Disabilities Concessions in Indonesia: Fundamental Problems and Solutions

Ristania Intan Permatasari¹, Sapto Hermawan²*, Abdul Kadir Jaelani³

¹,²,³ Faculty of Law, Universitas Sebelas Maret, Surakarta, 57126, Indonesia
* Corresponding author: saptohermawan_fh@staff.uns.ac.id

There are many people with disabilities in Indonesia. Special treatment for persons with disabilities is seen as an effort to maximize respect, protection, and fulfillment of the rights of persons with disabilities. However, the government has not fulfilled the rights of persons with disabilities according to the provisions in the laws and regulations on persons with disabilities. This study aims to analyze concessions for persons with disabilities in Indonesia: fundamental problems and offered solutions. This research is a normative study using the Literature Review study approach, namely by examining and analyzing data. The results of the research show that the government has not guaranteed the rights of persons with disabilities in Indonesia, so it is essential to issue government regulations that regulate the type and amount of concessions as a form of creating legal certainty for persons with disabilities. This concession is essential to implement in Indonesia because it can reduce the barriers for persons with disabilities to access essential services to increase their income and economic participation.

INTRODUCTION

The administration of state government activities based on a feeling of fairness and the principle of equality before the law (equality before the law) is one of the key mandates of reform in Indonesia, along with the protection of human rights (HAM). Human rights are the most fundamental rights possessed by all individuals, and Article 28 A-28 J of the 1945 Constitution, which incorporates human rights regulations, can be used to defend these rights. The concept of normalcy is frequently associated with a negative view of those with disabilities in society, in which a person with a "Different" physique and look is not accepted by some members of the community (Handajani 2012).
One of the greatest minority groups in the world, persons with disabilities include 600 million individuals, of which two-thirds reside in developing nations. The definition of persons with disabilities, according to Law no. 8 of 2016 concerning Persons with Disabilities, is that Persons with Disabilities are people with intellectual, physical, sensory, or mental limitations for a long time when interacting in their environment. They experience difficulties and obstacles when participating with other citizens (Arnaldi 2011).

The UN Convention, which contains a set of rights for persons with disabilities, has been ratified by 174 countries and signed by 166 countries (United Nations, 2018). The countries that are members are competing to improve development designs to adapt to the latest approaches to disability. Before the PPB convention, several countries had already implemented inclusive development (Sennoga et al. 2022). Scandinavian countries are at the forefront when developing the concept of inclusive development; this can be known based on the welfare gap between non-disabled and persons with disabilities (The Norwegian Directorate for Youth, Children, and Family Affairs, 2018). Their struggle against the social exclusion of persons with disabilities had started long before the CRPD was founded, namely in the 1960s (Widyatmanti et al. 2022).

In 2008, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) released a study detailing the progress made by Asia-Pacific nations in their efforts to promote disability inclusion. The contents of the report demonstrate that the accomplishments of each nation differ considerably. In general, however, efforts to realize the rights of people with disabilities have not made considerable progress; this is evident from the fact that individuals with disabilities have not been able to enjoy the same benefits of equitable development as non-disabled people. Other Asia-Pacific areas' inclusive growth may differ from that of wealthy nations. In 2012, UN Economic and Social Commission for Asia and the Pacific (UNESCAP) member states signed the Incheon Strategy (UNESCAP, 2014). During the period between 2013 and 2022, this strategy can direct the country to accelerate the inclusive development of people with disabilities. The objective includes increasing political involvement, reducing poverty, and expanding access to public services for people with disabilities (Kosen et al. 2022).

Persons with disabilities are members of society who encounter barriers to work, are vulnerable to extreme poverty, and have low representation in development discussions and forums. As many as 12 countries out of 53 countries have passed anti-discrimination regulations for persons with disabilities, and Indonesia is one of them. The Olympics, which are deliberately aimed at persons with disabilities, have been used to raise issues of discrimination and disabilities experienced by persons with disabilities. Until now, no efforts have been made sustainably and comprehensively to solve this problem. Inclusive development aimed at persons with disabilities in Asia
Pacific countries is progressing slowly compared to Australia & Norway (Saputra et al. 2022).

