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## Disability employment equality in Karl Loewenstein's Social Constitution Theory

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### Abstract

This study examines equal employment opportunities for persons with disabilities in Indonesia, applying Karl Loewenstein's Social Constitution Theory. It focuses on how norms within the 1945 Constitution and its derivative regulations transform or fail to transform into a living constitution. Using a normative juridical method, the research evaluates provisions in Law No. 8 of 2016, Law No. 13 of 2003, alongside international instruments like the CRPD. The findings indicate that while Indonesia's legal framework guarantees non-discriminatory employment, practical implementation remains at a nominal constitutional stage. Structural barriers, non-inclusive recruitment practices, societal stigma, weak oversight, and a lack of effective sanctions continue to hinder the internalization of equality values. To address this, the study proposes establishing a National Disability Employment Accountability System (SAKDIN) and integrating disability inclusion indicators into organizational performance metrics. Ultimately, these findings reinforce Loewenstein's view that constitutional effectiveness heavily depends on its capacity to shape actual social and institutional behavior.

### Key words

Equal employment opportunities; Karl Loewenstein; persons with disabilities; living constitution

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## Resumen

Este estudio examina la igualdad de oportunidades laborales para las personas con discapacidad en Indonesia, aplicando la Teoría de la Constitución Social de Karl Loewenstein. La investigación se centra en cómo las normas de la Constitución de 1945 y sus reglamentos derivados logran o no transformarse en una constitución viva. Mediante un método jurídico-normativo con enfoque conceptual y legislativo, se evalúan las disposiciones de la Ley N.º 8 de 2016, la Ley N.º 13 de 2003 y sus modificaciones, junto con instrumentos internacionales como la CRPD. Los resultados indican que, si bien el marco legal de Indonesia es claro al garantizar la no discriminación, su aplicación práctica sigue viéndose obstaculizada. Las barreras de infraestructura, los procesos de contratación no inclusivos, el estigma social y una supervisión deficiente continúan frenando la interiorización de los valores de igualdad. Para abordar esta situación, el estudio propone la creación de un Sistema Nacional de Rendición de Cuentas sobre el Empleo de Personas con Discapacidad (SAKDIN) y la integración de indicadores de inclusión en la evaluación del rendimiento de las organizaciones. En definitiva, estos hallazgos respaldan la visión de Loewenstein: la eficacia de una constitución depende de su capacidad real para moldear el comportamiento social e institucional.

## Palabras clave

Igualdad de oportunidades laborales; Karl Loewenstein; personas con discapacidad; constitución viva

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## 1. Introduction

The Social Constitutional Theory developed by Karl Loewenstein arose from concerns about the disconnect between written legal norms and the social reality that gives them life. Loewenstein started from the premise that the constitution cannot be understood merely as a normative text that regulates the division of power and establishes the rights of citizens, but rather as a manifestation of the values, power relations, and social dynamics that exist within society (Costa 2024a). Within the framework of sociological constitutionalism, the effectiveness of a constitution is measured by the extent to which the norms contained therein are truly internalized and manifested in social behavior, not merely by its ability to survive in written form (Blokker and Thornhill 2017). A living constitution (*living constitution*) requires not only formal obedience but also substantive recognition rooted in collective consciousness (Indra *et al.* 2023).

This is where the principle of equal employment opportunities for persons with disabilities becomes a real test: whether the Indonesian constitution remains a mere written promise, or whether it transforms into an inclusive social reality. This article analyzes Indonesia's constitutional and labor law regarding disability and employment, focusing on the 1945 Constitution and its legislation. It uses the CRPD as an interpretive benchmark for Indonesia's obligations related to the right to work. The discussion does not aim to compare jurisdictions; references to other laws are merely contextual.

The Indonesian Constitution, through Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, states that "Every citizen shall have the right to work and to a decent livelihood." This principle is reinforced by Article 28D paragraph (2), which states that "Everyone has the right to work and to receive fair and decent compensation and treatment in their employment." Meanwhile, Article 28I paragraph (2) prohibits discrimination, stating that "Everyone has the right to be free from discriminatory treatment on any basis" (Winarno *et al.* 2021). These three articles form the constitutional foundation that explicitly requires the state to ensure equal access for every citizen, including persons with disabilities, to participate in the world of work. This constitutional basis is expanded through legislation, particularly Law No. 8 of 2016 concerning Persons with Disabilities, which, in Article 11, letter a, guarantees the right to obtain employment organized by the government, local government, or private sector without discrimination. Article 53, paragraph (1) of this law even regulates the obligation of the government, local governments, and private enterprises to employ at least two percent of persons with disabilities from the total number of existing employees or workers. This provision is in synergy with Law Number 13 of 2003 concerning Manpower as amended by Law Number 11 of 2020 concerning Job Creation, which, in Articles 5 and 6, recognizes the right of every worker, without exception, to obtain equal treatment without discrimination.

However, from Loewenstein's perspective, these constitutional norms have not yet been fully transformed into a living constitution. The gap between the text and reality remains wide. Normatively, the right to equal employment opportunities for persons with disabilities has been recognized and guaranteed. However, sociologically, this principle often remains at the level of rhetoric or becomes merely an administrative obligation with little understanding (Chen 2014). The employment rate of persons with disabilities in Indonesia remains low, and most of those who are employed work in the informal

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sector with weak legal protection and social security. Companies that fulfill their employment quota obligations for persons with disabilities often do so symbolically, without adjusting the work environment or providing reasonable accommodations as mandated by law.

