportunities for persons with disabilities in the public sector but also promote their employment in the private sector through affirmative measures, incentives, and inclusive policies. Without effective affirmative policies, such as tax incentives for companies that employ persons with disabilities or specialized skill training programs, the private sector may tend to neglect these obligations due to economic reasons or ignorance. The implications of the ambiguity and weak enforcement of disability quotas are Indonesia's failure to fully meet the international commitments contained in the CRPD, particularly in providing inclusive and non-discriminatory job opportunities for persons with disabilities. Therefore, it is important for Indonesia to further integrate affirmative policies and incentives that can motivate the private sector not only to meet disability quotas but also to create a work environment that.

The quota system, although providing more opportunities for people with disabilities, is often hindered by the aforementioned structural factors, such as employer bias, workplace accessibility, and social stigma. So, the question is whether we should be satisfied with the "numbers" achieved, or should we think further to create a system that truly balances

opportunities for people with disabilities? If we truly desire substantive justice, we must critically examine whether quotas alone can address the existing gaps. Rawls' theory of distributive justice requires us to do more than just adjust numbers; it demands that we actively redistribute opportunities for those who are most vulnerable. Positive discrimination to support special quota policies can be implemented through specialized skill training mechanisms tailored to the type of disability to enhance the competitiveness of persons with disabilities in the job market. This is important to reduce inequality. For example, individuals with physical disabilities can be empowered through training that utilizes assistive technology, while those with mental or intellectual disabilities can receive training with more adaptive methods based on their cognitive needs. Therefore, it is important to ensure that these training programs are designed to take into account the diversity of disabilities and create equal opportunities for them to thrive. In this regard, Law No. 8/2016 also encourages the increased workforce participation of persons with disabilities through special training, inclusive job fairs, and the provision of appropriate accommodations.

Article 46 of Law No. 8/2016 explicitly states the obligation for the government to provide vocational training for persons with disabilities, further regulated in Article 8 letter b of Government Regulation No. 60/2020, which establishes the ULD, one of whose tasks is to provide information to the government regarding vocational training. However, this has not been seen as stated on the Kemnaker website. Although there have been several programs such as *SiapKerja*, *KarirHub*, *SkillHub*, *SertiHub*, and *BizHub*²⁶ that focus on skill enhancement and general job placement. Meanwhile, until now, there are no features or services specifically designed exclusively for people with disabilities. The training and services currently available tend to be general and do not yet provide the accessibility or specific assistance needed by the disabled group in those programs.

It should be emphasized that in terms of job training, redistribution is not just about providing access, but also creating opportunities that systematically benefit people with disabilities in the long term and how the system enables people with disabilities to develop and move to better positions compared to their previous conditions. Therefore, specialized training needs to be specifically facilitated for persons with disabilities. Special training for people with disabilities must also truly open access to high-quality jobs that are in demand in the labor market, not just provide basic skills that do not guarantee long-term economic improvement.

The gap between regulation and implementation of Article 46 of Law No. 8/2016 is evident in the government's obligation to provide vocational training for persons with disabilities, which in practice often does not meet their specific needs. This is caused by several factors, such as the lack of effective supervision, inadequate budget allocation, and the limited understanding of policymakers regarding the specific needs of persons with disabilities. The existing training programs often lack disability-friendly infrastructure, assistive technology, or relevant modules for various types of disabilities. Moreover, the lack of trained trainers and the absence of support systems, such as mentoring or job market bridging, exacerbate this mismatch. However, as a party to the Convention on the Rights of Persons with Disabilities

²⁶ Kementerian Ketenagakerjaan Republik Indonesia, "Siap Kerja Kemnaker," Kemnaker, accessed October 24, 2024, <https://siapkerja.kemnaker.go.id/app/home>.

(CRPD) ratified through Law No. 19/2011, Indonesia has an obligation to ensure that persons with disabilities have equal access to vocational training and decent work. However, the reality on the ground shows a gap between this international legal commitment and its implementation at the national level. Training programs often do not meet the inclusivity standards mandated by the CRPD, such as lack of accessibility, minimal technological support, and absence of integrated strategies. Employment training programs for persons with disabilities in Indonesia fail to meet the minimum inclusion standards mandated by the CRPD, which requires the state to provide training that is not only available but also accessible, relevant, and effective for the specific needs of disabilities. Many programs today are designed uniformly without considering the variations in types of disabilities, adaptive technologies, or the specific support needed. If analyzed through Rawls' theory of justice, particularly the difference principle, this failure reflects a neglect of the moral responsibility to prioritize vulnerable groups in the distribution of social benefits. In the context of job training, this provision not only fails to meet the aspect of distributive justice but also hinders individuals with disabilities from achieving the promised equality of opportunity. To be truly inclusive, training must be proactively designed to meet reasonable accommodations, including the involvement of disability experts, assistive technology, and effective advocacy and oversight schemes, to ensure that the program is not only available but also relevant, measurable, and directly impactful on skill enhancement and participation in the job market.