Inclusive development for persons with disabilities is included in the principles of the Sustainable Development Goals (SDGs) global development framework. This aims to correct inequalities due to differences in voice, power, and influence between groups/individuals (people with disabilities) in development. Inclusive development can strengthen social, economic, and environmental order in sustainable development efforts (United Nations, 2016). Without inclusive development, people with disabilities will be marginalized and exacerbate conditions of inequality and poverty. Referring to the large number of persons with disabilities in Indonesia, it is appropriate for the government to fulfill the rights of persons with disabilities following the provisions of the law. Special treatment for disabled people is seen as an effort to maximize respect, promotion, protection, and fulfillment of human rights universally. Article 5 of Law Number 8 of 2016 clearly states that persons with disabilities have 22 rights fully regulated in the constitution. One of the rights in Article 5 letter q of Law Number 8 of 2016 concerning Persons with Disabilities states the existence of a concession right (Jayadi, Abduh, and Basri 2022).

Concession rights are deductions from the Regional Government, Government, or people for Persons with Disabilities based on policies of the local government and government. Article 114 paragraph (1) stipulates that the Regional Government and the government must grant concessions to persons with disabilities if the Regional Government and the government are required to do so, and Article 114 paragraph (2) stipulates that the provisions regarding the size and type of concessions referred to in paragraph (1) are regulated by a Government Regulation. To date, however, with the adoption of Law No. 8 of 2016 respecting Persons with Disabilities, Government Regulations that particularly control concession rights for persons with disabilities have not been established. Suppose the government want to determine the amount or type of concession offered to disabled individuals. Consequently, this should be specified in government regulation. Therefore, there is an urgent need to develop regulations to fulfill, execute, and realize the rights of individuals with disabilities (Hanifa et al. 2022).

Norway oversees inclusive development by providing reform and support at the community level for the inclusion and normalization of persons with disabilities and the deinstitutionalization of persons with disabilities. Norway has carried out full deinstitutionalization since the 1990s. This considers that disability does not only require welfare. There is a lack of understanding of disability in various policies. The Norwegian government has included social regulations (in the form of regulations, laws, licenses, and issuance of permits regarding anti-discrimination and related accessibility) into the disability system. These efforts can increase the awareness of decision-making parties always to consider persons with disabilities and normalize their
existence in society. Norway currently has the Accessibility and Anti-discrimination Act of 2008; its contents include a non-discriminatory law that is deliberately aimed at disabilities and is enacted nationally to form a universal design in 2025 (Fitritnitia and Matsuyuki 2022).

The concession rights in accordance with Law Number 8 of 2016 state that concessions are all forms of fee deductions from the government for persons with disabilities, thus the local government and the government are responsible for protecting, respecting, and fulfilling the rights of persons with disabilities. The number of persons with disabilities in Indonesia is not small, thus requiring the existence of supporting programs, regulations, or activities that refer to the principle of equality of rights in a sustainable and comprehensive manner supported by infrastructure that can make it easier for persons with disabilities to be like ordinary people (Sennoga et al. 2022).

The ratification of the Convention on the Rights of Persons with Disabilities (CRPD) has been regulated in Law No. 19 of 2011, which is a milestone in progress in efforts to increase the promotion and protection of rights for persons with disabilities. The convention contains general rights and specifications for persons with disabilities regarding the obligations of the state as the party responsible for fulfilling the rights of persons with disabilities. Some of the rights of persons with disabilities are: adjusting national policies; creating an inclusive disability environment; providing reasonable accommodation; and providing accessibility in the non-physical and physical sectors. Demands for rights and the provision of infrastructure and facilities for non-physical or physical accessibility for persons with disabilities are often voiced by activists from Disabled Persons Organizations. The government has realized various infrastructure facilities, such as the construction of special schools, the construction of facilities in several buildings, news translators for people with hearing or deaf disabilities on television, special transportation for people with disabilities (Hall et al. 2022).

