

No. : 054/KNAKTP/Pimpinan/V/2022

9 May 2022

Attachment : 1 (one) document

Subject : Komnas Perempuan Response on List of Issues and State Party's Reply

To:

**Committee on the Rights of Persons with Disabilities**

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Dear Madam/Sir,

The Indonesian National Commission on Violence against Women (Komnas Perempuan) is a national human rights institution (NHRI) in Indonesia with a specific mandate to create a situation conducive to the elimination of all forms of violence against women in Indonesia and to advance women's rights. As an independent body, Komnas Perempuan is established by a Presidential Decree No. 181/1998, and then strengthened through President Regulation No. 65/2005.

In relation to the Indonesian report to the Committee, please find the attached submission from Komnas Perempuan as a response to the List of Issues and state party's reply. In preparing this response, Komnas Perempuan conducted several consultations with various partners and stakeholders. These included consultations with CSOs, service provider institutions for women victims of violence, particularly of women with disabilities, and representatives from governmental institutions. These consultations were conducted to enrich and sharpen the findings and provide greater participation of the relevant parties to also raise their concerns on this periodic review.

We sincerely hope that this submission would contribute to the process of the consideration of the State Party report in the coming session. Should you have further needs for more information or clarification, please do not hesitate to contact us through our staff, Sondang Frishka, at [frishka@komnasperempuan.go.id](mailto:frishka@komnasperempuan.go.id)

Looking forward to collaborate more with you in the future.

Sincerely Yours,



**Andy Yentriyani**  
**Chairperson**

**Attachment**

No. : 054/KNAKTP/Pimpinan/V/2022

Subject : Komnas Perempuan Response on List of Issues and State Party's Reply

**INDEPENDENT REPORT  
CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)**

**Submission by  
Komisi Nasional Anti Kekerasan Terhadap Perempuan  
(Komnas Perempuan / The National Commission on Violence Against Women)**

**May 2022**

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**The Convention on the Rights of Persons with Disabilities (CRPD)**  
**Komnas Perempuan’s Response to the List of Issues and the State Party’s Reply**  
**Written Contribution for 27 Sessions (15th August 2022 - 9th September 2022)**

This submission is prepared by The Indonesian National Commission on Violence Against Women (Komnas Perempuan, *Komisi Nasional Anti Kekerasan terhadap Perempuan*), a national human rights institution in Indonesia with a specific mandate to create a conducive environment to eliminate all forms of violence against women and fulfil the women’s rights.<sup>1</sup> Besides referring to data gathered through our monitoring, facts finding, documentation and strategic studies, Komnas Perempuan conducted series of consultation with relevant parties, including CSOs, particularly women with disabilities groups, for this submission.

**Articles 1-4: Purpose and General Obligations**

1. Following the issuance of Law No. 8/2016 on Persons With Disabilities, more regulations at both national and regional levels are utilizing the term “disabilities”. However, since article 148 on the Law 8/2016 directs the interpretation of the derogatory term of “penyandang catat” in other regulations as persons with disabilities (PWDs), there is no mechanism installed to speed up the harmonization of laws and regulations utilizing the term or adopting charity rather than right-based approach, such as seen in the absence of revision of Social Welfare Law within the national legislation priority agenda 2020-2024.
2. Since 2019, there are at least 12 provincial and district regulations on PWDs. The participation of organization and individual of disabilities were varied in the legislation process, depend on the commitment and awareness of the local government and the active leadership of civil society, particularly of disability organizations. Hence, the quality of the regulations is also varied; although some are considerably similar that even raised another concern of a possible copy-paste process rather than thorough and participatory deliberation based on the specific condition of disabilities at the respective area.
3. Government Regulation No. 70 of 2019 concerning the Master Plan for Disability Inclusive Development (RIPD, *Rencana Induk Penyandang Disabilitas*) has been followed up with the technical regulation, namely the Ministry of National Development and Planning (Bappenas, *Kementerian Perencanaan Pembangunan Nasional*) Regulation No. 3 of 2021. These regulations mandated a National Action Plan on Persons with Disabilities (RAN PD, *Rencana Aksi Nasional Penyandang Disabilitas*) with 7 disability mainstreaming strategies at central and regional levels and

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<sup>1</sup> Komnas Perempuan was established in responding to rape and other sexual assaults experienced by the Chinese women during the May 1998 Tragedy. It was regulated by the Presidential Decree No. 181 of 1998 which was later amended with the Presidential Decree No. 65 of 2005. Komnas Perempuan has tasks to conduct monitoring, fact-finding, research, policy reviews, public education and cooperation at all levels, as well as to provide policy recommendations.

from across sectors. Approximately 12 regions have begun to develop provincial-level Regional Action Plans for Persons with Disabilities. Considering the size of Indonesia, this means only few regional apparatus and civil society organizations that have an understanding of RIPD, RAN PD, and the Regional Action Plan for Persons with Disabilities (*Rencana Aksi Daerah Penyandang Disabilitas*). Furthermore, the planning is still treated as piloting project of Bappenas.

### **Recommendations:**

- a. The Government of Indonesia (GOI) to carry out measurable and systematic public dissemination of the term *penyandang disabilitas* (persons with disabilities) and to expedite the revision of Social Welfare Law and other related laws to meet the standard of human rights of PWDs;
- b. GoI to cooperate with organizations for persons with disabilities to develop monitoring systems for the implementation of Government Regulation No. 70 of 2019 to advance the commencement of National Action Plan on PWDs through mainstreaming 7 strategies on disability at central and regional levels across sectors.