This problem is exacerbated by structural and cultural barriers. Structurally, there are still many offices, factories, or work facilities that are not disability-friendly, both in terms of physical access, work tools, and supporting technology. The recruitment process is also often designed with criteria that ignore the potential of persons with disabilities, for example, with physical requirements that are irrelevant to the job. Culturally, the stigma that persons with disabilities are a burden or less productive is still deeply rooted in the minds of some members of the community and employers. This view creates subtle discrimination that is difficult to detect, but has a real impact on closing job opportunities (Abdussamad *et al.* 2023).

From the perspective of oversight and law enforcement, the effectiveness of the social constitution is also hampered by weak sanction mechanisms. The work quota provisions stipulated in Article 53 of Law No. 8 of 2016 are often not followed by strict sanctions or consistent enforcement. Oversight by local governments and relevant ministries remains partial, often relying on reports, and rarely accompanied by comprehensive field verification. In Loewenstein's framework, this shows that the constitution, although complete in its text, does not yet function effectively in social terms because it does not shape the behavior of the actors who should be subject to its regulation.

The lack of synchronization between cross-sector policies in implementing the principle of equal employment opportunities for persons with disabilities has also been an important finding in a number of previous studies. The study by Dewi *et al.* (2020) shows that in both Indonesia and Malaysia, inclusive policies such as employment quotas have not been accompanied by adequate synergy between the government, the private sector, and educational institutions, so that graduates with disabilities often lack skills that are relevant to the needs of the job market (Dewi *et al.* 2020). Policy brief PRAKARSA (2022a) highlights the weak supervision and sanctions in the implementation of quotas as stipulated in Article 53 of Law No. 8 of 2016, as well as the practice of symbolic quota fulfillment without adjustments to the work environment (The PRAKARSA 2022a) Meanwhile, Anggraini and Susetyo's (2024) research specifically examined the state-owned banking sector and found a gap between the recognition of constitutional rights and their application in recruitment and decent work accommodation (Anggraini and Susetyo 2024).

Existing research on disability employment in Indonesia primarily focuses on policy compliance, effectiveness, and barrier identification, while often treating constitutional guarantees as mere background. However, it underutilizes social-constitutional theory, particularly Loewenstein's concept of constitutional "validity," to explain the nominal status of equality norms. Additionally, discussions on how to implement these constitutional commitments into concrete institutional duties and accountability are limited. This study fills these gaps by applying Loewenstein's Social Constitution Theory to Indonesia's disability employment framework and proposing the National Disability Employment Accountability System (SAKDIN) as a practical mechanism to align constitutional values with actual workplace outcomes.

Accordingly, this study addresses the following main research question: How can Karl Loewenstein's Social Constitution Theory be used to evaluate—and to strengthen the realization of substantive employment equality for persons with disabilities in Indonesia, particularly in transforming constitutional and statutory guarantees into effective institutional practices? To operationalize this inquiry, the paper examines (1) how the principle of equal employment opportunities reflects the living constitution within Loewenstein's framework and (2) why constitutional equality norms remain weakly internalized in employment governance and workplace practices.

## **2. Research method**

This study uses a normative juridical method with a conceptual and legislative approach to examine the application of the principle of equal employment opportunities for persons with disabilities from the perspective of Karl Loewenstein's Social Constitutional Theory. The normative juridical method was chosen because the main focus of the study lies in the analysis of legal norms governing equal employment opportunities, starting from the constitutional provisions in the 1945 Constitution, Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 13 of 2003 concerning Manpower as amended by Law Number 11 of 2020 concerning Job Creation, to implementing regulations and related technical policies. A legislative approach was used to systematically examine the hierarchy, consistency, and synchronization between regulations, while a conceptual approach was used to understand and analyze the idea of a living constitution, which is at the core of Loewenstein's Social Constitution Theory, and its relevance in analyzing employment equality for persons with disabilities.

Legal materials were collected through a literature study covering primary legal materials in the form of relevant laws and court decisions, secondary legal materials such as books, journal articles, previous research results, and policy reports from national and international institutions discussing disability employment issues. Tertiary legal materials such as legal dictionaries and encyclopedias were used to reinforce the meaning of key terminology and concepts. Data analysis was conducted using a descriptive-analytical method, which involved describing the applicable norms in detail, analyzing their compatibility with the principles of a living constitution, and relating them to the reality of implementation in the field as revealed in previous studies.

Loewenstein's theoretical framework is used not only to assess formal compliance with legal provisions, but also to measure the extent to which the values of equal employment opportunities for persons with disabilities have been internalized in employment practices and institutional culture in Indonesia. Thus, this study does not stop at mapping normative issues but also seeks to reveal the conceptual and philosophical dimensions that are at the root of the disconnect between legal norms and social reality. This approach is expected to contribute something new to the literature on labor law by integrating normative analysis and theoretical readings that place the constitution as a living social entity.