The basis for the legalization of the Draft Law on Persons with Disabilities to become the Law on Persons with Disabilities is the government's steps in fulfilling the rights of persons with disabilities, both economic, political, social, and cultural rights, as well as their equality before the law. In the formation of the rule of law, the main principle is built in order to create clarity about the rule of law; that principle is legal certainty. Laws that regulate disability can become an umbrella for legal protection for persons with disabilities, thereby avoiding violence, injustice, and discrimination. Whereas in order to carry out a rule in the law, a government regulation is needed as the implementing regulation. Government regulations are interpreted as legislation that the President determines to carry out as it should. In line with what is emphasized in Article 114, paragraph (2), of Law Number 8 of 2016 concerning Persons with Disabilities, which states the type and amount of concessions are regulated in
government regulations, which are constitutionally the implementing regulations (Gan et al. 2021).

That the rights of persons with disabilities, especially concession rights, are a form of privilege that belongs to persons with disabilities, where these privileges are duly fulfilled by the state or the government as the authorities. The implementation of human rights is determined by the good will of the authorities. The authorities have the right to create institutions that have the power to impose what they want on society as well as control repressive tools. The implementation of human rights sometimes only seeks legitimacy for power to strengthen their government. An important human rights factor is carried out, namely, the official recognition of the state regarding human rights in a real way, namely, a declaration that is strengthened by law (Madyaningrum et al. 2021). Several previous studies have discussed the rights of persons with disabilities according to the law, however in this study the authors present a novelty of research that discusses in detail the fundamental problems of the importance of issuing concession rights arrangements and the proposed solutions provided by the authors regarding concession rights for disabilities.

The basic objective is to immediately issue a government regulation that specifically regulates concessions for persons with disabilities because the law on persons with disabilities clearly states that the amount and type of concessions for persons with disabilities are regulated by government regulations. From the point of view of persons with disabilities themselves, as vulnerable people, the main reason for granting concessions is that there are additional costs that must be incurred by people with disabilities (the "Disability Extra Cost"), whereas these additional costs are not experienced by people without disabilities. (Sibarani et al. 2022) In preparing government regulations, the community, organizations of persons with disabilities, and the seriousness and concern of all parties must be involved, primarily the provincial government, the central government, the city government, and all levels of society. Based on juridical references in Articles 114–116 of Law Number 8 of 2016, concerning Persons with Disabilities, and Article 12 of Law No. 12 of 2011, which contains the Formation of Legislation, which contains government regulations to implement the law, the purpose of issuing government regulations related to concession rights has been stated in Law Number 8 of 2016.

METHOD

This study uses a literature review approach, namely, by examining and analyzing the data obtained. Supporting references in writing this article was obtained from various trusted literature such as books, journals, laws, Google Scholar, and news that specifically discuss persons with disabilities or concession rights. (Iqra, Korompot, and David 2021) It is hoped that the results of the review in writing this article can be used as input or consideration by all parties who have the authority to issue government
regulations so that the rights of persons with disabilities, especially concession rights as stated in Law Number 8 of 2016, are more directly related to regulation (Saptaputra et al. 2021).

RESULTS AND DISCUSSION
The Urgency of Concessions for Persons with Disabilities

The serious attitude of the Indonesian government, which can illustrate if it is serious in its efforts to protect, respect, and fulfill the rights of persons with disabilities, is through ratifying the CRPD. CRPD is a form of the spirit of realizing the fulfillment of rights for persons with disabilities based on equal rights with society. Indonesia is included in the UN section that participated in ratifying the CRPD through Law No. 19 of 2011. The law is a statutory legal umbrella that has to do with persons with disabilities in order to realize equal rights (Gotuzzo 2008). The Indonesian government ratified the CRPD on the legal basis of ratification following the Preamble of the 45th UUD and reaffirmed it in its articles. It is known that the NKRI is a democratic legal state based on the welfare principle (Juanita et al. 2022).

This raises the following consequences: the state is obliged and responsible for guaranteeing fundamental rights for all its citizens and is obliged to realize them. Efforts to fulfill the rights of persons with disabilities need to be implemented in every government policy in development planning which includes persons with disabilities, legislation, fulfilling the rights of persons with disabilities, and budget allocations for social welfare. The implementation of the CRPD in Indonesia has significantly impacted the application of regulations or policies that will be formed. The most noticeable impacts are known from contractors, infrastructure accessibility, transportation operators, developers, or building management (Kristina et al. 2018).