### **Article 5: Equality and Non-Discrimination**

4. Komnas Perempuan appreciates the Indonesian Government's efforts to issue a number of policies, laws and regulations to advance the rights of PWDs, including to prioritize PWDs as one of the target groups in the National Human Right Action Plan on Human Rights (NAPHRs) 2021-2025.<sup>2</sup> However, NAPHRs Working Groups in many regions still have limited understanding in mainstreaming disability's rights in legal and human rights protection.
5. Komnas Perempuan finds that there is still a discrepancy between Law No. 8/2016 and regional bylaws, in which a number of regional bylaws still use a social welfare approach, categorize persons with disabilities as "persons with welfare problems", and use the derogatory term of *Penyandang Cacat*.<sup>3</sup> This condition demonstrates that the principle of inclusive equality, which is the basis of the CRPD, has not been fully understood by policy makers in the regions.<sup>4</sup> Even more so, the understanding of the vulnerability faced by particular type of disability and the multi layered discrimination faced by person with disabilities that is linked with their other identities, such as those from minority groups or women with disability. This condition also shows the need to strengthen current national mechanism to ensure nondiscrimination principle is performed in the formulation of bylaws.

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<sup>2</sup> Human Right Action Plan 2021-2025 is regulated under Presidential Regulation No. 53 of 2021 on Rencana Aksi Nasional Hak Asasi Manusia

<sup>3</sup> Komnas Perempuan's study on reproductive health services and village fund allocation in 5 (five) kabupaten (districts) found that 3 (three) kabupaten, namely Bekasi, Cirebon and Kupang still use regional regulations that use the term *cacat* and categorise persons with disabilities as persons with social welfare problems.

<sup>4</sup> The result of Komnas Perempuan's consultation with organizations for persons with disabilities. It was stated that regions formed regional government regulations on disability, however the articles in the regulations do not refer to Law No. 8 of 2016 and the CRPD.

6. PWDs who experience discrimination can refer to the Law No. 13/2006 jo. Law No. 31/2014 on Witnesses and Victims Protection (WVP Law) to access legal protection in addressing their case. However, unlike the Law on Elimination of Ethnic and Racial Based Discrimination that stipulates the right to redress for any loss resulted from the discrimination, Law 8/2016 does not regulate explicitly rights of remedies of the PWDs experiencing discrimination. WVP Law allows PWDs to access restitution, compensation and other forms of redress only when they are victims of terrorism, trafficking, sexual violence and grave assaults.
7. The Supreme Court Regulation No. 3/2017 on Guideline to Trial Cases of Women Before the Law is expected to encourage judges in the regional courts and supreme court to formulate breakthroughs in remedies that meet the specific needs of women with disabilities who experience discrimination and violence. Specific monitoring regarding the implementation of this regulation on PWDs' rights is yet to be performed.

### **Recommendation**

- a. GoI to expedite the agenda of NAP HRs to review/evaluate and revise regional bylaws in accordance with Law 8/2016 in order to mainstream legal protection and the fulfilment of the rights of PWDs;
- b. The Government in cooperation with organizations for PwDs disseminates the Presidential Regulation on the NAP HRs 2021-2024 at provincial and regional level more substantive and consistent in implementation;
- c. GoI to strengthen the above step with performing more training for officials at both national and local levels to ensure the implementation of Law on PWDs;
- d. GoI to develop database on a) disaggregated data on PWDs according to sex, geographical location, types of disabilities, education and other relevant information necessary to better prevent violence and layered discrimination against women with disabilities, and on b) sex segregated data on cases of discrimination and violence experience by PWDs, the process of addressing the cases, sanctions for perpetrators as well as remedies and redress accessed by the victims as a basis of information to have better policy on handling the cases

### **Article 6: Women and Disabilities**

8. Women with disabilities are vulnerable to facing layered discrimination and gender based violence. Komnas Perempuan's monitoring of women with mental disabilities in psychiatric hospitals in Papua (2021) found that women with mental disabilities experience layered discrimination, with the majority being victims of domestic violence and coming from underprivileged families. Negligence and stigma against women with disabilities has caused the deterioration of their living conditions and deprivation of their basic human rights.

9. The Information and Consultation Center for Women with Disabilities (PIKPPD, *Pusat Informasi dan Konsultasi Perempuan Penyandang Disabilitas*) has been established by the Ministry of Women's Empowerment and Child Protection in 9 regions, but has not yet been connected to units for handling violence against women and children service units in these regions (provinces) and therefore not run optimally.<sup>5</sup> The Ministry of Health has included disability friendly services and infrastructure as a standard for assessing basic health service providers. However, in its implementation, many public health centers do not understand how to provide services for PWDs.
10. Whilst age of marriage has been revised to meet the HRs standard of children, the revision of Law No. 1 of 1974 has yet to be made to withdraw disability as a legitimate reason for polygyny (art. 4 subart. 2) or divorce (explanation of Art. 39, Subart. 2).
11. Komnas Perempuan notes that the Job Creation Law contradicts with the CRPD and Law No. 8/2016, still uses the derogatory term of *penyandang cacat*;<sup>6</sup> adds the condition of disability as legitimate reason to terminate employment,<sup>7</sup> and permit the adoption of prerequisite to be "physically and mentally healthy" for job seekers that may result in PWDs being vulnerable to be discriminated in employment.<sup>8</sup>
12. Multilayered discrimination can be also found in regional bylaws. For example, Lampung's Regional Regulation No. 17 Year 2014 on Exclusive Breastfeeding that obliges mother to provide exclusive breastfeeding instead of affirming the maternity rights. It violates women's fundamental right to freedom, and women with mental disability is further discriminated because they are referred as "mentally retarded" and hence, are dismissed to hold this obligation.<sup>9</sup>

### Recommendations:

- a. Government amends legislations with discriminatory provisions against women with disabilities, in particular the Marriage Law, the Job Creation Law and Lampung

<sup>5</sup> The Advocacy Center for the Disabled, Women, and Children (SAPDA, *Sentra Advokasi Perempuan Difabel dan Anak*) in a consultative focus group discussion with 6 organizations for women with disabilities on the 21st of March 2022.

<sup>6</sup> Articles that contain the word *cacat* namely: Article 29 (a) item i:

Every hospital has an obligation

(i) To provide suitable public facilities and infrastructure, including parking facilities, waiting rooms, facilities for *cacat* (disabled) people, breastfeeding women....."

Accessibility is understood as physical facilities and does not cover the diversity of disabilities, among others.

