



Discrimination against persons with disabilities in the recruitment of civil servant candidates from the perspective of human rights law in Indonesia

Rahmad Rizki¹, Rizanizarli², Muazzin²

¹ Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturers, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

The acceptance of civil servant candidates (CPNS) for persons with disabilities is part of fulfilling the right to work based on the principles of equality and non-discrimination in human rights law. The research uses a normative juridical method with a regulatory and conceptual approach through literature study. The study results show that Indonesia has a legal basis that guarantees the rights of persons with disabilities to obtain employment, including in the government sector. However, its implementation still faces obstacles such as job requirements, health assessments, the provision of adequate accommodations, and differences in policy application between agencies that could potentially lead to indirect discrimination. Legal protection needs to be strengthened through clear technical regulations, appropriate accommodation standards, easily accessible complaint mechanisms, and consistent supervision. These efforts are necessary to realize the acceptance of CPNS that provides equal opportunities and access for persons with disabilities while still being based on the required qualifications and competencies.

Keywords: Persons with disabilities, civil servant candidates, discrimination, human rights, equality

Introduction

The right to work is one of the fundamental rights guarantied by the constitution. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia emphasizes that every citizen has the right to obtain work and a decent living for humanity. This guaranty is reinforced by Article 28D paragraph (2), which grants every person the right to work and receive fair and decent compensation and treatment. Additionally, Article 28H paragraph (2) provides space for every person to obtain facilities and special treatment to achieve equality and justice.^[1] These provisions indicate that the opportunity to obtain employment must fundamentally be provided equally and must not be based on discriminatory treatment.

In relation to persons with disabilities, the principle of equality holds significant importance. Persons with disabilities are part of the citizens who have the same rights and status in obtaining employment. Therefore, the obstacles that arise from certain requirements, policies, or practices in the hiring process need to be viewed from the principles of non-discrimination and equal opportunity.^[2] Discrimination in this context is not limited to actions that directly differentiate someone based on their disability condition, but can also arise through policies or requirements that indirectly cause individuals with disabilities to lose the opportunity to obtain employment on an equal basis.

Protection of that principle has been firmly established in Law Number 39 of 1999 on Human Rights. Article 3 paragraph (3) emphasizes that everyone has the right to receive protection of human rights without discrimination. Meanwhile, Article 5 paragraph (3) provides special treatment and protection to vulnerable groups in society. The provision indicates that special treatment for certain groups is not a form of discrimination, but rather can be an instrument to achieve equality and justice.^[3] Indonesia's commitment to the protection of the rights of persons with

disabilities is also evident through the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) based on Law Number 19 of 2011. Article 27 of the CRPD recognizes the right of persons with disabilities to work on an equal basis with others, including obtaining opportunities in an open, inclusive, and accessible work environment. These provisions also place the protection against discrimination in the recruitment and hiring process as part of fulfilling the rights of persons with disabilities.^[4]

At the national level, this protection is reinforced through Law Number 8 of 2016 on Persons with Disabilities. This law places equality of opportunity, equality, accessibility, and non-discrimination as principles in fulfilling the rights of persons with disabilities. Article 11 guarantees persons with disabilities the right to obtain employment provided by the government, local governments, or private entities without discrimination. In addition, Article 50 requires employers to provide reasonable accommodations and accessible facilities. The state also provides affirmative policies through Article 53 paragraph (1), which requires the government, regional governments, state-owned enterprises (BUMN), and regional-owned enterprises (BUMD) to employ at least 2% persons with disabilities.^[5] This guaranty becomes relevant in the process of accepting Civil Servant Candidates (CPNS) because the job as a Civil Servant is part of the public sector that is open to citizens based on the specified competencies and requirements. The procurement of ASN currently adheres to Law Number 20 of 2023 concerning the State Civil Apparatus and Minister of PANRB Regulation Number 6 of 2024 concerning the Procurement of State Civil Apparatus Employees. In its implementation, the selection process is not only required to meet the principles of objectivity and competence but also needs to ensure equal opportunities for applicants with disabilities. PermenPANRB Number 6 of 2024 has regulated the provision of accessibility in the implementation of selection according to the various

