

# Rights to Access of Public Facilities in Health Services for People with Disabilities

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**ABSTRACT:** In Indonesia, the rights of people with disabilities (PwD) have not been fully fulfilled despite vigorous attempts to accommodate human rights for decades. Indeed, the government is committed to fulfilling the PwD rights in PwD Law 4/1997 and ratified the Convention on the Rights of Persons with Disabilities. In practice, the government could not fully fulfill the PwD rights by providing facilities in the health sector. In this context, the Regency of Tulungagung has not set any regulations governing the fulfillment of the PwD rights. This study aimed to assess the PwD rights to access public facilities in health sectors in the Regency of Tulungagung, following factors that impeded the fulfillment of these rights. The empirical method and socio-legal analysis probed a gap between law in book and context, elucidated in three main findings. First, the PwD rights in the Regency of Tulungagung to public facilities in health service sectors have not been fully fulfilled since public facilities are not PwD-friendly. Second, most health cares in this region have no staff capable of communicating and handling PwD. Third, the absence of the regulations governing the PwD rights becomes another factor leading to discrimination, coupled with the paucity of knowledge of how to interact with the PwD properly. Human resources and economic issues served as problems in this case. Most PwD in Tulungagung Regency lived in poor economic conditions due to a lack of available jobs that could be accessed. Therefore, the local government should take a more specific measure to fulfill public health access for PwD by allocating more budget, training the health care personnel, and enacting by-laws.

**KEYWORDS:** Human Rights, People with Disabilities, Public Facilities, Health Services.



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## HOW TO CITE:

Dahlan, Muhammad, et al., "Rights to Access of Public Facilities in Health Services for People with Disabilities" (2022) 3:1 Indonesian Journal of Law and Society 25-48, online: <<https://doi.org/10.19184/ijls.v3i1.29226>>.

Submitted: 13/01/2022 Reviewed: 19/01/2022 Revised: 08/03/2022 Accepted: 09/03/2022

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## I. INTRODUCTION

Despite decades of attempts to meet human rights worldwide, people with disabilities (PwD) in Indonesia have not adequately received their rights. In the international arena, the World Health Organization changed the disabilities perspective from a medical to a social perspective that focuses more on social inhibitions that PwD experienced.<sup>1</sup> In 2007, the United Nations declared the Convention on the Rights of Persons with Disabilities to initiate the disabilities rights movement.<sup>2</sup> It aimed to nurture global respect for the rights of PwD, with 164 countries signing this Convention and 184 ratifications (per 5 January 2022).<sup>3</sup>

In Southeast Asia, Malaysia represents an experience of PwD's socio-economic exclusion issues.<sup>4</sup> Thailand is another example that faces a problem with fulfilling PwD rights, especially within the right to education framework.<sup>5</sup> At the outset, the Indonesian government took an initial step to regulate the fulfillment of the PwD rights in PwD Law 4/1997. Then, the government ratified the Convention on the Rights of Persons with Disabilities into Law 19/2011 and replaced PwD Law 4/1997 with Law 8/2016. The change was made because Law 4/1997 assumed PwD needed to be pitied despite the increasing issues. It could not answer various issues related to respect, protection, and fulfillment of PwD rights.<sup>6</sup> Both rules represent the national commitment to fulfilling PwD rights in Indonesia.

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<sup>1</sup> Katerina Kazou, "Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: is it really based on a 'Social Model' approach?" (2017) 2017:23 *International Journal of Mental Health and Capacity Law* 25 at 27.

<sup>2</sup> United Nations, *Convention on the Rights of Persons with Disabilities (CRPD)*.

<sup>3</sup> Tavee Cheausuwantavee & Chomanad Cheausuwantavee, "Rights, Equality, Educational Provisions and Facilities for Students with Disabilities in Thailand: Legal and Practical Perspectives over the Past Decade" (2012) 23:1 *Disability CBR & Inclusive Development* 70 at 71.

<sup>4</sup> M Rezaul Islam, "Rights of the People with Disabilities and Social Exclusion in Malaysia" (2015) 5:2 *International Journal of Social Science and Humanity* at 176.

<sup>5</sup> Cheausuwantavee & Cheausuwantavee, *supra* note 3 at 87.

<sup>6</sup> Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab dan Pelaksanaan oleh Pemerintah Daerah" (2020) 11:1 *Jurnal HAM* 131 at 133.