### 3. Results and discussion

#### *3.1. The principle of equal employment opportunities for persons with disabilities as a manifestation of the living constitution in the perspective of Karl Loewenstein's Social Constitutional Theory*

The principle of equal employment opportunities for persons with disabilities is a concrete manifestation of the legal ideals enshrined in the constitution, particularly as a reflection of respect for human dignity and the realization of a democratic state based on the rule of law (Stephenson and Persadie 2023). In the Indonesian context, this principle has a clear normative basis in several legal instruments. Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) guarantees that every citizen has the right to work and a decent livelihood, while Article 28D, paragraph (2) guarantees the right of every person to work and to receive fair and decent compensation and treatment in employment relationships. The strengthening of this norm is evident in Law Number 8 of 2016 concerning Persons with Disabilities, which explicitly regulates the rights of persons with disabilities to obtain employment, including the obligations of the state and employers to provide reasonable accommodations and eliminate all forms of discrimination. At the sectoral regulatory level, Law Number 13 of 2003 concerning Manpower and its amendment through Law Number 11 of 2020 concerning Job Creation, along with its implementing regulations, also serve as normative instruments that shape the legal architecture regarding equal employment opportunities (S. P. Nurhayati *et al.* 2025). These norms, textually, provide a strong foundation that the state not only recognizes the rights of persons with disabilities, but is also obliged to take affirmative steps to ensure that these rights are effectively implemented.

However, the problem that arises is the serious gap between written legal norms and social reality in the field. Although legal regulations mandate the fulfillment of disability quotas, the elimination of discrimination, and the guarantee of reasonable accommodations, the reality is that employment practices in Indonesia still often place persons with disabilities in subordinate positions or even exclude them from the job market. Many companies formally claim compliance with regulations, but in practice, manipulate quota fulfillment by placing persons with disabilities in non-strategic positions, or choose to provide administrative compensation rather than actually recruiting them (Noviasari and Nurwati 2020). Loewenstein's Social Constitution Theory emphasizes the importance of constitutional values in institutional and collective behavior, using normative, nominal, and semantic dimensions to evaluate their effectiveness in governance.

Karl Loewenstein, through his Social Constitution Theory, views the constitution not only as a normative text that limits power and establishes rights, but as a social phenomenon that lives in the behavior, customs, and collective consciousness of society. For him, the existence of a true constitution is not determined by the beauty of its wording or the breadth of the rights it guarantees, but by the degree to which the values it embodies are internalized into social and political life (Bhuta 2025).

According to Loewenstein, the constitution has three dimensions that indicate its quality of validity, namely normative, nominal, and semantic. The normative dimension is the

ideal condition, when constitutional norms are effectively implemented and become the basis for state behavior. At this stage, the constitution has transcended its status as a legal document to become a living constitution that guides the actions of political actors and shapes the legal culture of society. The nominal dimension is a situation in which constitutional norms apply formally, their existence is recognized, but their implementation is partial or hampered by social, political, economic, or cultural obstacles. At this stage, the constitution does serve as a formal reference, but it does not yet fully function as an instrument that consistently influences behavior. The semantic dimension is the most reductive form, in which the constitution only becomes an instrument of legitimizing power without providing substantive meaning to the people; it loses its function of controlling power and is only maintained as a symbol to embellish the image of the regime (Costa 2024).

According to Karl Loewenstein, the constitution cannot be understood simply as a collection of articles that regulate state institutions and formulate citizens' rights. The constitution always moves between text and social reality, so the quality of its validity needs to be measured by how the norms work in practice (Přibáň 2019). This measure, in Loewenstein's view, can be seen through three main dimensions: normative, nominal, and semantic. These three dimensions are not merely theoretical classifications, but rather tools for assessing whether the constitution truly functions as a guide and controller of power, or whether it merely stands as a document that has lost its social power.

The normative dimension describes the conditions considered most ideal. Constitutional norms not only "exist" and are "recognized," but actually bind the behavior of state actors and shape the legal culture of society (Golia and Teubner 2021). At this stage, the Constitution serves as a tangible reference for political decision-making, public policy formulation, and law enforcement. Citizens' rights are not merely abstract formulations, but are realized through mechanisms that are accessible, monitored, and beneficial (Hirschl 2014).

Conflicts of interest remain, but institutions operate within constitutional limits, and deviations from norms are corrected through effective oversight and judicial systems. An important feature of the normative dimension is apparent when the constitution no longer functions as a text that is read at ceremonial moments, but rather lives as a framework of values that shapes the habits of statehood. At this stage, the term *living constitution* acquires its most concrete meaning, because the constitution flows in institutional practice as well as social consciousness.

The nominal dimension presents a more problematic situation, but it is still far from being merely a facade of power. The constitution remains formally in force and is a legitimate reference in the legal system, but its implementation is incomplete and often stalled. Obstacles can come from many directions: an unequal economic structure, weak bureaucratic capacity, political patronage, a discriminatory social culture, or the interests of elites who suppress the enforcement of principles (Law and Versteeg 2013). At this stage, the constitution often appears to be "correctly formulated," but the mechanisms to make it work are inadequate or not seriously implemented.

As a result, some norms are only effective in certain situations, for certain groups, or at certain moments, and then weaken when they encounter stronger interests. The

constitution serves as a formal reference, but its influence on the behavior of actors is inconsistent (Thornhill 2011). Norms regarding rights and equality may look good on paper, but in everyday life, citizens still experience limited access, discrimination, or half-hearted policies. The nominal dimension illustrates the characteristic gap between “normative promises” and “social outcomes,” which makes the constitution seem present but not fully functioning.

