

Fulfillment of the Rights of Persons with Disabilities as Workers in the Formal Sector: A Comparative Study of Indonesia and France

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ARTICLE INFO	ABSTRACT
<p>Keywords: People with Disabilities; Workers; Formal Sector; Fulfillment; France.</p> <p>How to cite: Aldillah, M., Wasitaatmadja, Fuad Fokky (2025). Fulfillment of the Rights of Persons with Disabilities as Workers in the Formal Sector: A Comparative Study of Indonesia and France. <i>Veteran Law Review</i>. 8(2). 129-147.</p> <p>Received:2024-10-14 Revised:2024-10-27 Accepted:2024-12-02</p>	<p><i>The concept of the state as a protective entity is a fundamental principle in modern legal philosophy, whereby the state acts as an active guarantor of the fulfillment of the fundamental rights of all its citizens without exception. In Indonesia, this commitment is manifested through Law No. 8 of 2016 concerning Persons with Disabilities, which mandates a job placement quota of 2% for the public sector and 1% for the private sector. However, the reality on the ground shows a significant gap between this legal mandate and the low level of compliance from companies. The research question for this study is how the concept of fulfilling the rights of persons with disabilities in the formal sector is reviewed based on positive law in Indonesia, and how the mechanism for fulfilling the rights of persons with disabilities compares to that in France. The theory used in this study refers to the theory of the rule of law and the theory of the welfare state. This study uses a normative juridical method with a regulatory approach and a conceptual approach to analyze the issues raised. The results of the study show that although Indonesian positive law has shifted from a paternalistic paradigm to one based on human rights through Law No. 8 of 2016, its implementation is hampered by the absence of explicit recognition in the constitution and weak enforcement mechanisms. A comparative analysis with France reveals that the "hire or pay" system, supported by special fund management institutions such as Agefiph, offers a more effective and constructive model. Therefore, Indonesia is advised to adopt a similar mechanism with clear sanctions to transform its normative framework into an implementable and sustainable system.</i></p>

1. Introduction

The concept of the state as a protective entity is a key foundation in modern legal philosophy, whereby the state acts not only as a guardian of order, but also as an active guarantor of the fulfillment of the fundamental rights of all its citizens without exception (Sujasmin, 2012). In this paradigm, protection of vulnerable groups, including persons with disabilities, becomes the main benchmark of a country's civility and success in carrying out its constitutional mandate. The state has a positive obligation to create a social, economic, and legal environment that allows every individual to participate fully and equally in society (Anugrah & Syaichu, 2017). This responsibility goes beyond simply

prohibiting discrimination; it requires affirmative action to remove existing barriers (Rahmani & Dirkareshza, 2023). This protection inherently includes the right to decent work, which is the main gateway to economic independence, dignity, and social inclusion. Therefore, the state must act as a balancing force to ensure that labor market dynamics do not exclude those with limitations.

The welfare state is a concrete manifestation of the state's role as a protector, systematically intervening in market dynamics to ensure social justice and equitable distribution of welfare (Sukmana, 2016). In the context of employment, the welfare state paradigm rejects the view that the market can regulate itself fairly, especially for groups with weaker bargaining positions such as persons with disabilities (Istifarroh & Nugroho, 2019). The state takes an active role by formulating policies, allocating budgets, and building institutions that specifically aim to empower and protect workers' rights. These interventions can take the form of providing social security, adaptive job training programs, subsidies for companies that employ people with disabilities, and strict law enforcement against discriminatory practices. Thus, the concept of the welfare state changes the status of people with disabilities from objects of pity to subjects of law who have the same rights to contribute productively.

State intervention in the realm of employment is a logical necessity of its role as a guarantor of justice, where regulations are created to limit potentially exploitative contractual freedom (Ardiansyah et al., 2023). The state sets minimum standards that employers cannot violate, such as minimum wages, working hours, occupational safety and health, and the right to organize. In the context of workers with disabilities, this intervention is even more crucial, as they face multiple barriers, ranging from social stigma to physical accessibility in the workplace (Choudhury & Gupta, 2023). Therefore, the state legally intervenes by establishing specific regulations that require reasonable accommodation and employment quotas. This intervention is not a form of excessive interference, but rather a corrective mechanism to ensure that the principle of free competition in the labor market continues to operate on a fair and equal footing.

The principle of equality before the law is a key pillar that must be upheld in all labor laws and regulations, which explicitly prohibit all forms of discrimination (Riswandie, 2023). For workers with disabilities, this principle means that they are not only entitled to employment, but also to equal treatment in all aspects of the employment relationship, including recruitment, placement, promotion, and remuneration (Febrina & others, 2021). This concept of equality should not be interpreted narrowly as equal treatment, but rather understood as the provision of equal opportunities through the removal of barriers and the provision of necessary support (Butar-Butar & Turisno, 2022). The state, through its legal instruments, must ensure that all employers, both private and public, apply this principle consistently. Failure to guarantee this equality is not only a violation of human rights, but also an economic loss because the state loses the productive potential of some of its citizens.