disabilities of the applicants. For individuals with visual impairments, for example, there are provisions for additional exam time as well as companions or supporting applications in the implementation of competency selection.^[6] These regulations demonstrate an effort to ensure that the condition of disability does not become an obstacle in participating in the selection stages. The existence of these various provisions does not automatically eliminate the possibility of issues arising in practice. The issues may relate to administrative requirements, the determination of the suitability of the type of disability with the position, the provision of accessibility, or the provision of appropriate accommodations. One of the cases that illustrates this issue is the case of Muhammad Baihaqi, a low vision disability holder who was rejected.^[7] The case illustrates that the issue of discrimination against persons with disabilities in the recruitment of civil servants (CPNS) is not only related to the existence or absence of regulations that provide protection but also concerns how those provisions are implemented. There is a need to ensure that the requirements and selection mechanisms are truly based on the competencies required for a position and do not create unreasonable barriers for persons with disabilities. Thus, legal protection for persons with disabilities in the recruitment of civil servants (CPNS) needs to be placed within the framework of equality, non-discrimination, accessibility, and reasonable accommodation as guaranteed by national law and human rights law. The issue of the gap between normative provisions and their implementation serves as an important basis for further examining discrimination against persons with disabilities in the recruitment of civil servants in Indonesia from the perspective of Human Rights law.

Research Method

This research falls under normative legal research, which focuses on the study of norms, principles, and legal doctrines related to the issues being examined. Normative legal research is used to discover and understand relevant legal provisions through the examination of various legal sources.^[8] The approach used is a normative juridical approach by examining laws and regulations, court decisions, as well as legal opinions or doctrines related to the protection of persons with disabilities in the CPNS recruitment process. This research was conducted through library research, utilizing primary, secondary, and tertiary legal materials.^[9]

The collection of legal materials is carried out by examining various written sources that are related to the main issue. Primary legal materials in the form of laws and court decisions are used as the main sources. Subsequently, secondary legal materials such as books, scientific journals, articles, and expert opinions are used to provide explanations and strengthen the analysis of primary legal materials. Tertiary legal materials are used as supporting materials to provide an understanding of the legal terms and concepts used in the research.

All the legal materials that have been collected were then analyzed qualitatively. The analysis was conducted by identifying, outlining, and interpreting the relevant legal provisions, then linking them to the issue of discrimination against persons with disabilities in the recruitment of civil servants (CPNS).^[10] Through this analysis, the research aims to obtain an overview of the conformity of the

regulations and implementation of CPNS recruitment with the principles of equality and non-discrimination from the perspective of Human Rights law.

Results and Discussions

1. Analysis of Legal Regulations on the Recruitment of Civil Servant Candidates for Persons with Disabilities from the Perspective of Non-Discrimination Principles in Human Rights Perspective

Regulations for the recruitment of Civil Servant Candidates (CPNS) for persons with disabilities are one form of the state's responsibility in ensuring the fulfillment of human rights. The opportunity to obtain employment and hold positions in the government should fundamentally be provided equally, adhering to the principle of equality before the law and the prohibition of discrimination. Equality does not only mean treating everyone the same, but also requires specific measures to overcome the barriers that are particularly faced by persons with disabilities. This concept is known as substantive equality, which aims to ensure that everyone has truly equal opportunities in exercising their rights.^[11]

Normatively, Indonesia has a number of legal instruments that provide protection for the rights of persons with disabilities in obtaining employment. The protection is derived from the 1945 Constitution of the Republic of Indonesia and reinforced through Law Number 39 of 1999 on Human Rights, Law Number 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities, Law Number 8 of 2016 on Persons with Disabilities, and Law Number 20 of 2023 on State Civil Apparatus. All of these provisions indicate that persons with disabilities hold the position of legal subjects who are entitled to opportunities to work in the government sector.^[12]

That protection is not enough if it is only manifested by prohibiting discriminatory actions. The state also has an obligation to take concrete steps to ensure that the rights of persons with disabilities can be effectively implemented. In the process of recruiting civil servants, this can be done by providing special positions, accessibility, and appropriate accommodations during the selection stages.^[13] Special formations are one form of affirmative policy aimed at reducing the structural barriers faced by persons with disabilities. The policy can essentially run in parallel with the merit system because the determination of graduation is still based on the qualifications and competencies required for a position.