<sup>7</sup> Employment:

Article 153 (j) - in a state of permanent *cacat* (disability)

Article 154 A Paragraph 1 (2) concerning work termination "experience prolonged sickness or *cacat* (disability) due to a work accident and cannot carry out their work exceeding the 12 month limit".

<sup>8</sup> Article 168: Use of the term *jasmani rohani* (physically and mentally healthy) as a condition for certain positions. This phrase has the potential to discriminate against persons with psychosocial disabilities and even denies them as disabilities. "To be appointed as a member of the Supervisory Board from a professional element and a candidate for a member of the Board of Directors you must meet the following requirements: a. Be a citizen of Indonesia;... c. **be physically and mentally healthy**:"

<sup>9</sup> Lampung's Regional Regulation No. 17 Year 2014 on Breastfeeding Article 4 verse (7b).

Regional Regulation No. 17 of 2014 on Exclusive Breastfeeding

- b. Government improves access to reproductive health care and awareness-raising programs specifically for women with intellectual or psychosocial disabilities
- c. Government equips health workers with a disability perspective.

#### **Article 8: Awareness-raising**

13. To combat stereotypes, prejudice and harmful practices against them in all aspects of life, awareness-raising campaigns on disability rights in Indonesia are run by both the government and organizations for PWDs. Heavy load of bureaucracy, ad hoc approach and lack of creativity are identified as hindrances to the effectiveness of campaigns run by the government.
14. Government Regulation No. 70 of 2019 concerning Planning, Implementation and Evaluation of Respect, Protection and the Fulfilment of the Rights of Persons with Disabilities that is expected to be a reference for government institutions and ministries in developing program strategies has not been widely disseminated. Consequently, the regulation is not well implemented.

#### **Recommendations:**

- a. GoI needs to better plan and persistently carry out education and public campaigns relating to the rights of PWDs through various forms of media including TV, radio, online media and other media accessible for all levels of society
- b. GoI to conduct more and better monitored training for officials in ministries and regional governments, including to disseminate the responsibility to carry NAPHRs and RIPD

#### **Article 11: Situations of Risk and Humanitarian Emergencies**

15. The increase in the incidence of violence against women and vulnerable groups during the pandemic was confirmed by quite a number of participants in Komnas Perempuan's consultations, especially in the Provinces of Central Sulawesi and Papua. In addition, there has been a decrease in availability of protection services for victims of violence, both in terms of affordability and the quality of services due to challenge in adopting online services.<sup>10</sup>
16. During the COVID-19 pandemic the Government has issued a number of policies related to health protocol and policies to respond to the pandemic. However, most of the policies are not disability friendly, and there are particular obstacles in observing the policies by the PWDs. Deaf people find mask-using policy hinders them from

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<sup>10</sup> Source: Jitupasna - the Indonesian National Board for Disaster Management (BNPB, *Badan Nasional Penanggulangan Bencana*), the United Nations Development Program (UNDP) Red-R, YEU, the SRI Institute, MCS and Sinau GIS.

communicating by reading lips. Policies to maintain distance is particularly difficult to be followed by persons with severe disabilities who rely on other people to carry out daily activities. Wheelchairs users find it difficult to observe the wash-hand policy due to the inaccessible infrastructure. PWDs also are disproportionately disadvantaged by the economic impact of the pandemic, particularly because many of them are working in informal sectors, especially women with disabilities.

17. PWDs' access to available supports during pandemic is still problematic. Many has not been able to access social safety net program because they are not registered or do not possess ID card to be eligible in accessing the support. PWDs face barriers in accessing health services due to limited quotas for health services and also the inaccessibility of health infrastructure in accordance to specific needs of PWDs. In Komnas Perempuan's consultation with NGOs, it is also identified that in relation to the pandemic:
  - ✓ Some policies and regulations are progressive, but the implementation is weak due to the limited commitment and understanding of the officials at both national and local levels on the rights of PWDs;
  - ✓ PWDs are yet to be actively included in the preparation, implementation and monitoring of disaster management efforts including to ensure better protection for PWDs experiencing multilayered vulnerabilities, including gender based violence experienced by women with disabilities.
  - ✓ Data collection especially during disaster are not segregated according to gender, age, types of disabilities and the special needs of disabilities, and thus, hinders the government from having better intervention policies and programs;
  - ✓ Gender integration is included in featured programs and activities at the BNPB, including Destana (Disaster Resilient Villages, *Desa Tangguh Bencana*), but yet to be completed with the Gender Analysis Pathway (GAP) and the Gender Budget Statement (GBS).
  - ✓ Social norms and patriarchal culture that are still strong in society contribute to the weak gender transformative approach in formulation and implementation of disaster management programs to also benefit equally women with disabilities

### **Recommendations:**

- a. GoI to earnestly and sustainably cooperate with organizations for PWDs to carry out education and training on disaster management that is disability and women friendly in all sectors, including at the family level;
- b. The Government conducts firmer monitoring and evaluation of the implementation of various regulations related to disaster management to ensure the optimal benefits for PWDs, with affirmative action to perform gender equality and justice.

### **Article 12: Equality Before the Law**

18. In July 2020, Presidential Regulation No. 39 of 2020 on Decent Accommodation for Persons with Disabilities in Judicial Proceedings was issued to provide required services, facilities and infrastructure necessary for PWDs to access the legal processes.

The provision will follow the result of personal assessment, that requires awareness on specific needs and vulnerability of women with disabilities in order to enjoy equality before the law. To date, the implementation of this regulation is mainly available in big cities in Java Island.<sup>11</sup>

19. There are still many cases that are refused by law enforcement officers.<sup>12</sup> The legal process for women with disabilities who are victims of violence is still slow due to the stigma and the reluctance of law enforcement officers and families related to their limited awareness on gender issue and disabilities.
20. Thus, Komnas Perempuan welcomes the issuance of Sexual Crime Law that ensures equality before the law for PWDs who are victims of sexual violence, by amongst other to reinforce (1) the rule of evidence to account the testimony of disabilities and mental disabilities, (2) the state's responsibility to ensure the strengthening of mechanism resources for handling cases of sexual violence to also meet requirements for decent accommodation for women and children with disabilities.
21. Article 9 of the Law on Persons with Disabilities guarantees the rights of persons with disabilities in accessing banking and non-banking financial services. Derivative policies have been issued by the Financial Services Authority (OJK, *Otoritas Jasa Keuangan*) and Bank Indonesia<sup>13</sup> regarding access for persons with disabilities to be able to conduct financial transactions with banks and state and private owned insurance corporations, including ensuring the inheritance rights of women with disabilities. However, PWDs still experience barriers in accessing banking, owning a bank ATM card and in applying for insurance.<sup>14</sup> The lack of confidence of financial institution in the capabilities of PWDs is exemplified by the case that MoU between a women disabilities organization (HWDI- Himpunan Wanita Disabilitas Indonesia) in West Java and a Government-owned banking institution for business capital assistance for Micro, Small and Medium Enterprises of Persons with Disabilities has still not come into realization after two year of the signing.<sup>15</sup>

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<sup>11</sup> Indonesian Women with Disabilities Association (HWDI, Himpunan Wanita Disabilitas Indonesia) in an online consultative focus group discussion on the 22nd of March 2022.

<sup>12</sup> Online consultative focus group discussion on the 21st of March 2022 with organizations for persons with disabilities.

<sup>13</sup> Article 9 of the Law on Persons with Disabilities and several derived regulations including Presidential Regulation No. 114 of 2020 concerning the National Strategy for Financial Inclusion (SKNI, *Strategi Nasional Keuangan Inklusif*) for the revision of Presidential Regulation No. 82 of 2016 concerning the National Strategy for Financial Inclusion, the Financial Services Authority (OJK) Circular No. 31/SEOJK.07 of 2017 concerning Implementation of Activities to Increase Financial Inclusion in the Financial Services Sector; OJK Regulation No. 76/POJK.07 of 2016, in which Article 15 explains that the scope of financial inclusion includes the provision of various facilities for the special needs community to access products and financial services; Bank Indonesia Regulation No. 16/1/PBI of 2014 concerning Consumer Protection Payment System Services, OJK Regulation No. 1/POJK.02 of 2013 concerning Consumer Protection, in which Article 24 states that service providers are required to provide special services for customers with special needs. Regarding guardianship issues, the Ministry of Law and Human Rights, through the Technical Service Unit of the Inherited Property Board (Balai Harta Peninggalan), acts as the guardian of adults with mental disorders.

<sup>14</sup> HWDI in an online consultative focus group discussion on the 24th of March 2022.

<sup>15</sup> Ibid.

## **Recommendations:**

- a. GoI to allocate adequate resources for the implementation of Presidential Regulation No. 39/2020 on Decent Accommodation for Persons with Disabilities in Judicial Proceedings and also breakthroughs regulated in the Sexual Crime Law and to ensure these regulations is implemented with gender lens and are followed also in rural and remote areas;
- b. GoI to monitor and reinforce policies providing equality before the law in economic and finance aspect, i.e. banking, insurance and accessing loans
- c. Government takes effective ensures to eliminate discrimination against women with disabilities in carrying out bank transactions and accessing business capital for Micro, Small and Medium Enterprises.

## **Article 13: Access to Justice**

22. Komnas Perempuan expects the Sexual Crime Law to provide better protection against sexual violence, that mostly experienced by women and children, particularly those with disabilities. The law regulates 9 crimes of sexual offences, provides breakthroughs on rule of procedures and elaborate rights of victim, with efforts to respond to the vulnerabilities related to disabilities. It is noteworthy that the Law relies on revision of Penal code to adopt better definition on rape, which current regulation reduce the possibility of victims of rape to access justice due to its limited definition and prerequisite evidence.
23. Komnas Perempuan's monitoring found that women with disabilities victims of violence still encounter various barriers in addressing their cases. Many regions have no derivative regulation on decent accommodation on judiciary process. Thus, needed assistance may not be accommodated, such as sign language interpreters, psychologists and psychiatrists.<sup>16</sup> MoUs between social services and law enforcement officers are mostly limited to the provision of sign language interpreters and disability aids, instead of a full provision based on personal assessments, even more so with a gender perspective to specific need to women with disabilities.<sup>17</sup>
24. Personal assessment to identify needed assistance for PWDs to access the legal processes, as stipulated in of Presidential Regulation No. 39 of 2020 on Decent Accommodation for Persons with Disabilities in Judicial Proceedings, has been partially implemented. Supreme Court's effort to train judges to be more familiar with this regulation is commendable. Meanwhile, the absence of technical regulation and adequate allocation of budget to provide the needed assistance have been the major hindrances for the Police to implement it. There are 3 Directorate General Decrees in the judiciary institutions to follow up this regulation and will effectively be applied in in civil cases. Meanwhile, in criminal cases, the courts can only request the prosecutor to carry out a personal

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<sup>16</sup> The Center for Improving Qualified Activity in Life of People with Disabilities (CIQAL) focus group discussion on the 21st of March 2022.

<sup>17</sup> HWDI in an online consultative focus group discussion on the 24th of March 2022.

assessment after the case is filed. Financial support for legal aid is provided only for those who have Kartu keluarga Sejahtera, a certification of family living in poverty. Financial assistance mostly does not cover DNA tests nor *Visum et repertum psychiatricum* (VeRP).<sup>18</sup> The mechanism to access special allocation fund (DAK: Dana Alokasi Khusus) provided by KPPPA for the protection of persons with disabilities remains restricted.

### **Recommendations:**

- a. GoI to ensure provision of rape in the revision of Penal Code reflects the experience of women victims of rape, particularly those with disabilities;
- b. GoI to allocate adequate resources to expedite trainings for law enforcers and service providers for women victims of violence with disability rights perspective;
- c. GoI to provide adequate resources to ensure needed assistance, as obliged in Government Regulation 39/2020, according to the personal assessment in order to remove barrier of access to justice for women with disabilities who are victims of sexual violence, including the financial aid to conduct *VeRP* and free DNA test.

### **Article 14: Liberty and Security of the Individual**

25. Whilst policies are available to stop confinement of persons with disabilities,<sup>19</sup> confinement is still widely practiced. Study by Basic Health Research (Risdaques, *Riset Dasar Kesehatan*, 2018) found that 14% families still confine their family members with mental disorders and 31.5% of confinement cases occurring in the last 3 months.<sup>20</sup> The Healthy Souls Association (*Perhimpunan Jiwa Sehat*) reported that there are approximately 13,000 persons with disabilities including women with disabilities enduring deprivation of their freedom.<sup>21</sup> Some are locked up in social care centers without their consent just because they have mental disabilities. Segregated data on PWDs losing liberty according to the type of disability and other relevant information is not available.<sup>22</sup> Whilst thorough monitoring of confinement cases at societal level is challenging, a working group (P5HAM) to monitoring of social care centers has been set up<sup>23</sup> but no budget is available yet to conduct its tasks.<sup>24</sup>

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<sup>18</sup> VeRP is a mental health specialist's statement in the form of a letter as a mental health examination on a person in a health service facility for the sake of law enforcement. Article 1 (2) of Ministry of Health Regulation No. 77 of 2015 concerning Guidelines for Mental Health Examination in the Interest of the Law.

<sup>19</sup> Law No. 23 of 1966 concerning Mental Health; Ministerial Decree of the Ministry of Home Affairs No. PEM.29/6/15, dated the 11th of November 1997, addressed to the Governor of the Head of Level 1 Regions throughout Indonesia to ask the society to not confine people with mental disorders and to raise public awareness around handling over care for patients in psychiatric hospitals. This decree also contains instructions for sub-district heads and village heads to actively take initiatives and steps in dealing with patients in their area.

<sup>20</sup> Erti Ikhtiarini Dewi, et al. 2019. Stigma Against People with Severe Mental Disorders (PSMD) With Confinement. *NurseLine Journal* Vol. 4 No. 2 November 2019 p-ISSN 2540-7937 e-ISSN 2541-464X. P. 132.

<sup>21</sup> Komnas Perempuan online focus group discussion with persons with disabilities on the 22nd of March 2022.

<sup>22</sup> This data is disaggregated by gender and types of disabilities experienced.

<sup>23</sup> *Keputusan Kementerian Hukum dan Hak Asasi Manusia* No. M.HH-01.HA.04.02 Tahun 2021 *tentang Kelompok Kerja Penghormatan, Perlindungan Pemenuhan, Penegakan dan Pemajuan*

<sup>24</sup> Ministry of Law and Human Rights Decree No. M.HH-01.HA.04.02 of 2021 concerning Working Group Respect, Protection, Fulfilment, Enforcement and Promotion of Human Rights for Persons with Mental Disabilities.

## **Recommendations:**

- a. GoI to provide adequate resources for the implementation of policies and the tasks of P5HAM working group, including to develop regularly updated segregated data to monitor the progress of efforts to reduce confinement of PWDs.

## **Article 15: Freedom from Torture**

26. Komnas Perempuan recognizes the efforts of national campaign against shackling in following up The Law 18/2014 on Mental Health that prohibits shackling against persons with mental disabilities and/or mental disorders. However, in many regions data on cases of shackling is not available, particularly in remote areas.
27. Komnas Perempuan notes that whilst number of public health center (*puskesmas*) that provide services for mental health patients is increasing, but mental health facility is rare in various regions. This condition is also portrayed with the fact that there is only one mental health hospital to serve the whole Papua and West Papua Province. Hence, cases of women with mental or psychosocial disabilities abandoned in the street are still commonly reported.<sup>25</sup> Many public health centers are also not equipped with adequate medication and some needed medication is not provided free of charge.<sup>26</sup> There is also a shortage in number of psychologist and psychiatrist, while many health workers are not familiar and have the needed skill to serve PWDs, even more so with gender sensitivity. The lack of facilities and skilled health worker, particularly in villages and remote areas, has resulted in a prolonged torture and other ill treatment experienced by women with disabilities, particularly those enduring violence.
28. Komnas Perempuan's monitoring of rehabilitation centers and psychiatric hospitals (2018) concluded that some psychiatric hospitals and rehabilitation centers still carry out torture practices and ill treatments against patients with disabilities, including overcrowding, physical confinement and sanctions, and psychological abuse. Torture-alike practices that were documented in this monitoring include: (1) Patients were smeared with carbolic acid and sulfur for the treatment of scabies itching, because they are heap and considered effective in treating scabies (2) restraining movement with iron chains; (3) isolation and placed in room without a bed or mattress.
29. Since 2018, 5 independent institutions including Komnas Perempuan established a Cooperation to Prevent Torture (KuPP). Aiming to endorse ratification of Optional Protocol on CAT (OPCAT), this cooperation is considered as an initiation of a national

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<sup>25</sup> As of 2017, there were 34 Government-owned psychiatric hospitals, 9 privately-owned psychiatric hospitals and 1 drug addiction hospital in each of 28 out of 34 provinces in Indonesia. There were 6 provinces that did not have any psychiatric hospitals, including the Riau Islands, North Kalimantan, Central Sulawesi, Gorontalo, West Sulawesi and West Papua.

<sup>26</sup> Online consultative focus group discussion on the 22nd of March 2022 with organizations for persons with disabilities.

preventive mechanism. This cooperation brings strategic partners, i.e. Ministry of Human Rights, Ministry of Health and Ministry of Social Welfare because issue of detention alike condition and ill treatment, including against PWDs, is part of the attention of KuPP.<sup>27</sup>

**Recommendations:**

- a. GoI to develop work plan with clear timeframe to eradicate shackling and other form of torture and ill treatments against PWDs;
- b. GoI to increase number of psychiatrist hospitals, rehabilitation centers and service providers of mental health with priority to areas outside of Java and with sufficient space to respond to the condition of overcrowding, to train health workers with gender and disability perspective, and to distribute free of charge needed medications in rural and remote areas.
- c. GoI to speed up the process for ratification of The Optional Protocol Convention Against Torture

**Article 16: Freedom from Exploitation, Violence and Abuse**

30. Komnas Perempuan's annual compilation of reported cases of violence against women in the period of 2017-2021 documented at least 342 cases of violence against women with disabilities. More than half, or 59% is experienced by women with mental and intellectual disabilities. Up to 65% of reported cases are sexual violence, mostly are rape, that occurs in both personal and public domain, including incest and rape by teachers. Economic and psychological dependency, and the lack of social security scheme other than support from family raise the vulnerability of women with disabilities to become victims of domestic violence.<sup>28</sup> Komnas Perempuan also concerns that online sexual violence against women with disabilities is underreported, considering the trend is increasing dramatically.
31. Thus, Komnas Perempuan appreciates the issuance of Sexual Crime Law that integrates explicitly perspective on the vulnerabilities and rights of women with disabilities. It is noteworthy that facility of safe abortion for women victims of rape is still rare and many medical practitioners still refuse to perform the service. The lack of sexual and reproductive rights education for women with disabilities raised their vulnerability to sexual violence and their unawareness to pregnancy as impact of sexual violence or activities.
32. Komnas Perempuan's study on regional regulation on services for women victims of violence (2020) found that only 10% of 128 regional regulations adopting integrated service concept has a provision of special treatment for women with disabilities. As many

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<sup>27</sup> KuPP- Kerjasama untuk Pencegahan Penyiksaan or Cooperation for Prevention of Torture was established by Komnas Perempuan with National Commission on Human Rights, National Commission on Child Protection, Ombudsman, and Victims and Witness Protection Agency. Joint program related to disabilities will be one of the focuses on the 2<sup>nd</sup> term of this cooperation (2022-2027), KuPP has conducted Webinar "the Protection and Prevention of torture and ill treatment of Persons of Mental Disability", in 24 March 2021

<sup>28</sup> HWDI in an online consultative focus group discussion on the 24th of March 2022.

as 42 regional regulations have explicit provision of psychosocial service for women victims of violence. Furthermore, the implementation remains a challenge due to the available infrastructure and resources. Hence, Komnas Perempuan concerns that the situation may aggravate the mental condition of women with disabilities who are victims of violence, and raise the risk of women victims of violence to mental disability, as exemplified by the findings of Komnas Perempuan's monitoring to mental health hospital in Abepura/Papua that most of the women patients are victims of violence.

### **Recommendations:**

- a. GoI to immediately oversee the implementation of Sexual Crime Law and regulation of decent accommodation in judiciary process for PWDs, with specific attention to the vulnerabilities of women with disabilities, particularly intellectual disability;
- b. GoI to a) expedite the setup of free and safe abortion service for women victims of rape and other forms of sexual violence, b) strengthen regional regulation to provide special treatments according to the needs of women with disabilities who are victims of violence; c) conduct sexual and reproductive rights education for women with disabilities as an integral strategy to prevent and handling sexual violence and d) provide adequate and appropriate support for victims' recovery;
- c. GoI to ensure prohibition of forced abortion is included in the revision of penal code.

### **Article 17: Protecting the Integrity of the Individual**

33. GoI has issued policies and guidelines regarding Reproductive Health services for persons with disabilities in 2017 as a follow up to the issuance of the Disability Law in 2016. However, forced abortion, forced contraception and forced sterilization are reported to be still practiced. Most cases of rape and sexual exploitation against women with disabilities are revealed when the pregnancy is noticeable due to striking physical changes. Hence, the forced abortion, forced contraception and forced sterilization are commonly considered by the family to put relief for the victim who are perceived not able to take care of neither themselves nor the baby resulted from the rape or sexual exploitation. Komnas Perempuan's monitoring report published in 2019<sup>29</sup> found that forced contraception and forced sterilization of women with disabilities is practiced in a number of government-owned rehabilitation centers and psychiatric hospitals. These practices were even carried out without informed consent on the grounds that women with psychosocial disabilities are unable to give their consent or they do not have families who can give consent.<sup>30</sup>

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<sup>29</sup> Komnas Perempuan Monitoring Report 2019: Punishment Without Crime, Dimensions of Torture and the Cycle of Violence Against Women with Psychosocial Disabilities in Locations Similar to Prisons (Psychiatric Hospitals and Rehabilitation Centres).

<sup>30</sup> All women residents at Margo Widodo Social Care Centres in Semarang, if of childbearing age are immediately implanted with the family planning implant, while women patients at Dr Amino Regional Psychiatric Hospital undergo a tubectomy. If the patient is escorted by their family, then consent is requested from the family, but for residents who were dropped off by the Civil Service Police Unit (SATPOL PP, *Satuan Polisi Pamong Praja*) after carrying out raids on the streets, the contraceptive insertion procedure is carried out without informed consent from those concerned. Meanwhile, at the Bina Karsa Psychiatric Hospital in Medan, all mental patients must take a pregnancy test when entering the psychiatric hospital (before receiving treatment). According to the hospital, these steps are taken as a precaution. For example, sometimes there are

34. These medical actions violate human rights, not limited to the right to dignity and privacy, but also right to health, to information, and to be free from violence and discrimination. Hence, Komnas Perempuan welcomes the Sexual Crime Law that prohibit forced contraception and forced sterilization. Noteworthy, prohibition on forced abortion will be governed according to the revision of Penal Code and this raises a concern of possible reinforcement of criminalization of women with disabilities performing abortion to unwanted pregnancy.

**Recommendations:**

- a. GoI to develop a national campaign to eliminate forced contraception and forced sterilization against women with disabilities
- b. GoI to ensure revision of penal code integrates prohibition of forced abortion and withdraw criminalization of abortion as integral protection of the rights of women with disabilities.

**Article 21: Freedom of Expression and Opinion and Access to Information**

35. Provision of disability-friendly public information is mandatory according to the Law on Person with Disabilities, but many public institutions are not able to observe the obligation. Various public facilities such as places of worship, traditional markets, bus terminals and public service places, particularly those located in remote areas, still do not provide information accessible for persons with sensory disabilities (the deaf and blind communities) or persons with intellectual disabilities. Many websites of public institutions are inaccessible for persons with disabilities, by providing audio feature to accommodate the need of blind people or subtitled video content to enable deaf people to access information.
36. As for Komnas Perempuan, the state budget allocated is not adequate to be able to perform the obligation regarding rights of disabilities. Komnas Perempuan also unable to provide decent accommodation for employment although two of the commissioners are disabled. Nor our website is disability-friendly. Nevertheless, the effort to provide as such information can be observed in Komnas Perempuan's attempt to have sign language interpretation during its public event, to have its video campaign material subtitled, and to advocate budget allocation to improve its website and working accommodation.

**Recommendations:**

- a. GoI to allocate adequate budget for state and public institution to build their website, other campaign materials and avenue, as well as activities to disability-friendly in accordance to

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patients who walk outside the hospital without the staff being aware of it and can be raped and fall pregnant as a result of the rape. In addition, to anticipate the effect of medications that are feared to disturb pregnancy. Theoretically, the consumption of psychotic medications will affect the condition of a person's pregnancy. Thus, patients who are pregnant, when they enter the hospital, must sign an agreement beforehand that if there is a disruption of the pregnancy, it is not the responsibility of the hospital. As stated by the staff of the Bina Karsa Psychiatric Hospital "Don't let it happen if you have a disabled pregnancy, the hospital is not responsible and should not be blamed".

CRPD's mandate on public information, including through the works and institution of Komnas Perempuan.

#### **Article 24: Education**

37. Komnas Perempuan is aware of the challenges in implementing Presidential Regulation No. 13 of 2020 concerning Suitable Accommodation for Students with Disabilities. Obligation to established disability service unit in all level of education is in accordance to the existing bureaucracy on education, and thus, resource mobilization of this unit at particularly elementary to senior high school level is heavily relied on the awareness, commitment and priority of regional authorities.<sup>31</sup> Komnas Perempuan received report that special needs schools managed by the Government still require additional fees, a limited number of inclusive and special needs schools, and very few public schools follow the regulation of suitable accommodation students with disabilities, including provision of information for parents, availability of teacher assistants, and accessible infrastructure.<sup>32</sup>
38. Whilst segregated data is unavailable, Komnas Perempuan concerns that approximately 17% of children with disabilities never been enrolled to school and around 8% are dropped out.<sup>33</sup> Stigma against disability and economic condition has deterred many children with disabilities, especially girls, to enjoy education, besides the lack of education facility. This situation in a long run would result in limited access to employment and higher risk of impoverishment. Since national data shows the existing gender gap in education, it is expected that more girls with disabilities are not accessing education in comparison to boys with disabilities.
39. Another concern is related to the very rare presence of sexual and reproductive education for students with disability as a mean to prevent sexual violence. In response to this situation, Komnas Perempuan has developed a training module on this matter that has been tried out in 5 provinces where Komnas Perempuan has been working with disability groups to advocate for better implementation of CRPD with gender perspective.

#### **Recommendations:**

- a. GoI to develop action plan with clear target and timeline to implement Presidential Regulation No. 13 of 2020 concerning Suitable Accommodation for Students with Disabilities, including to equipped education practitioners and state apparatus relevant to education system at all levels with disability perspective.
- b. GoI to integrate sexual and reproductive education in the curriculum with disability perspective
- c. GoI to enhance monitoring of the implementation of the Presidential Regulation 13/2020, including through developing segregated data in accordance to sex, age and type of disability related to access in education

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<sup>31</sup> HWDI in an online consultative focus group discussion on the 24th of March 2022.

<sup>32</sup> HWDI in an online consultative focus group discussion on the 24th of March 2022.

<sup>33</sup> GoI's response to LoI, 2021

## Article 25-26: Health, Habilitation, Rehabilitation

40. Komnas Perempuan's monitoring notes that stigmas and stereotypes against women with psychosocial disabilities in families and communities have been depriving them of their autonomy, such as by not allowing them to consensually determine when they must be treated in a psychiatric hospital or rehabilitation center.<sup>34</sup> Meanwhile, there are still workers in psychiatric hospitals and rehabilitation centers who do not have disability perspective. Based on Ministry of Health Regulation No. 290/Menkes/PER/III of 2008, consent for medical treatment can only be given by competent patients, namely those who are not a child,<sup>35</sup> whose psychological awareness is not disturbed, is able to communicate properly, does not experience mental retardation and does not suffer from illness and can therefore make their own decisions. Patients can also be represented by their closest family (husband, wife, father, mother or caregiver). However, family members do not always convey the patient's interest as they may feel burdened to have to care for a person with psychosocial disabilities. Therefore, Komnas Perempuan considers it important for patients to be accompanied by special assistants according to the level of psychosocial barriers in order to obtain genuine consent.
  
41. The Presidential Regulation No. 70 of 2020 concerning Habilitation and Rehabilitation Services for PWDs requires regional government regulation at the provincial level as an umbrella for government regulations at the city/district/village level for resource mobilization for its implementation. Although there are regional government policies, their implementation is still constrained technically and in terms of substance.<sup>36</sup> Budgets are also prioritized for non-disability programs and the Covid-19 situation has also increased the barriers and vulnerabilities of persons with disabilities in accessing health services such as carried out by the Health Social Security Administration Agency.<sup>37</sup> There is also a limited number of psychiatric hospitals with 6 out of 4 provinces have none, and the quality of mental health services is quite low in many areas in Indonesia. There are also no available rehabilitation centers that are affordable for those living in small towns or villages.
  
42. The lack of policies and understanding as well as the capacity of reproductive health services has resulted in a number of cases of forced sterilization and abortion for women

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<sup>34</sup> In Komnas Perempuan's monitoring (Punishment Without Crime, 2018), in a number of psychiatric hospitals and rehabilitation centres, violations of human rights were found in the form of, among others, Being Deprived of the Right to Make Decisions, Feeling Dumped and Experiencing Exile, in other words "being denied as a subject, feeling differentiated, not having ones voice and decisions heard, for example, suddenly being forced into a car to be taken to a psychiatric hospital or being rehabilitated without consent" (p. 54).