In Indonesia, the state's commitment to protecting the rights of workers with disabilities is manifested through a series of progressive legal instruments, one of which is the obligation to fulfill quotas in the formal sector (Herrin, 2016). Law Number 8 of 2016 concerning Persons with Disabilities is the main legal umbrella that has revolutionarily changed the paradigm from pity to the fulfillment of rights. Specifically, Article 53 paragraph (1) of this law requires the central government, local governments, state-owned enterprises, and regional-owned enterprises to employ at least 2% (two percent) of people with disabilities from the total number of employees or workers (Hu, 2015). This obligation affirms the role of the state as a role model in creating inclusive employment.

Data from the Central Statistics Agency (BPS) shows that in 2020, the number of persons with disabilities in Indonesia reached 22,97 million, or about five percent of the total population. According to data from the Central Statistics Agency (BPS) on the number of workers with disabilities in Indonesia, there were 720,748 people. This number reached around 0.53% of the total Indonesian population who worked, which was 131.05 million last year (2021). It was recorded that the number of Indonesian workers with disabilities in 2022 increased by 160.18% from the previous year. In 2021, the number was only 277,018 people. In 2022, the proportion of workers with disabilities who are self-employed reached 0.81% of the total working population at the national level. Looking at the proportion of workers with disabilities who are assisted by unpaid workers/family workers/unpaid workers, it is 0.78%, and family workers/unpaid workers are 0.67%. Meanwhile, disabled workers with freelance jobs in agriculture accounted for 0.66% and those assisted by permanent/paid workers accounted for 0.55%. Meanwhile, workers with disabilities who are laborers/employees/officials have the smallest proportion, namely 0.23% of the total working population nationally. The above data shows that people with disabilities have not fully obtained space to work in the formal sector even though there is a quota requirement that each company must have 1% of the total workforce in the company concerned. The following table explains the above:

Year	Total (In Million)
2020	22,97
2021	23,3
2022	41
2023	22,97

Tabel 1.
Total of Disabilities in 2020-2023

This quota requirement applies not only to the public sector, but also explicitly binds the private sector, which is the largest provider of employment. Article 53 paragraph (2) of Law Number 8 of 2016 stipulates that private companies are required to employ at least 1% (one percent) of people with disabilities

from the total number of employees or workers (Renita et al., 2021). This provision is the most concrete state intervention to encourage the private sector to actively participate in creating inclusiveness. This norm is further reinforced through Government Regulation No. 60 of 2020 concerning Disability Service Units in the Field of Employment. To provide technical guidance, Minister of Manpower Regulation No. 21 of 2020 also regulates Disability Service Units in the field of employment that assist in the placement process.

Although the legal framework regarding the 1% quota for private companies has been clearly established, the reality on the ground shows a significant gap between the mandate of the law and the level of compliance (Rosana, 2014). Many companies are still reluctant to fulfill this obligation for various reasons, ranging from misperceptions about the productivity of workers with disabilities to unwillingness to provide adequate accommodations because they are considered costly (Ndaumanu, 2020). A common example is subtle rejection during job interviews or the placement of workers with disabilities in positions that do not match their qualifications. This phenomenon shows that regulations alone are not enough without strict supervision and firm enforcement of sanctions by the government.

One example that illustrates this challenge is the experience of a graduate in accounting with a physical disability who had to send hundreds of job applications before finally being accepted by a multinational company with a global inclusivity policy (Sidi, 2014). Most of the domestic companies he applied to either did not respond or rejected him for reasons unrelated to his competence. Another case is a garment factory that preferred to pay a fine (even though the fines were not yet effectively enforced) rather than renovate its production facilities to make them accessible to wheelchair users (Dirkareshza et al., 2024). This reality reflects that there is still deep-rooted bias and stigma among employers, which is a major obstacle to the implementation of quota regulations.

Data from various institutions, including national labor force surveys and civil society organization reports, consistently show that the labor force participation rate of persons with disabilities is still very low, especially in the formal sector (Sinaga, 2017). The open unemployment rate among persons with disabilities is much higher than that of non-disabled persons. Many companies formally report their number of employees without specifying their fulfillment of the 1% quota, and supervision by local labor offices is often not optimal for verifying this data. The lack of a centralized and transparent reporting mechanism is one of the main obstacles to accurately monitoring compliance rates.

