



The position, duties and functions of the national commission for disability in Indonesia

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Abstract

The National Commission for Disability in Indonesia has a very strategic role. The presence of the National Commission for Disability is expected to be an important milestone in accelerating the implementation of Indonesia's grand vision for persons with disabilities. The establishment of the National Commission for Disability is a positive first step towards equality of persons with disabilities to create an inclusive, disability-friendly Indonesia environment. In connection with the very strategic role carried out by the National Commission for Disability, it is interesting to investigate further what and how exactly is the position, duties and functions of the National Commission for Disability, which has just been formed in Indonesia since December 1, 2021.

With a normative juridical research method, which is descriptive qualitative research, by examining secondary data obtained through Presidential Regulation of the Republic of Indonesia Number 68 of 2020 concerning the National Commission on Disability and other related regulations that are relevant to the position, duties, and functions of the National Commission on Disability.

The results of this study indicate that the position of the National Commission for Disability in Indonesia based on Presidential Regulation Number 68 of 2020 is under and responsible to the President. However, the position of the secretariat of the National Commission for Disability is in the work unit in the ministry that carries out government affairs in the social sector. Meanwhile, the duties and functions of the National Commission for Disability in Indonesia: "have the task of monitoring, evaluating, and advocating the implementation of respect, protection, and fulfillment of the rights of persons with disabilities and functions in the preparation of the National Commission for Disability activity plans in an effort to respect, protect, and fulfill the rights of persons with disabilities; monitoring and evaluating the implementation of respect, protection, and fulfillment of the rights of persons with disabilities; advocating the implementation of respect, protection, and fulfillment of the rights of persons with disabilities; and implementation of cooperation in handling persons with disabilities with relevant stakeholders." Further provisions regarding the implementation of the duties and functions of the National Commission for Disability will be further regulated by a Regulation of the National Commission for Disability.

Keywords: national commission for disability, persons with disabilities, disability

Introduction

The Republic of Indonesia guarantees the survival of every citizen who is equal before the law and has the same human rights, both for persons with disabilities and non-disabled persons. To make the lives of persons with disabilities become prosperous, independent, and non-discriminatory, the Government of Indonesia and The People's Representative Council of the Republic of Indonesia amended Law Number 4 of 1997 concerning Persons with Disabilities with Law Number 8 of 2016 concerning Persons with Disabilities ^[1].

In terms of designation, Law Number 4 of 1997 mentions people with disabled, while Law Number 8 of 2016 uses the designation of people with disabilities. Law Number 8 of 2016 in Article 1: "providing space for understanding for the government and the community the main things that must be given to people with disabilities are providing equal opportunities, not discriminatory, respecting, protecting, fulfilling, empowering, providing accessibility, accommodation, assistive devices, concessions (fee discounts), and service units for persons with disabilities. The principle of fulfilling the rights of persons with disabilities is in the form of respect for their dignity, individual autonomy, non-discrimination, equal opportunity, equality, accessibility, special treatment, and more protection" ^[2].

During the commemoration of the International Day of Persons with Disabilities in 2021, the President of Indonesia, Mr. Joko Widodo, in his speech at the Presidential Palace on December 3, 2021, stated that: "Indonesia must make this International Day of Persons with Disabilities a momentum to emphasize concern and strengthen solidarity in laying a solid foundation for protection. persons with disabilities, namely from a caricative and charity-based paradigm to a human rights-based paradigm. Indonesia wants to continuously improve equality, opportunity, and accessibility for persons with disabilities, ensuring access to education,

access to health, and access to employment for persons with disabilities. As well as building accessible infrastructure to create a barrier-free environment for people with disabilities.”

Many government regulations have been issued by the Government of Indonesia. In 2019, there was “Government Regulation Number 52 of 2019 concerning the Implementation of Social Welfare for Persons with Disabilities; and Government Regulation Number 70 of 2019 concerning Planning, Implementation, and Evaluation of the Respect, Protection, and Fulfillment of the Rights of Persons with Disabilities.”