Two perspectives question why PwD is likely to be marginalized in society and get minor attention from the government.<sup>7</sup> These two perspectives stem from individual and non-individual viewpoints.<sup>8</sup> The first is called "individual perspective." Public regard PwD as a form of abnormality resulting from individual glitches. This perspective is sometimes inextricable from a local myth. However, the second called the "non-individual perspective" does not see disabilities as a result of individual setbacks but a problem of social structure. While human rights are more focused on fulfilling the PwD rights, it may consider societal changes on the stigmatization of disabilities as an abnormality.<sup>9</sup>

The recent publication argued that legal protection from local government is essential to fulfilling the rights and services of people with disabilities.<sup>10</sup> Eta Yuni investigated how the PwD rights in the Regency of Semarang were fulfilled. However, a lack of school infrastructure designed for students with disabilities existed as a problem in fulfilling their rights.<sup>11</sup> Rahma Diana argued that public facilities made available for PwD were not yet optimal in the District of Tulungagung, the Regency of Tulungagung.<sup>12</sup> Alia Harumdani concluded that discrimination and low education level presented barriers to career opportunities and proper living standards for the PwD.<sup>13</sup> Frichy Ndaumanu shared the same opinion, suggesting by-law

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<sup>7</sup> Ari Pratiwi, *Disabilitas dan Pendidikan Inklusif di Perguruan Tinggi* (Malang: UB Press, 2018) at 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid* at 5.

<sup>10</sup> Aprilina Pawestri, "Hak Penyandang Disabilitas dalam Perspektif HAM Internasional dan HAM Nasional" (2017) 15:1 Era Hukum at 180.

<sup>11</sup> Eta Yuni Lestari, Slamet Sumarto & Noorochmat Isdaryanto, "Pemenuhan Hak Bagi Penyandang Disabilitas di Kabupaten Semarang Melalui Implementasi Convention on the Rights of Persons with Disabilities (CPRD) dalam Bidang Pendidikan" (2017) 28:1 Integralistik at 8.

<sup>12</sup> Nuzul Rahma Diana, *Aksesibilitas bagi Penyandang Disabilitas pada Bangunan Umum berdasarkan Peraturan Daerah Jawa Timur Nomor 3 Tahun 2013 dan Fikih Syasab (Studi Kasus Bangunan Umum di Kecamatan Tulungagung)* IAIN Tulungagung, (2020) [unpublished] at 126.

<sup>13</sup> Alia Harumdani Widjaja, Winda Wijayanti & Rizkisyabana Yulistyaputri, "Perlindungan Hak Penyandang Disabilitas dalam Memperoleh Pekerjaan dan Penghidupan yang Layak bagi Kemanusiaan" (2020) 17:1 Jurnal Konstitusi 197 at 220.

should highlight the local responsibilities over the PwD rights.<sup>14</sup> Therefore, two critical problems impeding PwD are the regulatory aspect and facility support.

This study aimed to assess how local governments fulfill the PwD rights with its specific focus on fulfilling the right to public facilities for PwD in the health sector. It examined the link between the government's measures and PwD from a human rights perspective. This study consisted of three parts of the discussion. It consisted of the general elaboration of the research site, the fulfillment of the rights to access public facilities in health service sectors for the PwD in the Regency of Tulungagung by observing eleven health centers in the Regency, and the impeding factors in the measures of fulfillment.

## II. METHODS

This research used empirical and socio-legal approaches, departing from investigating social behavior regarding how they interact and live in society.<sup>15</sup> These approaches aimed to identify and conceptualize the law as a real and functional social institution in terms of how the law is in practice at society.<sup>16</sup> Research data were taken from observation investigating how the PwD rights access public facilities were met in eleven health centers in the Regency of Tulungagung. Interviews involved the representation of PwD and the authorities of the Health Service Center in the Regency, followed by qualitatively analyzing the data.<sup>17</sup>

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<sup>14</sup> Frichy Ndaumanu, "Hak Penyandang Disabilitas: Antara Tanggung Jawab dan Pelaksanaan oleh Pemerintah Daerah" (2020) 11:1 j ham 131 at 148.

<sup>15</sup> Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajawali Pers, 2016) at 43.

<sup>16</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2006) at 51.

<sup>17</sup> Muhaimin Muhaimin, "Metode Penelitian Hukum" in (Mataram: Mataram University Press, 2020) at 105.

### III. TULUNGAGUNG REGENCY: AN OVERVIEW

The Regency of Tulungagung is part of the Province of East Java. It covers 1,055.65 km<sup>2</sup> of land, with 19 districts, 271 villages/sub-districts, 738 hamlets, 2032 community associations (commonly referred to as *Rukun Warga* or RW), and 5668 neighborhood associations (commonly referred to as *Rukun Tetangga* or RT). This Regency is passed through by rivers, accounting for 2.2% of the total land of East Java. The Regency has the administrative borders of the Regency of Kediri in the north and the Regency of Blitar in the east.<sup>18</sup> It borders the Indian Ocean in the south and the Regency of Trenggalek in the west.<sup>19</sup>

The Regency of Tulungagung is home to 1,043,182 inhabitants, with 508,621 males and 534,561 females.<sup>20</sup> The Department of Religion of the Regency reported that most people in Tulungagung are Muslims, with the rest being Christian, Catholic, Buddha, Hindu, and others.<sup>21</sup> Despite this religious diversity, people rarely have inter-religion conflicts in the Regency, in line with the Regency's motto "*Ayem Tentrem Mulyo lan Tinoto*"—safe, peaceful, noble, and in order.