The application of non-discrimination principles in the recruitment of civil servants (CPNS) still faces several issues. Some of these issues are related to job requirements, health condition assessments, restrictions on certain types of disabilities, and the availability of supporting facilities during the selection process. Health requirements should be applied by considering the actual needs of the position to be filled and not automatically using a disability condition as a reason to limit someone. Similarly, restrictions on certain types of disabilities need to be based on objective, proportional reasons, and directly related to the characteristics of the job.^[14]

PermenPANRB Number 6 of 2024 has provided a basis for persons with disabilities to participate in ASN recruitment through special needs and allows for adjustments in the

selection process. However, clearer regulations are still needed regarding the standards for appropriate accommodations and the parameters for determining job requirements. The lack of clarity can lead to differences in implementation between agencies and affect the uniformity of legal protection for participants with disabilities.^[15]

Normatively, the regulation of CPNS recruitment for persons with disabilities has shown efforts to implement the principles of equality and non-discrimination. However, its implementation still requires strengthening, especially in terms of setting job requirements, health assessment standards, providing appropriate accommodations, and monitoring the selection process. Such reinforcement is necessary so that the legal guarantees already in place not only provide formal rights but also create equal opportunities for persons with disabilities to obtain employment in the government sector.

2. Analysis of Ideal Legal Protection for Persons with Disabilities in the Recruitment of Civil Servant Candidates to Ensure Equal Opportunity and Fair Access

Legal protection for persons with disabilities in the CPNS recruitment process is not only determined by the availability of regulations that guarantee the right to work but also by the ability of the selection system to provide equal opportunities to every participant. Such protection must be realized through an open, fair, and accessible recruitment process for persons with disabilities without any discriminatory treatment. Based on the research findings, the applicable legal provisions fundamentally include the principles of equality and non-discrimination. However, its implementation still faces several issues, particularly related to differences in job requirements, the uneven provision of facilities, and the lack of technical standards that can be consistently applied by all agencies.^[16]

Philipus M. Hadjon distinguishes legal protection into preventive and repressive forms. Preventive protection aims to avoid violations of rights by establishing rules and procedures that provide certainty, while repressive protection relates to efforts to resolve issues when violations or disputes have occurred.^[17] Both forms of protection are important to implement in the CPNS recruitment process so that the rights of persons with disabilities do not stop at normative recognition, but are truly protected throughout the selection process.

Preventive efforts can be made by establishing job formations and requirements based on a measurable job analysis. Health requirements need to be adjusted to the demands of the job and should not be used to limit applicants solely because they have a disability. In addition, clear standards are needed regarding the forms of reasonable accommodation, such as access to examination venues, the use of assistive devices or technology, time adjustments, and support according to the participants' needs. The existence of the same standards will help avoid differences in service during the selection process in various institutions.

Supervision of the recruitment process also needs to be strengthened to ensure that the provisions are truly implemented. The Ministry of Administrative and Bureaucratic Reform (PANRB) and the National Civil Service Agency (BKN) play an important role in providing guidance and oversight on the establishment of requirements

and the implementation of selection processes to ensure they adhere to the principles of non-discrimination and the merit system. In addition, the National Disability Commission can play a role through monitoring, providing recommendations, and evaluating policies that have the potential to hinder the fulfillment of the rights of persons with disabilities.^[18]

Legal protection for persons with disabilities in the recruitment of civil servants needs to be developed through three main components, namely prevention through clear regulations and technical standards, resolution through accessible complaint and dispute mechanisms, and strengthening oversight through regular evaluations. The implementation of these three components is expected to create a recruitment process that remains based on a merit system while providing equal opportunities and access to persons with disabilities.