In 2020, there are four more government regulations, namely “Government Regulation Number 13 of 2020 concerning Adequate Accommodation for Students with Disabilities; Government Regulation Number 39 of 2020 concerning Adequate Accommodation in the Judicial Process; Government Regulation Number 42 of 2020 concerning Accessibility to Settlements, Public Services, and Protection from Disasters for Persons with Disabilities; and Government Regulation Number 60 of 2020 concerning the Manpower Disability Service Unit (Sector).”

Besides that, two Presidential Regulations that have also been made by the President of Indonesia, namely “Presidential Regulation Number 67 of 2020 concerning Terms and Procedures for Giving Awards to the Fulfillment of the Rights of Persons with Disabilities, and Presidential Regulation Number 68 of 2020 concerning the National Commission for Disability.”

There are some regulatory umbrellas, but the key isn't just regulation. Good rules, good plans without serious implementation are useless. The key is in the implementation. The government's next task is to ensure that all policies can be implemented. right, done right, and people with disabilities are feeling the benefits.

The National Commission for Disability has a very strategic role. As a non-structural body that is independent and directly accountable to the President, the Indonesian President hopes that “the presence of the National Commission for Disability will be an important milestone in accelerating the implementation of Indonesia's law. great vision for people with disabilities.”

The President hopes “that no person with a disability should be left behind from the various service programs provided by the government. All ministries, institutions and local governments must actively support, starting from the need for synchronizing data on persons with disabilities nationally, involving persons with disabilities in the preparation of the National Action Plan and Regional Action Plan documents, and overseeing their implementation, so that all action plans run effectively and benefit the community. persons with disabilities.”

The establishment of the National Commission for Disability is a positive first step towards equality of persons with disabilities to create an inclusive, disability-friendly Indonesia environment. In connection with the very strategic role carried out by the National Commission for Disability, it is interesting to investigate further what and how exactly is the position, duties and function of the National Commission for Disability, which has just been formed in Indonesia since December 1, 2021.

Research Method

The research method used is the use of normative legal research methods with qualitative descriptive research. According to Ronny Hanitijo Soemitro, normative legal research is “literature research conducted by examining secondary data. The research was carried out by examining the provisions in statutory regulations and related literature”^[3].

Normative juridical research “uses data collection tools by conducting document studies. Document study, which means studying literature, Presidential Regulation of Indonesia Number 68 of 2020 concerning the National Commission for Disability and other related regulations relevant to the the National Commission for Disability.”

The results of the research are presented in a descriptive-analytical way. According to Soejono and Abdurrahman, descriptive analysis is “descriptive-analytical, namely describing the existing facts, then the analysis is carried out based on positive law and existing theories”^[4]. “The descriptive analysis focuses on solving existing problems. The implementation of this descriptive method is not limited to the stage of data collection and data preparation but includes analysis and interpretation of the meaning of the data itself”^[5].

Result and Discussion

The National Commission for Disability is an institution mandated by Law Number 8 of 2016 concerning Persons with Disabilities. This provision was further regulated in Presidential Regulation No. 68 of 2020 concerning the National Commission for Disability as well as ordering its formation. After going through the selection process, on December 1, 2021, the President of the Republic of Indonesia officially inaugurated 7 members of the National Commission for Disability, as well as marking the National Commission for Disability for the first time officially serving.

Based on this research, several important discussions were produced regarding the position of the National Commission for Disability in Indonesia, as well as the duties and authorities of the National Commission for Disability in Indonesia as follows:

Position of the National Commission for Disability in Indonesia

Based on the President Number 68 of 2020 concerning the National Commission for Disability, in particular Article 2: “In order to ensure and monitor the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities, an independent National Commission for Disability was formed.” Article 3 stipulates that the position of the National Commission is under and responsible to the President^[6].

In organizational structure, the National Commission for Disability consists of: Chairman concurrently member, Deputy Chair concurrently member; and 5 (five) members. So that in terms of quantity, there are 7 (seven) members of the National Commission for Disability, consisting of 4 (four) members from disability elements and 3 (three) members from non-disability elements.