Efforts to fulfill the rights of persons with disabilities require consideration of Indonesian citizens having the right to demand their rights. As a country with human rights provisions in its constitution, Indonesia must ensure the access that Indonesian citizens take to get their rights. Everyone has the right to use international forums and national law for human rights violations, guaranteed in Law No. 39 of 1999 concerning Human Rights (Article 7 Paragraph 1). The essence of protection and respect for human rights is to maintain human safety by balancing actions between obligations and rights and balancing public interests and individual interests. Efforts made to protect, respect, and uphold human rights are a shared responsibility and obligation between the government, individuals, and the state. Persons with disabilities have the same rights, positions, and obligations as ordinary people. Persons with disabilities should receive special treatment to protect them from being vulnerable to discrimination while simultaneously avoiding human rights violations. The Urgency of Concessions for Persons with Disabilities (Al Hayyan et al. 2021).
Giving special treatment is an effort to maximize the promotion, respect, fulfillment, and protection of universal human rights. This has been guaranteed in the 1945 Constitution, Article 28 I, Paragraph 2, which explains that everyone must be free from discriminatory actions and has the right to obtain human rights, including persons with disabilities. Law No. 39 of 1999 concerning Human Rights indicates that the state's obligations regarding human rights are: (1) obligation to respect; it is the state's duty to refrain from carrying out marginalization and discrimination in the form of actions or attitudes toward persons with disabilities. Every person with disabilities has the right to obtain food, the right to work, the right to access welfare and welfare services, the right to maintenance of social welfare levels, and the right to receive social assistance. (2) to protect or the obligation to protect, namely, protection carried out by the state to prevent persons with disabilities from the threat of futility, neglect, or exploitation. (3) to fulfill or the obligation to fulfill is the obligation to stipulate administrative, legislative, practical, and judicial steps to fulfill the rights of persons with disabilities that have been guaranteed in law. In this case, the state must provide non-physical and physical facilities to ensure the welfare of persons with disabilities. The obligation in question is the government's responsibility to every citizen (Evlyn et al. 2021).

The principle of welfare in the 1945 Constitution is fundamental and general, so its implementation needs to be regulated in other laws. The law, which contains aspects of people's welfare, relates to the rights of persons with disabilities. This aims to create prosperity for people with disabilities so that aspects of life can be achieved. Indonesia, as a country that upholds the principle of welfare, has an impact on the necessity to realize welfare for all citizens in it as a whole. Ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and subsequently contained in Law no. 19 of 2011 can change the paradigm of understanding for people with disabilities through the terminology of people with disabilities (Widyawati et al. 2021).

This changes the method of approach used to empower people with disabilities. The ratification obliges the government to protect and pay attention to persons with disabilities. This ratification is the momentum for the subsequent success that comes from the advocacy process to encourage fulfilling the rights of persons with disabilities. The pouring of the convention into law, as a generally binding written rule, the law which ratifies the convention will have legal force. Thus it will also have a binding legal force so that it can be enforced (force applies) and, simultaneously, has moral force for the signatory country. Hand. For this reason, it is a legal and moral obligation for the state to regulate issues of persons with disabilities in statutory regulations (Utomo et al. 2019).

NKRI is a democratic legal state based on the principle of welfare. This raises the following consequences: the state is obliged and responsible for guaranteeing fundamental rights for all its citizens and is obliged to create citizen welfare without
discrimination. Based on Law No. 39 of 1999, every person with a disability has the right to receive the same treatment as citizens of other countries. The law shows that if the central government must participate in protecting persons with disabilities, this can be implemented by establishing laws specifically aimed at persons with disabilities (Pertiwi, Llewellyn, and Villeneuve 2020). Moreover, Law No. 8 of 2016 concerning Persons with Disabilities has mandated 22 rights for persons with disabilities, where these rights are a form of special treatment given by the government to persons with disabilities. One of the 22 rights is a concession right. Concessions are all forms of cost reductions originating from the regional government, government, or other people and aimed at persons with disabilities based on the regional government or government. Concessions are important because they can lower barriers to basic services for people with disabilities, increasing their participation and income in the economy. The results of studies that have been carried out show that as many as 20 million Indonesian citizens (8.6%) with disabilities have higher living expenses than non-disabled people. This raises challenges for those who participate fully in the economy (Andriana and Evans 2020).

