

THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS
WRITTEN CONTRIBUTION ON THE UNCRPD 13TH PRE SESSION

INTRODUCTION

1. The National Commission on Human Rights of the Republic of Indonesia, abbreviated in Indonesian as Komnas HAM¹, hereby submits its report to the Committee on the Rights of Persons with Disabilities in fulfilling its reporting obligation given by the Treaty Body to Indonesia.
2. Indonesia has ratified the Convention on the Rights of Persons with Disabilities on 18 October 2011, which was entered into force and promulgated on 10 November 2011. The Komnas HAM report is intended to provide additional information regarding the status of the CRPD implementation, as provided by the previous Report of the Government of Indonesia.
3. The National Human Rights Commission welcomes the implementation of best practices in the protection and fulfilment of the rights of persons with disabilities in several Indonesian regions. These are evident in the Special Region of Yogyakarta Province, for instance, where CRPD was adopted in the local laws.
4. The data provided in this report were collected as results of consultations, field study, complaints lodged to Komnas HAM, meetings, and other related activities both attended or organized with partners from disabled persons' organizations (DPO), civil society organizations (CSOs), and government agencies. The report also takes into account national and international laws, as well as local and international reports and focuses mainly on the following themes:

- I. The Politics of Discrimination against Persons with Disabilities
- II. The Politics of Budgeting for Disability Rights

¹As NHRI Komnas HAM has a mandate to monitor conventions that have been ratified by the Indonesian government. Komnas HAM is an NHRI that obtained a "A" status assessment from GANHRI

III. Disability Protection Mechanisms

IV. Inhuman Degrading Treatment

Part I: Fundamental Problem at the National Level

A. The Politics of Discrimination against Persons with Disabilities

5. Law No. 8 of 2016 has changed the paradigm from "charity" to "rights". However, the said law still puts the Ministry of Social Affairs in charge as the authorized ministry, making persons with disabilities perceived only as part of the social problems. Komnas HAM considers this as a form of discrimination because persons with disabilities have the same rights as any other citizens, not merely a social problem. The approach made in this regard should be cross-institutional and multi-sectoral in nature.
6. Komnas HAM believes that discriminatory policies against persons with disabilities still persist in numerous laws that have not been adjusted or amended to be in line with the Law on Persons with Disabilities. Law No. 11/2009 on Social Welfare, for example, still places persons with disabilities as people with social welfare problems. Such paradigm perceives them as part of the social problems requiring a Charity-based solution.
7. The typical discrimination experienced by most persons with disabilities is the physical and mental health requirements that prevents them from being able to apply for a job, vote, and take part in political activities, among others. Komnas HAM noted a discriminatory provision such as in Article 65 of the Civil Service Law, which requires physical and mental health as a condition in the civil service recruitment process. The Commission considers that such health requirements severely discriminate against persons with disabilities. Therefore, it believes that the aforementioned conditions should be removed from every form of requirement to allow fair access to employment, education, and public office. Komnas HAM also urged the amendment of laws that still put physical and mental health as part of their requirements.
8. Law No. 8 of 2016 has mandated the establishment of government regulations in its implementation. The government regulations include: 1) Government Regulation on Planning, Organizing, and Evaluating the Respect, Protection and Fulfilment of the Rights of Persons with Disabilities, 2) Government Regulation on Appropriate

Accommodation for Persons with Disabilities in Judicial Process, 3) Government Regulation on Proper Accommodation for Students with Disabilities, 4) Government Regulation on Social Welfare, 5) Government Regulation on Fulfilment of the Right to Settlement, Public Services, 6) Draft Government Regulation on Manpower Disability Services Unit, 7) Draft Government Regulation on Concessions and Incentives in Respect, Protection and Fulfilment of the Rights of Persons with Disabilities, 8) Draft Government Regulation on Habilitation and Rehabilitation Services for Persons with Disabilities. Komnas HAM considers that the process of establishing government regulations has been very slow and delayed. Of the 8 Draft Government Regulations, only two have been completed and passed. The deliberation of Draft Government Regulation on Concessions and Incentives was rejected by the Ministry of Finance although it was stipulated in Presidential Regulation No. 33 of 2018 on National Action Plan on Human Rights. The Committee stated that the delayed process of establishing a draft government regulation and the rejection of one of the draft government regulations was a disregard of the mandate of the disability law.

List of Issues

1. What measures have been taken by the government to harmonize the discriminatory legislations, such as the Law on Civil Service?
2. Regarding the physical and mental health requirement, how can the Indonesian Government see to it that recruitment processes will not discriminate against persons with disabilities in all and ensure inclusive participation in public offices, civil service, and fulfilment of other civil rights?
3. With regard to the delayed deliberation of some of the draft government regulations, how can the government ensure expedient formulation and implementation of such regulations and ensures the inclusive public participation of persons with disabilities?
4. The government still perceives disability as an issue under the responsibility of the Ministry of Social Affairs, turning it into another part of the social problems. How can the government ensure and involve all ministries to take responsibility in the fulfilment of rights for persons with disabilities?

B. The Politics of Budgeting for Disability Rights

9. Komnas HAM's observation regarding the special budget for persons with disabilities was that it has never been allocated in all ministries and state institutions. The only ministry with special budget for this purpose is the Ministry of Social Affairs. Other ministries, on the other hand, while they have an allocated budget, they have no specific program designed for persons with disabilities. In 2018, the education budget went up by only 2.7%, whereas in 2019 the budget decreased. The budget allocated by Directorate of Special Education and Special Services Development in 2019 Rp.690,660 billion, a decrease in figure by approximately Rp.65 billion from Rp.755,786 billion in 2018.² It went to show that the politics of budgeting in the national budget has not yet fully sided with persons with disabilities.
10. Government policies on the protection and fulfilment of the rights of persons with disabilities are also reflected in the health budget, which should have been provided as health insurance for their disability, including assistive tools for persons with disabilities. Assistive tools are supporting tools for persons with disabilities and they should be included in the health insurance scheme. That way, the provision of assistive tools by the Ministry of Social Affairs or local government can be carried out as a charity, as opposed to be based on disability needs. Assistive tools are supporting prosthetics and mobility devices used by persons with disabilities, therefore they should be included in the health insurance scheme.
11. The regional budget also does not specifically allocate a budget for persons with disabilities. The Komnas HAM data suggests that regions that do have Regional Regulation on Persons with Disabilities have yet to prepare programs designed for participatory involvement of persons with disabilities. The Special Capital Territory of Jakarta Province, for instance, has quite a large budget allocated for disability programs. However, most of this budget has been distributed mainly to Jakarta social rehabilitation

²<https://minanews.net/ledia-hanifa-kebijakan-pendidikan-bagi-penyandang-disabilitas-belum-jelas/>

centres³ but the benefit is not fully enjoyed by all persons with disabilities living in the country's capital. The budget is also not accompanied by a comprehensive program designed to cater to the needs of disabled person.