Health service development has been intended to provide health services to all equally. Measures to provide excellent services involve the health facilities. According to International Hospital Federation, the Regency has 32 community health centers and 11 hospitals, including Dr. Iskak Hospital, which earned recognition for its best services in 2019.<sup>22</sup>

To date, this Regency has 32 community health centers spreaded in Balesono, Bandung, Bangunjaya, Banjarejo, Beji, Bendilwungu, Basole, Besuki, Boyolangu, Campurdarat, Dono, Gondang, Jeli, Kalidawir,

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<sup>18</sup> Badan Pusat Statistik Kabupaten Tulungagung, *Kabupaten Tulungagung dalam Angka 2021* (Tulungagung: BPS Kabupaten Tulungagung, 2021).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Jumlah Penduduk (Jiwa) 2018-2020*, by Badan Pusat Statistik Kabupaten Tulungagung (Tulungagung: Badan Pusat Statistik Kabupaten Tulungagung, 2021).

<sup>21</sup> Kabupaten Tulungagung, *supra* note 18 at 235.

<sup>22</sup> Adhar Muttaqin, "Mengintip Layanan RSUD Terbaik di Dunia RSUD Dr Iskak Tulungagung", *Detikhealth* (2021), online: <<https://health.detik.com/berita-detikhealth/d-4783805/mengintip-layanan-rsud-terbaik-di-dunia-rsud-dr-iskak-tulungagung>>.

Karangrejo and Kauman. The health centers are also available in Kedungwaru, Ngantru, Ngunut, Pagerwojo, Pakel, Pucanglaban, Pucung, Rejotangan, Sembung, Sendang, Simo, Sumbergempol, Tanggunggunung, Tiudan, Tulungagung, and Tunggangri. In addition, the Regency has 11 hospitals, mentioned in the table below:

No.	Hospital Name
1.	Dr. Iskak Hospital
2.	Bhayangkara Hospital
3.	Orpeha Hospital
4.	Era Medika Hospital
5.	Madinah Hospital
6.	Fauziah Hospital
7.	Amanda Hospital
8.	Trisna Medika Hospital
9.	Citra Sehat Hospital
10.	Muhammadiyah Bandung Hospital
11.	Satiiti Prima Husada Hospital

**Table 1.** *Hospitals in the Regency of Tulungagung*<sup>23</sup>

According to the Social Agency at the Regency of Tulungagung, there were 653 PwD in 2020. This number was low since the regency census of people with disabilities is still underway.<sup>24</sup> The following is the list of disabilities in the Regency of Tulungagung:

People with Disabilities in 2020 (Provisional)	
Disability	Number
Quadriplegic	131
Ex-leper/chronic disease	11
Multiple disabilities	134
Mentally ill	61
Autism	18
Deaf	46
Speech impaired	5
<i>Low vision</i>	5
<i>Totally Blind</i>	69

<sup>23</sup> *Rumah Sakit Kabupaten Tulungagung*, by Dinas Kesehatan Kabupaten Tulungagung (Tulungagung: Dinas Kesehatan Kabupaten Tulungagung, 2021).

<sup>24</sup> *Data Penyandang Disabilitas di Kabupaten Tulungagung*, by Dinas Sosial Kabupaten Tulungagung (Tulungagung: Dinas Sosial Kabupaten Tulungagung, 2020).

Slow learning	33
Mentally disabled	105
<i>Down syndrome</i>	35
<b>Total</b>	<b>653</b>

**Table 2.** *People with disabilities in 2020 (provisional)*<sup>25</sup>

*A. Association of People with Physical Disabilities (Percatu)*

PwD in Tulungagung Regency formed an organization to empower PwD and provide moral support to each other. This organization is called the Association of People with Physical Disabilities (*Persatuan Cacat Tubuh - Percatu*). Percatu is an organization under which PwD is united, headed by Didik Prayitno. It was founded in 2002 to accommodate and organize physically disabled people by providing training, teaching them skills, and delivering specified and moral counseling.

This organization departed from the situation where PwD are often stigmatized because the public often saw disability with disdain. Those with disabilities had no valuable skills that they were physically impaired and incapable of performing activities. Therefore, this situation requires counseling and training to let them learn new skills for broader acceptance in the community and live a 'normal' life like others.<sup>26</sup> At the interview, about 60 active members had physical disabilities in PERCATU in the Regency of Tulungagung. Didik further defined that PwD suffers from dysfunctional body parts, possibly due to polio, amputation, and accident.