The semantic dimension is the most reductive and dangerous form. The constitution is symbolically upheld, but its substantial function as a check on power has been virtually eliminated. The text of the constitution is used as a tool of legitimization to consolidate dominance, rather than as a mechanism to protect the people. In semantic conditions, the language of the constitution may appear progressive in its talk of rights, democracy, and welfare, but none of this is directed toward creating real protections (Blokker and Thornhill 2017). Norms have been reduced to rhetoric, while the institutions that should control power have been weakened or reduced to mere formalities. The constitution continues to be cited, but more as a political ornament to polish the regime’s image than as a tool to correct abuses of power. The existence of the constitution at this stage is paradoxical: the more it is displayed as a symbol, the further it is from its true function.

This division of dimensions arose from Loewenstein’s sensitivity to the reality that many countries have written constitutions that guarantee broad rights, but in practice, these rights are never realized. For Loewenstein, the constitution is a reflection of the dynamic relationship between norms and social context. When constitutional norms clash with social structures that are not ready for or resist change, the constitution risks becoming trapped in a nominal or even semantic state. On the other hand, when constitutional norms are supported by collective consciousness, a democratic political culture, and effective law enforcement mechanisms, the constitution can achieve a true normative status (Loewenstein 1955).

In the context of equal employment opportunities for persons with disabilities, the norms in the 1945 Constitution and related laws are, textually, normative, as they explicitly guarantee the right to work without discrimination and establish mandatory employment quotas for persons with disabilities. However, in practice, this policy is often stuck in a nominal position. The implementation of the policy is hampered by cultural biases that view disability from a perspective of pity rather than equality; a lack of transparent monitoring mechanisms; weak sanctions for quota violations; and low collective awareness that fulfilling the rights of persons with disabilities is part of a constitutional obligation.

Justice is not only about distributive justice in the allocation of resources, but also recognition justice that places individual identity and dignity at the center of consideration. People with disabilities are often trapped in structural discrimination that stems not only from a lack of physical or technological access, but also from social constructs that view disability as a weakness rather than a diversity of abilities (Montaldo 2016). This is where the principle of equal employment opportunities needs to be interpreted not only as the fulfillment of quotas or the implementation of norms, but as a paradigm shift that recognizes persons with disabilities as full subjects in the life of the state. Within the framework of a living constitution, the successful implementation of this principle depends on the extent to which society, including businesses,

policymakers, and law enforcement officials, accepts the value of equality as an integral part of their constitutional consciousness.

If we follow Loewenstein's thinking, internalizing the values of equal employment opportunities for persons with disabilities requires convergence between the normative power of law and the sociological reality that brings it to life. The living law, as defined by Eugen Ehrlich, is actually close to Loewenstein's idea of a living constitution, whereby a constitution or law will only be effective if it is internalized and implemented by society (Vatter 2021). Thus, the main problem in implementing the principle of equal employment opportunities for persons with disabilities does not lie in the absence of norms or weak regulations, but rather in the weak internalization of the value of equality itself. The norms have been established, but the social and cultural structures are not yet fully ready to accept them. The collective consciousness of society has not yet made equality for persons with disabilities a moral and constitutional obligation, but merely an administrative obligation that will be implemented only if possible.

In the hermeneutic approach to law, constitutional norms must be interpreted not merely grammatically or systematically, but teleologically in order to capture the moral and just purposes they embody (Susetiyo 2025). The principle of equal employment opportunities for persons with disabilities has a clear teleological basis, namely the realization of an inclusive society that respects human dignity without discrimination. However, this teleological interpretation often stops at the realm of discourse due to conflicts with economic interests, cultural stereotypes, or exploitative labor market structures (United Nations Department of Economic and Social Affairs 2022).

To conclude the first discussion, it can be emphasized that the principle of equal employment opportunities for persons with disabilities, despite having gained strong legitimacy in constitutional norms and derivative regulations, has not automatically transformed into a living constitution. Within Loewenstein's framework, the measure of a constitution's "liveliness" does not lie in the completeness of the text, but in the ability of the values within it to shape social behavior, policy choices, and institutional culture. When teleological interpretations of equality stop at the level of discourse and fail to find resonance in recruitment practices, workplace design, and law enforcement, what we see is a constitution that remains at the "nominal" level: formally recognized, but insufficiently effective in changing a discriminatory social reality.

Its complexity has even increased in the era of globalization and digitalization. Remote working technology has indeed opened up new opportunities to break down physical barriers, but at the same time, it has also given rise to new risks of exclusion through inequalities in access to devices, networks, and digital skills. If labor regulations and policies are not adaptive to this transformation, then equality of employment opportunities will be confined to a "conventional" context and lose its relevance, thereby testing the flexibility of the living constitution: its ability to adapt without sacrificing the substance of the value of equality itself.

Thus, the main agenda after normative mapping is no longer simply to affirm "what should be" according to the law, but to ensure "how that value works" in the social sphere: through the internalization of equality as collective consciousness, consistent enforcement, and adaptive mechanisms that are responsive to changing times. At this point, the discussion needs to move on to the next core problem, namely why these

normative guarantees are not connected to the internalization of values in labor practices and what factors cause progressive constitutions to remain at the nominal stage.

