



UUM JOURNAL OF LEGAL STUDIES

<https://e-journal.uum.edu.my/index.php/uumjls>

How to cite this article:

Nita Ariyani, Sefriani, Francisca Romana Harjiyatni, Endang Sulistyaningsih, Devi Andani, & Angelika Virginia Sutedja. (2026). Reconstruction of regulations on the participation of persons with disabilities in Indonesia. *UUM Journal of Legal Studies*, 17(2), 139-154. <https://doi.org/10.32890/uumjls2026.17.2.8>

RECONSTRUCTION OF REGULATIONS ON THE PARTICIPATION OF PERSONS WITH DISABILITIES IN INDONESIA

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Received: 21/12/2024

Revised: 29/3/2026

Accepted: 15/4/2026

Published: 31/7/2026

ABSTRACT

This research is aimed at examining and reconstructing the regulations about the participation of Persons with Disabilities (PwD) in Indonesia as stated in Article 20 of Regulation of the Government 70 of 2019 and Article 32 of Regulation of the Minister of the NDP/HNDP 3 of 2021. The legal analysis of Article 28C paragraph (2) of the 1945 Indonesian Constitution, United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and UNCRPD General Comment No. 7/2018 was also analyzed. Normative legal research was used to examine the coherence and synchronization of positive law based on the hierarchy of legislation, while reconstructing the regulations on the full, effective, and meaningful participation of PwD according to the Social and Human Rights (S&HR) Model of Disability in UNCRPD. The results showed that the legal construction established for the participation of PwD did not incorporate the obligation of the state, or provide a comprehensive interpretation based on UNCRPD and UNCRPD General Comment No. 7/2018. A reconstruction of the provisions for the participation of PwD was recommended to offer a broader interpretation of the organizations based on UNCRPD. This research contributes to the development of disability law investigations through a legal reconstruction that transforms the position of PwD from objects into legal subjects with the right to participate, and as mandatory partners of the state in public decision-making.

Keywords: Reconstruction, participation, PwD, S&HR model of disability, UNCRPD.

INTRODUCTION

Indonesia has ratified the UNCRPD through Law Number 19 /2011 (Ndaumanu, 2020). In this context, the regulation of the rights of Persons with Disabilities (PwD) has been subjected to a transformation from the traditional method (Arrivanissa, 2023), which was based on physical conditions (Retief & Letšosa, 2018) and the charity/compassion model (Affandi, 2022) towards a social paradigm (Lisicki, 2013) and human rights (HR) model. The new model offers a policy framework that emphasizes human dignity of PwD (Degener, 2017). The UNCRPD directs signatory states to reformulate policies and practices for PwD based on HR (McCusker et al., 2023). The regulation of the rights has been obtained through the establishment of Law Number 8 of 2016 on PwD, which serves as a guideline for realizing the rights of PwD (Handayani et al., 2023).

According to Article 4, Paragraph (3) of the UNCRPD, PwD organizations are positioned as entities that play an important role in realizing rights through participation in close and active consultation during the implementation of regulations and policies concerning disability issues. Indonesia must acknowledge the positive impact of including PwD organizations with the right experience and knowledge.

Participation is a human and constitutional right of citizens as expressed in Article 28 of the 1945 Indonesian constitution. This guarantees freedom of assembly, association, and the right to express thoughts verbally and in writing (Dondokambey, 2023). Article 28C paragraph (2) of the 1945 Indonesian constitution states that everybody has the right to progress by collectively advocating for the welfare of society, country, and nation. These articles emphasize the guarantee of the right to participate in organizations of PwD.

Indonesia has several national-level PwD organizations and has established regional representatives in several provinces, including the Indonesian Women's Disability Association (HWDI), the Indonesian Blind Union (Pertuni), the Indonesian Deaf Welfare Movement (Gerkatin), the Indonesian Association of Persons with Physical Disabilities (PPDFI), the Indonesian Disability Association (PPDI), and the Election Accessibility Center (PPUA) (Nursyamsi, 2023). The Ministry of National Development Planning/Bappenas (hereinafter referred to as the Ministry of NDP/Bappenas) detailed the list of 142 organizations of at the regional level (Ministry of NDP/Bappenas, 2024). PwD organizations play an important role, especially for actors such as the government, service providers, and the general public at the local, national, and international levels. These groups function as a method of realizing the aspirations of PwD based on knowledge and experience regarding needs, abilities, and aspirations (Enns, 2005).

The Law on PwD has not been detailed, even though the constitution and the UNCRPD guarantee community participation. Article 20 paragraph (1) of the Regulation of the Government Number 70 of 2019 (hereinafter referred to as the RG No. 70/2019) with Article 32 paragraph (1) of the Regulation of the Minister of National Development Planning / Head of the National Development Planning Agency Number 3 of 2021 (hereinafter referred to as RM NDP/HNDP No. 3/2021) state that PwD and stakeholders can participate in the planning, implementation, and evaluation processes regarding respect, protection, and fulfillment of the rights of PwD.

However, the provisions for the participation of PwD in these two regulations do not explicitly regulate the obligation of the state as the main actor. The state has the primary responsibility to consult closely, effectively, and meaningfully with PwD organizations. It has the obligation to actively involve PwD,

particularly through PwD organizations, as parties with experience and knowledge about the issues of the rights of PwD. This structure certainly impacts the minimal involvement of PwD in the legislative process, one example being the limited participation of PwD, especially PwD organizations, at the initial formation of the Job Creation Law. This law was criticized at its inception due to the lack of involvement of civil society from PwD or PwD organizations in the legislative process (Arrivanissa, 2023; Violetta & Susetyo, 2023).

Another example is the limited participation of PwD during the discussion of the Draft Penal Code (RKUHP). According to Nursyamsi (2022), the forums for discussing and socializing the Draft Penal Code did not provide accessibility for deaf/hard-of-hearing persons. The draft documents, academic papers, and meeting results were inaccessible for blind persons; and the process comprised minimal participation from disability organizations across different categories. The enacted Penal Code has been criticized for being insensitive and failing to provide solutions to the interests and realities of PwD due to the use of inappropriate terminology. The government is seen as not fully understanding disability, and some provisions in the Penal Code are considered to reinforce potential discrimination (Nursyamsi, 2022). Albert Wirya, the Coordinator of Programs and Research at the Community Legal Aid Institute (LBH Masyarakat), stated that the enacted Penal Code did not favor PwD, pointing to certain articles requiring their participation, particularly regarding the status of victims, the death penalty, criminal liability, and homelessness (Sekolah Tinggi Hukum Indonesia Jentera, 2022).

The lack of awareness regarding the rights of PwD, coupled with inadequate legislations, leads to discrimination and marginalization (Syawaluddin Hanafi et al., 2023), insufficient fulfillment of the needs of PwD, and obstacles in the implementation of PwD rights (Kurniawan & Jumiaty, 2020). Regulations concerning the participation of PwD in Indonesia are not consistent with the mandate of the UNCPRD, which positions them as inclusive subjects in national development. Full participation of PwD is an obligation that the state must fulfill in upholding the law and human rights for PwD (Fikri & Jelita, 2022). The current legal construction disproportionately places the active role of PwD as solely the responsibility of PwD organizations, while the obligation of the state to actively consult and engage with PwD, especially organizations representing them, is not explicitly mandated in the process from planning to evaluation related to realizing the rights of PwD.

This research focuses on a deep understanding of the full, effective, and meaningful participation of PwD, based on the UNCPRD and through the organizations representing them. The compatibility of regulations regarding the participation of PwD was also examined within every planning, implementation, and monitoring process to achieve full, effective, and meaningful participation for PwD. Furthermore, this research explores the reconstruction of participation regulations for PwD as outlined in Article 20 of the RG No. 70/2019, with Article 32 of RM NDP/HNDP No. 3/2021, emphasizing full, effective, and meaningful participation. This is grounded in the S&HR Model of Disability and corresponds with the legal interpretation of Article 28C paragraph (2) of the 1945 Indonesian constitution, the UNCPRD, and the UNCPRD General Comment No. 7 (2018), and on the participation of PwD through representative PwD organizations in the implementation and monitoring of the UNCPRD convention (hereinafter referred to as UNCPRD GC No. 7/2018).

METHODOLOGY

This normative legal research was carried out by conducting an analysis of the coherence and synchronization of the laws based on the hierarchy of legislation (Solikhin, 2021). The reconstruction

of regulations to realize the rights of PwD in Indonesia was addressed regarding the full, effective, and meaningful participation of PwD in accordance with the UNCRPD. A German, Karl Larenz argued that the objectivity of legal research was in the ability to "further develop existing value judgments, and relate new judgments within certain limits to the existing judgments"(Smits, 2012). The reconstruction of the legal framework concerning the participation of PwD in the planning, implementation, and monitoring of rights require the development and explicit recognition of PwD participation, as well as the obligation of the state to closely consult and actively include PwD.

This research analyzed the provisions regarding the participation of PwD contained in RG No. 70/2019 and RM NDP/HNDP No. 3/2021 to prevent any contradictions with the 1945 Indonesian Constitution, Law No. 19/2011 on the Ratification of the CRPD, the Disability Law, Article 4 paragraph (3) of UNCRPD, Article 33 paragraph (3) of UNCRPD, and UNCRPD GC No. 7/2018. The primary legal materials used were the 1945 Indonesian constitution, Law No. 19/2011, Disability Law, RG No. 70/2019, RM NDP/HNDP No. 3/2021, UNCRPD, and UNCRPD GC No. 7/2018. The research also adopted secondary and tertiary legal materials. Data collection methods were carried out through literature analysis of regulations, official documents, books, articles, papers, and other sources.

LITERATURE REVIEW

Models of Disability in Understanding the Participation of PwD

The development of disability models plays a significant role in shaping understanding and perspectives on disability. The conceptualization of disability has been subjected to a paradigm transformation from earlier charity- and medical-based models toward a social paradigm oriented to human rights. Table 1 presents the differences among the four models concerned with understanding disability.

Table 1

Models in Understanding Disability

Medical Model	Charity Model	Social Model	Human Rights Model (HRM of Disability)
1. Disability is understood as an impairment in the body's systems or functions that is inherently pathological, problematic, and something that needs to be fixed, cured, eliminated, concealed, or minimized (Bie & Brown, 2017). 2. Disability focuses on the rehabilitation of physical and mental functions through medical interventions (Centre for Innovation in Campus Mental Health & Canadian Mental Health Association, 2023).	1. The charity model primarily identifies PwD as individuals with physical limitations, as people with many issues, positioning them as victims and as objects of pity (Christian Blind Mission, 2022). 2. This model views PwD as passive, tragic, or suffering individuals who require care (Christian Blind Mission, 2022). 3. Communities and society are responsible for organizing all services for vulnerable individuals and determining what is best	1. Disability is viewed as one aspect of a person's identity, similar to race/ethnicity, gender, and others. This is obtained from a mismatch between persons with disabilities and the environment (both physical and social) (Olkin, 2022). 2. PwD are disabled by the barriers present in society that exclude and discriminate against them. Addressing these barriers requires transforming the environment and society by removing obstacles to environmental	1. The HRM of Disability focuses on the inherent dignity of human beings, placing the individual at the centre of all decisions that affect them and locating the primary "problem" outside the individual and within society (Lawson & Beckett, 2021). According to Degener, the human rights model offers a theoretical policy framework for disability policy that emphasizes the human dignity of PwD (Degener, 2017) (Retief & Letšosa, 2018). 2. The HRM of Disability acknowledges that some

(continued)

Medical Model	Charity Model	Social Model	Human Rights Model (HRM of Disability)
3. The medical model emphasizes impairment rather than the systems and structures that affect the lives of PwD, focusing on the rehabilitation of physical and mental functions through medical interventions (Centre for Innovation in Campus Mental Health & Canadian Mental Health Association, 2023).	for them (Christian Blind Mission, 2022).	change and full inclusion, such as negative stereotypes, discrimination, and oppression (Olkin, 2022).	PwD face challenging life situations (including the realities of pain and suffering), and that these must be considered in the development of relevant theories of social justice (Degener, 2017) (Retief & Letšosa, 2018).
4. The medical model is the source of terms such as handicapped, defective / invalid, crippled, retarded, and spastic (Retief & Letšosa, 2018).		3. Disability is viewed as a socially produced injustice that can be abolished through radical social transformation (Lawson & Beckett, 2021).	3. The HRM of Disability recognizes that appropriately formulated prevention policies can be regarded as a form of human rights protection for PwD. It also offers constructive proposals to improve the living conditions of PwD (Degener, 2017)(Retief & Letšosa, 2018)

The medical model assumes that individuals must have bodies and minds free from impairment to participate fully in society (Foundation for People with Learning Disabilities, 2024). Meanwhile, the charity model fails to recognize the autonomy, capabilities, and rights of PwD, since these individuals are positioned as objects of pity. The charity model fails to recognize the ability of PwD to exercise self-determination and to participate in decision-making processes, leaving others to dictate preferences (Clifton, 2020). PwD encounters major obstacles across various fronts, including attitudinal, physical, legal, economic, social, and communication that block active participation in public life. Before the adoption of the UNCRPD, perspectives on PwD were largely shaped by the medical and charity models, resulting in the views being ignored and replaced by third-party representatives (United Nations Committee on the Rights of PwD, 2018).

By adopting the social model and the Human Rights Model (HRM) of Disability, the UNCRPD marks an officially recognized international paradigm shift in attitudes and approaches to disability issues. Social model supports the HRM of Disability by affirming that PwD have the right to be citizens who participate fully and equally with others. In the HRM of Disability, PwD are viewed as subjects who possess rights, have the capacity to claim the rights, and can make personal decisions (People with Disability Australia, 2026). The right to participate in decision-making processes, as well as in the implementation and monitoring of the realization of PwD under the UNCRPD, as elaborated in UNCRPD GC No. 7/2018, is defined as a right and an obligation that is applicable and not subject to any form of budgetary constraints. PwD can identify and show measures that may advance or affect their rights, leading to improved outcomes in decision-making processes through the guaranteed participation of PwD organizations at every stage. In this context, full and effective participation should be understood as a process.

The participation of PwD, both individually and through their organizations, is meaningful and has a positive impact on policymaking processes, as well as on decision-making, particularly in relation to the provision of programs, services, and activities. The participation of PwD serves as a means to obtain various information regarding their needs, conditions, and perspectives, and at the same time as a step

to build their trust in programs, services, and activities intended for them (Surwanti et al., 2017). This participation is across the processes of planning, budgeting, implementation, monitoring, evaluation in development, and in the realization of the rights of PwD.

State Obligations in Realizing the Participation of PwD Based on the UNCRPD

International human rights treaties serve as a foundation for the protection of human rights (Ahmad et al., 2025). The UNCRPD is an international treaty that specifically regulates the rights of PwD. The UNCRPD uses an approach based on the HRM of disability, which complements the social model of disability. According to Lawson & Beckett (2021), the relationship between the social model and the HRM of disability is one of mutual complementarity and symbiosis. The Social model describes the barriers faced by PwD, not solely due to obstacles in law, communication, attitudes, architecture, and other forms of discrimination. The Social model supports the HRM of disability by promoting equality and inclusion. The HRM of Disability places PwD as subjects, and recognizes them as rights holders (Waddington & Priestley, 2021) rather than merely objects of concern.

Degener's HRM of Disability (Degener, 2017) considered in the development of relevant social justice theories, acknowledges that PwD encounter challenging life situations. Well-formulated preventive policies can serve as examples of protection for the rights of PwD. The HRM of disability provides constructive suggestions to improve the living conditions of PwD (Retief & Letšosa, 2018). This model places the state as the party responsible for respecting, protecting, and fulfilling the human rights of PwD (Rosdianti, 2021).

The general principle intended to be realized in Article 3 of the UNCRPD is effective participation and inclusion. Countries that have ratified the UNCRPD strive for the full and effective participation of PwD. Such participation includes the involvement of PwD in various decision-making institutions from the local level to the international level. This also means the involvement of PwD in national human rights institutions, and their involvement in ad hoc committees, councils and regional or city organizations (United Nations Committee on the Rights of PwD, 2018).

The effective and full participation of PwD aims to achieve meaningful participation that includes the creation of various ideas, contributions to decision-making, and shared responsibility (Obot et al., 2022). The Constitutional Court Decision No. 91/PUU-XVIII/2020 explains that public participation must be meaningful, resulting in genuine participation and engagement through the fulfillment of three prerequisites. To measure the fulfillment of participation indicators, the three prerequisites are, namely the right to be heard (Ibrahim & Mohamed, 2019), considered, and explained.

A further consequence of realizing the participation of PwD under Article 4 paragraph (3) of the UNCRPD is the obligation of State parties to engage in close and active consultation with PwD, including Children with Disabilities (CwD) concerning the development and implementation of regulations and policies implementing the provisions of the UNCRPD at all levels and branches of government. Moreover, consultation and involvement of PwD must be mandatory for the adoption of laws, regulations, and policies, whether general or specific to disabilities. The UNCRPD GC No. 7/2018 explains that consultation should commence at the earliest stages, and then incorporate input throughout the decision-making process. The obligation to include organizations representing PwD reflects the diversity of disabilities across local, regional, national, and international levels. The interpretation of the legal obligations includes a broad interpretation of the meaning of consultation. These include providing access to public decision-making spaces, access to research in various fields, consultation,

partnerships, universal design, delegated authority, and citizen control. It must also ensure the ability to consult with global and regional disability organizations.

The obligation for consultation with state parties to the UNCRPD and with organizations of PwD, at the local, national, regional, and international levels, is aimed at preventing actions or practices that are inconsistent and violate the rights of PwD in a country. This prevent disputes related to public authority measures that directly or indirectly affect PwD, such as issues related to reasonable accommodation policies, deinstitutionalization, social insurance and disability pension issues, individual assistance, accessibility concerns, violations of constitutional rights of PwD, voting rights, access to justice, and special disability policies or public policies in the fields of education, health, employment, and labor (United Nations Committee on the Rights of PwD, 2018).

International human rights law emphasizes the importance of state obligations to protect the rights of citizens, including PwD within their respective countries (Khan et al., 2021). This obligation is to ensure consultation with PwD and the involvement of PwD in every decision-making process, which requires recognition of the legal capacity of all individuals to take part in decision-making (United Nations Committee on the Rights of PwD, 2018). Caspar et al. (2016), (Young, 1993), and (Zhang et al., 2023) Supraja Sankaran and Henks Aarts explained autonomy by summarizing several previous investigations (Borhani et al., 2017), defining the concept as the centre of a person's experience regarding the capacities and abilities that an agent possesses as the source and origin of their actions, or what is called control. Individual autonomy provides the ability to actively participate in society and in large organizations when related to the capacities of PwD.

The state must provide access to all necessary and relevant information to realize meaningful and timely consultation and engagement with PwD organizations, such as in public agency websites, in an easily accessible digital format, reasonable accommodations like simple and easy language, easily read text, braille communication, the provision of sign language interpreters, and other accommodations. The UNCRPD GC No. 7/2018 further explains that public authorities leading the decision-making process have an obligation to provide information on the result of that process, including explicit explanations in an easy-to-understand format about the findings, considerations and reasons for the decision based on the perspectives of PwD, including CwD.

Article 4 paragraph (3) of the UNCRPD places PwD organizations at the centre in ensuring the autonomy of individuals with disabilities and their active participation, including CwD. The provisions mandate the active participation and engagement of PwD organizations, including organizations representing CwD. Therefore, the state must understand, respect, and consider the wishes, preferences, and capacities of CwD, ensuring that the recognition and promotion of individual autonomy rights encompass all PwD, including CwD, and that these rights are truly respected, fulfilled, and protected. The State can take the initiative to gather opinions of CwD by organizing open seminars or meetings, or by inviting CwD to submit essays on certain topics, and encouraging them to share their direct experiences or aspirations as input in the decision-making process.

After ratifying the international human rights treaties, such as the UNCRPD, the ICESCR, the ICCPR, and the CRC, Indonesia assumes the status of a state party and is thereby legally bound and committed to incorporating the standards, provisions, measures, duties, and obligations contained in these international instruments into the domestic legal framework. The domestic legal framework is required to conform to the standards established under the Convention. The UNCRPD, with other international instruments such as the UDHR and the ICCPR, shows the importance of ensuring the participation of

PwD, as well as the active participation and access to information of all individuals affected by public decisions, as essential elements of inclusive public decision-making. Article 4 paragraph (3) of the UNCRPD requires states parties to closely consult and actively involve PwD, while Article 33 paragraph (3) expands the concept of participation of PwD in public life to include the monitoring of the implementation of the UNCRPD concerning the rights of PwD.

By ratifying the UNCRPD through Law No. 19/2011, Indonesia is bound and fully committed to ensuring the rights of PwD based on the UNCRPD. Furthermore, the UNCRPD views disability as the result of the interaction between individuals with limited abilities, attitudes, and environments, affecting full and effective participation in society on an equal basis with others. PwD must have the opportunity to be actively included in the decision-making processes regarding programs and policies that directly affect them.

Participation includes the inclusion of PwD at all levels of decision-making and in all aspects of public life, which is closely connected to the obligations of the state under the UNCRPD. This must be fulfilled by states parties in the development of legislation and policies for the implementation of the UNCRPD.

In decision-making regarding issues, there must be close consultation and active involvement of PwD, including CwD, and with organizations that represent them. The participation of PwD does not stop at decision-making, development, and implementation of legislation and policies related to PwD. As mandated in Article 33 paragraph (3), PwD must be included and participate fully in the monitoring process of the implementation of the UNCRPD.

RESULTS

Participation of PwD through PwD Organizations in Indonesia

The participation of PwD through PwD organizations in Indonesia is related to the constitutional guarantee regarding the right of every individual to advance themselves in the pursuit of their rights collectively, as stated in Article 28C, paragraph (2) of the 1945 Indonesian constitution. The said Article also guarantees human rights, including the rights of PwD to participate, through the provisions of Article 28I, paragraph (4) of the 1945 Indonesian constitution, which places the responsibility primarily on the state, especially the government. In the pursuit of their rights collectively, PwD, through organizations representing them, have the right to participate in the planning, implementation, and evaluation of the respect, protection, and fulfillment of their rights.

The framework for regulating the participation of PwD in Indonesia is outlined in the RG No. 70/2019 and the RM NDP/HNDP No. 3/2021. Regulations concerning the participation of PwD and stakeholders are further elaborated in Article 20 of the RG No. 70/2019, which states that:

1. PwD and stakeholders can participate in the planning, implementation, and evaluation processes regarding the respect, protection, and fulfillment of the rights of PwD.
2. The participation of PwD and stakeholders, as referred to in paragraph (1), can be conducted through the collection of aspirations from PwD organizations and stakeholders.
3. The collection of aspirations, as referred to in paragraph (2), may involve engagement through thematic disability forums held in conjunction with national and regional development planning and budgeting forums.

4. The implementation of thematic disability forums, as referred to in paragraph (3), is coordinated by the Minister together with the Minister responsible for state finance and the Minister responsible for home affairs.

Article 32 of RM NDP/HNDP No. 3/2021 complements the regulations regarding the participation of PwD, through the implementation of thematic disability forums at the provincial, district/city, and village levels. The results of the aspirations collected through thematic disability forums are used as considerations in the development planning discussions.

Referring to the framework for the participation of PwD in the RG No. 70/2019 and the Regulation of the RM NDP/HNDP No. 3/2021, there is a lack of legal construction regarding the state's obligation to closely consult and actively involve PwD through organizations representing them and other disability partners. The regulations address the participation of PwD and other stakeholders, the forms of participation, and the thematic disability forums. Based on the UNCRPD GC No. 7/2018, Indonesia must actively ensure the participation of PwD, through PwD organizations, in every decision-making process in policies, programs or legislation related to them because of their knowledge and life experiences regarding the implementation of the rights of PwD. The strategic role of actively involving PwD through organizations representing them in the development and implementation of legislation/regulations, policies, and in other decision-making processes regarding issues related to PwD is guaranteed by Article 4, paragraph (3) and Article 33, paragraph (3) of the UNCRPD. The Convention requires state parties to consult closely and actively engage PwD, including CwD, and through their representative organizations.

There are logical legal consequences related to Article 4 paragraph (3) of the UNCRPD to fulfill obligations. Referring to paragraph 15 of the UNCRPD GC No. 7/2018, Indonesia must include the obligation to consult closely and actively involve PwD through organizations representing them within its legal framework, procedures, and regulations at all levels and branches of government. Consultation and the involvement of PwD must be a mandatory step before the approval of any legislation and policies, whether applicable generally or specifically to PwD.

The UNCRPD recognizes the participation of PwD as a general obligation and a cross-sectoral issue. Indonesia is obligated to consult closely and actively involve PwD concerning issues related to PwD. According to Article 33 paragraph (3) of the UNCRPD, the country is also obligated to include and ensure the full inclusion of PwD in the monitoring processes. This is part of the broader efforts regarding participation in public life. The regulation of the participation of PwD should be reconstructed through the legal framework concerning the obligation of the state to consult closely and actively, and should involve PwD through organizations representing them and disability partners.

Reconstruction Mechanism for Consultation and Participation: The Planning, Implementation, and Evaluation Processes for the Respect, Protection, and Fulfilment of PwD Rights

Consultation is a strategy used to achieve meaningful participation of PwD in key decision-making processes (Executive Office of the Secretary-General et al., 2021). Indonesia needs to reinforce in its legislation a mechanism for consultation through the mandate of Article 4 paragraph (3) with Article 33 paragraph (3) of the UNCRPD. This is essential at all levels of government since many important decisions affect the lives of PwD.

A total of 13 European Union (EU) member states regulate the inclusion of disability organizations through laws related to the development of legislation and policies. The following is a comparison of the consultation and participation in laws and policies affecting PwD in EU countries. In Sweden, consultation with disability organizations is guaranteed by the constitution. Meanwhile, in Cyprus, Austria, Spain, and Malta, the concept is regulated by laws focusing on disability (FRA European Union Agency for Fundamental Rights, 2014). Based on Article 9 of the Disability Act, Austria established a Federal Disability Council that includes seven representatives from various disability organizations, they are consistently consulted in the legislative and policy-making processes. A confederation of PwD (which consists of nine disability organizations) as a state partner was formed in Cyprus, mandating the government to conduct consultations regarding decisions impacting PwD through the law. In Slovakia, Italy, Poland, Germany, and Hungary, the obligation to consult is established through general provisions requiring relevant parties and/or the public to be consulted in the legislative and policy-making processes. Federal ministries in Germany must consult with relevant non-governmental organizations in legislative procedures or processes to develop political strategies. In Italy, non-governmental organizations active in the protection of the rights of PwD must be included in formulating and implementing policies through regional and national advisory assemblies, and this is in coordination with the Ministry of Social Affairs (FRA European Union Agency for Fundamental Rights, 2014).

The consultation and involvement of organizations representing PwD in the development of legislation and policies in 15 EU member countries do not regulate the obligation within the laws. However, 11 countries, namely the United Kingdom, Ireland, Luxembourg, Latvia, Croatia, Finland, Bulgaria, Estonia, Belgium, Denmark, and the Czech Republic, have established consultation mechanisms for organizations representing PwD. Latvia, Bulgaria, Czech Republic, Luxembourg, and Belgium have formed advisory bodies representing various disability organizations. Estonia has established non-binding guidelines for the government, known as the Good Involvement Code (*Hea kaasamise tava*), which mandates the government to involve stakeholders affected by the proposed legislation. In the drafting process, drafts are sent to stakeholders, requesting their comments (FRA European Union Agency for Fundamental Rights, 2014).

Based on the comparison of all these regulatory frameworks, it is clear that Indonesia needs to reinforce its commitment through normative guarantees that regulate the obligations and mechanisms for consultation and participation. This is essential to ensure legal certainty in fulfilling the participation rights of PwD, both individually and through their representative organizations. Indonesia has not constitutionally guaranteed the obligation of consultation and the involvement of PwD in every process related to the implementation of PwD rights. This is because amending the constitution is not an easy task and requires the fulfillment of specific procedural mechanisms. Bivitri Susanti (Researcher at the Center for Indonesian Law and Policy Studies) argued that constitutional amendment was an uncertain political process. Furthermore, the current condition of political parties is removed from the aspirations of the people (Hukumonline, 2016). Indonesia has not regulated the obligation of consultation and proactive state involvement of PwD in the constitution or statutory law (as seen in countries such as the United Kingdom, Ireland, Luxembourg, Latvia, Croatia, Finland, Bulgaria, Estonia, Belgium, Denmark, and the Czech Republic), given the complexity of constitutional amendment mechanisms and the uncertainty of political processes in Indonesia.

Indonesia has established mechanisms for consultation and the involvement of PwD through Government Regulations and Ministerial Regulations. The legal framework established regarding the consultation activities and the active involvement of PwD in Indonesia is regulated in the RG No. 70/2019 and in the Regulation of the RM NDP/HNDP No. 3/2021. However, this framework is still

very limited and lacks legal provisions that guarantee the obligation of the state to consult and actively involve organizations representing PwD. There is no legal framework that mandates the government to engage PwD in the planning, implementation, and monitoring of the realization of rights.

Considering the experiences of Italy, Slovakia, Poland, Germany, and Hungary, Indonesia should establish a legal framework that requires the government to consult and actively include organizations representing PwD, with regard to the rights of PwD. Furthermore, the legal construction established in the RG No. 70/2019 and the RM NDP/HNDP No. 3/2021 regarding consultation mechanisms only describes one form of participation for PwD and stakeholders, namely through aspiration gathering, which may involve participation via thematic disability forums. This legal construction does not comprehensively reflect the forms of participation for PwD, including organizations representing them, and thus requires a reconstruction of legal rules to include various forms of participation for PwD, including organizations representing them and stakeholders. This can be achieved not only through aspiration gathering, but also through public consultations, public hearings, seminars, workshops, discussions, work visits, socialization, oversight, and other forms of involvement in accordance with legal regulations.

The regulation on the establishment of thematic disability forums to capture aspirations and ensure the involvement of PwD under Government Regulation No. 70/2019 and the RM NDP/HNDP No. 3/2021 has not been made mandatory. As a result, the policy appears only partially committed, unlike in countries such as Latvia, Bulgaria, the Czech Republic, Luxembourg, and Belgium. Although these countries do not mandate consultation and participation of PwD in their constitutions or legislation, they have established consultative bodies for PwD that include representatives from diverse disability groups. One of the consequences of this state of affairs is that, at the provincial level in Indonesia where regulations generally refer to higher-level legislation, Aceh Province and South Sulawesi Province do not regulate the participation of PwD through thematic disability forums in their Governor Regulations related to disability (see Governor Regulation of Aceh No. 53 of 2023 on the Regional Action Plan for the Respect, Protection, and Fulfillment of the Rights of PwD 2024–2029, and Governor Regulation of South Sulawesi No. 52 of 2023 amending Governor Regulation No. 116 of 2018 on the Implementation of Regional Regulation of South Sulawesi Province No. 5 of 2016 on the Protection and Services for PwD).

Construction in Article 20, paragraph (1) of the RG No. 70/2019, with Article 32, paragraph (1) of the RM NDP/HNDP No. 3/2021 does not provide certainty in ensuring the participation of PwD in every stage of legislative formation that impacts them. The use of the word “can” in the norm of Article 20, paragraph (1) of the RG No. 70/2019, with Article 32, paragraph (1) of the RM NDP/HNDP No. 3/2021, can be interpreted in multiple ways. However, this lacks legal certainty because legislators can choose any of the options available (the word “can” in the dictionary means capable; able; allowed; possible) in drafting legislation. The use of the word “can” does not reflect the full commitment of the state to ensure the meaningful participation of PwD in every public decision-making process that affects them. The phrase “can participate...” in Article 20, paragraph (1) of the RG No. 70/2019, with Article 32, paragraph (1) of the RM NDP/HNDP No. 3/2021 carries a different meaning from “has the right to participate...”. Furthermore, the phrase “has the right to participate...” emphasizes and guarantees that the legal subjects involved are recognized for their human rights and ensures the protection of those rights. The state affirms the responsibility to protect, enforce, promote, and fulfil the rights when stated in legislation. Changing the phrase “can participate...” to “has the right to participate...”, whereby reconstructing Article 20, paragraph (1) of RG No. 70/2019 with Article 32, paragraph (1) of RM NDP/HNDP No. 3/2021 will provide a stronger emphasis and certainty regarding the participation of

PwD. Based on this suggestion, the provision would be better reconstructed to read: “PwD, including CwD and stakeholders, have the right to participate in the planning, implementation, and evaluation processes regarding their rights”.

According to the UNCRPD, PwD and stakeholders are guaranteed participation at every stage. This strategy enhances the capacity to identify and provide informed input on measures that may advance or affect the rights of PwD, contributing to more effective decision-making outcomes. The reconstruction emphasizes that full and effective participation intended by the UNCRPD is understood as a process. The explanation of Article 20 paragraph (2) of RG No. 70/2019 defines PwD organizations as “organizations that are led and managed by, and have a majority membership of PwD.” The explanation only outlines a specific characteristic, which does not provide a complete understanding. PwD organizations have several specific characteristics as described in the UNCRPD GC No. 7/2018, as follows:

- a. PwD organizations are established primarily to act collectively, express, promote, advocate for, and/or defend the rights of PwD, PwD organizations must be generally acknowledged to be such.
- b. PwD organizations employ, are represented by, entrust or specifically designate/nominate PwD.
- c. PwD organizations are independent from public authorities and other non-governmental groups. These organizations are not affiliated with any political party.
- d. PwD organizations may represent one or more constituencies based on real or perceived disabilities, or may be open to membership by all PwD.
- e. PwD organizations represent groups with diverse backgrounds, namely sex, gender, race, age, and migrant/refugee status. These groups also include constituencies based on transversal identities like children, women, or indigenous PwD. PwD organizations also include members with multiple disabilities.
- f. The scope of PwD organizations may be local, national, regional or international.
- g. PwD organizations may operate as an individual, or in coalitions, or cross-disability organizations or umbrella PwD organizations. PwD organizations provide a collaborative and coordinated voice for PwD in the interactions with private entities, public authorities and international organizations.

In essence, RG No. 70/2019 and RM NDP/HNDP No. 3/2021 place stakeholders as participants in every process, starting from planning, implementation, and evaluation concerning the rights of PwD. This provision is consistent with Article 33 paragraph (3) of the UNCRPD, where civil society, including PwD and PwD organizations, must be included by the state and participate fully in the oversight of monitoring the implementation of the UNCRPD. Article 20, paragraph (1) of RG No. 70/2019 describes stakeholders as individuals, community groups, professional/scientific organizations, educators/academics, mass media, business associations, non-governmental organizations, and other development partners.

PwD are part of civil society, including PwD organizations. The differences between PwD organizations and organizations for PwD must be clarified to understand the elements of civil society. Organizations for PwD undertake advocacy and provide services on behalf of PwD, which in practice can lead to conflicts of interest. The aim is to act as private entities concerning the rights of PwD. Furthermore, civil society organizations include various research institutions, service-providing groups, and other stakeholders. PwD organizations may not engage in advocacy regarding rights, but can support the mainstreaming within the human rights agenda. The explanation regarding stakeholders in Article 20 paragraph (1) of RG No. 70/2019 needs to be reinterpreted. Therefore, the elements of civil society, in Article 33 paragraph (3) of the UNCRPD, are accommodated within the meaning of “stakeholders”. Civil society actors who are actively included in the decision-making process can develop communities and regions to become more inclusive (Daniel, 2024).

CONCLUSION

In conclusion, Indonesia is bound and fully committed to realizing the respect, fulfillment, and protection of the rights of PwD based on the UNCRPD. This includes the participation of PwD, including PwD organizations, as stated in Article 4 paragraph (3), and Article 33 paragraph (3) of the UNCRPD, which is closely related to the state's obligation to consult closely and actively with PwD, and with organizations that represent them. The full, effective, and meaningful participation of PwD should occur in the decision-making, development, and implementation of legislation and policies, as well as in the monitoring process of the UNCRPD. The framework for participation of PwD in Indonesia is regulated by RG No. 70/2019 and RM NDP/HNDP No. 3/2021. However, these regulations do not comprehensively address the obligation of the state to consult closely and actively with PwD and with PwD organizations, and other disability partners in the processes of planning, implementation, and evaluation regarding the rights of PwD. The consultation mechanisms established in these regulations only describe one form of participation for PwD and stakeholders through aspiration gatherings using thematic disability forums at the national and local levels. The current regulation of participation for PwD requires reconstruction. In this context, the main objectives outlined in the UNCRPD can be fulfilled to achieve full, effective, and meaningful participation for PwD through the following:

1. Legal construction concerning the obligation of the state to closely consult and actively involve PwD through PwD organizations and disability partners in the processes of planning, implementation, and evaluation regarding the respect, protection, and fulfillment of the rights of PwD.
2. Reconstruction of legal rules regarding forms of participation for PwD through aspiration gatherings, public consultations, public hearings, seminars, workshops, discussions, site visits, socialization, oversight, and other forms of involvement.
3. Comprehensive reconstruction of the meaning of PwD organizations.
4. Reconstruction of the meaning of stakeholders that accommodates civil society beyond PwD organizations. These include organizations for PwD that serve and/or advocate on behalf of PwD, including research organizations, service provider's organizations, and other private stakeholders.

ACKNOWLEDGMENT

This work was supported by the Ministry of Education, Culture, Research, and Technology of the Republic of Indonesia under the 2024 Fundamental Research Grant-Regular (Grant Number: 0459/E5/PG.02.00/2024).

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