This inconsistency in meeting the 1% quota creates a double negative impact. First, it directly perpetuates the cycle of poverty and marginalization for persons with disabilities, who are qualified but hindered by systemic discrimination (Rahmani & Dirkareshza, 2023). Second, from a macroeconomic perspective, the country loses the potential GDP contribution of millions of its productive citizens. This mass non-compliance also sends a

signal that regulations protecting vulnerable groups can be ignored without significant consequences, thereby undermining the rule of law itself. Ultimately, this gap between regulation and implementation reflects the lack of substantive social justice for persons with disabilities in Indonesia.

As a point of comparison, France, as a country with a strong tradition of civil law and welfare state, has a more mature approach to enforcing the right to work for persons with disabilities. Since 1987, France has implemented a higher quota policy of 6% (six percent) for all companies with 20 or more employees, as stipulated in the Code du Travail (French Labor Code) (Trade Registry France, 2024). What sets France apart is its enforcement mechanism: companies that do not meet this quota are required to pay an annual financial contribution to an institution called Agefiph (Association for the Management of Funds for the Professional Integration of Persons with Disabilities). The funds collected from these “fines” are then used productively to finance training programs, workplace adaptations, and support other initiatives that increase employment opportunities for people with disabilities, a system that ensures all parties contribute.

The implementation in the field shows that the quota and contribution system in France, although not yet perfect, has proven to be more effective in encouraging compliance (Schnatterer, 2015). The existence of institutions such as Agefiph has created an integrated ecosystem, where financial sanctions are converted into positive incentives for empowerment (Schaduw, 2015). Companies are given a choice: recruit directly, subcontract work to companies that employ a majority of people with disabilities, or pay contributions. This flexibility, coupled with strict supervision, has resulted in a significantly higher rate of employment among people with disabilities in France compared to Indonesia. The work culture in many French companies has also shifted, where employing people with disabilities is now seen as part of social responsibility and even as a competitive advantage.

Although the system in France is more advanced, challenges remain (Rouge et al., 2018). The unemployment rate among people with disabilities there is still twice as high as that of non-disabled people, and many are still concentrated in low-wage jobs. However, what sets France apart is its strong legal framework, clear enforcement mechanisms, and structured support ecosystem. Companies cannot simply ignore their obligations without real financial consequences. The existence of fund management institutions ensures that even non-compliance can be turned into a resource for empowerment, a valuable lesson for Indonesia in designing a more effective system.

Every study requires differences and similarities in filtering and sorting novelty or research findings. These novel findings consist of three articles discussing several related topics. The first article, entitled “Hak atas pekerjaan bagi penyandang disabilitas di sektor publik: antara model disabilitas sosial dan medis,” was written by Muhammad Dahlan and Syahriza Alkohir Anggoro in *Undang: Jurnal Hukum* Vol. 4 No. 1 Year 2021. This article finds that affirmative action policies do not provide equal opportunities for persons

with disabilities because special formations and medical requirements prevent them from applying for jobs that match their interests and educational backgrounds. The use of the medical model of disability in the provision of employment opportunities in the public sector in turn hinders the level of participation and the creation of an inclusive work environment. The difference with this study is that this study will discuss disability rights and compare them with existing concepts in France, while this article only discusses social and medical aspects without comparing them with other countries.

Furthermore, research conducted by Suryanto Suryanto from Narotama University, entitled “Pemenuhan Hak Penyandang Disabilitas Pada Perusahaan Swasta dalam Perspektif Hukum Ketenagakerjaan” and published in the Bureaucracy Journal, focuses on the problems of implementing the rights of persons with disabilities in private companies after the enactment of Law No. 8 of 2016 (Suryanto, 2025). The main issue raised is the gap between the normative obligations imposed on companies – such as fulfilling the 1% quota, providing adequate accommodation, and social security – and the reality of practices that are often not fulfilled. Using a normative legal research method, this study aims to analyze the fulfillment of these rights from the perspective of labor law applicable in Indonesia and to identify preventive legal measures, such as employment agreements, that can be taken by workers with disabilities to protect their rights. The fundamental similarity between Suryanto's research and this study is that both place the fulfillment of the employment rights of persons with disabilities in the formal private sector as the main object of study. Both start from the same premise, namely the existence of legislation (Law No. 8 of 2016) that provides the basis for rights, but its implementation in the field still faces various challenges. In addition, both studies examine the issue from a labor law perspective, with the ultimate goal of ensuring protection and equality for workers with disabilities. The most significant difference, and this is where the novelty of this study lies, is in the methodology and scope of analysis. Suryanto's research uses a purely normative juridical approach that focuses exclusively on the Indonesian legal system (intra-legal system analysis). His research aims to examine the consistency and implementation of legal norms within a single country. In contrast, this study uses a comparative law method, which inherently transcends national jurisdictional boundaries by comparing the Indonesian legal system with that of France. This approach not only identifies problems in Indonesia, but also seeks alternative solutions or best practices from other legal systems that have a strong welfare state tradition. Thus, while Suryanto's research provides a foundation regarding the legal conditions in Indonesia, this research will build on it by offering a critical and constructive external perspective, which is an original contribution to the discourse on the fulfillment of disability rights in Indonesia.