PwD Law 4/1997 was officially revoked after PwD Law 8/2016 was passed. It was deemed to be no longer relevant to the PwD conditions. This replacement marked the changing term '*penyandang cacat*' or more likely to sound like "handicapped people" in English in its use in law to the term '*penyandang disabilitas*,' more likely dubbed as 'people with disabilities' in English. This changing term does not spark disagreement for the organizations of people with disabilities that still use the term '*cacat*' or 'handicapped' in their organizations, including Percatu in Tulungagung.

<sup>25</sup> *Ibid.*

<sup>26</sup> Didik Prayitno, *Penyandang Disabilitas dan PERCATU Tulungagung* (2021).

In terms of the use of the term '*cacat tubuh*' or 'physically handicapped', I do not see any administrative problem necessarily arising following the effectuation of the Law concerning People with Disabilities, revoking the previous law concerning handicapped people. I have consulted it with the representatives of Badan Kesatuan dan Politik (Kesbangpol) and others. Percatu existed before the Law concerning People with Disabilities was passed, but for your information, the members are still referred to as people with disabilities. Changing the organization's name will require another lengthy permit issuance process, involving central to local governments."<sup>27</sup>

In the knowledge of laymen, these two terms referring to those with disabilities may not appear to be significant, but not for PwD believing that these two different terms have their positive and negative senses. Didik, the organization's chairperson and disabled, hopes that the term "handicapped people" should no longer be used since he believes it worsens the sense and discriminates their existence. However, the term '*difable*' in Bahasa or people with disabilities in English is deemed to be more appropriate, or this appropriateness can apply with more specific terms according to the kinds of disabilities such as *tunarungu* (deaf), *tunanetra* (blind), or *tunawicara* (speech impaired).

Didik recalled that the data showing the numbers of people with disabilities in the Regency of Tulungagung was a bit unreliable,

"The data from the social agency of the Regency only represents the data obtained from facilitators of the PwD, not representing all PwD in the Regency and not all were recorded, while the real number of PwD residing in remote areas accounted for 7000 people. The 600 (based on the data from a social agency) only represents those living in the city."<sup>28</sup>

In March 2020, Didik held a meeting involving the members of the Regional House of Representatives of the Regency of Tulungagung, where he voiced all the desires of the PwD of the whole Regency, expecting that

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*



solutions be outlined in a by-law of the Regency of Tulungagung concerning People with Disabilities.

Didik explained the following matters in the meeting, such as accessibility to green open space in the town square. For example, PwD with wheelchairs and crutches have difficulty entering the park since no ramps are available. Buildings in the Regency of Tulungagung mostly have stairs that connect floors, such as the building of the Regional House of Representatives and the Local Government Building. Mosques primarily provide stairs for access. The ablution chambers bordered with a water pool put PwD at risk of slipping, coupled with a slippery bathroom floor. Special access and ablution chambers for PwD are required.

Public services serving identity cards and family cards, administrative processing, and tax services should provide special sections separated from those for non-PwD. People with disabilities should receive special attention in health and medical services and checkups, while people with disabilities only have access to non-PwD. Regarding the development of the by-law on PwD in the Regency of Tulungagung, Didik has seen no progress made in the provision of PwD -friendly facilities so far. He said:

"Perhaps the fund was diverted to handling COVID-19, let us see if the progress is real next year."<sup>29</sup>

Following the research observation, no health service centers in the Regency have human resources mastering a sign language, contrary to what Didik expected:

"It is true, both officials and public must hold a clear communication, not to mention the communication with deaf and speech impaired persons. Poor communication will lead to poor services for the members of the public. Thus, the existence of those mastering sign language needs to be taken into account, recalling that the deaf and the speech-impaired persons also deserve services like non-PwD."<sup>30</sup>

Didik added a statement that the local government should consider the grievances of PwD more. They also should give solutions to what the PwD

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

voiced, recalling that those with disabilities in the Regency are usually weak in their economy, worsening their productivity daily when the facilities that support their conditions do not exist.

#### IV. FACILITIES FOR PEOPLE WITH DISABILITIES IN HEALTH SECTORS IN TULUNGAGUNG

Ten community health centers and Dr. Iskak Hospital in the regency of Tulungagung were picked by looking at public facilities for PwD in health services, and the places where the observation took place in some healthcare centers, *inter alia*, Puskesmas Kauman, Puskesmas Sumbergempol, Puskesmas Kedungwaru, Puskesmas Rejotangan, Puskesmas Sembung, Puskesmas Ngunut, Puskesmas Tulungagung, Puskesmas Gondang, Puskesmas Boyolangu, Puskesmas Gondang, Puskesmas Beji, and Dr. Iskak Hospital. The above observation brought the following results:

##### *A. Entrance*

Ten community health centers provided ramps and stairs, but some ramps had slippery surfaces. Some buildings covered the ramps with rubber mats, but not all surfaces were covered. Slippery surfaces could cause a wheelchair, even a normal pedestrian, to slip on a wet surface. However, some health centers had ramps that rose gradually with rubber flooring. Thus, such ramps are safe to use despite water splashes. All entrances in all locations observed were sufficiently wide for wheelchair access or other walking equipment (with minimum width ranging from 80-90 cm), but, on occasions, some entrance space was blocked and seemed narrower than it should be.

For example, from our observation in Sembung, Sumbergempol, and Tulungagung community health centers, 30% of entrance space was taken for particular purposes facilitating the COVID-19 vaccination program. About 50% of the entrance in Sumbergempol health center was blocked by a long line of people queuing for the COVID-19 swab test. This crowd at

the entrance possibly causes no problems for normal people, but not for the disabled, especially those on wheelchairs and other assisting equipment. An entrance should be user-friendly, where it can easily shut and open. Most entrances in Dr. Iskak Hospital use automated doors. However, some other sections, such as polyclinics, still provide conventional twin and push-and-pull doors. All entrances connecting buildings and rooms have met the 90 cm width standards.<sup>31</sup>

### *B. Handrails*

Almost all health centers provide handrails, although they are not effectively applied and less valuable. In Boyolangu, Gondang, and Ngunut community health centers, handrails are primarily provided at the entrance that leads to the main building. As found in observation, in Kauman health center, handrails were blocked by queues of patients. A staff recalled that before the pandemic, the handrails were easily used. However, the pandemic seemed to force people to stand at least one meter apart, and this situation set chairs too wide from one another, taking up other premises.

Sembung, Ngunut, and Tulungagung health centers provide handrails in toilets useful for patients, the elderly, and pregnant women. Handrails are vital for PwD, pregnant women, and the elderly. Handrails are commonly found along corridors that connect buildings and sections in a hospital, and Dr. Iskak Hospital has a significant number of corridors and connecting halls. However, handrails are provided at the entrance, but not at all the corners.

### *C. Toilet*

All the health centers observed were found to have no toilets specially designed for people with disabilities; toilets were bare of symbols for PwD. Among the ten health centers observed, only Boyolangu and Tulungagung health centers have provided flush toilets. In contrast, Ngunut and Sembung health centers only provided flush toilets (as opposed to squatting

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<sup>31</sup> *Regulation of the Minister of Public Works 30/PRT/M/2006 c II.*

toilets) for women. All the ten health centers have fairly wide access that connects rooms for people with wheelchairs, but not the toilet spaces that are not spacious enough. Most toilets involve raised surfaces, and the floor was slippery with water splashes. All the door locks function appropriately and are easily used.

People with disabilities need toilets that are specially designed. Hospitals should have specially designed toilets for PwD separated from conventional toilets. Dr. Iskak Hospital provides flush toilets separated based on sexes with the comfortable floor but without handrails. However, special toilets for PwD in the hospital were not separately available.

#### *D. Wheelchair*

Wheelchairs were available in all ten health centers but not significantly since most only had two wheelchairs. A person in charge of the health center confirmed that several patients usually came with their wheelchairs, while the wheelchairs were temporarily intended to accommodate patients' recuperation.

Wheelchairs were available by the entrance to the building, but some wheelchairs were set at the point that was not accessible, causing difficulty for the researcher to document them. Ngunut health center, also receiving inpatients, is one of the centers designated to take COVID-19 patients. In this observation, the wheelchairs were placed at the quarantine section of the health centers, with no easy access to the wheelchairs. As the biggest hospital in the Regency of Tulungagung, Dr. Iskak Hospital provides wheelchairs in almost every corner, including entrance to inpatient wards. The wheelchairs are well taken care of due to the frequent use by patients, the elderly, pregnant women, and PwD.

#### *E. Parking Lot*

A parking lot specially designed for the PwD is another aspect commonly overlooked in the government's health services. At the same time, several PwD can still ride a motorbike or even drive a car independently. A

specially designed parking lot for PwD allows them to access health service facilities and makes them feel more respected. Lack of land for a parking lot is still an issue in most health centers in Tulungagung, leading to a paucity of parking lots for PwD in several health centers such as Sembung and Tulungagung. Some patients' vehicles were sometimes parked along the road, causing congestion.

With a spacious parking lot, Dr. Iskak Hospital provides a specially designed parking lot for PwD, in line with the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number 14 of 2017. This parking lot has a 60-meter maximum space from the entrance and has enough space for wheelchair users for their vehicles. Symbols asserting that the space is for the PwD are also available, but it does not stop non-PwD from irresponsibly using this parking space, adding that "it will not take long."