<sup>35</sup> A child who is married in considered as adult

<sup>36</sup> Komnas Perempuan, *Living in Vulnerability and Abandonment: The Urgency of Fulfilling the Right to Reproductive and Sexual Health Services for Women with Disabilities and the Elderly, Results of Initial Mapping in Kabupaten Bekasi, Kabupaten Cirebon, Kabupaten Kulon Progo, Kabupaten Situbondo and Kabupaten Kupang*. 2021. p. 38-43.

<sup>37</sup> Organisations for persons with disabilities networks' inclusive Covid-19 response; Komnas Perempuan's focus group discussion with disability networks on the 22nd of March 2022.

with disabilities on the medical grounds of the possibility of giving birth to babies with disabilities.<sup>38</sup> Hospitals and health service centers are still not friendly and equal in quality of services, including access to reproductive health.<sup>39</sup> In addition, women with disabilities are also vulnerable to becoming victims of sexual violence.<sup>40</sup> Barriers regarding the rehabilitation of women with mental disabilities include the inability of families to care for their family members with disabilities, limited knowledge, conditions of the elderly, loss of villages due to conflict or family who can no longer be contacted.

### **Recommendations:**

- a. The Government ensures regional and national policies which guarantee access to reproductive health services for persons with disabilities.
- b. The Government ensures an increase in the number of psychiatric hospitals and rehabilitation centers in small towns and remote areas.
- c. The Government ensures access to rehabilitation services in all hospital institutions.

### **Article 27: Work and Employment**

43. In line with the gap for girls and women with disabilities in accessing all levels of education (see article No. 24 on Education), women's participation in education is low and is getting lower at the secondary and higher education levels. In the education sector, women with disabilities who have a high school diploma/equivalent total 9.21%, while men with disabilities who have a high school diploma/equivalent equal 16.88%. This situation affects employment access for women with disabilities.
44. The participation of women with disabilities in the workforce is about half that of the labour force participation rate of men with disabilities. According to the Central Bureau of Statistics (BPS, Badan Pusat Statistik, 2020), in 2019, the labour force participation rate of men with disabilities was recorded as 60.06%, while the labour force participation rate for women with disabilities was only 33.96%. With this situation, most persons with disabilities or 72% (approximately 1.37 million people) work in the informal sector (SMERU, 2020). Even though the Government has issued a policy for a quota of 2% workers with disabilities in government institutions and 1% in private institutions, Komnas Perempuan's monitoring still finds discrimination against women with disabilities. The

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<sup>38</sup> Komnas Perempuan Study on the urgency of the fulfillment of the sexual reproductive health services for women with disabilities and elderly women, 2021.

<sup>39</sup> For example, women with physical disabilities experience difficulties registering at the hospital. Women with disabilities also do not receive knowledge on how to bathe and handle babies after giving birth at hospitals, or practice pregnancy exercises. Komnas Perempuan Sexual and Reproductive Health Team. 2015. Proceedings of the Workshop on Preparation for the Development of Sexual and Reproductive Health Policy Brief. Komnas Perempuan. Jakarta; Komnas Perempuan Sexual and Reproductive Health Team. 2015. Results of Field Visits to Yogyakarta and Bandung. Komnas Perempuan. Jakarta; Komnas Perempuan focus group discussion with disability networks on the 22nd of March 2022.

<sup>40</sup> CATAHU (Komnas Perempuan's Annual Notes) 2021 noted 77 cases of violence against women with disabilities with 55 of those cases being women with intellectual disabilities (who are the most vulnerable to sexual violence), followed by 22 cases of women with sensory disabilities; SADPA. 2021. Reproductive Health Services Need to be More Reachable and Disability Friendly. [sapdajogja.org/2021/06/layanankespro-perlu-lebih-menjangkau-remaja-disabilitas/](http://sapdajogja.org/2021/06/layanankespro-perlu-lebih-menjangkau-remaja-disabilitas/). Accessed on the 13th of December 2021.

lack of detailed and systematic mechanism to monitor the implementation of these quota policies and the absence of sanctions for government and private institutions that violate the disability quota seems to perpetuate discrimination against women with disabilities in employment sector.<sup>41</sup>

45. Furthermore, there is still discrimination of PWDs in the recruitment process due to the meaning of the requirement to be “physically and mentally healthy”, in which this requirement is often based on the condition of a person’s disability. As explained above related to Art. 6, the Job Creation Law also still discriminates against workers with disabilities and women workers with disabilities.

**Recommendations:**

- a. GoI to expedite implementation of quota policies for workers with disabilities in state institutions and private sector and encourages accessibility for workers with disabilities in the work environment with the availability of suitable accommodation for them, including the use of disability-friendly technology.
- b. GoI to develop firm and consistent monitoring mechanisms for ensuring the implementation of laws regarding labour quotas for persons with disabilities
- c. GoI to revise the Job Creation Law to ensure the fulfilment of rights of PWDs, including maternity rights and better protection for women workers with disabilities.
- d. GoI to develop inclusive schools by integrating the use of digital technology for students with disabilities in order to increase work participation.

**Art. 33: National implementation and monitoring**

46. Komnas Perempuan supports the establishment of the National Commission of Persons with Disabilities (Komisi Nasional Disabilitas/ KND). During the preparation of the establishment, Komnas Perempuan shared our experience in developing our institution as a national human rights institution (NHRI) with a specific mandate. Komnas Perempuan also elaborated our works in a sharing session with the elected commissioners and discussed the crucial issue of independence within the current bureaucracy setting. Komnas Perempuan looks forward to work more closely with KND in ensuring the creation of conducive environment to eliminate all forms of violence against women with disabilities and to advance the rights of women with disabilities

**Recommendation**

- a. GoI to allocate adequate resources for both Komnas Perempuan and KND to perform their role as NHRI individually and to develop join programs necessary to eliminate all forms of violence and discrimination against women with disabilities.

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<sup>41</sup> Like the case of DH, who had schizophrenia who worked in a state ministry and was fired due to psychosocial problems that had relapsed for a while, while DH was one of the outstanding workers in the ministry where he worked. This case was reported to Komnas Perempuan in March 2022 and received strong protests by organisations for persons with disabilities in the country.