The research conducted by Salha Marasaoly, et al. from Khairun University, entitled “Fulfillment of the Rights of Persons with Disabilities in Obtaining Employment in Government Agencies in the City of Ternate” and published in the Journal of Legal Interpretation, focuses on analyzing the

implementation of the fulfillment of employment rights for persons with disabilities in the government sector in the city of Ternate (Marasaoly et al., 2025). The main issue raised is the failure to achieve the minimum quota of 2% as mandated by the 1945 Constitution and Law No. 8 of 2016 in local government agencies. The fundamental similarity between Marasaoly et al.'s research and this journal proposal is that both examine the issue of fulfilling the right to work for persons with disabilities as a central issue. The most fundamental difference, and this is where the novelty and specific contribution of this journal proposal lies, is in the focus of the sector, scope, and analysis methodology. Marasaoly et al.'s research exclusively examined the government sector (government agencies) and was limited to the local context (Ternate City), with the analyzed obstacles originating from within persons with disabilities themselves. In contrast, this research focuses on the formal private sector and uses a comparative study methodology by comparing the Indonesian and French legal systems at the national level. This approach makes it possible to not only identify domestic problems as previous studies have done, but also to offer alternative policy solutions by learning from law enforcement models and support ecosystems implemented in other countries. Thus, while the study by Marasaoly et al. provides an in-depth picture of the challenges in the local public sector, this study will broaden the discourse by providing an international and comparative perspective on the private sector.

Based on a comparison between the ideal legal framework, the problematic reality of implementation in Indonesia, and the more mature system in France, this study raises several questions. First, how is the concept of fulfilling the rights of persons with disabilities in the formal sector reviewed under positive law in Indonesia? Second, how does the mechanism for fulfilling the rights of persons with disabilities compare with that in France?

2. Method

This study uses a normative juridical method with a regulatory approach and a conceptual approach. The normative juridical research method is defined as a research method that uses secondary data as the main material for research to find answers to the issues raised (Marzuki, 2017). The use of secondary data in this study uses legal materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The regulatory approach is an approach that uses current regulations or positive law and compares them with the issues raised. This study uses several applicable regulations related to the topic of employment. The conceptual approach is defined as an approach that uses doctrines and theories from experts in the discipline of law. The doctrines or theories used in this study are related to labor, human rights, and equality before the law. The data collection technique used is a literature study. In addition, this study is descriptive-prescriptive in nature, providing suggestions on the issues raised in the study.

3. Main Heading of the Analysis or Results

3.1. The Concept of Fulfilling Disability Rights in the Formal Employment Sector as Reviewed by Positive Law in Indonesia

The fulfillment of the rights of persons with disabilities began with the enactment of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006. The concept of this convention adopts the social model of disability, which refers to Mark Goodale's concept of "sympathetic law." The doctrine of this theory emphasizes that the law serves the functions of humanity and social change for social welfare and justice (Findi et al., 2023). The emergence of this convention cannot be separated from the awareness that persons with disabilities still live in very vulnerable and poor conditions due to various barriers that cause the loss of opportunities for all persons with disabilities to explore their individual talents, interests, and jobs (Maulana et al., 2024). The fulfillment of the right to work is essential in maximizing the potential, contribution, and participation of persons with disabilities in economic activities. The orientation of this convention also emphasizes the role of the international community in viewing the rights of persons with disabilities as inherent rights, just as human rights are rights that are inherent in human beings from birth.

Normatively, at the domestic level, Indonesia has a framework for the protection of the rights of persons with disabilities through Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities (CRPD Convention Law) and Law Number 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities). The provisions of these two laws show that Indonesia is slowly moving away from the paternalistic legal tradition in its view of persons with disabilities towards a human rights perspective, including the right to employment for persons with disabilities in the public sector (Dahlan & Anggoro, 2021). The context of the provisions in the Persons with Disabilities Law indirectly reflects an anti-discriminatory view in the effort to develop persons with disabilities into dignified human beings as they should be, regardless of their physical condition or disability. Article 11 letter a of the Disability Law explicitly states that *"The right to employment, entrepreneurship, and cooperatives for persons with disabilities includes the right to: a. Obtain employment organized by the government, local government, or private sector without discrimination"* (Trimaya, 2018). The provisions of this article emphasize that all persons with disabilities have full rights to employment organized by the government (in this case, the central government), local governments as stakeholders at the regional level, or the private sector without discrimination. The provisions of the Disability Law indirectly lead to provisions that refer to the human rights of persons with disabilities, which are not fully fulfilled in the provisions of Law Number 4 of 1997 concerning Persons with Disabilities (Disability Law).

Historically, the Disabled Persons Law has contained provisions that do not fully protect the rights of persons with disabilities, particularly in terms of protecting the rights of persons with disabilities in the employment sector (right to work). In fact, this law tends to limit persons with disabilities in obtaining the jobs they want. This provision is contained in Article 6 paragraph 2 of the Disability Law, which affirms the right of persons with

disabilities to work, limited by the type and degree of disability, education, and ability. The article reads, “*Every person with a disability has the right to obtain: ... 2. employment and a decent livelihood in accordance with the type and degree of disability, education, and ability.*” This article indirectly closes off some access for persons with disabilities to obtain the right to work, which may be caused by the interpretation of this article by employers. Employers indirectly have the right to interpret the provisions of this article, in addition to the provisions in the explanation of Article 5 of the Disabled Persons Law, which classifies disabilities according to their level, namely: a) physical disabilities, which are disabilities caused by disorders of bodily functions, including movement, vision, hearing, and speech; b) mental disabilities. This refers to mental and/or behavioral disorders, whether congenital or caused by illness; and c) physical and mental disabilities, which is a condition where a person has both types of disabilities. These three classifications are adopted in the Disability Law, even though in terms of human rights, this law limits people with disabilities in obtaining the jobs they want. The Disability Law indirectly creates a double-edged sword for persons with disabilities at that time (Dahlan & Anggoro, 2021). Although the classification of persons with disabilities in this law is necessary, their rights are limited by this provision and the unclear definition of persons with disabilities in the Disability Law.

The enactment of the Disability Law provides clarity on the basic rights of persons with disabilities, especially in terms of a clear definition of persons with disabilities in Indonesia. Article 1 paragraph 1 of the Disability Law explains that persons with disabilities are “any person who experiences long-term physical, intellectual, mental, and/or sensory limitations who, in interacting with their environment, may experience obstacles and difficulties in participating fully and effectively with other citizens on the basis of equal rights.” There is a clear difference between the rights and freedoms of persons with disabilities in the Law on Persons with Disabilities and the Law on Persons with Disabilities. The definition in the Law on Persons with Disabilities does not limit rights in any way, as persons with disabilities are given the broadest possible rights to fundamental access as a human right based on human rights.

Upon further examination, there are provisions that explain the rights of persons with disabilities, which are clearly detailed in Article 5 paragraph (1) of the Law on Persons with Disabilities, stating that persons with disabilities have the right to: “a) life; b) freedom from stigma; c) privacy; d) justice and legal protection; e) education; f) employment, entrepreneurship, and cooperatives; g) health; h) politics; i) religion; j) sports; k) culture and tourism; l) social welfare; m) accessibility; n) public services; o) protection from disasters; p) habilitation and rehabilitation; q) concessions; r) data collection; s) independent living and involvement in society; t) expression, communication, and access to information; u) movement and citizenship; and v) freedom from discrimination, neglect, torture, and exploitation” (Fitriyani & Cahyaningtyas, 2022). This article shows that persons with disabilities under the Disability Law are granted the same rights as normal people in general (Thamariska et al., 2023). Thus, the substance of the

law emphasizes equal rights as human beings. The guarantee and protection of these rights are clearly and explicitly stated in this law.

In terms of more specific rights, namely the right to employment, Article 53 paragraph (1) of the Disability Law directly stipulates the composition of employees in government and private entities in relation to persons with disabilities (Istiqomah, 2022). This article stipulates the following percentages: *"1) The central government, local governments, state-owned enterprises, and regional-owned enterprises are required to employ at least 2% (two percent) of persons with disabilities from the total number of employees or workers; and 2) Private companies are required to employ at least 1% (one percent) of persons with disabilities from the total number of employees or workers"* (Sholihah, 2016). This article stipulates the obligation of companies or government entities to employ employees with disabilities, which also guarantees them a special place in these state and private entities.

In terms of the implementation of this article, as researched in previous studies, it appears that in some areas, such as companies in the city of Bekasi, the 1% requirement mandated by this article has not been fully implemented. Despite strengthening employment for persons with disabilities, the Bekasi City Government has not been optimal in supervising companies in terms of the composition of persons with disabilities. Although the Bekasi City Government has implemented it optimally in terms of organizational management, it has not fully met expectations as there are still many companies that do not comply with the provisions of Article 53 paragraph (2) of the Law on Persons with Disabilities.

When looking at the constitutional norms that apply in Indonesia, there is no article that explicitly states the protection of persons with disabilities in obtaining access to decent work or guarantees against acts of discrimination. Indonesia regulates the right to work in general in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that *"Every person has the right to work and to receive fair and proper compensation and treatment in employment relationships"* (Pemerintah Republik Indonesia, 1945). The normative construction of this article provides general access to everyone living in the Republic of Indonesia, including persons with disabilities (Trimaya, 2018). However, when looking at constitutional provisions in other countries, it is clear that persons with disabilities have their own exclusive protection.

For example, Germany has the Grundgesetz or Basic Law of Germany, which affirms the rights of persons with disabilities to obtain employment, or the right to work. This provision affirms the state's commitment to ensuring that no one is disadvantaged because of their disability. The affirmation of the protection of disability rights in Germany is emphasized in Article 3 paragraph (3) of the Basic Law of Germany, which states that *"Niemand darf wegen seines Geschlechtes, seiner Abstammung, seiner Rasse, seiner Sprache, seiner Heimat und Herkunft, seines Glaubens, seiner religiösen oder politischen Anschauungen benachteiligt oder bevorzugt werden"* (Currie, 1994). No one shall be disadvantaged because of their disability." This article affirms that no one

shall be disadvantaged or favored because of their gender or even because of their disability. The mention of the word disability in the Basic Law of Germany affirms that disability is given special status and is recognized constitutionally.

Then, from the perspective of Italy, which also emphasizes the position of persons with disabilities in obtaining access to education and employment, as stated in Article 38 of the Constitution of the Italian Republic, which reads: *"Every citizen unable to work and lacking the means necessary for life has the right to maintenance and social assistance. Workers have the right to adequate means to meet their needs in the event of accident, illness, disability, old age, or involuntary unemployment. Disabled and handicapped persons have the right to education and vocational training. The organs and institutions established or integrated by the State shall provide for the tasks set out in this article."* In this article, the rights of persons with disabilities are maximized through the empowerment of educational and vocational training institutions (Cartabia & Lupo, 2022). The position of persons with disabilities is recognized in this article, although not in terms of guaranteeing the right to work. However, the mention of persons with disabilities in the constitutional norm gives them a special status and minimizes violations of the rules in lower laws and regulations.

The conditions of the two countries above give persons with disabilities a special status by mentioning them directly in the constitutional norm. This will minimize violations of normative provisions that will be further elaborated in lower-level legislation in order to fulfill the principle of *lex superior derogat legi inferior* (higher regulations override lower regulations) (Aditya & Winata, 2018). This principle will maintain the consistency and harmony of existing laws and regulations in their vertical relationship.

When looking at this condition, the recognition of persons with disabilities in the realm of law is already maximal. However, the recognition of persons with disabilities in constitutional norms in Indonesia is not fully maximal, as it only provides general provisions on the protection and recognition of persons with disabilities in the right to work. Nevertheless, guaranteeing the rights of persons with disabilities does not necessarily require amending the 1945 Constitution of the Republic of Indonesia (Tutik, 2017). The rights of persons with disabilities can be guaranteed by the Constitutional Court, as the guardian of the constitution, interpreting the rights of persons with disabilities. The Constitutional Court can interpret Article 28D paragraph (2) of the 1945 Constitution based on its authority to review laws against the constitution as stated in Article 24C paragraph (1) of the 1945 Constitution, which reads "The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final, to review laws against the Constitution...". Thus, the guarantee and affirmation of the right to work for persons with disabilities can be maximized through this channel without having to amend the 1945 Constitution of the Republic of Indonesia.

3.2. Mechanism for Fulfilling Disability Rights to Work from a Comparative Perspective with France

Although the Indonesian constitution explicitly guarantees equality for all citizens, the reality on the ground shows that the fulfillment of the rights of persons with disabilities is still far from ideal, especially in terms of access to decent work. Persons with disabilities systematically face multiple barriers, ranging from deep-rooted social stigma in society to public infrastructure and work environments that are physically inaccessible. This situation is exacerbated by the lack of access to inclusive education and skills training relevant to market needs, limiting their competitiveness from the outset (Open Government Partnership, 2018). As a result, most persons with disabilities are trapped in a cycle of poverty and dependency, marginalized from full participation in economic and social life (Revillard, 2017). Their labor force participation rate in the formal sector is very low, reflecting unresolved structural discrimination (Revillard, 2018). Failure to guarantee these basic rights is not only a violation of human rights, but also a significant economic loss for the country as it fails to optimally utilize its vast human resource potential.

Normatively, Indonesia already has a progressive legal framework to protect the rights of persons with disabilities, culminating in the enactment of Law No. 8 of 2016 on Persons with Disabilities (Istifarroh & Nugroho, 2019). This law fundamentally changes the paradigm from one based on charity to one based on human rights, in line with the UN Convention on the Rights of Persons with Disabilities (CRPD) (Sodiqin, 2021). In it, the state guarantees a comprehensive set of rights, including the right to education, health, accessibility, political participation, and most importantly, the right to work, dignity, and entrepreneurship (Dahlan & Anggoro, 2021). The guarantee of the right to work is reinforced by the obligation of affirmative action in the form of a labor placement quota system. This legal instrument clearly mandates the state and the private sector to proactively create an inclusive environment. Thus, from a regulatory perspective, Indonesia has laid a strong foundation for the fulfillment of disability rights.

In an effort to set an example, Indonesian regulations specifically require the public sector to take the lead in employment inclusivity. Article 53 paragraph (1) of Law No. 8 of 2016 explicitly mandates that the Central Government, Regional Governments, State-Owned Enterprises (BUMN), and Regional-Owned Enterprises (BUMD) must employ at least 2% (two percent) of persons with disabilities from their total number of employees or workers. However, in practice, the implementation of this mandate still faces significant challenges at all levels of government (Sukanti & Faidati, 2021). Many government agencies have not yet reached the 2% quota, citing various reasons ranging from the recruitment process for civil servants (ASN) not being fully accessible to a lack of understanding of reasonable accommodation. Despite progress in recent years, the national employment rate of persons with disabilities in the public sector remains below the level required by law (Upik, 2021).

The obligation to create an inclusive work environment is also explicitly imposed on the private sector as the main driver of the economy. Article 53 paragraph (2) of Law No. 8 of 2016 stipulates that private companies are

required to employ at least 1% (one percent) of people with disabilities from their total number of employees. However, the reality on the ground shows that the level of compliance by private companies with this provision is still very low. Many companies are reluctant to meet this quota for various reasons, such as misconceptions about productivity and the additional costs of providing adequate accommodation. The lack of effective monitoring mechanisms and the absence of strict sanctions for non-compliant companies are among the main causes of low implementation. As a result, many persons with disabilities who have qualifications and competencies face rejection and systemic discrimination when entering the private labor market.

Overall, the fulfillment of employment rights for persons with disabilities in Indonesia is hampered by a wide gap between ideal normative regulations and weak practical implementation. The main challenge lies not only in the low level of awareness and commitment on the part of employers, but also in institutional weaknesses on the part of the government. The monitoring mechanisms carried out by local labor offices are often not optimal for verifying companies' compliance with the 1% and 2% quotas. In addition, to date there are no effective administrative sanctions that are consistently applied to companies or agencies that violate these provisions. The lack of centralized and accurate data on the employment of persons with disabilities also complicates the process of monitoring and evaluating policies. Ultimately, without strong law enforcement, even progressive regulations will remain ineffective.

As a country with a strong welfare state tradition, France has a more mature and robust legal framework to guarantee employment rights for people with disabilities. Since 1987, France has implemented an ambitious quota policy through the *Code du Travail* (Labor Code), known as the *Obligation d'Emploi des Travailleurs Handicapés* (OETH) or Obligation to Employ Persons with Disabilities, which was reaffirmed in Law No. 2018-771 of September 5, 2018 (Afifah & Hadi, 2018). Based on this provision, every company, both in the public and private sectors, with 20 or more employees is required to employ persons with disabilities, with a minimum composition of 6% (six percent) of their total workforce, which is reaffirmed in Article L5212-2 of the Labor Code, which reads that “*Tout employeur emploie des bénéficiaires de l'obligation d'emploi mentionnés à l'article L. 5212-13 dans la proportion minimale de 6 % de l'effectif total de ses salariés*” (Gouvernement de France, 2020). The context of this article emphasizes that the employment quota in France must be 6% of the total workforce in a company. This figure is much higher than the quota set in Indonesia. However, the key to this system is not only the size of the quota, but also its unique and multifaceted law enforcement mechanism.

Implementation in the field shows that the quota and contribution system in France, although not yet perfect, has proven to be more effective in encouraging compliance (Schnatterer, 2015). The existence of institutions such as Agefiph has created an integrated ecosystem, where financial sanctions are converted into positive incentives for empowerment (Schaduw, 2015). Companies are given a choice: hire directly, subcontract work to companies that employ a majority of people with disabilities, or pay contributions. This

flexibility, combined with strict oversight, has resulted in a much higher employment rate among people with disabilities in France compared to Indonesia. The work culture in many French companies has also changed, where employing people with disabilities is now considered part of social responsibility and even a competitive advantage.

Although the system in France is more advanced, challenges remain (Rouge et al., 2018). The unemployment rate among people with disabilities there is still twice that of non-disabled people, and many are still concentrated in low-paying jobs. However, what sets France apart is its strong legal framework, clear enforcement mechanisms, and structured support ecosystem. Companies cannot ignore their obligations without real financial consequences. The existence of fund management institutions ensures that even non-compliance can be turned into a resource for empowerment, a valuable lesson for Indonesia in designing a more effective system.

The uniqueness of the French system lies in its flexibility and clear consequences for companies that cannot meet the 6% quota. Companies are given several options to fulfill their obligations: first, by directly employing persons with disabilities; second, by subcontracting work to companies dedicated to employing a majority of persons with disabilities (*entreprises adaptées*); or third, by paying an annual financial contribution to a special institution. This institution, known as Agefiph (Association for the Management of Funds for the Professional Integration of People with Disabilities), then uses the funds collected from these “fines” to finance empowerment programs, such as skills training, workplace adaptation, and support for entrepreneurs with disabilities. This system creates an integrated ecosystem where even non-compliance can be transformed into a productive resource to support inclusivity (Gouvernement de France, 2025). The following is a comparison table of each country in terms of fulfilling the rights of persons with disabilities:

Comparasion Aspect	Indonesia	Prancis
Legal Basis	Article 53 paragraph (1) and (2) Law Number 8 of 2016 concerning Persons with Disabilities.	Article L5212-2 Code de Travail Code du Travail (Labor Code) through the OETH scheme.
Quota	<ul style="list-style-type: none"> • 2% for the Public Sector (Government, State-Owned Enterprises/Regionally-Owned Enterprises). • 1% for the Private Sector. 	<ul style="list-style-type: none"> • 6% for the Public and Private Sectors.

Scope	All government agencies, State-Owned Enterprises/Regionally-Owned Enterprises, and private companies regardless of the number of employees.	All companies (public and private) with 20 or more employees.
Enforcement Mechanism	Supervision by the labor office at the regional level.	A flexible and strict “Hire or Pay” system.
Incompliance Sanction	Administrative sanctions that have not been regulated in detail and have not been effectively implemented.	Obligation to pay annual financial contributions to the fund management agency.
Auxiliary Organ	Employment Disability Service Unit (ULD) (focus on placement).	Agefiph, the institution that manages contribution funds for empowerment programs.
Main Goals of Policy	Emphasis on the normative obligation to recruit workers with disabilities.	Emphasis on collective responsibility through recruitment options, subcontracting, or constructive financial contributions.

Tabel 2.

Comparison Aspect between Indonesia and France.

When comparing the two countries, the similarity lies in the use of quota systems as affirmative action instruments. However, the differences are fundamental: France has higher quotas (6% vs. 1-2%), clearer coverage (companies with ≥ 20 employees), and most importantly, an effective “hire or pay” enforcement mechanism. The system in Indonesia is currently weak due to the absence of clear and consistently applied sanctions for non-compliance. The main lesson Indonesia can learn from France is the concept of constructive sanctions. Rather than simply punishing, financial contribution systems such as Agefiph turn non-compliance into a sustainable source of funding for empowerment programs. Implementing a similar model in Indonesia could create a strong incentive for companies to comply, while also building an endowment fund to support training and the provision of decent accommodation.

To accommodate the valuable lessons from France, significant changes to legislation in Indonesia are needed. The first change must be made to Law No. 8 of 2016 or through stronger derivative Government Regulations, by including clauses on strict and clear administrative sanctions for companies that do not meet the 1% and 2% quotas. Second, Indonesia needs to adopt a “hire or pay” mechanism by establishing a Public Service Agency (BLU) or a national endowment fund to manage contributions from non-compliant companies. Third, the allocation of these funds needs to be formulated in detail, focusing on three pillars: subsidies for the provision of adequate accommodation for companies, skills training programs (upskilling and reskilling) for job seekers with disabilities, and the strengthening of Employment Disability Service Units (ULD) in each region. Thus, the legal framework in Indonesia can be transformed from one that is merely normative to a system that is implementable, accountable, and sustainable.

4. Conclusion

The development of fulfillment of employment rights for persons with disabilities in Indonesia has been marked by significant legal progress, particularly through Law No. 8 of 2016. This regulation changed the paradigm from one based on charity to one based on human rights, and established a mandatory employment quota of 2% for the public sector and 1% for the private sector. However, there is a wide gap between the ideal legal framework and its implementation in the field. The main challenges lie in weak supervision, low compliance from employers, and the absence of strict sanctions for violators, rendering these normative protections ineffective in creating an inclusive job market.

As a solution, this text proposes a comparison with systems in other countries, particularly France, which is considered more mature and effective. France applies a higher quota (6%) with a “hire or pay” enforcement mechanism. Through this system, companies that do not meet the quota are required to pay financial contributions to a special institution, which then manages the funds for empowerment programs, such as training and workplace adaptation. This constructive sanction model is recommended for adoption by Indonesia, namely by revising regulations to strengthen sanctions and establishing a similar fund management mechanism to create a system that is not only normative but also implementable and sustainable.

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