#### *F. Audio Visual Information*

Most health centers announce information on a microphone, but the rest spread information without the help of a microphone. Several health centers also installed monitors, but they were out of order at observation. Tulungagung health center also provides touch screen computers to enable patients to access information and report services. This facility is vital for deaf and speech-impaired people

Information is passed to patients in Dr. Iskak Hospital through audio-visual facilities with LCD screens and loudspeakers at a counter where patients queue in waiting rooms. The loudspeaker, however, seemed not to reach the ears of all people waiting to be called. The hospital also provides computers to assist patients in making an appointment with a GP and administering health security programs.

#### *G. Home Visit Facilities*

Diana, the Head of the Kedungwaru community health center, believed that she rarely or never saw patients with disabilities in all community health centers in the Regency of Tulungagung. She added that it is

probably due to the lack of PwD -friendly facilities provided at health centers, compared to the number of PwD visiting the hospital. Despite the distance, PwD prefer visiting the hospital to local health centers.

To tackle such an issue, all health centers in the Province of East Java initiated a door-to-door counseling program, often dubbed as KOPIKU. Diana and Endah, the Head of Sumbergempol health center said:

"We have seen almost none of the patients with disabilities, or, if so, it would never be more than ten patients for home visit patients. A home visit is also performed for those with disabilities and others who need this service in the KOPIKU scheme. KOPIKU is available in each village for which nurses work to visit patients with TB, mental illnesses, hypertension, diabetes, and so on."<sup>32</sup>

"We serve patients at the health center, but sometimes we visit those not capable enough to make their way to the center."<sup>33</sup>

In April 2020, Dr. Iskak Hospital officially provided home care and telemedicine, where patients could contact available numbers to request a home visit. The doctor can communicate with the patient or the patient's family by using a video call facility to determine the patient's progress. (8) Starting from the common health examination to delivering med's to patients just by calling the number that has been provided. This facility is for patients with chronic diseases and mental illnesses, the elderly, and pregnant women who have difficulty visiting the hospital.

#### *H. Availability of Special Staff*

None of the staff in the health centers where this research took place understood sign language since there is no regulation requiring each center to have a staff understanding sign language, as Diana said:

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<sup>32</sup> Diana Diana, *Pemenuhan Hak-Hak Penyandang Disabilitas di Sektor Layanan Kesehatan di Kabupaten Tulungagung* (2021).

<sup>33</sup> Endah Endah, *Pemenuhan Hak-Hak Penyandang Disabilitas di Sektor Layanan Kesehatan di Kabupaten Tulungagung* (2021).

"This health center does not have a staff who can perform sign language, and I am not sure myself if there is any regulation that makes it compulsory."<sup>34</sup>

"Most patients with disabilities, such as deaf and speech-impaired persons, brought along their relatives or family members to help them translate what they intended to say."<sup>35</sup>

The researcher believes that this contravenes the principle of independence that should serve as the basis of meeting the facilities for PwD. Gondang health center once received a patient of a road accident from Ponorogo who happened to be speech impaired.

"We had difficulty getting information from the patient since no one understood the language and no relatives or family members were around, but thank God we understood little what the patient intended to say, and the family members turned up at last."<sup>36</sup>

Although the relatives of the PwD could be reliable to some extent, the availability of human resources understanding sign language must as part of facilities available to support PwD in health centers. A person in charge of public relations in Dr. Iskak Hospital confirmed that no one of 1000 health workers and other staff understands the sign language.

## V. IMPEDING FACTORS

Several factors were found to impede the fulfillment of facilities for PwD at health centers. How vital are *peraturan daerah* or by-laws to fulfill PwD rights? Attitude on how society and government interact with PwD. Last, it is about human resources and the economic situation.

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<sup>34</sup> Diana, *supra* note 32.

<sup>35</sup> *Ibid.*

<sup>36</sup> Galih Galih, *Pemenuhan Hak-Hak Penyandang Disabilitas di Sektor Layanan Kesehatan di Kabupaten Tulungagung* (2021).

### *A. Regulations*

These are related to the power conferred by the 1945 Constitution of the Republic of Indonesia, where the participation of the members of the public and the variety of regions serve as fundamental principles to back up regional autonomy.<sup>37</sup> These two principles should be implemented into government authority due to local autonomy and local regulation-making. Whether a legislative product will be appropriately enforced will depend on how it is implemented in the by-law. Failure to understand and the incapability to enforce legislative products down from central government fail national legislative products.<sup>38</sup>

The power to set by-law is outlined in Article 236(1) of Law 23/2014, stating, "to run local autonomy and co-administration tasks, regional areas form of by-laws." The by-law plays a role in settling disputes faced by local governments due to autonomy and regional development in social problems in society.<sup>39</sup> Although lower than presidential regulations, by-laws are deemed the most effective in their proximity to the public members due to a limited scope of regional areas. The function of the by-law is to solve issues encountered by the local government due to autonomy and regional development that represent social problems. Moreover, by-laws can also function as an instrument to implement regional autonomy and co-administration tasks, as delegated legislation to further regulate the upper laws, accommodate the uniqueness and diverse regions, and facilitate the aspiration of local people.<sup>40</sup>

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<sup>37</sup> Reynold Simandjuntak, "Sistem Desentralisasi Dalam Negara Kesatuan Republik Indonesia Perspektif Yuridis Konstitusional" (2016) 7:1 *Jurnal de Jure* at 66.

<sup>38</sup> Jumadi Jumadi, "Kedudukan dan Fungsi Peraturan Daerah (Perda) Kabupaten/Kota Sebagai Instrumen Otonomi Daerah dalam Sistem Perundang-Undangan di Indonesia" (2018) 1:1 *Jurnal Hukum Unsulbar* 27–40 at 34.

<sup>39</sup> Abd Salam, "Kedudukan Fungsi Peraturan Daerah (PERDA) sebagai Bagian Dari Hukum Nasional" (2019) 4:5 *plenojure* 1–12 at 12.

<sup>40</sup> Direktorat Jenderal Peraturan Perundang-undangan, Direktorat Fasilitasi Perancangan Peraturan Daerah & Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, *Panduan Praktis Memahami Perancangan Peraturan Daerah* (Jakarta: Direktorat Jenderal Peraturan Perundang-undangan, 2009) at 8.



In terms of people with disabilities, Article 27(1) of PwD Law 8/2016 states that central and local governments should set a plan, implement, and evaluate the execution, recognition, protection, and fulfillment of the rights of people with disabilities.<sup>41</sup> Without such a regulation, those functions will not work appropriately. Similarly, the absence of by-law on PwD in the Regency of Tulungagung fails the enforcement of Law 8/2016. Despite the Regulation of East Java Number 3/2013 on Protection and Services for People with Disabilities, regencies/municipalities in the province represent different backgrounds in the economy, society, geography, human resources, and cultures.

At the provincial level, by-law regulates the protection and services provided for PwD in East Java, By-law 3/2013. Moreover, this regulation is further regulated by Governor Regulation 125/2016, which states how to implement the by-law in technical aspects. Nevertheless, there is a lack of certainty about how the provincial government works in collaboration with the regional level. At least, Article 5 of By-law 3/2013 mentions that the by-laws become guidelines for the regional government to implement policies and protect services for PwD.

The fulfillment of the rights of PwD in the Regency of Tulungagung refers to the consideration that suggests respecting human values as outlined in Article 2 of Human Rights Law 39/1999. Indonesia upholds human rights as a vital element of the state, and enforcing human rights is a shared responsibility given by central and local governments; both are responsible for protecting and developing human rights.<sup>42</sup> Protecting and manifesting human rights may take regulation-making at central and local levels by prioritizing human rights as the fundamentals of regulation-making. In addition, human rights should also be considered in the development at the central and local levels.

PwD in Indonesia come from families of low economies, including those residing in the Regency of Tulungagung. Most of them have difficulty

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<sup>41</sup> *Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas.*

<sup>42</sup> Johan Jasin, *Penegakan hukum dan hak asasi manusia di era otonomi daerah*, cetakan pertama ed (Sardonoharjo, Ngaglik, Sleman, Yogyakarta: Deepublish, 2019) at 197.

making ends meet, coupled with the stigma suggesting that PwD cannot perform helpful activities. With proper training intended to teach them job skills, people with disabilities are expected to perform their jobs. Thus, supervision that serves as an instrument of by-laws to help eliminate discrimination among PwD in service sectors, careers, law, and public facilities is required.

More specific measures should to be taken to establish coaching and supervision to put the by-law into effect. This coaching is intended to facilitate the empowerment of local autonomy.<sup>43</sup> This coaching may also involve educating the public about how to interact with PwD appropriately, encouraging people with disabilities to actively participate in regional development, supporting mass organizations for PwD, and providing training for government and non-government institutions.

Indeed, supervision is critical to keep the enforcement of by-laws on track or to keep it from not being implemented at all. This supervision involves teams of supervisors on how the rights to facilities for PwD are fulfilled in health, education, political sectors, and others. Furthermore, sanctions are equally vital. Sanctions are intended to raise the effectiveness of by-laws and adjust the violations of by-laws subject to sanction imposition.<sup>44</sup> Article 238 (1) of Local Government Law 23/2014 asserts that by-laws could set forth the provisions regarding the imposition of coercing levies in the enforcement/implementation of the regulation. These levies are imposed either fully or partially on violators according to legislation. Article 238(3) and (3) of Law 23/2014 could set forth sentencing, while Article 238(4) of Law 23/2014 states that by-law may set forth administrative measures as sanctions. They are oral warning, written warning, temporary termination of operation, termination of operation stages, license revocation, permanent license revocation, fines, and/or other administrative sanctions. Sanctions can be imposed on the public, government, and non-government

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<sup>43</sup> Husin Ilyas, “Pembinaan dan Pengawasan Pemerintah Pusat dalam Rangka Penyelenggaraan Pemerintah Daerah Berdasarkan Undang-undang Pemerintah Daerah” (2012) 04:04 *Jurnal Bina Praja* 273–280 at 273.

<sup>44</sup> Suharyo Suharyo, “Pembentukan Peraturan Daerah, dan Penerapan Sanksi Pidana serta Problematikanya” (2015) 4:3 *Rechtsvinding* 431 at 442.

institutions due to violations of regulations regarding people with disabilities or the complete absence of regulations.

### *B. Attitude*

PwD have the right to be free from discrimination. Although provisions regarding anti-discrimination for people with disabilities are outlined in several laws, PwD are discriminated against in society.<sup>45</sup> Generally, the term '*cacat*' (closely referring to 'handicapped' in English) as inappropriate since this term could generally refer to 'flawed,' which contravene the principle of humanity. However, this term is often heard with a paucity of knowledge among the locals in Tulungagung. Other terms such as '*budeg*,' another inappropriate term for deaf, and '*gendeng*,' another term for 'mentally ill,' are also often used to refer to those with such disabilities. These references may not serious issues, but they could offend the people concerned and trigger reluctance among PwD to interact with others.

The fifth part of rights to justice and legal protection of Article 9 of PwD Law 8/2016 states that people with disabilities have rights to protection from violence, torture, discrimination, and/or seizure of property rights. Article 28I(2) of the 1945 Constitution asserts that every person shall be free from any discrimination unconditionally and has the right to protection against any discriminative act.

There are about 3000 PwD in Tulungagung.<sup>46</sup> As our interview with Didik, most of them live in poor economic conditions due to restricted access to job opportunities and skill training for PwD. Several organizations have made empowerment by providing entrepreneurship training for PwD.<sup>47</sup> While Article 56 of PwD Law 8/2016 stipulates the local government responsibility to provide capital to help PwD in businesses, it does not fully recover the PwD economic condition.

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<sup>45</sup> Istifarroh Istifarroh & Widhi Cahyo Nugroho, "Perlindungan Hak Disabilitas Mendapatkan Pekerjaan di Perusahaan Swasta dan Perusahaan Milik Negara" (2019) 12:1 *Mimbar Keadilan* 21 at 23.

<sup>46</sup> Kabupaten Tulungagung, *supra* note 24.

<sup>47</sup> Prayitno, *supra* note 26.

### *C. Human Resources*

Due to COVID-19, the government focuses more on the budget spent on tackling the pandemic, not to mention the Government of Tulungagung. Some plans set on the table have to be put off. This change of plan may have held back the drafting of the by-law on PwD in the Regency of Tulungagung, including the improvement of public facilities for friendlier acceptance of PwD in the Regency.

The unavailability of proper human resources contributes to sluggish progress in health services given to PwD in the Regency. Article 62 (2) of PwD Law No 8/2016 implies that health workers should give health services to people with disabilities with competence and authority that appropriately allow them to give services to PwD. Furthermore, Article 63(1) of Law 8/2016 implies that central and local governments must provide competent health workers authorized to give health services to people with disabilities with available first level to advanced facilities. The competence is in line with Article 68 of Law 8/2016 regarding training for health workers. However, health services hire those with no specific competence to give services to PwD. An interview with the Head of Health Center in the Regency of Tulungagung revealed that no special training intended to give care to PwD was conducted.

## **VI. CONCLUSION**

Some facilities out of eight main facilities that have to be met for PwD are provided to support health services in the Regency of Tulungagung. However, not all the facilities are accessible for PwD, such as entrances blocked by lines of people queuing for the COVID-19 vaccine and handrail blocked by the chairs in the waiting room. Public facilities for people with disabilities in health services have not been optimally fulfilled. Second, fulfilling the need of the PwD by providing proper facilities in health services in Tulungagung encounters three main problems. They are the absence of the by-law protecting PwD rights, discrimination from society and health workers, and paucity of competent human resources provided to give health services to PwD. The Government of Tulungagung Regency

should take a specific measure and conduct more intensive discussions with PwD organizations and supervise how to fulfill the rights of PwD.

## ACKNOWLEDGMENTS

The authors would like to express our gratitude to all respondents and relevant institutions who helped them collect data for this research. They were some local institutions in Tulungagung Regency, such as the National Unity and Political Agency, the Health Service Agency, the Children and Women Empowerment Agency, the Public Relations of Dr. Iskak Hospital, and the Head of Community Health Centers. They also thank Percatu for the insightful knowledge related to this research.

## COMPETING INTERESTS

The authors declared that they have no conflict of interests.

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