List of Issues

1. Regarding the budget allocation in several ministries that is not specifically targeted for disability programs and improper utilization of such budget, how can the government control and ensure that budget is prepared with a program designing process that meets disability needs and involves persons with disabilities in its planning?
2. As regards regional budget, how can the national government encourage all regional governments to devise participatory programs for persons with disabilities, supported by a budget that is tailored to the needs of persons with disabilities?

C. Disability Protection Mechanism

12. Komnas HAM recommends the development of protection mechanism for persons with disabilities. It also encourages the establishment of an independent national commission for persons with disabilities, one that does not operate under a ministry. The establishment of an independent commission is critical considering that disability matters are a concern of all ministries and state institutions, including regional governments. If the said commission operates under one ministry, such as the Ministry of Social Affairs, for example, it will be very difficult for this commission to monitor the implementation of disability rights by other ministries or in the regions. The National Commission for Senior Citizens, to take an example, operates under a directorate of the Ministry of Social Affairs, and it has not been very effective in its regional outreach programs. It has been quite a long time since the national commission organized a publicized activity as its reputation slowly diminishes.

³2018 Komnas HAM data, an interview with Jakarta Department of Social Affairs

List of Issues:

1. Regarding the protection mechanism, how can the government prepares the mechanism, including measures to ensure that complaints against customers can be resolved, the protection mechanism continue to guarantee the fulfilment and protection of persons with disabilities, and frequently-reported abuse -- such as inhuman degrading treatment and torture -- can be reduced?
2. Please explain in details the mechanism through which the government will establish an independent commission for persons with disabilities? If the commission had to operate under one ministry, how would you make sure that the ministry's budgeting arrangements would not affect the commission's independence? How could the commission extend its programs to other ministries and state institutions outside the Ministry of Social Affairs?

D. Inhuman Degrading Treatment

13. Komnas HAM deems it necessary to raise this issue in particular, especially for the interest of those who belong to the psychosocial mental disability group. Komnas HAM's findings suggest that in regions where cultural values are deeply rooted in social lives, people with mental disabilities have always been severely stigmatized as everything from a curse, a disgrace to the family, someone possessed by evil spirits, or harmful individuals who need to be excluded because they are seen as not being a part of the community.⁴ The lack of understanding among the community and their family has resulted in people with mental disabilities being hidden away and even receiving degrading treatments from their own families with some being locked up or shackled.⁵ Due to the minimal understanding of the community and the dominating stigma around

⁴ Komnas HAM studies in Toraja and Bali Tenganan and Bengkulu still find stigma that disability is considered a curse because of ancestral sins. But the Toraja and Balinese people have started to involve disability in traditional ceremonies by adjusting their abilities. Komnas HAM, 2017

⁵ The results of monitoring and investigation of the National Human Rights Commission in 2016 about mental disability in 5 (five) Provinces in Indonesia, namely East Java, West Java, South Sulawesi, Bali, and Banten concluded that the practice of mounting is still widely practiced in these five regions. Savings are carried out in the family environment for various reasons including economic problems and lack of community knowledge regarding the handling of mental disability. Komnas HAM, 2016

mental disability, added with the minimal and unequal access to mental health services, people tend to seek whatever alternative treatments available. This gave way to the rise of privately-managed social rehabilitation centres, operating without any proper government oversight.

14. These rehabilitation centres accommodate persons with disabilities to be rehabilitated and carry out various methods for dealing with persons with mental disabilities. Komnas HAM's findings from its observation of several rehabilitation centres in Central Java and Yogyakarta regions throughout the period of 2016, 2017, and 2018 suggest that these rehab centres are a form of institutionalization of social rehabilitation practices without any form of supervision. Some of the practices carried out by these rehab centres include chain shackling, wooden shackling, confining, and all forms of exclusion; administration of one type of medication and dosage for all patients by non-professional and without periodic assessments; administration of castration drugs and injections or contraception without informed consent from the patients; head shaving of both men and women; bathing by caregivers of the opposite sex, which poses a risk of sexual harassment.

List of Issues:

1. If rehabilitation centres are managed by provincial government, how can the Ministry of Social Affairs ensure that oversight of the rehabilitation centres is performed properly?
2. Has the Indonesian government taken action to stop the alleged practices of human rights violations in rehabilitation centres, at least by giving sanctions or closing ones that have been proven to have committed human rights violations and/or torture?
3. How does the government organize and ensure continued and regular organization of awareness-raising programs in order to reduce inhuman treatment of persons with disabilities, especially persons with psychosocial mental disability?
4. Does the government have a guideline for respectful treatment of persons with mental disabilities and how they are implemented?

Part II Analysis of the Articles

Article 5 Equality and Non-Discrimination

15. Indonesia currently adopts Law number 8 of 2016 on Persons with Disabilities. The said law has given persons with disabilities a hope to have equal and fair treatment as Indonesian citizens. The principles contained in the legal instrument also adopt the CRPD's principles of respect for human rights. However, most disability-related affairs are still left under the management of the Ministry of Social Affairs, with programs based on "pity", which is in contrary to the principles of the CRPD.
16. Komnas HAM finds that the treatment of disability-related affairs merely as social affairs under the Ministry of Social Affairs is a form of discrimination because it discriminates persons with disabilities and perceives them as a group with different set of rights than other citizens when they should have been affairs of cross-sectoral concern.
17. The information gathered by Komnas HAM suggests that a great number of persons with disabilities are not recorded in the population register because their family never registered them. This has resulted in difficulty later in life when children with disabilities could not enrol in schools since a birth certificate is one of the requirements in the enrolment.

List of Issues

1. What has the government done to prevent discrimination against persons with disabilities, and what measures have been taken to ensure that disability-related affairs are not managed only by the Ministry of Social Affairs?
2. How can the government ensure that every person with disabilities can obtain an identification easily?