Members of the National Commission for Disability are expected to come from elements of academics, practitioners, professionals, and the community. In particular, members of the National Commission for Disability who come from elements of disability must represent the diversity of disabilities. It is mandatory to pay attention to the representation of women. In addition, decision making in supporting the implementation of the duties of the National Commission for Disability is carried out in a collegial collective manner.

The following are the names of the members of the National Commission for Disability who were inaugurated based on the Decree of the President of the Republic of Indonesia Number 53/M of 2021 concerning the Appointment of Membership of the National Commission for Disability:

1. Dante Rigmalia, as chairman and member;
2. Deka Kurniawan, as deputy chairman and member;
3. Eka Prastama Widiyanta, as a member;
4. Kikin Retired Tarigan Sibero, as a member;
5. Fatimah Asri Muthmainah, as a member;
6. Jonna Aman Damanik, as a member; and
7. Rachmita Maun Harahap, as a member.

The appointment of members of the National Commission for Disabilities shall come into effect as of the date of appointment by the President on November 30, 2021, with each term of office of five years.

The establishment of the National Commission for Disability is met with hope in the midst of the Government of Indonesia's efforts to carry out its mandate in realizing respect, protection, and fulfillment of the rights of persons with disabilities. However, there is deep concern about the institutional strength of the National Commission for Disability to respond to these expectations, particularly in implementing the spirit and principles of Law Number 8 of 2016 on Persons with Disabilities which places the issue of disability in a cross-sectoral approach.

However, the National Commission for Disability is not a field executor, but an external supervisory agency from the Government and local governments in carrying out their duties and authorities as regulated in Law Number 8 of 2016 concerning Persons with Disabilities.

Article 129 of Law Number 8 of 2016 concerning Persons with Disabilities states: "that the Government establishes a coordination mechanism at the national level in order to carry out respect, protection, and fulfillment of the rights of persons with disabilities. Coordination at the national level is carried out by the minister who carries out government affairs in the social sector with related ministries and non-ministerial government agencies. The coordination aims to organize and synchronize policies, programs, and budgets for the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities"^[7].

Still in the same law, specifically in Article 137, it is also stated that: "The government is obliged to mainstream the issue of disability in establishing international cooperation, by:

- a. Exchange information and experiences;
- b. Training program;
- c. Best practices;
- d. Study;
- e. Science; and/or
- f. Technology transfer."

Especially for Regional Governments, "coordination can be done by establishing coordination mechanisms at the provincial and district/city levels in order to respect, protect, and fulfill the rights of persons with disabilities in accordance with their authority" (Article 130).

One of the provisions that become the focus of the problem lies in Article 9 Paragraph (4) of Presidential Regulation Number 68 of 2020 concerning the National Commission for Disability which stipulates that: "The position of the secretariat of the National Commission for Disability is in the work unit in the ministry that carries out government affairs in the social sector." The existence of this norm is explicitly contrary to Article 131 of Law Number 8 of 2016 concerning Persons with Disabilities which emphasizes that the design of the National Commission for Disability is an independent institution, where the main principle of the institution is that all organs within it are not bound by other institutions. in the three main branches of power, including the ministry of state as part of the executive power^[8].

The disproportionately disproportionate institutional design within the National Commission for Disability will also directly affect the implementation of the supervisory function which is at the heart of the humanitarian agenda in the form of respecting, protecting and fulfilling the rights of persons with disabilities. Weak supervision from the state through the National Commission for Disability which is independent *mutatis mutandis* has implications for the unresolved cases of discrimination against persons with disabilities in Indonesia^[9].

Duties and Functions of the National Commission for Disability in Indonesia

Based on the President Number 68 of 2020 concerning the National Commission for Disability, especially in Article 4: "The National Commission for Disability in Indonesia has the task of monitoring, evaluating, and advocating the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities."