### *3.2. The disconnect between constitutional norms and the internalization of equality values in employment practices for persons with disabilities in Indonesia*

The Indonesian Constitution, as the highest law, has established principles that explicitly recognize the equality of citizens' rights without discrimination. Article 28D paragraph (2) affirms that every person has the right to work and to receive fair and proper compensation and treatment in their employment relationship. Article 28I paragraph (2) adds that every person has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment (Purnomosidi 2017).

These norms are explicitly stated in several articles of the 1945 Constitution that are relevant to the right to work for persons with disabilities. Article 27 paragraph (2) states that every citizen has the right to work and a decent livelihood. Article 28D paragraph (2) affirms that every person has the right to work and to receive fair and decent compensation and treatment in their employment relationship. Article 28I paragraph (2) adds a more explicit guarantee: every person has the right to be free from discriminatory treatment on any basis and has the right to protection from such discriminatory treatment. This set of norms shows that the constitution has provided a strong basis for placing access to work for persons with disabilities as part of a non-negotiable constitutional right.

In fact, Article 28H paragraph (2) guarantees the right of every person to obtain facilities and special treatment in order to obtain equal opportunities and benefits for the sake of equality and justice. This normative construction shows that equal employment opportunities for persons with disabilities are an integral part of constitutional rights that are not only declarative but also legally binding.

The national legal framework then clarified this constitutional mandate through Law No. 8 of 2016 on Persons with Disabilities. This law was created as a correction to the old paradigm in Law No. 4 of 1997, which tended to view disability from a charity-based perspective, replacing it with a rights-based approach. Article 5, paragraph (1) of Law No. 8 of 2016 states that persons with disabilities have the right to obtain employment that is appropriate to the type and degree of their disability. Article 53 paragraphs (1) and (2) require the public and private sectors to employ persons with disabilities with a minimum quota of two percent in government agencies, state-owned enterprises, and regionally owned enterprises, and one percent in private companies. Violations of this provision are subject to sanctions as stipulated in Articles 145 and 146, which contain criminal penalties and fines (Puspitawati and Darmadha 2019).

The technical implementation is regulated through Government Regulation No. 60 of 2020 concerning Disability Service Units (ULD) in the Field of Employment, which, in Article 3, mandates that the duties of ULD include facilitating the recruitment, placement, and assistance of persons with disabilities in the workplace. Minister of Manpower Regulation No. 3 of 2021 then provides detailed guidelines on the management of ULDs, cross-sector coordination mechanisms, and reporting on quota fulfillment. Formally, this legal framework is adequate to ensure the connection between

constitutional norms and employment inclusion practices. At the international level, Indonesia is bound by the Convention on the Rights of Persons with Disabilities (CRPD) through Law No. 19 of 2011. Article 27 of the CRPD explicitly affirms the right of persons with disabilities to work on an equal basis, free from discrimination, with the same rights to fair and favorable working conditions, as well as the obligation of the state to provide reasonable accommodation (Situmorang and Kusuma 2023). This ratification means that Indonesia has an international legal obligation to integrate the principles of the CRPD into national law, while ensuring its implementation in practice.

However, reality shows that there is a significant disconnect between these constitutional norms and the internalization of equality values in the field. Reports from the Ministry of Manpower and studies from various independent institutions show that compliance with disability employment quotas remains low in both the public and private sectors. Many government agencies do not meet the minimum percentage specified in Article 53 of Law No. 8 of 2016, while sanctions are rarely imposed. The reasonable accommodations mandated by Article 27 of the CRPD are often merely a formality, without adequate adaptation of the work environment for workers with disabilities. This can be seen from the most authoritative population database, which records a scale of needs that far exceeds actual absorption capacity.

The ratification of the Convention on the Rights of Persons with disabilities (CRPD) puts Indonesia in a position that no longer merely expresses moral support, but assumes international legal obligations (Brooks and Von Schrader 2025). The real consequence is that the principles of the CRPD must be integrated into national law, harmonized into policy, and then implemented consistently through institutional, budgetary, and supervisory tools (Ameri *et al.* 2023). Ratification also requires countries to be serious about ensuring that recognized rights do not remain mere documents, because the measure of success lies in tangible changes in recruitment processes, working conditions, protection, and access to redress when violations occur.

The problem does not stop at meeting quotas. The work environment is often not prepared to ensure that persons with disabilities can work safely, productively, and with dignity (Khater *et al.* 2025). Adequate accommodation, as emphasized in Article 27 of the CRPD, is often understood as an administrative formality, rather than an obligation that requires real adjustments. The selection process still often contains barriers; building and facility accessibility is inadequate, job information is not always available in disability-friendly formats, assistive technology is rarely prioritized, and work culture sometimes still carries a stigma that limits opportunities for growth. This situation creates a subtle but significant form of discrimination, because rejection does not always appear overtly, but is present through a system that was not designed to be inclusive from the outset.

The Central Statistics Agency, through its latest publication, reports that there are approximately 22.97 million people with disabilities in Indonesia, or  $\pm 8.5\%$  of the population; this figure confirms the size of the target group for inclusive employment policies that must be fulfilled by the state and business actors. At the same time, employment indicators show that only 763,925 persons with disabilities are employed, with the largest proportion working for themselves and only a fraction employed as workers or employees; this configuration indicates limited access to the formal labor market, which is relied upon by the quota regime (Isneini and Luthfianto 2025). This

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basic fact makes it clear that normative compliance has not yet been transformed into substantive performance commensurate with the mandate of the constitution and laws.

The most authoritative population data shows a striking gap between the size of the working-age population with disabilities and the limited number of available job opportunities, so this issue should not be viewed as a series of isolated individual cases. Such figures actually confirm the existence of structural problems that work from upstream to downstream: inclusive education pathways are not yet truly open to all, access to job training is still limited and often not disability-friendly, while job placement services are not yet sufficiently sensitive to accommodation needs.

Interregional disparities exacerbate the situation because the availability of training centers, vocational rehabilitation services, accessible public transportation, and industrial networks ready to accept workers with disabilities is not developing at the same pace. As a result, employment opportunities tend to be concentrated in certain areas, while many persons with disabilities in other areas are forced to face limited choices: working in the informal sector without adequate protection, or not working at all (S. *et al.* 2024).

Program planning is often not based on detailed and measurable needs mapping. The category of “disability” is often treated as homogeneous, even though access and support needs vary according to the type of disability, level of education, work experience, family economic conditions, and environmental barriers (Putri *et al.* 2024). The lack of accurate data makes it easy for interventions to miss the mark. Training is conducted without considering local labor market demand, certifications are not linked to industry needs, affirmative recruitment is not followed by workplace readiness, and programs end up as ceremonial activities. This situation creates a recurring cycle in which persons with disabilities are considered “unemployable,” even though the support systems that should prepare and connect them have not been seriously developed.

Weak data-based policies also open the door to old ways of thinking in the job market. Recruiters assess candidates with disabilities through the lens of risk and additional costs, rather than through their potential and developable competencies; workplaces view accommodations as a burden on the budget, rather than an investment in productivity; promotions and career development are rarely designed to be inclusive, so many workers with disabilities remain in stagnant positions (S. Nurhayati 2020). This kind of stigma does not exist in isolation, but is perpetuated by an ecosystem that does not provide strong incentives for change and does not impose real consequences on those who deny access.

At the implementation level, operational instruments designed to bridge norms and practices have not been working adequately. Official data from the Ministry of Manpower shows that the placement of workers with disabilities through government services is still very small compared to the size of the need; for example, in the first and second quarters of 2024, the total number of placements recorded was only around 600 people, while the publication “Employment in Data” also confirms that placements per province tend to be sporadic and do not yet reflect the systematic fulfillment of quotas (Kementerian Ketenagakerjaan Republik Indonesia 2024). The discrepancy between the target population and the placement achievements recorded through this channel

provides an objective indication of the weak internalization of equality values in the recruitment and talent management processes in both the public and private sectors.

Independent policy analysis reinforces this picture. The PRAKARSA policy brief concludes that the quota policy as stipulated in Article 53 of Law 8/2016 has not been optimal in increasing the participation of persons with disabilities in the labor market, due to problems in its design and implementation: unclear monitoring mechanisms, the absence of effective sanctions, and a weak support ecosystem, such as adequate accommodation and needs-based vocational training (The PRAKARSA 2022b). This finding is consistent with interdisciplinary academic studies that highlight the misalignment between pro-inclusive norms and labor policy infrastructure at the regional and central levels. In other words, the failure lies not in the absence of regulations, but in the absence of an operational architecture that ensures constitutional values are “alive” in institutional behavior.

At the institutional level, the implementing agency that is projected to serve as a “bridge” between norms and the formal labor market, namely the Employment Disability Service Unit, as mandated by PP 60/2020, has not yet shown consistent performance across regions. The Coordinating Ministry for Human Development and Culture emphasizes the importance of the ULD as a hub for facilitating recruitment, mentoring, and workplace adaptation (Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan 2021). However, policy evaluations and implementation research in several regions have found that ULDs are often constrained by human resources, budgets, and inter-agency coordination, so that their role in promoting quota fulfillment and adequate accommodation has not been optimal. When policy nodes that should encourage organizational behavioral change do not function as “internalization engines” for values, progressive constitutions inevitably remain nominal.

The same criticism applies to the areas of oversight and enforcement. In its recommendations on promoting the rights of persons with disabilities, Komnas HAM highlighted that the employment regime still tends to view persons with disabilities as “incapable” and “unhealthy,” a structural bias that results in discriminatory recruitment and promotion decisions. In the judicial sphere, the Constitutional Court in Decision No. 93/PUU-XX/2022 (Mahkamah Konstitusi Republik Indonesia 2022). Reaffirming the prohibition of discrimination and the state’s obligation to guarantee effective protection for persons with disabilities and related parties is a strong normative affirmation, but its effectiveness remains dependent on the courage of regulators to translate the principle of non-discrimination into administrative sanctions and tangible policy corrections at the sectoral level.

Case examples show how rights that are clearly stated in text do not automatically translate into fair experiences in practice. Civil court rulings that uphold victims of transportation service discrimination, such as the Dwi Ariyani case, reveal that violations stem from institutional assumptions about “safety standards” that exclude reasonable accommodations. Identical patterns of reasoning can also arise in employment relationships when recruitment and performance evaluation criteria normalize barriers rather than removing them (Thea 2017). Although the case occurred in the public service sector, the discriminatory logic is parallel to employment practices that require “perfect health” without providing accommodation, thus setting a social

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precedent that protection needs to be moved from discourse to measurable corrective mechanisms.

### *3.3. Transformation towards normative constitution through labor accountability system*

Stagnation in the fulfillment of constitutional rights for persons with disabilities in the labor sector can no longer be viewed simply as an operational technical failure, but should be read as a symptom of systemic dysfunction in the legal governance of the state. Karl Loewenstein, through his constitutional theory, warned that even the most perfect constitutional document would still have a nominal status if the holder of power did not have the political will or adequate instruments to subjugate social reality under the supremacy of the norm.

The gap between the noble promises of the 1945 Constitution and the reality of exclusion in the field demands a paradigm shift in law enforcement from a moral appeal approach to a coercive structural approach. The transformation of the constitution's status from nominal to normative is only possible if the state builds an accountability infrastructure capable of automatically and institutionally detecting, measuring, and correcting non-compliance (Malik *et al.* 2021).

The answer to this urgent need is the establishment of an integrated digital monitoring architecture, which in this study is conceptualized as the National Disability Employment Accountability System or SAKDIN. This idea was born from the premise that laws without accurate data are blind laws. Until now, the classic excuse often used by bureaucracies and corporations to avoid quota obligations has been the lack of valid data on disability applicants or ignorance of compliance standards. SAKDIN is designed to close this loophole by creating a single data ecosystem that connects population data, disability medical data, and employment data. This system does not merely function as a passive database, but as a real-time compliance audit engine that monitors labor absorption movements across all sectors.

The operational mechanism of SAKDIN must be based on the principle of cross-ministerial data interoperability that eliminates sectoral egos. The Ministry of Manpower, as the holder of technical regulatory authority, needs to integrate the Mandatory Employment Reporting (WLK) system with the population database at the Ministry of Home Affairs and employment social security data. This integration enables the state to have an accurate digital map of the number of companies that are compliant, those that have not met their quotas, and the locations of pockets of disability unemployment that require intervention.

The transparency of data generated by this system will transform the law enforcement landscape from a reactive approach that waits for reports of discrimination to a proactive approach based on early warning indicators (Abdussamad *et al.* 2022). When a large company is detected as not meeting the 1% quota or a government agency has not reached 2%, the system will automatically issue a non-compliance notification that has administrative consequences.

The most fundamental aspect of this transformation is the shift in compliance logic from the realm of charity to the realm of performance. Disability inclusion must be positioned

as an indicator of organizational success, not merely a corporate social responsibility (CSR) activity. The government bureaucracy requires radical intervention by incorporating the variable of disability employment into the assessment components of Bureaucratic Reform (RB) and the Government Agency Performance Accountability System (SAKIP).

Bureaucratic logic works based on performance targets that impact budgets and allowances; therefore, the most effective strategy to compel civil service officials to recruit persons with disabilities is to make it a condition for the disbursement of performance incentives or agency performance assessments. This method directly intervenes in the “political will” of those in power, as required by Loewenstein, by linking the pragmatic interests of bureaucrats with the ideal goals of the constitution.

The private sector requires a different but similar social engineering approach, namely by utilizing market instruments and economic incentives. The government has enormous purchasing power through the mechanism of public procurement (Cravero 2017). This power can be used as a tool to enforce compliance by stipulating that only companies that have disability inclusion compliance certificates (verified through SAKDIN) may participate in government project tenders above a certain value. Affirmative action in the supply chain will create massive market pressure. Companies will compete to employ persons with disabilities and provide reasonable accommodations not merely out of fear of criminal sanctions, but because they fear losing access to lucrative government markets. This is a concrete example of efforts to make constitutional norms an economic variable that determines business continuity.

Fiscal and non-fiscal incentives also need to be designed precisely based on SAKDIN data to reward entities that exceed compliance standards. Corporate income tax cuts or priority lanes in business licensing can be given to companies that are proven to have a superior inclusive work ecosystem. Conversely, a disincentive system must be automatically applied to violators. Sanctions do not always have to be criminal in nature, with complicated proof processes, but can be administrative sanctions with immediate impact, such as suspension of certain public services for companies or postponement of promotions for public officials who are negligent. This digitally measurable “carrot and stick” approach will create a climate of consistent behavior conditioning, so that legal compliance becomes the most profitable rational choice for every economic and political actor.

Public transparency is another key element that distinguishes nominal constitutions from normative ones in the perspective of modern democracy. SAKDIN must provide a public interface in the form of a national dashboard that can be accessed by civil society, academics, and the media. Openness of information regarding the level of compliance of ministries, local governments, state-owned enterprises, and even multinational corporations will trigger a strong social control mechanism. The reputation of institutions will be at stake in the eyes of the public. This reputational pressure is often more effective than the threat of fines because it concerns public image and investor confidence. When the public can directly monitor which entities are inclusive and which are discriminatory, constitutional norms gain social legitimacy that lives within society, rather than being confined to the text of the law.