In 2019, 75% of people with severe disabilities had only completed elementary school or had received no education at all. Individually, as many as 44% of people with disabilities work, compared to only 69.8% of those without disabilities. Persons with disabilities have lower incomes than the national average. The economic situation of families with disabilities tends to be lower when compared to the economies of families without disabilities because it requires more financing (extra cost). What is meant by "more financing" are things like high transportation costs, health costs, additional costs needed to be used as a tool, childcare costs, and opportunity costs that arise due to lower competitiveness and education. Families with disabilities must at least bear an additional fee of up to 20% to meet their basic needs. Concessions are deemed necessary because they are part of a form of social protection for disabilities so that persons with disabilities are far from the poverty line (Paramashanti et al. 2022).

Types of concessions that are deemed necessary or recommended for persons with disabilities contain at least 4 (four) types of priority which include (1) Concessions in the health sector are concessions that are given in the form of JKN program membership contribution assistance, additional benefits for rehabilitation and assistive devices for persons with disabilities in the JKN program, and providing tax discounts as a tool for persons with disabilities; (2) Concessions in the education sector, namely the government needs to provide and prioritize additional benefits in the PIP program for students with disabilities; (3) Concessions in the field of transportation, namely: providing discounts on inter-provincial/inter-city travel tickets for persons with disabilities; (4) Concessions in the utility sector, namely: granting discounts on electricity payments, drinking water fees, or internet. Therefore, it is necessary to discuss the financing side by the central government involving local governments,
BUMN, BUMD, the private sector, and the community (Lahiri-Dutt, Amor, and Perks 2021).

Regarding the number of concessions granted to persons with disabilities in Law no. 8 of 2016 is regulated in a Government Regulation that has not yet been issued. There is an urgency to issue a Government Regulation immediately because the rules regarding the amount of discounted fees given to persons with disabilities must be expressly stated and implemented as a rule to create legal certainty for persons with disabilities. Therefore, in drafting government regulations that discuss concessions, there needs to be coordination between internal parties, such as the central and regional governments, as those with authority to make and determine regulations, the ministry of finance related to financing, organizations of people with disabilities, and community participation (Mboi et al. 2022).

Concessions are considered a rational policy rule if granted to persons with disabilities. Where seen from the point of view of financing the necessities of life, families with disabilities in it require an additional cost that a person must incur with a disability, "Disability Extra Cost." Families with family members with disabilities will incur 20% more costs when compared to families without disabilities because a person with a disability must meet specific needs, for example, expenses to buy wheelchairs for access to the mobility of persons with disabilities and also buy the necessary medical needs. Purchasing special needs inevitably will issue more necessities of life compared to the needs of non-disabled people. In Indonesia, few policies specifically regulate social protection in the form of concessions (reductions). Thus, concessions are deemed necessary because they are part of a form of social protection for disabilities so that persons with disabilities are far from the poverty line (Paintain et al. 2020).

The Model of Concession Arrangement for Persons with Disabilities Based on Human Rights

The compared to households without persons with disabilities, households with disabilities face a higher risk of problems due to lower economic standards. Persons with disabilities bear a higher cost of living compared to non-disabled persons, which can push households below the poverty line. (Pujilestari et al. 2019) This is caused by direct and indirect costs related to the basic needs of people with disabilities, for example, higher health and transportation costs, costs for aids and rehabilitation, medical expenses, and opportunity costs arising from low education and low competitiveness. Families with disabled members must pay 20% more to meet their basic needs. According to the research findings, the average disabled person living abroad must pay a disability extra cost of USD 1200 to USD 7000 per year (Pertiwi et al. 2020).
In Vietnam, a family with a disabled member must incur a Disability Extra Cost of 12%. In the Philippines, a person with disabilities will receive concession benefits when he goes to restaurants, hotels, and other places. There, the average discount received is 20%. People with disabilities in the Philippines who want to use their concession rights only need to show their disability identification card. In Malaysia, the concessions given to people with disabilities are tax deductions, discounts on the cost of making passports, and discounts when buying a car; in South Korea, concessions are given in the form of discounts for people with disabilities who want to use public transportation. Judging from the description of the presentation, many countries have implemented and have legal regulations regarding the regulation of concession rights for persons with disabilities (Andriana and Evans 2020).