Furthermore, what is regulated in the next article, namely Article 5: "In carrying out the tasks as referred to in Article 4, the National Commission for Disability carries out the following functions:

- a. preparation of activity plans for the National Commission for Disability in the effort to respect, protect, and fulfill the rights of Persons with Disabilities;
- b. monitoring and evaluating the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities;
- c. advocacy for the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities; and
- d. Implementation of cooperation in handling Persons with Disabilities with relevant stakeholders."

In Article 6 it is stated that: "further provisions regarding the implementation of the duties and functions of the National Commission for Disability as referred to in Article 4 and Article 5 shall be regulated by a Regulation of the National Commission for Disability"^[10].

The fact that the National Commission for Disability is an external institution from the government bureaucracy is stated in the provisions of Article 132 of Law Number 8 of 2016 concerning Persons with Disabilities which stipulates that: "The task of the National Commission for Disability is to carry out monitoring, evaluation, and advocacy on respect, protection and fulfillment of the rights of persons with disabilities." From this task, it can be seen that the National Commission for Disability is not a direct implementer, but ensures that the Government and local governments carry out their duties in realizing respect, protection, and fulfillment of the rights of persons with disabilities based on Law Number 8 of 2016 concerning Persons with Disabilities^[11].

If you look at the objectives of the establishment of Law Number 8 of 2016 concerning Persons with Disabilities, there are at least five objectives for the formation of this law, namely as stated in Article 3, which reads:

"The implementation and fulfillment of the rights of Persons with Disabilities aims to:

- a. realize full and equal respect, promotion, protection and fulfillment of human rights and basic freedoms for Persons with Disabilities;
- b. ensure efforts to respect, promote, protect, and fulfill rights as inherent dignity for Persons with Disabilities;
- c. realize the standard of living of Persons with Disabilities that are more qualified, fair, physically and mentally prosperous, independent, and dignified;
- d. protect Persons with Disabilities from neglect and exploitation, harassment and all discriminatory actions, as well as violations of human rights; and
- e. ensure the implementation of efforts to respect, promote, protect, and fulfill the rights of Persons with Disabilities to develop themselves and utilize all abilities according to their talents and interests to enjoy, participate in and contribute in an optimal, safe, free, and dignified manner in all aspects of life as a nation, state, and community^[12]".

All of these goals are formulated by viewing disability as a human rights issue, not just as an issue of welfare or social protection. Therefore, the Government should "attach the National Commission for Disability to the Ministry that has duties and functions on Human Rights issues, namely the Ministry of Law and Human Rights based on Presidential Regulation Number 44 of 2015 concerning the Ministry of Law and Human Rights, or to the National Commission on Human Rights. Human Rights based on Law Number 39 of 1999 concerning Human Rights. Not to the Ministry of Social Affairs, which is based on Presidential Regulation Number 46 of 2015 concerning the Ministry of Social Affairs, where the Ministry of Social Affairs is only assigned to the scope of social rehabilitation, social security, social empowerment, social protection, and handling the poor.

Conclusion

The position and authority of the National Commission for Disability in Indonesia can be concluded that based on the Presidential Regulation Number 68 of 2020 concerning the National Commission for Disability, the position of the National Commission is "under and responsible to the President. However, the position of the secretariat of the National Commission for Disability is in the work unit in the ministry that carries out government affairs in the social sector. This is contrary to Article 131 of Law Number 8 of 2016 concerning Persons with Disabilities which emphasizes that the design of the National Commission for Disability is an independent institution, where the main principle of the institution is that all organs within it are not bound by institutions in the three branches of power. Major Powers, including state ministries as part of the executive power."

Duties and functions of the National Commission for Disability in Indonesia have "the task of carrying out monitoring, evaluation, and advocacy on the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities and functions in terms of: preparing an activity plan for the National Commission with Disabilities in the effort to respect, protect, and fulfill the rights of Persons with Disabilities; monitoring and evaluating the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities; advocacy for the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities;

and implementation of cooperation in handling Persons with Disabilities with relevant stakeholders. Further provisions regarding the implementation of the duties and functions of the National Commission for Disability will be further regulated by a Regulation of the National Commission for Disability.

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