Conclusion

The acceptance of civil servant candidates (CPNS) for persons with disabilities has been supported by legal provisions that guarantee equality and prohibit discrimination, in line with the principles of the Convention on the Rights of Persons with Disabilities (CRPD). However, its implementation is still not optimal due to differences in determining job requirements, health standards, the provision of appropriate accommodations, and inter-agency policies that can indirectly lead to discriminatory treatment. Legal protection needs to be strengthened through the refinement of technical regulations, the implementation of appropriate accommodation standards, the provision of effective complaint mechanisms, and the enhancement of oversight by relevant institutions. These steps are necessary to ensure that the CPNS recruitment process provides equal opportunities and fair access for persons with disabilities without neglecting the merit principle in ASN management.

Reference

1. Arisanti NA, Hadi S. Perlindungan Hak Buruh Penyandang Disabilitas dalam Memperoleh Pekerjaan dan Penghidupan yang Layak bagi Kemanusiaan. *JHP17, Jurnal Hasil Penelitian*,2022:7(2).
2. Istifarroh, Nugroho WC. Perlindungan Hak Disabilitas Mendapatkan Pekerjaan di Perusahaan Swasta dan Perusahaan Milik Negara. *Mimbar Keadilan*,2019:12(1).
3. Sitompul RWA. Kajian Hukum Tindak Pidana Politik dari Aspek Hak Asasi Manusia Menurut Pasal 23 Undang-Undang No. 39 Tahun 1999 dan Peran Amnesty Internasional. *Lex Et Societatis*,2022:8(4).
4. Noviasari DT, Nurwati N. Perlindungan Tenaga Kerja Disabilitas dalam Perspektif Hak Asasi Manusia. *Borobudur Law Review*,2020:2(1).
5. Humaira JD, Chandra PS. Implementasi Undang-Undang Nomor 8 Tahun 2016 Pasal 53 tentang Penyediaan Kuota Kerja bagi Penyandang Disabilitas di Kota Pekanbaru. *Jurnal Ekonomi dan Ilmu Sosial*,2025:4(1).
6. Peraturan Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi Nomor 6 Tahun 2024 tentang Pengadaan Pegawai Aparatur Sipil Negara,2024.
7. Mahkamah Agung Republik Indonesia. Putusan Nomor 471 K/TUN/2021,2021.

8. Marzuki PM. Penelitian Hukum. Kencana, Jakarta, 2021.
9. Soekanto S, Mamudji S. Penelitian Hukum Normatif, Suatu Tinjauan Singkat. Raja Grafindo Persada, Jakarta, 2022.
10. Sugiyono. Metode Penelitian Kuantitatif, Kualitatif, dan R&D. Alfabeta, Bandung, 2019.
11. Asshiddiqie J. Hukum Tata Negara dan Pilar-Pilar Demokrasi. Sinar Grafika, Jakarta, 2015.
12. Fredman S. Discrimination Law. 2nd ed. Oxford University Press, Oxford, 2011.
13. Muchtar, Nisa LS, Siska D. Evaluasi Penerimaan CPNS bagi Penyandang Disabilitas di Pemerintah Provinsi Kalimantan Selatan. Jurnal Kebijakan Pembangunan, 2020;15(2).
14. Nasution BJ. Negara Hukum dan Hak Asasi Manusia. Mandar Maju, Bandung, 2017.
15. Smith RKM. International Human Rights Law. 9th ed. Oxford University Press, Oxford, 2020.
16. Hadjon PM. Perlindungan Hukum bagi Rakyat di Indonesia. Bina Ilmu, Surabaya, 1987.
17. Nasution BJ. Negara Hukum dan Hak Asasi Manusia. Mandar Maju, Bandung, 2017.
18. Ridwan HR. Hukum Administrasi Negara. Rajawali Pers, Depok, 2020.