Article 6 Women with Disabilities

18. In response to Paragraph 174-180 of the Government Report on Women with Disabilities, Komnas HAM considers that the government has not been serious in addressing the issue of women with disabilities. The data collected by the commission

still suggest significant number of unfair treatments of women with disabilities. The imposition of birth control programs is the most common example experienced by women with disabilities, especially those with mental, intellectual, and deaf-mute impediments, in addition to cases of violence against women with disabilities occurring in rehabilitation centres. Women with disabilities are vulnerable to becoming victims of double discrimination as women and as persons with disabilities. Article 4 of Law No. 1 of 1974 concerning Marriage even stipulates that, due to their disability, the husbands of women with disabilities may file for a divorce or enter into a polygamous marriage.⁶

19. The number of cases of violence against women with disabilities, as recorded by Komnas HAM, has amounted to 143 cases⁷, among which the most common case is sexual violence. These cases occur as the result of women with disabilities not having the adequate protection for their vulnerability as women and as persons with disabilities. In addition to the recorded cases, unrecorded violence against women with disabilities also dispersed geographically and they are not managed properly. Therefore, Komnas HAM strongly urges the establishment of a regulatory framework for the protection against sexual violence.

List of issues:

1. What will the Government of Indonesia do to ensure that women with disabilities do not experience sexual violence?
2. Please explain the percentage of cases of women with disabilities dealing with the law, especially as victims of sexual violence, the regional distribution all over Indonesia, their resolutions (legal actions and legally-binding decisions that are

⁶Article 4 of Law No.1 of 1974 on Marriage stipulates:

(1) In the event that a husband desires to have more than one wife, as referred to in Article 3 paragraph (2) of this Law, he shall be required to submit a request to the Court of Law in the region where he resides.

(2) The Court of Law intended paragraph (1) of this article shall grant permission to a husband desiring to have more than wife only if:

- a. His wife is unable to perform her duties as a wife;
- b. His wife suffers from physical disabilities or incurable illnesses;
- c. His wife is unable to have children.

⁷ The Indonesian Association of Women with Disability (HWDI) data indicate 143 cases of recorded violence

in favour of women with disabilities), including the restoration of rights of the victims?

3. How does the legal aid law give priority or affirmation to women with disabilities?
4. What measures need to be taken to amend discriminatory policies that may potentially cause the occurrence of violence against women with disabilities, as provided in Law No.1 of 1974 on Marriage?

Article 8 Raising Awareness

20. The stigma of disability remains the major impediment for persons with disabilities to participate fully in the community and to be able to enjoy their rights. This stigma is one of the reasons disabled persons cannot get access to education, employment, or even get actively involved in the community as public officials and politicians. Prior to the enactment of Law Number 8 of 2016 on Persons with Disabilities, Indonesia had Law Number 4 of 1997 on Disabled Persons.
21. Law Number 4 of 1997 on Disabled Persons considers persons with disabilities as objects in the national development and perceives them as a burden requiring “pity” from the government. While this law has been amended by Law Number 8 of 2016, unfortunately some laws and regulations still refer to the old paradigm that perpetuates this stigma and make use of terms like “defect” which has very negative connotation in Indonesian, whereas linguists have suggested the use of the term “disability”.⁸ Despite the fact that these laws and regulations were established before the CRPD ratification by the Government of Indonesia in 2011, they are still referred and derived into sectoral programs rife with stigma and programs that put people with disability as objects of pity.

⁸Laws and regulations with outdated paradigms are: (1) Law No. 11 of 2009 that identifies people with disabilities as people with social and welfare problems together with homeless people and the needy; (2) Law No. 1 of 1974 on Marriage that provides allows disability to be used as a reason to justify divorce and polygamy; (3) Law No. 24 of 2007 on Disaster Mitigation; (4) Law No. 40 of 2004 on the National Social Security System; (5) Law No.1 of 2009 on Aviation that identifies people with disabilities as ‘incapable’ passengers. (6) Decision of the Manpower Minister No. 205 of 1999 on Vocational Training and Work Placement for People with Disabilities, which categorizes jobs based on types of disability and in turn reinforces stereotypes on disability. For example, associating persons with visual disabilities with massage therapy, persons with hearing disabilities with jobs in loud environment, and persons with intellectual disability with weaving.

22. The Government has also drawn up the 2015 - 2019 National Action Plan for Human Rights and the Master Plan for the Development of Disability Services⁹ in the effort of raising awareness among government officials and the wider community. However, the implementation is not yet optimal since there is no comprehensive promulgation on the existing and prevailing legislations, added with the lack of guidelines for the implementation of these awareness-raising programs, especially at the regional level.

List of issues:

1. Please explain the central and regional government budget postures that include aspects of dissemination and capacity building programs for government and law enforcement officials focusing on the protection and fulfilment of the rights of persons with disabilities?
2. What can the Indonesian government do to promote better understanding and knowledge on disability among state officials at both the national and regional levels, especially those who deal with planning and budgeting (the Regional Development Planning Agency/BAPPEDA)?
3. Is there a special policy issued by the government that serves as an executive order to require all government officials and state institutions to play an active role in reducing discrimination against persons with disabilities and promoting respect for disability?
4. Is there a government program that is designed to continuously raise public awareness about disability in all aspects of life and at all levels? And what kind of guarantee is provided to make such program compulsory and implemented by all government agencies, both national and regional.

Article 9 Accessibility

⁹ Presidential regulation No. 70 of 2019 on the Planning, Implementation, and Evaluation on the Respect, Protection, and Fulfillment of the Rights of People with Disabilities.

23. Komnas HAM noted that equitable access to public transports in major cities has been well underway, with particular attention to the special capital city of Jakarta. Different types of public transports in Jakarta have provided assistive services and priority seat signs for people with disabilities.¹⁰ However, these disability-friendly services are yet to be carried out in all regions throughout the country. Komnas HAM calls upon the Indonesian government to issue a national-level regulation that require all public transport services be disability-friendly.
24. Komnas HAM highly appreciates the use of priority signs for vulnerable groups and persons with disabilities in different transportation services. However, the Commission is against the use of such signs to perpetuate stigma and discrimination against persons with disabilities.
25. Some reports received by Komnas HAM are related specifically to transportation services in aviation.¹¹ The reports indicated that discrimination against persons with disabilities still exists in the provision of transportation services in the aviation industry. Komnas HAM believes that flight safety instruction standards must also take into account disability-friendly services.
26. Komnas HAM welcomes the establishment of regulations governing accessibility in commercial buildings.¹² However, strict adherence to these regulations are yet to be seen with numerous buildings still not having disability-friendly access. It appears that

¹⁰ Komnas HAM appreciates that various public transports in the capital city have provided services and mobility access for persons with disabilities. Priority seats have also been given for persons with disabilities and other vulnerable groups (Komnas HAM 2019 Infrastructure Field Data).

¹¹ Dwi Ariyani's case with Etihad is one of the cases reported to Komnas HAM. The report stated the airline's refusal to fly Ariyani due to the absence of a companion who would be available to assist in emergency situation (Komnas HAM Data on Complaints).

¹² Accessibility in buildings is stipulated in Law No. 8 of 2016. Prior to that, Indonesia has Law No. 28. of 2002 on Buildings. However, although it is mentioned that a building is required to provide accommodation, the law does not provide specific provisions on what facilities need to be available to ensure such accommodation for people with disabilities. The Regulation of the Public Works Minister Number 30/PRT/M/2006 on the Technical Guidelines on Facilities and Accessibility in Buildings and Buildings' Vicinity defines accessibility as the accommodation provided to all, including people with disabilities and elderly, to realize equal opportunities in all aspects of life and livelihoods. Article 4 of the regulation stipulates that (1) Technical requirements of facilities and accessibility in buildings and buildings' vicinity apply to: a. standard area size; b. pedestrian; c. tactile block; d. Parking area; e. Doors; f. Ramps; g. Stairs; h. Elevators; i. Stairway elevators; j. Toilets; k. Showers; l. Sink; m. Telephone; n. Control facility and equipment; o. Furnitures; p. Road signs and surface markings.

accessibility for persons with disabilities in commercial buildings has not been made a national priority.

27. Komnas HAM highly welcomes the practices carried out by a number of regions to facilitate access to public services for persons with disabilities. Some regions even came up with innovations aimed at facilitating and providing access to public services for people with disabilities.¹³ However, the commission sees that access to public services

¹³A Pattiro study finds that there are several regions that have come up with innovative ideas to provide accessible public services to people with disabilities. Public Services for Disabilities (Good Practices and Innovation Study of the Phase 1 Disability Pillar Care Program Partners (2015-2016) in Five Provinces in the Public Service Sector), Pattiro 2018 Archives <http://pattiro.org/2018/06/pelayanan-publik-bagi-disabilitas-kajian-praktik-baik-dan-inovasi-dari-mitra-program-peduli-pilar-disabilitas-fase-1-tahun-2015-2016-di-lima-provinsi-pada-sektor-pelayanan-publik/>

Public Service Innovations and Best Practices

No

Innovation

Coverage area

Institution

A. Health

1

Pioneering Disability-Friendly Primary Health Clinic

West Lombok District, Lingsar and Labuapi Sub-Districts

PATTIRO

2

Dedicated and Collaborative Healthcare for People with Mental Disorders

Kulon Progo District, Lendah Sub-Districts

SIGAB

Disability-Friendly Primary Health Clinic

Kulon Progo District

3

Disability Card

Sukoharjo District

has not been fully prioritized by the Indonesian government. The innovations introduced in several regions to promote access to public services for persons with disabilities are endorsed by DPOs who work actively in raising awareness about disability among regional government officials. Meanwhile, in remote and underdeveloped regions, access to public services remains a great challenge for persons with disabilities. Komnas HAM calls for serious attention to this particular issue and encourages an affirmation action to promote access to public services, especially in remote and underdeveloped regions.

List of Issues:

Karinakas

Integrated and Continuous Healthcare for People with Disabilities (Dedicated Healthcare for Children with Disabilities)

Sukoharjo

B. Education

4

Inclusive Primary School

Kota Banjarmasin

SAPDA

C. Disability-Responsive Planning and Budgeting

5

Village-level Disability-Responsive Planning and Budgeting

Sumba District, spread in 11 villages.

BAHTERA

6

Village-level Disability-Responsive Planning and Budgeting

Bone District

YASMIB

1. How does the government ensure that Regulation of the Minister of Transportation No. 98 of 2017 is implemented by all state and private public service companies all over Indonesia?
2. Is there a mechanism for the supervision, evaluation, and giving sanctions for violators of the regulation?
3. How can the government ensure that public services – from big cities to remote and underdeveloped regions – are easily accessible to all persons with disabilities?

Article 12 Recognition of Equality before the Law

28. In response to Paragraph 59 of the Government Report, Komnas HAM appreciates that the government recognizes the legal rights of persons with disabilities to get equal access to banking services. However, the government's initiative to sign memorandums of understanding with some of the largest banks in Indonesia have not been followed by operational implementation. Several cases of refusal by banks are still reported by persons with disabilities to gain access to banking services. One of the reports received by Komnas HAM came from a visually-impaired person who was denied the access to customer service at one of the branches of BRI Bank in Bandung, West Java. The latest reported case took place in December 2019 when a person with disability was not allowed to use both the ATM and access to mobile banking services.¹⁴
29. In the criminal justice system, cases that involved persons with disabilities are often settled out of court due to the stigma that persons with disabilities are legally incapacitated, an idea that is often supported even by their families. This is exacerbated by inadequate understanding of law enforcement officers who, on numerous occasions, deny the testimony of persons with disabilities. Someone's disability would often make their testimony either as a victim or a witness in a case inadmissible, therefore resulting in the case being dismissed due to insufficient evidence.¹⁵

¹⁴<https://www.cnnindonesia.com/ekonomi/20191217135934-78-457702/nasabah-difabel-mengaku-dilarang-bni-s-variabel-punya-atm>, accessed on 13 January 2020.

¹⁵ Hasil Wawancara Komnas HAM dengan LBH Yogyakarta, pada penelitian Disabilitas berhadapan dengan hukum 2018

List of issues

1. How does the government ensure that the memorandums of understanding that it drew up with Indonesian banks are implemented down to the lowest bank unit?
2. How does the government build the capacity and shared understanding among law enforcement officials in dealing with persons with disabilities?
3. Has an initiative been taken to develop a special procedure in the law enforcement mechanism for persons with disabilities, so that equality before the law is met?

Article 13 Access to Justice

30. Komnas HAM observed the case that occurred in Wonosobo, Central Java, in which a woman with a mental disability was raped by her neighbour.¹⁶ The problem turned for the worse when she and her family were persecuted by the village official who sided with the rapist. As a result of the continued threats and persecution, the victim's mother suffered a stroke and had to stay with her extended family. The turn of events occurred as a result of the victim's poor access to a fair criminal justice system. If the law enforcement officials had prevented the said persecution from happening and protected the victim and her family, complication of the case would have been avoided and it would not have threatened the victim's vulnerability. The lack of a proper police investigation mechanism in this regard has had a negative impact to access to justice for persons with disabilities.
31. While Paragraph 61 of the Government Report¹⁷ states that "The provisions regarding access to justice, such as Law No. 16 of 2011 on Legal Aid, can be used by persons with

¹⁶ Komnas HAM Team, Data Examination and Analysis from a Study on Persons with Mental Disabilities dealing with the Law, 18 July 2018.

¹⁷Initial Report by the Government of Indonesia, 3 January 2017

disabilities to obtain legal assistance" it does not necessarily mean that such provision on legal aid will automatically improve access to justice for persons with disabilities. Article 5 of the Legal Aid Law put forward a condition of "poor people" who is unable to fulfil their basic rights independently for recipients of the service. Thus, for people with disabilities to receive legal assistance, they must be able to present a statement of poor financial condition (*surat keterangan miskin*). Also included in the list of legal aid service recipients are convicted persons with disabilities who are sentenced to a minimum imprisonment of five years. Meanwhile, victims with disabilities in a criminal case, much less in a civil case, are yet to see the day when they will get access to legal aid services.

32. The 2016 Komnas HAM Reported Complaints Data¹⁸ highlighted two criminal cases that prompted a corrective action by the Public Prosecutor's Office following the management of a couple of cases involving persons with disabilities. The first case occurred in Sleman Regency, Yogyakarta Special Region, in which the victim (a person with mental disability) did not get proper accommodation in the judicial process. Meanwhile, the second case occurred in Gunung Mas Regency, Palangkaraya, in which the convicted individual (a person with mental disability) did not receive medical (psychological) examinations. This indicates the law enforcement officials' lack of understanding of the conditions and the needs of persons with disabilities in seeking justice.
33. Articles 29 through 39 of Law No. 8 of 2016 on Persons with Disabilities stipulate that legal protection for persons with disabilities is the responsibility of the national and regional governments. This protection shall include legal assistance, experts, other accommodations, and dissemination. However, the services provided are still based on the same mindset as rooted in the Law on Legal Aid. The scheme has not been followed by a friendly and proper criminal justice system for persons with disabilities. The lack of improvements to the mechanism, in addition to poor understanding, attitude and acceptance by the police, prosecutors, judges and legal counsels or lawyers towards persons with disabilities still indicate that there is a large room for improvement. These

¹⁸ Komnas HAM, 2016

problems are rooted from the complicated access to justice, which comes in non-uniform patterns and forms.

List of Issues

1. How does the government encourage the establishment of a special procedural law to accommodate persons with disabilities?
2. How can the government ensure that technical regulations regarding proper accommodation in the judicial process are formulated and implemented properly?

Article 15 Freedom from Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

34. In 2016, Komnas HAM found as many as 20 persons with mental disabilities (PMD) who were shackled by their families in the provinces of East Java, West Java, South Sulawesi, Bali, and Banten. The commission's observation found that the community in the said 5 provinces still associated PMDs with a curse, a disgrace to one's family, possession of evil spirits, and harmful individuals who need to be shunned and exiled.¹⁹ This is compounded by the shortage of mental health workers and disproportionate mental health services in Indonesia.²⁰
35. In 2017, Komnas HAM conducted another series of observations of private rehabilitation centres in Central Java and Yogyakarta. The commission visited six social rehabilitation centres and found that the rehabilitation centres were established under different institutional structures, which include Islamic boarding school (*pesantren*),

19

²⁰ Data of Basic Health Research 2018 shows that the prevalence of schizophrenia/psychosis is 7 per mil, which means that 7 of every 1000 people in Indonesia are affected by mental disorders. The data also shows significant increase compared to the 2013 Basic Health Research that noted the prevalence of 1.7 per mil. The proportion of households that shackle their family members with mental disorders stands at 14% and the proportion of households that exercise shackling in the past three months is 31.5%. Resource: <http://labdata.litbang.depkes.go.id/ccount/click.php?id=19> | there are only 600-800 psychiatrists (1 : 300.000 – 400.000) and 1,700 clinical psychologists who are concentrated in Java. Source: <https://tirto.id/defisit-psikiater-dan-psikolog-sebarannya-terpusat-di-jawa-dpk2>

private rehabilitation centre, and foundation. These rehab centres operated under the same type of legal permit -- a foundation -- issued by the Ministry of Law and Human Rights, accompanied by a permit to deliver social rehabilitation services from the Provincial Department of Social Affairs;

36. While these institutions have obtained permits for the establishment and implementation of social rehabilitation services, they have never received supervision and evaluation from the relevant authorities. On the other hand, the government does not yet have a standard for privately-managed social rehabilitation centres and its monitoring mechanism. The site visit conducted by Komnas HAM showed that shackling, confinement, and various forms of exclusion are still the most common method used for PMDs in all the visited rehabilitation centres.
37. The commission also found that it was a common practice for male caregivers to handle women PMDs, doing everything from changing their clothes to bathing them, a practice that may pose a risk of sexual harassment and violence against female PMDs. Komnas HAM also came across a rehabilitation centre in which a PMD was locked in a 1 x 2 meter room, where the said individual was expected to eat and use the toilet in the same place.²¹
38. Komnas HAM also found supposedly medical procedures performed by rehabilitation centre staff when PMDs were administered psychotic medications without prior mental health examinations, all of which should have been carried out by professional medical personnel.

List of Issues

1. How can the government ensure that all public and private rehabilitation centres are properly registered?

21

2. What is the standard procedure for the delivery of services for PMDs and their integration back into the community and family, including preparatory dissemination program for their family and community about the required knowledge and skills to interact with persons with disabilities?
3. How can the government ensure that standards and monitoring mechanisms for rehabilitation centres are met and implemented properly?
4. How can the government encourage, plan and gradually deinstitutionalize currently operating rehabilitation centres?

Article 24 Education

39. In response to Paragraph 143 of the Government Report regarding Regulation of the Minister of Education No. 70 of 2009 on Inclusive Education, Komnas HAM observed that the regulation has not been implemented optimally due to the lack of technical guidelines at the national and regional levels that can be used as a source of reference for inclusive education standards. The commission noted the great disproportion in the number of students with disabilities compared to non-disabled students.²²
40. Komnas HAM field data gathered from East Nusa Tenggara Province indicated the absence of teaching staff with inclusive education competencies in inclusive schools appointed by the Regional Government.²³ There is a need for a national-level regulatory framework applicable in all regions as guidelines for inclusive education standards, indicators of teacher competency, infrastructure, facilities, and attitudes in implementing inclusive education.²⁴

²²According to the 2018 Education Statistics, the proportion of children with disabilities over 5 years old who are enrolled to school is only at 5.48%, far lower compared to 25.83% for children without disabilities. There are 23.91% of people with disabilities who are not yet enrolled or have never participated in school. Meanwhile, children over 5 years old without disabilities and are not yet enrolled accounts for only 6.17%. The proportion of people with disabilities who drop out of school is also high at 70.62%. The higher the age group, school participation rate becomes lower. The highest school participation rate occurs in the 7-12 years old age group, namely 91.12% among children with disabilities and 99.29% among children without disabilities. The lowest school participation rate occurs in the 19-24 age group, namely 12.96% for youth with disabilities and 24.53% for youth without disabilities. Source: the Statistics Agency, <https://databoks.katadata.co.id/datapublish/2019/08/29/pada-2018-hanya-548-penyandang-disabilitas-yang-masih-sekolah>

²³Analysed from an interview with the East Nusa Tenggara Provincial Government in 2017.

²⁴2017 data from the National Human Rights Commission in Yogyakarta and East Nusa Tenggara show that other than policy and program issues, social barriers also hinder people with disabilities from accessing

41. Article 4 of Regulation of the Minister of Education No. 70 of 2009²⁵ stipulates the appointment of inclusive schools by regional governments. This appointment is top-down in nature and therefore lacks the involvement of parents and children with disabilities in identifying what is best in terms of education for persons with disabilities.
42. In response to Paragraph 144 of the Government Report, a claim of specific standards of competency and expertise for teachers in inclusive education could not be found in the relevant regulation. Item A.1.e²⁶ only describes the academic qualifications of teachers in "special needs" schools, which is inconsistent with the government's claim that it regulates the teacher's competency and expertise standards in inclusive education, as well as the role of homeroom teachers, counselling teachers, and special needs teachers. Another point of urgent matter is filling the gap between special needs assistant teachers and students with disabilities in inclusive schools.
43. As regards Paragraph 148 of the Government Report, Komnas HAM still observed persistent discriminatory practices against persons with disabilities seeking to access higher education, particularly in service-bond state institutions. This is evident in the conditions requiring prospective students to be "in good physical and mental health conditions".²⁷ Some service-bond schools even include the phrase "not physically and mentally disabled" as one of the requirements for prospective students.²⁸ in 2014,

education. Several barriers are identified, including: parents of children with disabilities are afraid to enroll their children in mainstream schools, parents are embarrassed, lack of information on how to access inclusive schools, and economic challenges. Refusal to attend school among children with disabilities is caused by some schools declining students with disabilities for funding reason, or the schools consider they already have students with disabilities and instead direct the students to enroll to private schools. (Based on the interviews with Education, Youth, and Sports Office of Kulon Progo, Education Office of Yogyakarta, and the provincial government of East Nusa Tenggara, 2017.)

²⁵ The provision: "(1) Regency/city government appoints at least 1 (one) primary school, and 1 (one) middle school in each sub-district and 1 (one) high school which shall carry out inclusive education and shall accept students as referred to in Article 3 paragraph (1)."

²⁶ Item A.1.e: **Academic Qualifications of Special Needs Primary Schools/Middle Schools/High Schools Teachers** Teachers at Special Needs Primary Schools/Middle Schools/High Schools, or other equivalent institutions, must have a minimum educational qualification of a Bachelor's degree (D-IV or S1) in special education program or a relevant Bachelor's degree in the subjects being taught, from an accredited study program.

²⁷ see the 2019 Requirements for Prospective Students of State Institute of Meteorology, Climatology and Geophysics; and the State Institute of Intelligence.

²⁸ see the 2019 Requirements for Prospective Students of State Institute of Cryptography, State Institute of Accounting, State Polytechnic of Corrections, and State Polytechnic of Immigration.

Komnas HAM and the Ombudsman oversaw a case of prospective student with mental and/or psychosocial disability who got rejected in a state university registration for being categorized as physically and mentally unhealthy.²⁹

44. The said cases of rejection and requirements imposed by educational institutions occurred as a result of the lack of institutions authorized to identify the types and degrees of disabilities and their relevance to different teaching and learning requirements. There is a need for an objective, non-discriminatory supervisory institution that determines the requirements of prospective students for persons with disabilities.

List of Issues

1. What measures will the government take to eliminate the physical and mental health requirement from school enrolment at all levels and all areas of education?
2. How can the government ensure that there will be no more rejection of students with disabilities in all educational institutions from primary to higher education level?
3. How can the Government increase the capacity, quality, and number of assistant teachers for students with disabilities as supporting elements in inclusive schools, as well as the adequate facilities and infrastructure?
4. How can the government ensure the availability of technical guidelines for the implementation of appropriate accommodation for students with disabilities?

Article 25 Health

45. Responding to Paragraphs 149 through 159 of the Government Report, Komnas HAM believes that there is a fundamental misunderstanding about Health and Social Security, in which the current health services are provided based on insurance scheme rather than social security. The health insurance does not accommodate some of the needs of persons with disabilities and their assistive tools. This has resulted in persons with disabilities not being able to enjoy the highest health standards.

²⁹Komnas HAM, 2018. Position Paper: Endorsing the Ratification of the CPRD Optional Protocol in Fulfilling the Human Rights of Persons with Disabilities. Jakarta: Komnas HAM.

46. In the health insurance scheme, persons with disabilities are considered the same as other general beneficiaries, with no specific accommodation for persons with disabilities.³⁰ Komnas HAM considers the need for amendments in the prevailing regulations and/or the establishment of a new regulation concerning national social security system to guarantee, fulfil and provide protection of the right to health for persons with disabilities.
47. Law Number 36 of 2009 on Health emphasizes the primary role of government in ensuring the availability of facilities and health services for persons with disabilities for a healthy and productive life. However, it has not been regulated by more technical regulations or provisions.³¹
48. There should be special provisions on health security that regulate the protection, fulfilment and enjoyment of the highest health standards for persons with disabilities. Special Region of Yogyakarta in this regard has successfully initiated special provisions for persons with disabilities, which are provided in the regional regulation on persons with disabilities, and also regulated in the Regulation of the Governor of Yogyakarta. The implementation of special health security scheme for persons with disabilities require its own budget allocation as it has been done in Yogyakarta Province.³²

³⁰Law Number 40 of 2004 on National Social Security System, Law Number 36 of 2009 on Health, Law Number 24 of 2011 on Social Security Implementing Agency, and other relevant bylaws.

³¹Article 18 paragraph 2 of Law Number 36 of 2009 on Health

³² Yogyakarta Provincial Regulation No. 4 of 2012 on Disability stipulates Health Insurance for People with Disabilities. The technical guideline of this provision is afforded in the Governor's Regulation No. 50 of 2017 on Health Insurance System for People with Disabilities. Articles 41-53 of the provincial regulation stipulate that, "Every person with disabilities has the same and equal rights and opportunities to participate in every health effort in any healthcare provider, which consists of:

1. promotive: healthcare delivery that focuses on promoting healthy behavior for people with disabilities;
2. preventive: healthcare delivery that focuses on preventing health problems and/or illnesses on people with disabilities;
3. curative: healthcare delivery that focuses on activities or a series of treatment to cure illnesses, to alleviate patients' conditions due to illnesses, and/or to manage disabilities;
4. rehabilitative: healthcare delivery that focuses on the activities to optimize the physical function of people with disabilities in order to help their independent mobility and social participation suitable to their abilities as members of the public.

The regulation also stipulates that healthcare facilities for people with disabilities are mandatory. In addition to that, people with disabilities have the right to affordable healthcare (Data from the Study for Disability Bill, National Human Rights Commission, 2013).

List of Issues:

1. Does the government have free health security program for persons with disabilities? How does it ensure that such program exists and how can they receive special health services without a free health security program?
2. With regard to the government's health insurance scheme, how can the government ensure that the scheme is fully free-of-charge and that it does not add more financial burden to the people and persons with disabilities?
3. Does the health insurance scheme accommodate the needs of persons with disabilities?
4. Has the government developed guidelines and standards for the implementation of health services for persons with disabilities?

Article 26 Habilitation and Rehabilitation

49. Responding to Paragraphs 160 to 166 of the Government Report, the habilitation and rehabilitation programs have been carried out by the government as a misguided concept. Persons with disabilities are still considered as part of social problems requiring rehabilitation when, in actuality, they are not people with social problems. The said rehabilitation programs carried out by the government are still limited only to skills training. Furthermore, the vocational disability training centres are only accessible to people with certain types of disabilities and within certain age restrictions. The training programs have not been designed with due consideration of the skills and interests of different individuals.
50. The Law on Persons with Disabilities regulates the implementation of habilitation and rehabilitation, but to date the law has not been implemented due to the lack of technical implementing regulation, which is yet to be formulated.

List of Issues:

1. Does the government have a technical implementing regulation in place for the Law on Persons with Disabilities concerning habilitation and rehabilitation that serves as a standard for the implementation and monitoring mechanism?

2. How does the government develop community-based rehabilitation programs?

Article 27 Employment and Employment Opportunities

51. The Government through Law Number 8 of 2016 guarantees employment opportunities for persons with disabilities by reserving a minimum 2% employment quota in the government sector, regional governments, state-owned enterprises (SOEs), and Regional SOEs, and a 1% minimum quota in the private sector. Based on the compulsory reporting data, the Ministry of Manpower reported that in a total of 440 companies employing a workforce of approximately 237,000 personnel, only as many as 2,851 persons with disabilities are employed.³³ This means only 1.2% of persons with disabilities have been absorbed in the formal workforce sector. It also suggests that the right to work has not been enjoyed by persons with disabilities.
52. Komnas HAM believes that the unfulfilled minimum employment quota for persons with disabilities is a real impact of the government's inability to impose administrative sanctions against employers in both the government and private sectors who failed to fulfil the quota. The sanctions may be given in the form of fines, temporary suspensions, or revocation of permits, among others. Moreover, the government also has not been able to ensure proper accessibility for persons with disabilities who work in the formal sector.
53. The minimum 2% employment quota for persons with disabilities is not followed by adequate disability-friendly facilities and infrastructure. The recruitment process has not been conducted based on neither standard conditions and competency for persons with disabilities nor the needs of the recruiting employer. This condition has led to many workers with disabilities not working based on their skills and potential, and some even not getting assigned with tasks or works.

³³Based on data from the National Labor Force Survey collected in August 2017, the national working age population is 21.9 million people, whereas the number of employed persons with disabilities is 10.8 million. Quoted from Tempo.co, <https://difabel.tempo.co/read/1143835/baru-1-persen-teman-disabilities-yang-berja-di-sektor-formal/full&view=ok>, on 13 January 2020, at 2:02 p.m.

54. The good physical and mental health condition is still listed in the recruitment requirements by numerous government institutions. It has limited the opportunities for persons with disabilities to take part in civil service recruitment. The civil service recruitment conditions for several ministries such as the Ministry of Health, the State Civil Service Agency, and the Election Supervisory Board in 2019 specified that only those with a certain type of disability were eligible to participate in the recruitment process, namely those with lower limbs disabilities/mobility impairment.³⁴
55. The 2018-2019 Komnas HAM Reported Complaints Data still indicates a number of cases of discrimination against persons with disabilities in the recruitment process organized by both the government sector and SOEs.³⁵ In 2018, the commission received a request to follow-up a complaint regarding an arbitrary dismissal made by the Government of Bone Regency against a Probationary Civil Servant (CPNS) named Habire since December 2016 allegedly due to the said employee's blindness.
56. Through the Ministry of Social Affairs, the government has taken measures to provide vocational rehabilitation to people with disabilities. Balai Besar Rehabilitasi Vokasional Bina Daksa (BBRVBD) for people with physical disabilities and Panti Sosial Bina Netra

³⁴Quoted from

<https://www.bkn.go.id/wp-content/uploads/2019/11/Pengumuman-CPNS-BKN-2019-Lampiran-Formasi.pdf>,
<https://cpns.kemkes.go.id/unduh/Pengumuman%20Penerimaan%20CPNS%20Kemenkes%20Tahun%202019.pdf>,
[file:///C:/Users/Okta%20Rina%20Fitri/Downloads/PENGUMUMAN%20CPNS%202019%20\(2\).pdf](file:///C:/Users/Okta%20Rina%20Fitri/Downloads/PENGUMUMAN%20CPNS%202019%20(2).pdf), on 13 January 2020, at 03:32 PM

³⁵Reports made to the National Human Rights Commission 2018-2019 on the discrimination experienced by people with disabilities in the recruitment process for government and SOE employees are, among others: (a) a report on alleged discrimination against blind persons Friska Magdalena Simarmata, S.Sos., and Fibrianti Wardani, S.Psi, during their participation in the public servant selection process in the Ministry of Women Empowerment and Children Protection; (b) a report on alleged discrimination against blind person Muhammad Pihani S.Pd whose participation in the public servant selection process in the Education Office of South Kalimantan Province was refused; (c) complaint concerning discrimination against blind persons in the recruitment process in the Ministry of Religious Affairs' offices in provinces of Yogyakarta, Central Java, East Java, and Banten; (d) discrimination against the right to employment of people with disabilities when drg. Romi Syofpa Ismael, who had his announcement as one of the candidates who passed the selection process in South Solok District annulled based on Notification Letter Number 800/62/III/BKPSDM-2019 dated 18 March 2018; (e) misadministration of the joint recruitment organized by the SOE Ministry and the Forum Human Capital Indonesia (FHCI), which failed to pass Obo Sianipar (recruitment for people with disabilities in PT Bukit Asam) even though Mr. Sianipar passed the Basic Competency Test, for reasons that his age exceeded the age limit and that his education made him overqualified for the job.

(PSBN) Mahatmiya for people with blindness and visual impairment are examples of the institutions that deliver rehabilitation services. Nevertheless, location-wise, they are not universally accessible. Today, there are just 19 vocational rehabilitation centers in Indonesia.³⁶ This number certainly needs to be increased in an equitable manner throughout the country.

List of Issues

1. With respect to job application requirement that still cites “physically and mentally healthy”, what are the government’s actions to remove the requirement, which has been hindering people with disabilities to get a job, to be educated, and to hold public offices?
2. What actions are the government taking to prepare the facilities and infrastructure for workers with disabilities, including in terms of developing suitable recruitment pipeline based on the competencies of people with disabilities and the needs of employers?

Article 29 Participation in Political and Public Life

57. Komnas HAM appreciates the General Elections Commission that, in carrying out its role as an electoral body, sets out regulations concerning people with disabilities. However, monitoring the implementation of those regulations are crucial. The Electoral Observers’ Team of the Human Rights Commission noted down several issues in the participation of people with disabilities in the 2019 elections. They are fundamental issues on data collection and information dissemination to people with disabilities as election participants. These issues affect the exercise of their rights as citizens to participate in the elections and include the absence of introduction on electoral kits, which in turn created a confusion among people with disabilities.³⁷

³⁶ Accessed from <https://kemsos.go.id/rehabilitasi-sosial#> on 15 January 2020, 09.00.

³⁷ People with disabilities in West Java complaint about several issues in the 2019 elections. Their issues included confusing ballot - the 2019 elections had a total of 5 ballots, but the available templates were only the presidential and regional representative council ballots; lack of information overall, and that polling stations are not entirely accessible for people with disabilities. In East Kalimantan, some polling stations failed to provide accommodation for people with disabilities, e.g. voting booths were too small, ballot boxes were too high, and polling stations were only accessible by stairs. The polling stations (TPS) were identified as follows: TPS 15 Kel. Bandara, TPS 15 Kel. Air Hitam, and TPS 16, 17, 18 Kel. East Sempaja Timur, Samarinda Municipality.

58. Complaints on the lack of appropriate access and facilities for people with disabilities during elections were notable. Polling booths were too small, ballot boxes were too high, and some polling stations could only be reached by stairs. That aside, there needs to be a more participatory approach to include people with disabilities in elections both as participants and as part of election committees.

List of Issues

1. How can the government ensure that reasonable accommodation is available during regional elections?
2. Does the government provide room for people with disabilities to participate as both participants and committees during elections?

Article 30 Participation in Cultural Life, Recreation, Leisure, and Sport

59. Komnas HAM highly appreciates the organization of the Asian Para Games in 2018. The event is highly regarded for raising the awareness of the general public on disability issues. However, there were some issues that need to be addressed, especially in competition venues, athletes' village, and transport facilities that were not entirely accessible. Similar issues were found during the 15th National Paralympics Week in Bandung, where several facilities in the Bandung Stadium were problematic, e.g. ramps that are too steep, therefore athletes and visitors required assistance in order to participate and watch the games comfortably and safely.
60. Despite Law 10/2009 on Tourism, tourism sites with reasonable accommodation are extremely scarce in Indonesia. Article 21 of the law stipulates that visitors with physical disabilities, children, and elderly reserve the right to have special facilities suitable to their needs. This requirement, however, is not met and the number of tourism sites that are not accessible for people with disabilities is overwhelming. It is difficult for visitors with disabilities to enjoy Indonesia's tourism destinations.

List of issues

1. Does the government have a plan to improve sports facilities and infrastructure for people with disabilities?
2. How does the government prepare a sustainable development system for para-athletes including on long-term basis after they retire from competing?
3. What plan does the government have or is currently undertaking to develop access for people with disabilities in recreational and tourism sites?

Article 31 Statistics and Data Collection

61. In Indonesia, data on people with disabilities are collected using surveys built upon different methodologies by different government agencies. The lack of standard results in in comprehensive and incomplete database. According to Law No. 19 of 1997 on Statistics and Government Regulation No. 51 of 1999 on Statistics Undertakings, the government carries out population census on years ending with 0 (zero), or every 10 years. The last census of 2010 did not include an instrument to capture the number of people with disabilities and their characteristics. The upcoming census of 2020 is also missing an instrument to appropriately capture the number and variety disabilities in Indonesia.

List of Issue

- o How will the government carry out comprehensive data collection on people with disabilities, including types of disability and their needs?