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Ensuring Equal Justice: A Comparative Study on the Rule of Law and Access to Justice for Persons with Disabilities in Indonesia and Australia

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Abstract

The objective of this research is to examine the rule of law in access to justice for disabled persons in Australia and Indonesia by comparing each other and what both countries can learn in implementing the rights of people with disability based on Convention on the Rights of Persons with Disabilities (CRPD) in the key area such as legal reforms, inclusive education, accessible employment, social protection, and healthcare. In reality, the implementation of CRPD remains fraught with challenges, these are including inadequate resources, lack of political will, social stigma, and insufficient monitoring mechanisms. Despite legal frameworks being in place, practical barriers persist, especially in areas such as accessible infrastructure, educational opportunities, and healthcare services. This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities. The findings underscore the importance of moving beyond legislative action to ensure that policies are effectively implemented and adequately funded, thus making the CRPD's vision of equality and inclusion a reality for all persons with disabilities.

Keywords: Disabled Persons, Access to Justice, Indonesia, Australia.



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Introduction

The rule of law is a cornerstone of democratic governance and constitutionalism. It is not only a safeguard against arbitrary use of state power but also serves as a normative and institutional framework to uphold fundamental rights and freedoms¹. A legal system that truly embodies the rule of law must guarantee equality before the law, legal certainty, procedural fairness, and most importantly, meaningful access to justice for all citizens—including marginalized populations. One such group that has historically faced exclusion and discrimination in legal systems worldwide is persons with disabilities. Ensuring that individuals with disabilities can access justice on an equal footing with others remains a central challenge in the realization of inclusive legal frameworks².

The importance of inclusive access to justice is explicitly recognized in international human rights instruments, particularly the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006. As of 2024, the CRPD has been ratified by 190 countries, signalling a global shift from viewing disability through a purely medical lens to embracing a social and rights-based approach. Article 13 of the CRPD, titled “Access to Justice,” requires States Parties to ensure effective access to justice for persons with disabilities. This includes the provision of procedural and age-appropriate accommodations, as well as measures to facilitate their full and active participation in all stages of legal proceedings—as witnesses, complainants, defendants, or other relevant roles.

Both Australia and Indonesia have ratified the CRPD—Australia in 2008 and Indonesia in 2011 (via Law No. 19 of 2011). While both countries

¹ Susan Kiefel, “Social Justice and the Constitution Freedoms and Protections”, *James Cook University Law Review* 6, no. 1 (May 24, 2013): 20. <http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/JCULawRw/2013/1.html>.

² Tom Bingham, *The Rule of Law*, (London: Penguin Books, 2011), p. 1-9.

are legally bound by the treaty, their implementation paths differ significantly due to varying legal traditions, socio-political contexts, and institutional capacities³. Australia, with its advanced human rights infrastructure and a well-established common law tradition, has enacted the Disability Discrimination Act 1992 (Cth), which provides substantive and procedural protections for persons with disabilities. Indonesia, a country transitioning from an authoritarian past and marked by legal pluralism and decentralization, has taken a major step by passing Law No. 8 of 2016 on Persons with Disabilities. However, challenges remain in ensuring legal empowerment, institutional coordination, and access to justice at both national and local levels.

This comparative study is driven by a central research question: To what extent have Australia and Indonesia implemented the right of persons with disabilities to access justice, in line with the rule of law and the obligations of the CRPD? The study also explores supporting questions:

- 1) What are the legal and institutional frameworks in each country concerning disability rights and access to justice?
- 2) What barriers – whether legal, procedural, infrastructural, or socio-cultural – continue to hinder implementation?
- 3) Finally, what can Indonesia learn from Australia's more advanced legal and policy frameworks to enhance access to justice for its own disabled population?

Most existing research on disability rights in these two countries has primarily focused on substantive entitlements, such as access to education, employment, and healthcare. For instance, Schalock and Verdugo examined the use of quality-of-life indicators for people with intellectual

³ Elizabeth Ellis, *Principles and Practice of Australian Law*, (Australia: Lawbook Co, 2013), p. 165-6.

disabilities.⁴ Other studies, including those by Abdal Rohim⁵ studied about the legal protection and rights fulfilment of people with mental health disorders based on Islamic and health legal perspectives. Akhmad Sholeh⁶ studying the accessibility in education sector for persons with disability. Next, Further, Muhammad Dahlan and Syahriza Alkohir Anggoro⁷ studied the rights to work for persons with disabilities in public sector. There is no work studying a comparative study on the rule of law and access to justice for persons with disabilities in Indonesia and Australia.

This study aims to fill that gap by offering a doctrinal and comparative legal analysis of how the rule of law operates to either support or hinder access to justice for persons with disabilities in both Australia and Indonesia. The comparison is intentional: Australia represents a high-capacity, liberal democracy with a strong legal culture of rights protection, while Indonesia represents a post-authoritarian, legally pluralistic state grappling with democratic consolidation and institutional reform. This contrast offers valuable insights into the conditions that facilitate or obstruct the realization of access to justice.

Access to justice in this study is interpreted broadly. It is not limited to physical access to courtrooms or the mere presence of legal representation. Rather, it encompasses a wide range of interrelated elements: legal information must be accessible; legal services must be affordable and culturally competent; judicial processes must be procedurally fair; and legal actors must be trained to interact effectively and

⁴ Schalock, RL and Verdugo, *Handbook on Quality of Life for Human Service Practitioners*, (USA: Amer Assn on Intellectual & Devel, 2002).

⁵ Abdal Rohim, "Legal Protection and Rights Fulfilment of People with Mental Health Disorders: An Analysis of Islamic and Health Legal Perspectives", *As-Siyasi* 4, no. 2 (Desember 2024).

⁶ Akhmad Sholeh, "Islam dan Penyandang Disabilitas: Telaah Hak Aksesibilitas Penyandang Disabilitas terhadap Pendidikan", *Jurnal An-Nur* 4, no. 2 (Desember 2014).

⁷ Muhammad Dahlan and Syahriza Alkohir Anggoro, "Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis", *Undang: Jurnal Hukum* 4, no. 1 (Juni 5, 2021).

respectfully with persons with disabilities. Importantly, the CRPD's concept of "reasonable accommodation" is central—it requires modifications and adjustments that do not impose a disproportionate burden, yet enable individuals with disabilities to participate equally.

Furthermore, this paper operates on the principle that access to justice must be framed in terms of substantive, not merely formal, equality. Treating all individuals, the same under the law may perpetuate existing disadvantages. Substantive equality demands recognition of structural barriers and mandates differentiated treatment to level the playing field. This understanding is increasingly reflected in the jurisprudence of international and domestic courts, reinforcing the obligation of states to ensure not only theoretical legal equality, but actual, practical access to justice.

In Australia, a comprehensive legal and institutional architecture exists to support access to justice. The Australian Human Rights Commission, Legal Aid Commissions, and community legal centres provide pathways for legal redress. The Disability Discrimination Act 1992 (Cth) allows persons with disabilities to file complaints and seek remedies. However, critics argue that gaps remain, particularly in rural and indigenous communities, and in addressing compounded or intersectional forms of discrimination.

In contrast, Indonesia has made notable legal progress but continues to face significant obstacles. Despite the enactment of Law No. 8 of 2016, challenges such as insufficient accommodations in courtrooms, limited awareness among legal professionals, underfunded legal aid services, and fragmented local governance persist. Disability rights organizations and civil society actors have become crucial in filling institutional voids, but their capacity is constrained by resource limitations and policy incoherence.

This study is organized as follows: Part I introduces the conceptual framework and legal definitions of disability and access to justice. Part II outlines the methodology, including the legal sources and comparative strategy. Part III presents the legal and institutional frameworks in each country. Part IV offers comparative insights and policy implications, with attention to best practices from the Australian experience. The conclusion offers recommendations for future reforms and identifies areas for further research.

Table 1: Study Frameworks



Source: Author's summary based on study framework, 2025

Research Method

This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical

approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities (CRPD).⁸ The core objective is to understand how the rule of law operates in enabling or constraining this right across divergent socio-legal contexts, and to identify both convergences and divergences in legal and institutional practices.

Table 2: Description of Research Method

| Component | Description |
|----------------------------|--|
| Research Design | Comparative qualitative legal research design using doctrinal and non-doctrinal methods. |
| Approach | Normative-empirical approach combining legal analysis with field data on implementation. |
| Jurisdictions Studied | Indonesia and Australia |
| Data Sources | <ul style="list-style-type: none"> - Primary legal sources (e.g., CRPD, national laws, court decisions) - Secondary sources (academic journals, reports, policy briefs) |
| Empirical Data | Interviews and document analysis related to legal institutions, courts, and disabled persons' organizations in both countries. |
| Legal Instruments Analyzed | <ul style="list-style-type: none"> - Convention on the Rights of Persons with Disabilities (CRPD) - Constitution of Indonesia and Australia - Disability laws and regulations |
| Key Themes | <ul style="list-style-type: none"> - Legal access and barriers for disabled persons - Implementation of CRPD obligations - Role of national institutions and civil society |
| Data Collection Methods | <ul style="list-style-type: none"> - Literature review - Legal document analysis - Stakeholder interviews (limited, purposive sampling) |
| Analysis Technique | Thematic content analysis and comparative legal analysis |
| Ethical Considerations | Compliance with research ethics including confidentiality, informed consent (for |

⁸ Amrit Kharel, "Doctrinal Legal Research", *SSRN Electronic Journal* (February 26, 2018), <https://doi.org/10.2139/ssrn.3130525>.

| | |
|-------------|---|
| | interviews), and respect for vulnerable populations. |
| Limitations | Limited access to detailed case law in Indonesia, time constraints in data collection, and language barriers in interpreting legal texts. |

Source: *Author's summary based on methodology part, 2025*

Discussion/Result

This study reveals several key findings concerning the implementation of the right to access to justice for persons with disabilities within the legal frameworks of Australia and Indonesia. Using Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) as a normative benchmark, the results highlight how two countries with divergent legal cultures, institutional capacities, and levels of socio-economic development have responded to their international legal obligations to ensure equal access to justice.⁹

Legal and Institutional Frameworks

Australia has established a relatively comprehensive legal and institutional infrastructure for ensuring access to justice for persons with disabilities. The Disability Discrimination Act 1992 (Cth) serves as the primary legislative instrument, explicitly prohibiting discrimination on the basis of disability in various spheres, including legal proceedings. The Act provides a justiciable cause of action for individuals who experience discrimination, enabling them to seek redress through the Australian Human Rights Commission (AHRC) or the court system.

Complementing this are various support structures such as specialist legal aid services, community legal centres, and accessibility guidelines for courtrooms and legal procedures. Courts in Australia are increasingly

⁹ Mathe Scholten and Gather J. Adverse, "Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward", *Journal of Medical Ethics* 44, no. 4 (April, 2018), p. 226-233, DOI: 10.1136/medethics-2017-104414.

required to make "reasonable adjustments" to ensure procedural fairness, such as providing sign language interpreters, easy-read materials, and allowing the presence of support persons.

By contrast, Indonesia's legal framework, while making notable progress since the enactment of Law No. 8 of 2016 on Persons with Disabilities, remains underdeveloped in its implementation mechanisms. The law includes principles of non-discrimination, equal recognition before the law, and access to justice, aligning conceptually with the CRPD. However, it lacks detailed operational procedures, enforcement mechanisms, and institutional clarity.

Moreover, although the National Commission on Human Rights (Komnas HAM) and several ministries have developed programs to support the rights of persons with disabilities, coordination remains fragmented, and implementation is highly dependent on local government capacity.¹⁰ Indonesia's legal pluralism and decentralization also mean that judicial and administrative responses vary significantly across regions, with rural and under-resourced areas facing the most acute deficits.

Practical Barriers to Access

Despite Australia's stronger legal and institutional systems, several practical barriers persist. Intersectional discrimination – especially affecting Indigenous Australians with disabilities – remains a substantial issue. Many Aboriginal and Torres Strait Islander people experience compounded disadvantage in accessing the legal system due to geographic isolation, linguistic differences, socio-economic marginalization, and lack of culturally competent services.

¹⁰ Azadeh Chalabi, "Developments and Challenges of Designing National Human Rights Action Plans: 1994–2024", *Journal of Human Rights Practice* 17, no. 2 (Maret 20, 2025), <https://doi.org/10.1093/jhuman/haaf002>.

Remote regions in Australia often lack sufficient legal aid infrastructure or disability specialists, and court staff may not be adequately trained in dealing with individuals with intellectual or psychosocial disabilities. While legal standards exist, enforcement and uniform implementation remain a challenge. Moreover, some procedural accommodations are only provided upon request, which assumes that individuals are both aware of their rights and able to navigate complex legal systems – conditions not always met.¹¹

In Indonesia, barriers are even more pronounced. The physical inaccessibility of court buildings, the lack of sign language interpreters, limited legal aid services, and the absence of awareness among judicial personnel significantly impair access. Moreover, cultural stigmas and paternalistic attitudes toward disability further obstruct meaningful participation in legal processes. In many cases, persons with disabilities are seen as passive recipients of assistance rather than active rights-holders, which undermines the spirit of the CRPD.

Court proceedings often lack even basic accessibility accommodations. For instance, blind litigants do not receive documents in Braille or accessible digital formats. Individuals with cognitive or intellectual disabilities frequently lack access to supported decision-making mechanisms, and there are no clear legal procedures to ensure that their testimonies are taken seriously or presented appropriately in court.¹²

Procedural Accommodations and Legal Empowerment

Australia has made important strides in promoting procedural accommodations as required by the CRPD. These include changes to

¹¹ Australian Human Rights Commission, *Inquiry into Australia's Human Rights Framework 2023*, Report, Australia.

¹² Australian Human Rights Commission, *About Disability Rights: Annual Report and Non-Financial Statement 2019-2020*, Report, Australia, <https://humanrights.gov.au/our-work/publications>.

courtroom procedures to allow for communication support, flexible scheduling, simplified language in court documents, and training for judicial officers on disability rights. Some states, like Victoria and New South Wales, have pioneered programs to support persons with cognitive impairments to participate effectively in legal proceedings.

Australia has also institutionalized supported decision-making in some areas, moving away from substitute decision-making models that undermine legal agency. The National Disability Insurance Scheme (NDIS), while not directly linked to the justice system, provides supports that can empower individuals to assert their legal rights.¹³

In Indonesia, there is limited evidence of procedural accommodations being mainstreamed into the justice system. While Law No. 8/2016 mandates equal treatment and non-discrimination, it does not outline clear obligations for courts to provide reasonable accommodations. Legal professionals often lack training in disability rights, and court guidelines do not contain disability-sensitive protocols.

Moreover, legal empowerment is largely driven by civil society organizations, which play a crucial role in providing legal aid, conducting community outreach, and training advocates with disabilities. However, such initiatives are mostly urban-centric and lack sustained governmental support or nationwide coverage.

Role of Civil Society and Advocacy

In both countries, civil society organizations have played a crucial role in advancing access to justice for persons with disabilities. In Australia, organizations such as People with Disability Australia, the Disability Advocacy Network Australia (DANA), and numerous local disability

¹³ Australian Human Rights Commission, *About Disability Rights*, p. 45.

advocacy groups have contributed to litigation, policy development, and public awareness campaigns.¹⁴

These groups have also engaged in strategic litigation to establish precedents in disability rights law, particularly around anti-discrimination, access to public services, and equal treatment in administrative and judicial processes. Notably, the Australian Human Rights Commission facilitates conciliation processes that are more accessible and less intimidating than formal court procedures.¹⁵

In Indonesia, civil society actors such as SIGAB (Sasana Inklusi dan Gerakan Advokasi Difabel), Perhimpunan Jiwa Sehat, and LBH (Legal Aid Institute) provide crucial services in the absence of state support. They offer legal counselling, represent clients in court, and conduct disability rights training for law enforcement and judiciary officials. However, their impact is constrained by resource limitations, lack of political support, and fragmented coordination with state institutions.

Comparative Strengths and Gaps

A comparative synthesis shows that Australia has successfully translated many CRPD principles into actionable laws and institutional practices, though challenges remain in ensuring uniform access across marginalized populations. Its strength lies in its human rights-based

¹⁴ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability* 2013, Report, Australia, <https://www.humanrights.gov.au/sites/default/files/document/publication/Access%20to%20Justice%20in%20the%20Criminal%20Justice%20System%20for%20People%20With%20Disability%20-%20Issues%20Paper%20April%202013.pdf>

¹⁵ Alysia Blackham and Dominique Allen, "Resolving Discrimination Claims Outside the Courts: Alternative Dispute Resolution in Australia and the United Kingdom", *Australian Journal of Labour Law* 31 (January 2019), p. 253-278, DOI:10.2139/ssrn.3362157.

approach, formal complaint mechanisms, and structured accommodations.¹⁶

Indonesia, while showing normative alignment with the CRPD, struggles with implementation, enforcement, and institutional preparedness. Legal reforms remain textual rather than transformative, and the justice system lacks disability-specific procedural safeguards. Furthermore, awareness and education among legal professionals are inadequate, limiting the reach of reform efforts.

The decentralized nature of Indonesian governance, combined with strong cultural norms around dependency and stigma, further complicates reform. By contrast, Australia's centralized regulatory bodies, independent commissions, and active monitoring mechanisms contribute significantly to the realization of access to justice.

The International Obligations Under the CRPD for Ratified States

The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations in 2006, marked a major advancement in promoting the rights and dignity of persons with disabilities worldwide.¹⁷ It establishes a comprehensive set of obligations for ratifying states, requiring them to ensure equal treatment, eliminate discrimination, promote accessibility, and guarantee full societal participation for individuals with disabilities. However, while the CRPD's ratification has been widespread, the extent and effectiveness of its implementation vary significantly across countries.

¹⁶ Mary Anne Noone and Lola Akin Ojelabi, "Alternative Dispute Resolution and Access to Justice in Australia", *International Journal of Law in Context* 16, no. 2 (June 3, 2020), p. 108-127.

¹⁷ Arlene Kanter, *The Failure of the United States to Ratify the CRPD in Recognizing Human Rights in Different Cultural Contexts*, (Singapore: Springer Singapore, 2020), p. 97-132.

Legal and Policy Obligations

At the core of the CRPD is the requirement for states to harmonize national laws and policies with the Convention's principles. Article 4 mandates the adoption of legislative and administrative measures to uphold the rights of persons with disabilities.¹⁸ While many countries have enacted disability-specific legislation following ratification, the gap between legislation and enforcement remains a serious issue. In some contexts, legal protections exist in name only, hindered by weak implementation, insufficient budgets, and limited political will.

Moreover, corruption, lack of institutional capacity, and low public awareness about the rights of persons with disabilities contribute to ongoing systemic barriers. Legislative reforms must be accompanied by robust enforcement mechanisms, public education initiatives, and capacity-building for legal professionals, policymakers, and service providers. Without these, the impact of new laws is greatly diminished, and disabled individuals remain vulnerable to discrimination and exclusion.¹⁹

Inclusive Education and Employment

Education and employment are crucial domains for realizing the rights of persons with disabilities, both of which are directly addressed in the CRPD. Article 24 promotes inclusive education, calling for the integration of students with disabilities into mainstream education systems. However, many countries continue to operate segregated education systems, limiting opportunities for interaction and equal participation. Even in inclusive settings, students with disabilities often face barriers such as inaccessible classrooms, lack of assistive technology, and teachers untrained in inclusive pedagogy. The absence of individualized support

¹⁸ Popovych T, "Legal Obligation as The Legal Value", *Law Review of Kyiv* 43 (2020).

¹⁹ Stefano Berteau, *Contemporary Perspectives on Legal Obligation*, (United Kingdom: Routledge, 2022).

and accommodations can hinder academic achievement and self-development.²⁰

Similarly, Article 27 emphasizes the right to work, yet unemployment and underemployment among persons with disabilities remain alarmingly high. Many workplaces are not adapted for inclusivity, and reasonable accommodations—a key concept under the CRPD—are often lacking. Misconceptions about the capabilities of persons with disabilities, combined with economic concerns about accommodation costs, further reduce employment opportunities. To address these gaps, governments must invest in inclusive education systems, vocational training, and employer incentives such as tax breaks. Empowering the private sector to create inclusive environments and fostering positive attitudes through awareness campaigns are also vital steps toward fulfilling CRPD obligations.²¹

Accessibility and Infrastructure

A central pillar of the CRPD is accessibility, enshrined in Article 9. Despite progress in some high-income countries, inaccessible infrastructure remains a widespread problem, especially in developing contexts. Public transportation, buildings, digital services, and communication tools often lack the necessary accommodations for persons with disabilities. This limits access to education, employment, healthcare, and civic participation.²²

²⁰ Australian Human Rights Commission, *Disability Rights: Disability Legal Services* 2025, Australia, <https://www.humanrights.gov.au/disability-rights-disability-legal-services>.

²¹ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability*, p. 4-5.

²² Andrea Broderick, "Of rights and Obligations: The Birth of Accessibility", *The International Journal of Human Rights* 24, no. 4 (August 13, 2019), p. 393-413, <https://doi.org/10.1080/13642987.2019.1634556>.

Digital accessibility, for example, is still a challenge. Government websites and online platforms frequently fail to follow international accessibility standards, leaving many individuals unable to access essential information and services. Similarly, healthcare facilities often lack physical access and disability-friendly communication methods, creating disparities in health outcomes.²³

Improving accessibility requires more than just infrastructure development; it involves inclusive design, stakeholder consultation, and ongoing evaluation. States must adopt universal design principles, provide accessible technology, and ensure public services—including health and transportation—are adapted for all.

Social Protection and Health

Social protection and healthcare services for persons with disabilities are emphasized in Articles 25 and 28 of the CRPD. Yet, persons with disabilities are disproportionately affected by poverty, unemployment, and exclusion from basic social services. Many social protection systems are not designed to meet the specific needs of disabled individuals, resulting in inadequate support and increased vulnerability.

Access to healthcare is often limited due to financial constraints, physical barriers, and a lack of trained personnel sensitive to disability-related needs. In many countries, assistive devices and rehabilitation services are not publicly funded, placing an undue burden on individuals and families.

To fulfil CRPD commitments, states must ensure that social protection programs are inclusive and needs-based, and that healthcare

²³ Chibike Amucheazi and Chidebe Matthew Nwankwo, "Accessibility to Infrastructure and Disability Rights in Nigeria: An Analysis of the Potential of the Discrimination Against Persons with Disability (Prohibition) Act 2018, *Commonwealth Law Bulletin* 46, no. 4 (June 7, 2020), p. 689-710, 10.1080/03050718.2020.1781674.

systems are equipped to deliver equitable, accessible services. Funding for assistive technologies, community-based rehabilitation, and disability-sensitive health training is essential to closing the gap.

Monitoring and International Cooperation

Monitoring mechanisms, mandated under Article 33, are essential for tracking the implementation of the CRPD. However, in many countries, monitoring bodies are underfunded, poorly staffed, or lack enforcement authority. This undermines accountability and allows violations of disability rights to persist.²⁴

Article 32 calls for international cooperation in areas such as capacity-building, research, and technology transfer. While some progress has been made, political instability and limited financial resources hinder cooperation, particularly in low- and middle-income countries. Effective collaboration between governments, international organizations, and civil society is key to sharing best practices and resources.

In conclusion, the CRPD represents a powerful framework for advancing the rights of persons with disabilities. However, ratification alone is not sufficient. Genuine implementation requires strong political will, sustained investment, inclusive policymaking, and robust accountability mechanisms. As states move forward, they must adopt a holistic approach, recognizing the interconnectedness of rights such as education, employment, health, and accessibility. Only then can the promise of the CRPD be fully realized, transforming societies into inclusive spaces where all individuals – regardless of ability – can thrive with dignity and equality.

²⁴ Tatyana Yu. Anopchenko and Vladislav I. Ostrovskiy, *Monitoring the Management of International Cooperation and Integration of Small and Medium-Sized Businesses in the Region: A Substantive Scientific and Methodological Approach*. In *Institute of Scientific Communications Conference*, (Springer International Publishing, 2019), pp. 2245-2255.

Table 3: Study Result summary

| Key Areas | Indonesia | Australia |
|---|--|--|
| Legal and Policy Framework | Ratified CRPD (2011); National Law No, 8/2016 on Disability Rights, Legal reforms exist, but implementation: weak. few sustained training programs | Strong legal alignment with CPRD, Disabinfifty Discrimination Act 1992 and National Disability Strategy in place |
| Awareness & Capacity Building | Limited awareness among government officials, legal professionals, and society. Few sustained training programs | Inclusion is emphasised and supported with funding and teacher training. Some regional disparity still exists |
| Inclusive Education | Education Law promotes inclusion, but special schools are still dominant Infrastructural and pedagogical barreirs | Anti-discrimination laws support workplace Inciusion, Financial incentives and employment services exist |
| Employment Opportunities | Low employment rates for persons with disabilities. Limited workplace accommodation, and private aincentives | Accessible healthcare policies, 2ssistive technologies and disability services more rde available |
| Accessibility (Infrastructure & Digital) | Many public buildings and transportation systems are not accessible. Digital services remain a challenge | Broader coverage with talioed disability benefits. Regular policy reviews and reforms |
| Healthcare Services | Uneven access, especially in rural areas. Barriers including cost, infrastructure, or communication | Independent Human Rights and Disability Discrimination Commissions with legal pover |
| International Cooperation | National Cornmission on Disabilities established, but lacks full independenc. | Actively contributes to international disability rights advocacy and development aid |

Source: *Analysed by author based on study findings, 2025*

Conclusion

The Convention on the Rights of Persons with Disabilities (CRPD) represents a transformative shift in how the rights of persons with disabilities are recognized and protected globally. With its comprehensive set of obligations, the CRPD not only positions persons with disabilities as rights holders but also emphasizes their active participation in all facets of society. Through these obligations, ratified states are tasked with creating an environment that fosters equality, removes barriers, and promotes inclusion. However, the effective implementation of these obligations remains a complex and ongoing challenge.

An examination of the CRPD's impact reveals the legal, social, and infrastructural reforms necessary to build truly inclusive societies. While many countries have made considerable strides in aligning their national laws with the CRPD, the enforcement of these laws and adequate allocation of resources often fall short. Key challenges, including barriers in education and employment, accessibility issues, and the insufficient provision of social protection and healthcare, highlight the significant gap between international commitments and tangible outcomes. Legal reforms, though vital, often face practical obstacles, such as limited funding, lack of professional training, and the persistence of social stigma surrounding disability. These challenges hinder the full realization of the CRPD's potential, underscoring the need for ratified states to move beyond law adoption and actively prioritize resources and action in critical areas such as inclusive education, accessible infrastructure, and integrated healthcare systems.

Finally, while the CRPD marks a significant milestone in the advancement of disability rights, its true success relies on the consistent and sustained efforts of ratified states to remove barriers, ensure accessibility, and create inclusive environments, so that the rule of law and access to justice for disabled persons can be fulfilled comprehensively. This study advocates for a comprehensive and collaborative approach to overcoming the challenges that continue to obstruct the full realization of the rights of persons with disabilities worldwide.

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Website

Australian Human Rights Commission.
Australian Legal Information Institute (AustLII)
Disability Advocacy Network Australia (DANA)

Legislation/treaties

The Australian Constitution
The Indonesia Constitution (Undang-Undang Dasar Negara Republik
Indonesia Tahun 1945)
Disabled Discrimination Act 1992 (Cth)
Law No. 8/2016 concerning Disabilities (Undang-Undang Nomor 8 Tahun
2016 tentang Disabilitas)
Government Regulation (PP) No. 52/2019 on the Efforts to Increase Social
Welfare for People with Disability in Indonesia
The Convention on the Rights of Persons with Disabilities (CRPD)

2. Bukti Konfirmasi Review dan Hasil Review (10 April 2025)



Muhammad Syuib <m.syuib@ar-raniry.ac.id>

[As-Siyasi] Editor Decision

2 messages

Rahmat Tegus Santoso Gobel <ejournal@radenintan.ac.id>
To: Muhammad Syuib <m.syuib@ar-raniry.ac.id>

10 April 2025 at 13:29

Muhammad Syuib:

We have reached a decision regarding your submission to As-Siyasi: Journal of Constitutional Law, "Ensuring Equal Justice: A Comparative Study on the Rule of Law and Access to Justice for Persons with Disabilities in Indonesia and Australia".

Our decision is: Revisions Required

Rahmat Tegus Santoso Gobel
(SCOPUS ID: 58990747400) IAIN Sultan Amai Gorontalo
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As-Siyasi : Journal of Constitutional Law
<http://ejournal.radenintan.ac.id/index.php/assiyasi>

Muhammad Syuib <m.syuib@ar-raniry.ac.id>
To: Rahmat Tegus Santoso Gobel <ejournal@radenintan.ac.id>

10 April 2025 at 17:36

Thank you very much Pak Rahmat, I will revise it soon
[Quoted text hidden]

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**Catatan
Reviewer A**



As-Siyasi: Journal of Constitutional Law
E-ISSN 2798-3528, Vol. 3 No. 2 (2023)
DOI: <http://dx.doi.org/10.24042/as-siyasi.v3i2.17969>

Ensuring Equal Justice: A Comparative Study on the Rule of Law and Access to Justice for Persons with Disabilities in Indonesia and Australia

Abstract

The objective of this research is to examine the rule of law in access to justice for disabled persons in Australia and Indonesia by comparing each other and what both countries can learn in implementing the rights of people with disability based on Convention on the Rights of Persons with Disabilities (CRPD) in the key area such as legal reforms, inclusive education, accessible employment, social protection, and healthcare. In reality, the implementation of CRPD remains fraught with challenges, these are including inadequate resources, lack of political will, social stigma, and insufficient monitoring mechanisms. Despite legal frameworks being in place, practical barriers persist, especially in areas such as accessible infrastructure, educational opportunities, and healthcare services. This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities. The findings underscore the importance of moving beyond legislative action to ensure that policies are effectively implemented and adequately funded, thus making the CRPD's vision of equality and inclusion a reality for all persons with disabilities.

Keywords: Disabled Persons, Access to Justice, Indonesia, Australia.

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“Equal Access to Justice for Persons with Disabilities: A Comparative Legal Analysis of Indonesia and Australia under the CRPD”

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1. Background of the study
2. Tujuan
3. Metode
4. Hasil penelitian
5. Kesimpulan



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Introduction

The rule of law is a cornerstone of democratic governance and constitutionalism. It is not only a safeguard against arbitrary use of state power but also serves as a normative and institutional framework to uphold fundamental rights and freedoms¹. A legal system that truly embodies the rule of law must guarantee equality before the law, legal certainty, procedural fairness, and most importantly, meaningful access to justice for all citizens—including marginalized populations. One such group that has historically faced exclusion and discrimination in legal systems worldwide is persons with disabilities. Ensuring that individuals with disabilities can access justice on an equal footing with others remains a central challenge in the realization of inclusive legal frameworks².

The importance of inclusive access to justice is explicitly recognized in international human rights instruments, particularly the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006. As of 2024, the CRPD has been ratified by 190 countries, signalling a global shift from viewing disability through a purely medical lens to embracing a social and rights-based approach. Article 13 of the CRPD, titled “Access to Justice,” requires States Parties to ensure effective access to justice for persons with disabilities. This includes the provision of procedural and age-appropriate accommodations, as well as measures to facilitate their full and active participation in all stages of legal proceedings—as witnesses, complainants, defendants, or other relevant roles.

Both Australia and Indonesia have ratified the CRPD—Australia in 2008 and Indonesia in 2011 (via Law No. 19 of 2011). While both countries

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¹ Susan Kiefel, “Social Justice and the Constitution Freedoms and Protections”, *James Cook University Law Review* 6, no. 1 (May 24, 2013): 20. <http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/JCULawRw/2013/1.html>.

² Tom Bingham, *The Rule of Law*, (London: Penguin Books, 2011), p. 1-9.

are legally bound by the treaty, their implementation paths differ significantly due to varying legal traditions, socio-political contexts, and institutional capacities³. Australia, with its advanced human rights infrastructure and a well-established common law tradition, has enacted the Disability Discrimination Act 1992 (Cth), which provides substantive and procedural protections for persons with disabilities. Indonesia, a country transitioning from an authoritarian past and marked by legal pluralism and decentralization, has taken a major step by passing Law No. 8 of 2016 on Persons with Disabilities. However, challenges remain in ensuring legal empowerment, institutional coordination, and access to justice at both national and local levels.

This comparative study is driven by a central research question: To what extent have Australia and Indonesia implemented the right of persons with disabilities to access justice, in line with the rule of law and the obligations of the CRPD? The study also explores supporting questions:

- 1) What are the legal and institutional frameworks in each country concerning disability rights and access to justice?
- 2) What barriers – whether legal, procedural, infrastructural, or socio-cultural – continue to hinder implementation?
- 3) Finally, what can Indonesia learn from Australia's more advanced legal and policy frameworks to enhance access to justice for its own disabled population?

Most existing research on disability rights in these two countries has primarily focused on substantive entitlements, such as access to education, employment, and healthcare. For instance, Schalock and Verdugo examined the use of quality-of-life indicators for people with intellectual

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³ Elizabeth Ellis, *Principles and Practice of Australian Law*, (Australia: Lawbook Co, 2013), p. 165-6.

disabilities.⁴ Other studies, including those by Abdal Rohim⁵ studied about the legal protection and rights fulfilment of people with mental health disorders based on Islamic and health legal perspectives. Akhmad Sholeh⁶ studying the accessibility in education sector for persons with disability. Next, Further, Muhammad Dahlan and Syahriza Alkohir Anggoro⁷ studied the rights to work for persons with disabilities in public sector. There is no work studying a comparative study on the rule of law and access to justice for persons with disabilities in Indonesia and Australia.

This study aims to fill that gap by offering a doctrinal and comparative legal analysis of how the rule of law operates to either support or hinder access to justice for persons with disabilities in both Australia and Indonesia. The comparison is intentional: Australia represents a high-capacity, liberal democracy with a strong legal culture of rights protection, while Indonesia represents a post-authoritarian, legally pluralistic state grappling with democratic consolidation and institutional reform. This contrast offers valuable insights into the conditions that facilitate or obstruct the realization of access to justice.

Access to justice in this study is interpreted broadly. It is not limited to physical access to courtrooms or the mere presence of legal representation. Rather, it encompasses a wide range of interrelated elements: legal information must be accessible; legal services must be affordable and culturally competent; judicial processes must be procedurally fair; and legal actors must be trained to interact effectively and

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⁴ Schalock, RL and Verdugo, *Handbook on Quality of Life for Human Service Practitioners*, (USA: Amer Assn on Intellectual & Devel, 2002).

⁵ Abdal Rohim, "Legal Protection and Rights Fulfilment of People with Mental Health Disorders: An Analysis of Islamic and Health Legal Perspectives", *As-Siyasi* 4, no. 2 (Desember 2024).

⁶ Akhmad Sholeh, "Islam dan Penyandang Disabilitas: Telaah Hak Aksesibilitas Penyandang Disabilitas terhadap Pendidikan", *Jurnal An-Nur* 4, no. 2 (Desember 2014).

⁷ Muhammad Dahlan and Syahriza Alkohir Anggoro, "Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis", *Undang: Jurnal Hukum* 4, no. 1 (Juni 5, 2021).

respectfully with persons with disabilities. Importantly, the CRPD's concept of "reasonable accommodation" is central—it requires modifications and adjustments that do not impose a disproportionate burden, yet enable individuals with disabilities to participate equally.

Furthermore, this paper operates on the principle that access to justice must be framed in terms of substantive, not merely formal, equality. Treating all individuals, the same under the law may perpetuate existing disadvantages. Substantive equality demands recognition of structural barriers and mandates differentiated treatment to level the playing field. This understanding is increasingly reflected in the jurisprudence of international and domestic courts, reinforcing the obligation of states to ensure not only theoretical legal equality, but actual, practical access to justice.

In Australia, a comprehensive legal and institutional architecture exists to support access to justice. The Australian Human Rights Commission, Legal Aid Commissions, and community legal centres provide pathways for legal redress. The Disability Discrimination Act 1992 (Cth) allows persons with disabilities to file complaints and seek remedies. However, critics argue that gaps remain, particularly in rural and indigenous communities, and in addressing compounded or intersectional forms of discrimination.

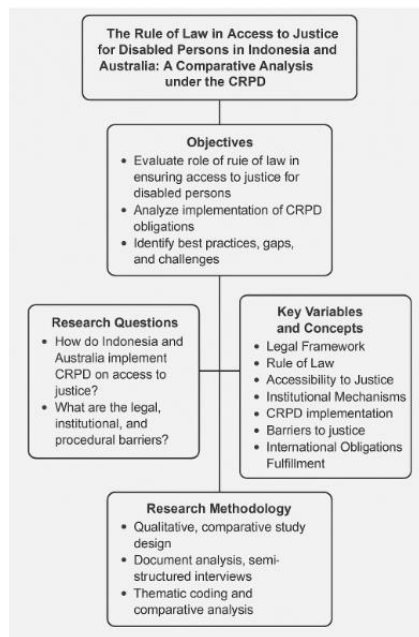
In contrast, Indonesia has made notable legal progress but continues to face significant obstacles. Despite the enactment of Law No. 8 of 2016, challenges such as insufficient accommodations in courtrooms, limited awareness among legal professionals, underfunded legal aid services, and fragmented local governance persist. Disability rights organizations and civil society actors have become crucial in filling institutional voids, but their capacity is constrained by resource limitations and policy incoherence.

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This study is organized as follows: Part I introduces the conceptual framework and legal definitions of disability and access to justice. Part II outlines the methodology, including the legal sources and comparative strategy. Part III presents the legal and institutional frameworks in each country. Part IV offers comparative insights and policy implications, with attention to best practices from the Australian experience. The conclusion offers recommendations for future reforms and identifies areas for further research.

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Table 1: Study Frameworks



Source: Author's summary based on study framework, 2025

Research Method

This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical

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approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities (CRPD).⁸ The core objective is to understand how the rule of law operates in enabling or constraining this right across divergent socio-legal contexts, and to identify both convergences and divergences in legal and institutional practices.

Table 2: Description of Research Method

| Component | Description |
|----------------------------|--|
| Research Design | Comparative qualitative legal research design using doctrinal and non-doctrinal methods. |
| Approach | Normative-empirical approach combining legal analysis with field data on implementation. |
| Jurisdictions Studied | Indonesia and Australia |
| Data Sources | <ul style="list-style-type: none"> - Primary legal sources (e.g., CRPD, national laws, court decisions) - Secondary sources (academic journals, reports, policy briefs) |
| Empirical Data | Interviews and document analysis related to legal institutions, courts, and disabled persons' organizations in both countries. |
| Legal Instruments Analyzed | <ul style="list-style-type: none"> - Convention on the Rights of Persons with Disabilities (CRPD) - Constitution of Indonesia and Australia - Disability laws and regulations |
| Key Themes | <ul style="list-style-type: none"> - Legal access and barriers for disabled persons - Implementation of CRPD obligations - Role of national institutions and civil society |
| Data Collection Methods | <ul style="list-style-type: none"> - Literature review - Legal document analysis - Stakeholder interviews (limited, purposive sampling) |
| Analysis Technique | Thematic content analysis and comparative legal analysis |
| Ethical Considerations | Compliance with research ethics including confidentiality, informed consent (for |

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⁸ Amrit Kharel, "Doctrinal Legal Research", *SSRN Electronic Journal* (February 26, 2018), <https://doi.org/10.2139/ssrn.3130525>.

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| | |
|-------------|---|
| | interviews), and respect for vulnerable populations. |
| Limitations | Limited access to detailed case law in Indonesia, time constraints in data collection, and language barriers in interpreting legal texts. |

Source: Author's summary based on methodology part, 2025

Discussion/Result

sub bab

This study reveals several key findings concerning the implementation of the right to access to justice for persons with disabilities within the legal frameworks of Australia and Indonesia. Using Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) as a normative benchmark, the results highlight how two countries with divergent legal cultures, institutional capacities, and levels of socio-economic development have responded to their international legal obligations to ensure equal access to justice.⁹

Legal and Institutional Frameworks

Australia has established a relatively comprehensive legal and institutional infrastructure for ensuring access to justice for persons with disabilities. The Disability Discrimination Act 1992 (Cth) serves as the primary legislative instrument, explicitly prohibiting discrimination on the basis of disability in various spheres, including legal proceedings. The Act provides a justiciable cause of action for individuals who experience discrimination, enabling them to seek redress through the Australian Human Rights Commission (AHRC) or the court system.

⁹ Mathe Scholten and Gather J. Adverse, "Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward", *Journal of Medical Ethics* 44, no. 4 (April, 2018), p. 226-233, DOI: 10.1136/medethics-2017-104414.

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Complementing this are various support structures such as specialist legal aid services, community legal centres, and accessibility guidelines for courtrooms and legal procedures. Courts in Australia are increasingly required to make "reasonable adjustments" to ensure procedural fairness, such as providing sign language interpreters, easy-read materials, and allowing the presence of support persons.

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By contrast, Indonesia's legal framework, while making notable progress since the enactment of Law No. 8 of 2016 on Persons with Disabilities, remains underdeveloped in its implementation mechanisms. The law includes principles of non-discrimination, equal recognition before the law, and access to justice, aligning conceptually with the CRPD. However, it lacks detailed operational procedures, enforcement mechanisms, and institutional clarity.

Moreover, although the National Commission on Human Rights (Komnas HAM) and several ministries have developed programs to support the rights of persons with disabilities, coordination remains fragmented, and implementation is highly dependent on local government capacity.¹⁰ Indonesia's legal pluralism and decentralization also mean that judicial and administrative responses vary significantly across regions, with rural and under-resourced areas facing the most acute deficits.

Practical Barriers to Access

Despite Australia's stronger legal and institutional systems, several practical barriers persist. Intersectional discrimination – especially affecting Indigenous Australians with disabilities – remains a substantial issue. Many Aboriginal and Torres Strait Islander people experience compounded disadvantage in accessing the legal system due to geographic isolation,

¹⁰ Azadeh Chalabi, "Developments and Challenges of Designing National Human Rights Action Plans: 1994–2024", *Journal of Human Rights Practice* 17, no. 2 (Maret 20, 2025), <https://doi.org/10.1093/jhuman/haaf002>.

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linguistic differences, socio-economic marginalization, and lack of culturally competent services.

Remote regions in Australia often lack sufficient legal aid infrastructure or disability specialists, and court staff may not be adequately trained in dealing with individuals with intellectual or psychosocial disabilities. While legal standards exist, enforcement and uniform implementation remain a challenge. Moreover, some procedural accommodations are only provided upon request, which assumes that individuals are both aware of their rights and able to navigate complex legal systems—conditions not always met.¹¹

In Indonesia, barriers are even more pronounced. The physical inaccessibility of court buildings, the lack of sign language interpreters, limited legal aid services, and the absence of awareness among judicial personnel significantly impair access. Moreover, cultural stigmas and paternalistic attitudes toward disability further obstruct meaningful participation in legal processes. In many cases, persons with disabilities are seen as passive recipients of assistance rather than active rights-holders, which undermines the spirit of the CRPD.

Court proceedings often lack even basic accessibility accommodations. For instance, blind litigants do not receive documents in Braille or accessible digital formats. Individuals with cognitive or intellectual disabilities frequently lack access to supported decision-making mechanisms, and there are no clear legal procedures to ensure that their testimonies are taken seriously or presented appropriately in court.¹²

Procedural Accommodations and Legal Empowerment

¹¹ Australian Human Rights Commission, *Inquiry into Australia's Human Rights Framework 2023*, Report, Australia.

¹² Australian Human Rights Commission, *About Disability Rights: Annual Report and Non-Financial Statement 2019-2020*, Report, Australia, <https://humanrights.gov.au/our-work/publications>.

Australia has made important strides in promoting procedural accommodations as required by the CRPD. These include changes to courtroom procedures to allow for communication support, flexible scheduling, simplified language in court documents, and training for judicial officers on disability rights. Some states, like Victoria and New South Wales, have pioneered programs to support persons with cognitive impairments to participate effectively in legal proceedings.

Australia has also institutionalized supported decision-making in some areas, moving away from substitute decision-making models that undermine legal agency. The National Disability Insurance Scheme (NDIS), while not directly linked to the justice system, provides supports that can empower individuals to assert their legal rights.¹³

In Indonesia, there is limited evidence of procedural accommodations being mainstreamed into the justice system. While Law No. 8/2016 mandates equal treatment and non-discrimination, it does not outline clear obligations for courts to provide reasonable accommodations. Legal professionals often lack training in disability rights, and court guidelines do not contain disability-sensitive protocols.

Moreover, legal empowerment is largely driven by civil society organizations, which play a crucial role in providing legal aid, conducting community outreach, and training advocates with disabilities. However, such initiatives are mostly urban-centric and lack sustained governmental support or nationwide coverage.

Role of Civil Society and Advocacy

In both countries, civil society organizations have played a crucial role in advancing access to justice for persons with disabilities. In Australia, organizations such as People with Disability Australia, the Disability

¹³ Australian Human Rights Commission, *About Disability Rights*, p. 45.

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Advocacy Network Australia (DANA), and numerous local disability advocacy groups have contributed to litigation, policy development, and public awareness campaigns.¹⁴

These groups have also engaged in strategic litigation to establish precedents in disability rights law, particularly around anti-discrimination, access to public services, and equal treatment in administrative and judicial processes. Notably, the Australian Human Rights Commission facilitates conciliation processes that are more accessible and less intimidating than formal court procedures.¹⁵

In Indonesia, civil society actors such as SIGAB (Sasana Inklusi dan Gerakan Advokasi Difabel), Perhimpunan Jiwa Sehat, and LBH (Legal Aid Institute) provide crucial services in the absence of state support. They offer legal counselling, represent clients in court, and conduct disability rights training for law enforcement and judiciary officials. However, their impact is constrained by resource limitations, lack of political support, and fragmented coordination with state institutions.

Comparative Strengths and Gaps

A comparative synthesis shows that Australia has successfully translated many CRPD principles into actionable laws and institutional practices, though challenges remain in ensuring uniform access across marginalized populations. Its strength lies in its human rights-based

¹⁴ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability 2013*, Report, Australia, <https://www.humanrights.gov.au/sites/default/files/document/publication/Access%20to%20Justice%20in%20the%20Criminal%20Justice%20System%20for%20People%20With%20Disability%20-%20Issues%20Paper%20April%202013.pdf>

¹⁵ Alysia Blackham and Dominique Allen, "Resolving Discrimination Claims Outside the Courts: Alternative Dispute Resolution in Australia and the United Kingdom", *Australian Journal of Labour Law* 31 (January 2019), p. 253-278, DOI:10.2139/ssrn.3362157.