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The institutionalization of this oversight also requires strengthening the role of the National Commission on Disability (KND) as an independent external oversight body (Rosdianti 2021). The KND must be given full access to SAKDIN analytical data in order to conduct independent audits and provide binding recommendations. The KND's position should not be limited to that of an advisor; rather, it should have the authority to issue compliance opinions equivalent to the financial audit opinions issued by the BPK, but in the context of human rights. These compliance opinions would then serve as a reference for other ministries in imposing sanctions or awards. This inter-agency synergy is absolutely necessary to prevent the buck-passing that has perpetuated the nominal constitutional status quo.

The implementation of this type of accountability system is essentially an effort to establish legal certainty. Uncertainty is often the biggest enemy of investment and the enforcement of human rights. For persons with disabilities, SAKDIN provides certainty that their competencies will be assessed in a system that is fair, monitored, and has clear accommodation standards. For employers, this system provides certainty regarding the parameters that must be met to be considered legally compliant, eliminating the gray areas of legal interpretation that have been confusing. Legal certainty is an absolute prerequisite for the creation of an efficient and inclusive labor market, where disability is no longer seen as a cost risk, but rather as a potential human resource protected by a robust system.

Behavioral changes enforced through a strict accountability system will gradually be internalized into legal culture. Legal sociology theory teaches that habits can be formed from continuous conditioned compliance (Nilsen 2015). Initially, companies may recruit people with disabilities because they are forced to do so by government tender regulations or SAKDIN audits. However, over time, intensive interaction in the workplace will erode stigma and prejudice. Employers will empirically realize that people with disabilities have equal productivity when given the right accommodations. At this point, the constitution begins to function normatively in the true sense: the value of equality is no longer enforced out of fear of sanctions, but because it has become a value that is believed to be true and has become part of the organizational culture.

Arguments about the cost of implementing such systems often hinder reform initiatives of this kind. However, the cost of investing in technology and reorganizing governance is actually much lower than the opportunity cost (Shalf 2020) which is lost due to the neglect of the potential of millions of people with disabilities. Systemic exclusion creates a double burden for the state in the form of prolonged social assistance and the loss of tax potential and purchasing power from the disability group. Therefore, the development of SAKDIN must be seen as a strategic investment by the state in human development, not merely a burden on the capital expenditure budget. A state that fails to facilitate its citizens to work is a state that allows its human resources to go to waste, and this contradicts the principle of efficient state administration mandated by the constitution.

The urgency of transitioning to a normative constitution is also relevant to Indonesia's global commitment to the Sustainable Development Goals (SDGs) and the principles of Environmental, Social, and Governance (ESG) (Dada *et al.* 2023). The global market now demands high standards of business ethics, including in the aspect of workforce

inclusivity. The existence of a credible national accountability system will increase Indonesia's investment competitiveness in the eyes of the world. Global investors will see Indonesia as a country with legal certainty and a mature social infrastructure. This proves that the enforcement of human rights through a living constitution goes hand in hand with the interests of national economic progress.

The next concrete step is to develop a roadmap for SAKDIN implementation with binding time targets. The government can no longer hide behind the narrative of an endless "gradual process." There must be a baseline year for when data integration will be completed, when system trials will be conducted, and when sanctions and incentives will be fully enforced. The absence of clear time targets is tantamount to allowing injustice to continue. This roadmap must be established through a strong legal instrument, at least a Presidential Regulation, to ensure that all ministries and institutions comply with this grand scenario of saving the constitutional mandate.

The final reflection of this discussion brings us back to the essence of Karl Loewenstein's theory of power control. The social constitution is not only about feeding the hungry, but about providing every citizen with a fishing rod and access to the same pond so that they can support themselves with dignity. As long as the job recruitment system remains discriminatory and the state remains silent without effective corrective mechanisms, the social constitution has failed to fulfill its function. SAKDIN and the integration of inclusion performance indicators are technocratic efforts to save the spirit of the constitution. This effort is a bridge that must be built to carry millions of people with disabilities from the shores of the sweet promises of a nominal constitution to the land of hope of a real and just normative constitution.

Equal employment opportunities for people with disabilities will never be achieved by relying solely on compassion or silent legal provisions. It requires a driving force in the form of a sophisticated, transparent, and enforceable accountability system. When this system is in place, discrimination is no longer merely a moral violation that can be ignored, but rather a performance failure for which the perpetrator must pay dearly.

In Loewenstein's view, true disability employment equality is hindered by the lack of effective corrective mechanisms in recruitment and workplace governance. The proposed National Disability Employment Accountability System (SAKDIN) aims to address this by incorporating disability-inclusion indicators into performance assessments, thus ensuring measurable compliance and routine monitoring. By framing discrimination and quota avoidance as compliance failures rather than mere moral issues, the system enhances enforcement credibility through transparency, incentives, and independent oversight. This approach seeks to embed equality values within workplace culture, enabling the constitutional framework to function normatively rather than just symbolically.

#### **4. Conclusion**

Indonesia's disability employment regime is largely nominal, with constitutional guarantees of non-discrimination, quotas, and reasonable accommodation. However, structural barriers, cultural stigma, weak monitoring, and under-enforced sanctions hinder the constitutional promise of employment equality for persons with disabilities. To move from a nominal to a normative constitution, the legislature should strengthen

enforceable duties, codify minimum standards for reasonable accommodation, and provide a clear legal basis for transparent reporting and data governance.

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