There has been no legal product in the form of concessions or reduced costs that specifically regulate the respect, protection, and fulfillment of the rights of persons with disabilities in Indonesia, because the problem of persons with disabilities in Indonesia has not yet become a legal or political issue. Legal politics is a form of concrete action in pursuing a legal policy. The step of forming a rule that explicitly regulates every stakeholder in the State of Indonesia in handling the problems of persons with disabilities requires a special commitment from all levels, including the government, local government, and council members (Paramashanti et al. 2022).

The efforts to build commitment in developing policies that are deemed unsuitable for people with disabilities are outlined in the form of a legal product. Apart from that, external constraints in implementing local government or government obligations to protect respect for and fulfill disability rights are that all the implementing regulations stipulated in Law Number 8 of 2016 concerning Persons with Disabilities have not been implemented. In our constitution, it has been stipulated that lower statutory regulations may not conflict with higher statutory regulations, and the contents of the legal regulations must also be spelled out. This is considered an obstacle to implementing regulations and realizing the mandate of Law Number 8 of 2016. For example, provisions regarding procedures and forms of granting concessions, whose implementation rules are regulated in government regulations, have just been formed. Article 114, paragraph (1), of Law Number 8 of 2016 states that the government and regional governments must provide concessions to persons with disabilities (Lahiri-Dutt et al. 2021).

Considering the creation of regulations regarding concession rights in other countries illustrates that it is vital to implement these concessions in Indonesia because they can reduce barriers for persons with disabilities to access essential services to increase their income and participation in the economy. Concessions are a social protection package that can effectively complement the role of cash transfers and reduce the negative impact when persons with disabilities are in low economic circles or are poor. In order to immediately issue a government regulation that specifically
regulates concession rights, this can be done through efforts to raise awareness from the government and regional governments as policymakers that protecting, respecting, and fulfilling the rights of persons with disabilities is a fundamental right to create regulation. The importance of fulfilling the rights of persons with disabilities according to the law also urgently needs to be included in the national legislation program through the aspirations of the people and the mandate of higher regulatory orders (Mboi et al. 2022).

The solution offered in the publication of concession regulations for persons with disabilities in Indonesia is to provide concession packages that can reduce costs borne by persons with disabilities. The concession packages are based on the types and recommendations for the primary needs of persons with disabilities, namely based on the priority scope of health, education, transportation, and utilities. This concession is based on the high costs incurred by households with disabilities. However, the implementation of this concession package must be regulated and studied, and it is essential to estimate additional living costs for persons with disabilities (Mani, Mitra, and Sambamoorthi 2018).

CONCLUSION

Law Number 8 of 2016 concerning Persons with Disabilities has mandated 22 rights for persons with disabilities, which rights are a form of special treatment given by the government to persons with disabilities. One of the 22 rights mentions the existence of concession rights for people with disabilities. Concessions are all forms of cost reductions provided by the Government, Regional Governments, and everyone to Persons with Disabilities based on Government and Regional Government policies. According to Article 114, paragraph (2), the type and amount of the concession are regulated in a Government Regulation. Government Regulation has yet to exist. There is an urgency to issue a Government Regulation immediately because the rules regarding the type and amount of fee deductions given to persons with disabilities must be expressly stated and implemented as a rule to create legal certainty for persons with disabilities. The solution offered by the author is related to the importance of fulfilling the rights of persons with disabilities when viewed from the high extra costs that families must incur with disabilities in terms of health or medical costs. It is recommended to have a concession package for disabilities based on the priority scope of health, education, transportation, and utilities. This need is felt necessary to obtain additional financing from the government as the policy maker.

REFERENCES


Mboi, Nafsiah, Ruri Syailendrawati, Samuel M. Ostroff, Iqbal RF Elyazar, Scott D. Glenn, Tety Rachmaawati, Wahyu Pudji Nugraheni, Pungkas Bahjuri Ali, Laksono


Pujilestari, Cahya Utamie, Lennarth Nyström, Margareta Norberg, and Nawi Ng. 2019. “Association between Changes in Waist Circumferences and Disability among Older Adults: WHO-INDEPTH Study on Global Ageing and Adult Health (SAGE) in Indonesia.” Obesity Research and Clinical Practice 13(5):462–68. doi:


