

THE CONVERSATION

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Omnibus law discriminates against people with disabilities

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Raisan Al Farisi/Antara Foto

Indonesia had made considerable progress in introducing policies that promote the inclusion of people with disabilities in public life in the past decade. The newly adopted omnibus Law on Job Creation, however, is a huge step backwards.

A decade ago, Indonesia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopting the universal human rights principle of respecting the rights of people with disabilities.

Since then, Indonesia has introduced about 85 policies, laws (including the National Disability Law No. 8/2016), government regulations, presidential and ministerial decrees, and regulations at provincial and village level.

The omnibus law, however, puts efforts to bring about social change to almost 24 million Indonesians living with a disability in reverse by not inviting people with disabilities in the bill's deliberation resulting in the law's discriminatory provisions.

One step forward, two steps back

The omnibus law has been received with disappointment by people with disabilities.

Instead of opening up equal employment opportunity for all citizens, it discriminates against people with disabilities, preventing them from getting a job.

People with disabilities were not consulted during the drafting process.

Lack of participation of people with disabilities resulted not only in the discriminatory directives towards people with disability but also the use of the term "cacat" or handicapped for people with disabilities.

Consistent with CRPD's universal principles, Indonesian policies have uniformly used the term "disabilitas" (disability) and "penyandang disabilitas" (person bearing disability).

The term "penyandang disabilitas" carries a sense of empowerment, dignity, and equality into the self-identity of people with disabilities.

Like the English term 'person with a disability', it places the individual first before their disability, emphasising the potential rather than limitations.

To be acknowledged as 'penyandang disabilitas' is giving people with disabilities a new "identity".

The term "cacat" in the omnibus law is a major set back to the progress Indonesia has made in the past ten years.

It contradicts other national legislation and violates Indonesia's international commitment to the universal principle of disabilities.

The omnibus law discriminates against people with disabilities in access to hospitals and access to reasonable adjustment in the workplace.

Even worse, Article 154A on Termination of Employment stipulates that individuals can be fired if they become "handicapped".

The law also contradicts the National Disability Law in requiring public and private sectors to employ people with disabilities.

Finally, it requires individual who applies for employment to provide proof that they are both mentally and physically healthy.

This is hugely discriminatory. It goes back to the New Order's policies towards disabilities.

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Negating advocacy

Of all the violations against people with disabilities in the omnibus law, the return of the term “cacat” is considered the most problematic.

It is because at the heart of the human rights principle of disability inclusion is equality and respecting the dignity of people with disabilities.

Early on in the movement, disability advocates demanded the government abolish the use of the term “cacat” (handicaped), “tuna” (lacking), and “tidak normal” (abnormal).

These terms were introduced under the authoritarian New Order's administration. Under these labels, the identity of people with disabilities had been about inability, abnormality, incapacity, dependence, and a burden to society.

The term “orang cacat” or “tuna” relegated people with disabilities to a lower social status. With that status, they did not get equal access to education, employment, health services, social welfare, and to actively participate in social and political development.

Further, discrimination in and lack of equal access to, employment is a major barrier to the full participation of people with disabilities in society.

Not only does the law turn back the clock on appropriate, rights-based language, it effectively locks people with disabilities out of the very opportunity they seek, which is to lead independent and productive lives.

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Advocating for change

The fact that these limitations in the law have gone unchecked, and that it passed parliament and was signed by President Joko “Jokowi” Widodo seems like a complete rejection of the efforts by government, disability advocates, and civil society organisations to date.

The only way people with disabilities can do now is petition the Constitutional Court to fully repeal the law or annul provisions that violate constitutional rights.

This will be a long, tiring, and costly effort for disability advocates. But previous success at the policy level will only ensure greater determination in people with disabilities that further struggle is the only way to promote change.

In that struggle, disability advocates have to once again demand for the government to stick to the social model of disability and the rights-based principle enshrined in CRPD.

Disability advocates will remind the government their Constitutional Rights to enjoy life equal to their fellow citizens.

Preventing people with disabilities from getting employment and using the word “cacat” is a violation against the Indonesian Constitution.