On the other hand, reasonable accommodations in workplaces are an important aspect of enabling persons with disabilities to work to their fullest potential. These accommodations include adjustments to the physical environment, provision of assistive devices, as well as flexibility in work regulations that correspond to their disability needs. With appropriate accommodations, barriers to work can be minimized, enabling individuals with disabilities to contribute effectively and productively. This also creates a more inclusive work environment, where every individual can develop to their full potential. The difference principle highlights the importance of accessible facilities and accommodations truly provide individuals with disabilities access to advantageous economic opportunities, rather than merely meeting minimum standards.²⁷ Adequate accommodations should encourage active engagement of persons with disabilities within the work environment, as well as provide equal opportunities with non-disabled peers, and access to better career advancement. Thus, the accommodations available are not merely symbolic, serving only to meet legal requirements without any real impact.

Using an approach like the difference principle, different accommodations for different disabilities can be seen as a form of fair treatment, as they provide equal opportunities for people with disabilities to participate in the labor market according to their individual needs. Therefore, policies should not be uniform but should be tailored to the specific characteristics of each type of disability, ensuring that each individual can access equal job opportunities and fully participate in economic life. So the available accommodations are not only symbolic, merely to meet legal requirements without any real impact. Symbolic accommodations refer

²⁷ Sheila Kusuma Wardani Amnesti et al., "Higher Education with Disabilities Policy: Ensuring Equality Inclusive Education in Indonesia, Singapore and United States," *Journal of Human Rights, Culture and Legal System* 3, no. 3 (November 20, 2023): 412–40, <https://doi.org/10.53955/jhcls.v3i3.135>.

to efforts or policies that exist only to fulfill legal obligations or to show a commitment to inclusion without any substantial implementation. Law No. 8 of 2016 does not provide sufficient detail in defining the types of accommodations needed based on the different characteristics of physical and mental disabilities. Meanwhile, the CRPD, which has been ratified by Indonesia, requires the state to provide appropriate and adequate accommodations for all types of disabilities. However, in practice, the implementation of these accommodations is often limited to physical standards alone, such as building accessibility or basic assistive devices, without considering more specific needs, especially for individuals with mental or psychosocial disabilities.

Such policies can create the illusion that persons with disabilities have been given equal opportunities, whereas, in reality, they continue to face various unresolved barriers. The consequence of this symbolic accommodation is that people with disabilities may feel neglected, disempowered, and lack the opportunity to fully contribute in the workplace. Substantial accommodations, on the other hand, involve genuine efforts to create a work environment that supports diversity, particularly in supporting disabilities. This includes the provision of adequate physical facilities, such as building accessibility, appropriate equipment, and training programs specifically designed for people with disabilities.

Another aspect that also needs to be highlighted in the employment rights policy for persons with disabilities in Indonesia is the recruitment process. In relation to this, Article 47 of Law 8/2016 guarantees accessibility in the recruitment process for persons with disabilities, for example, by providing assistance, flexibility in test timing, and identifying talents and abilities to determine suitable job positions. However, Article 47 of Law 8/2016 states that employers "may" provide various forms of assistance in the recruitment process mentioned earlier. The word "dapat," in KBBI, refers to being able; capable; able; permitted; possibly.²⁸ This certainly indicates that the provision of facilities in the recruitment process mentioned in Article a quo is optional (if the employer can or is able; perhaps; allowed), and not a strict obligation. From the perspective of the difference principle, this is problematic because it ignores the principle that a fair arrangement must ensure that those who are most vulnerable receive tangible benefits. Rawls' principle demands that such arrangements be not merely optional but mandatory for employers. Thus, persons with disabilities will have the guaranteed right to an equal recruitment process, rather than merely relying on the discretion of each employer.

Article 47 of Law 8/2016 places more emphasis on inclusion in the recruitment process, but less consideration is given to fair outcomes. From the perspective of the difference principle, justice is not only related to procedures but also to the real impact on vulnerable groups.²⁹ Policies should include mechanisms that ensure that persons with disabilities receive significant benefits, not just follow the same process as other candidates. Employers often occupy a dominant position that allows them to determine the criteria and forms of tests used, which may still be biased against people with disabilities. The difference principle demands that policies reflect an awareness of power imbalances. The regulations should create corrective mechanisms that ensure that people with disabilities can negotiate their needs more

²⁸ KBBI, "Kamus Besar Bahasa Indonesia," 2022.

²⁹ Rawls, *Justice As Fairness : A Restatement*, 159.

equally with employers. This can be realized through strengthening oversight by the state or independent institutions to ensure the implementation of a fair recruitment process.

Rawls explains that the difference principle also applies to institutions as a system of public rules.³⁰ This interpretation demands that existing inequalities be structured in such a way, through fair institutions, that the result is a system that benefits the most vulnerable groups, in this case, people with disabilities. The inequalities that arise in society must be regulated in a way that improves the position of those who are least advantaged, rather than worsening their situation. One of the most relevant institutions in this regard is the National Disability Commission (KND), which was established by Law No. 8 of 2016 and implemented through Presidential Regulation No. 68/2020. KND has the main task of overseeing and evaluating the fulfillment of the rights of persons with disabilities in Indonesia. However, even though KND is positioned as an independent institution, there are institutional structures that reduce its effectiveness in carrying out this task.

KND, as a non-structural agency under the President, should have the freedom to act without intervention from other agencies. However, in reality, the KND Secretariat, which is responsible for providing administrative and budgetary support, is actually under the Ministry of Social Affairs, which is also subject to KND's oversight. This creates a dependency that affects KND's independence, hindering the institution's ability to conduct oversight objectively and effectively. These limitations place persons with disabilities in a disadvantaged position, as the institution that is supposed to protect their rights is instead bound by a structure that does not facilitate that role.³¹

The Difference Principle posits that inequality in this structure can only be justified if it benefits the least advantaged group. In this case, people with disabilities are the most marginalized group and have special needs that should receive more attention from the state. However, the institutional structure of the KND, which relies on the Ministry of Social Affairs, creates unproductive inequality for people with disabilities. The budget dependency of the KND on the ministry, which is also under surveillance, can be seen as contrary to the spirit of the Difference Principle, which demands that institutions functioning to protect vulnerable groups be able to act free from external influences that are inconsistent to protect human rights.

If we look deeper, the Difference Principle demands that existing structural inequalities be arranged in such a way as to maximize benefits for people with disabilities. In this context, institutions like KND should be able to operate more independently without being bound by structural dependencies that limit their capabilities.³² KND should be empowered more to achieve better accessibility for people with disabilities in various sectors, including in the workplace and education. By improving its institutional design, KND can become an agency that can truly advocate for the rights of persons with disabilities effectively, just as Komnas HAM or Komnas Perempuan carry out their duties for the protection of human rights and women's rights.

³⁰ Rawls, *Justice As Fairness : A Restatement*.

³¹ Yeni Rosdianti, "Quo Vadis Komisi Nasional Disabilitas?," *Jurnal HAM* 12, no. 2 (August 26, 2021): 209, <https://doi.org/10.30641/ham.2021.12.209-226>.

³² M. Syafi'ie, "Simposium Nasional Hukum Tata Negara : Quo Vadis Lembaga Negara Independen," in *Rethinking Komisi Nasional Disabilitas (KND): Kritik Dan Idealita Lembaga Negara Independen*, ed. Yustika Ardhanay, Mazdan Maftukha, and Eka Detik (Yogyakarta: FH UII Pers, 2022), 73-84.

From an institutional perspective, the Difference Principle invites us to think that the state must design institutions that not only protect persons with disabilities but also ensure that they can access job opportunities, education, and public services without unnecessary structural barriers. State institutions should be more accessible to people with disabilities, not only physically but also in terms of policies and services provided. Structural inequalities in this regard, which still exist in the KND, must be changed to ensure that people with disabilities benefit maximally through more inclusive and fair policies. In practice, this means restructuring the institutional framework so that there are no administrative or budgetary obstacles hindering the KND in carrying out its supervisory role. KND must be able to function more freely in advocating for the rights of persons with disabilities without being dependent on other institutions that are also bound by different interests. KND's oversight and advocacy must encompass various aspects of the lives of persons with disabilities, from accessibility to the improvement of their quality of life. Thus, the state will be able to create a fairer system, where persons with disabilities can fully utilize their rights without facing the inequalities that hinder them.

4. Conclusions

The difference principle is not yet fully reflected in Indonesian policies pertaining to the realization of people with disabilities' right to work. Special quotas and other rules that lack severe penalties demonstrate that they are only normative, which makes them ineffectual in practice. Furthermore, the Ministry of Manpower's training and job fair initiatives are still broad in scope and do not adequately cater to the unique requirements of people with disabilities. Because Article 47 of Law No. 8/2016 contains the word "may," which denotes a potential (optional) rather than a requirement, the inclusive recruiting process itself is still voluntary. (required). People with disabilities have additional challenges as a result of the KND weak and less independent institutional framework so that this institution not only becomes a symbol but also an agent of structural change that equitably distributes socio-economic benefits to persons with disabilities.

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