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approach, formal complaint mechanisms, and structured accommodations.¹⁶

Indonesia, while showing normative alignment with the CRPD, struggles with implementation, enforcement, and institutional preparedness. Legal reforms remain textual rather than transformative, and the justice system lacks disability-specific procedural safeguards. Furthermore, awareness and education among legal professionals are inadequate, limiting the reach of reform efforts.

The decentralized nature of Indonesian governance, combined with strong cultural norms around dependency and stigma, further complicates reform. By contrast, Australia's centralized regulatory bodies, independent commissions, and active monitoring mechanisms contribute significantly to the realization of access to justice.

The International Obligations Under the CRPD for Ratified States

The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations in 2006, marked a major advancement in promoting the rights and dignity of persons with disabilities worldwide.¹⁷ It establishes a comprehensive set of obligations for ratifying states, requiring them to ensure equal treatment, eliminate discrimination, promote accessibility, and guarantee full societal participation for individuals with disabilities. However, while the CRPD's ratification has been widespread, the extent and effectiveness of its implementation vary significantly across countries.

¹⁶ Mary Anne Noone and Lola Akin Ojelabi, "Alternative Dispute Resolution and Access to Justice in Australia", *International Journal of Law in Context* 16, no. 2 (June 3, 2020), p. 108-127.

¹⁷ Arlene Kanter, *The Failure of the United States to Ratify the CRPD n Recognizing Human Rights in Different Cultural Contexts*, (Singapore: Springer Singapore, 2020), p. 97-132.

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Legal and Policy Obligations

At the core of the CRPD is the requirement for states to harmonize national laws and policies with the Convention's principles. Article 4 mandates the adoption of legislative and administrative measures to uphold the rights of persons with disabilities.¹⁸ While many countries have enacted disability-specific legislation following ratification, the gap between legislation and enforcement remains a serious issue. In some contexts, legal protections exist in name only, hindered by weak implementation, insufficient budgets, and limited political will.

Moreover, corruption, lack of institutional capacity, and low public awareness about the rights of persons with disabilities contribute to ongoing systemic barriers. Legislative reforms must be accompanied by robust enforcement mechanisms, public education initiatives, and capacity-building for legal professionals, policymakers, and service providers. Without these, the impact of new laws is greatly diminished, and disabled individuals remain vulnerable to discrimination and exclusion.¹⁹

Inclusive Education and Employment

Education and employment are crucial domains for realizing the rights of persons with disabilities, both of which are directly addressed in the CRPD. Article 24 promotes inclusive education, calling for the integration of students with disabilities into mainstream education systems. However, many countries continue to operate segregated education systems, limiting opportunities for interaction and equal participation. Even in inclusive settings, students with disabilities often face barriers such as inaccessible classrooms, lack of assistive technology, and teachers untrained in inclusive pedagogy. The absence of individualized support

¹⁸ Popovych T, "Legal Obligation as The Legal Value", *Law Review of Kyiv* 43 (2020).

¹⁹ Stefano Bertea, *Contemporary Perspectives on Legal Obligation*, (United Kingdom: Routledge, 2022).

and accommodations can hinder academic achievement and self-development.²⁰

Similarly, Article 27 emphasizes the right to work, yet unemployment and underemployment among persons with disabilities remain alarmingly high. Many workplaces are not adapted for inclusivity, and reasonable accommodations—a key concept under the CRPD—are often lacking. Misconceptions about the capabilities of persons with disabilities, combined with economic concerns about accommodation costs, further reduce employment opportunities. To address these gaps, governments must invest in inclusive education systems, vocational training, and employer incentives such as tax breaks. Empowering the private sector to create inclusive environments and fostering positive attitudes through awareness campaigns are also vital steps toward fulfilling CRPD obligations.²¹

Accessibility and Infrastructure

A central pillar of the CRPD is accessibility, enshrined in Article 9. Despite progress in some high-income countries, inaccessible infrastructure remains a widespread problem, especially in developing contexts. Public transportation, buildings, digital services, and communication tools often lack the necessary accommodations for persons with disabilities. This limits access to education, employment, healthcare, and civic participation.²²

²⁰ Australian Human Rights Commission, *Disability Rights: Disability Legal Services* 2025, Australia, <https://www.humanrights.gov.au/disability-rights-disability-legal-services>.

²¹ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability*, p. 4-5.

²² Andrea Broderick, "Of rights and Obligations: The Birth of Accessibility", *The International Journal of Human Rights* 24, no. 4 (August 13, 2019), p. 393-413, <https://doi.org/10.1080/13642987.2019.1634556>.

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Digital accessibility, for example, is still a challenge. Government websites and online platforms frequently fail to follow international accessibility standards, leaving many individuals unable to access essential information and services. Similarly, healthcare facilities often lack physical access and disability-friendly communication methods, creating disparities in health outcomes.²³

Improving accessibility requires more than just infrastructure development; it involves inclusive design, stakeholder consultation, and ongoing evaluation. States must adopt universal design principles, provide accessible technology, and ensure public services—including health and transportation—are adapted for all.

Social Protection and Health

Social protection and healthcare services for persons with disabilities are emphasized in Articles 25 and 28 of the CRPD. Yet, persons with disabilities are disproportionately affected by poverty, unemployment, and exclusion from basic social services. Many social protection systems are not designed to meet the specific needs of disabled individuals, resulting in inadequate support and increased vulnerability.

Access to healthcare is often limited due to financial constraints, physical barriers, and a lack of trained personnel sensitive to disability-related needs. In many countries, assistive devices and rehabilitation services are not publicly funded, placing an undue burden on individuals and families.

To fulfil CRPD commitments, states must ensure that social protection programs are inclusive and needs-based, and that healthcare

²³ Chibike Amucheazi and Chidebe Matthew Nwankwo, "Accessibility to Infrastructure and Disability Rights in Nigeria: An Analysis of the Potential of the Discrimination Against Persons with Disability (Prohibition) Act 2018, *Commonwealth Law Bulletin* 46, no. 4 (June 7, 2020), p. 689-710, 10.1080/03050718.2020.1781674.

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systems are equipped to deliver equitable, accessible services. Funding for assistive technologies, community-based rehabilitation, and disability-sensitive health training is essential to closing the gap.

Monitoring and International Cooperation

Monitoring mechanisms, mandated under Article 33, are essential for tracking the implementation of the CRPD. However, in many countries, monitoring bodies are underfunded, poorly staffed, or lack enforcement authority. This undermines accountability and allows violations of disability rights to persist.²⁴

Article 32 calls for international cooperation in areas such as capacity-building, research, and technology transfer. While some progress has been made, political instability and limited financial resources hinder cooperation, particularly in low- and middle-income countries. Effective collaboration between governments, international organizations, and civil society is key to sharing best practices and resources.

In conclusion, the CRPD represents a powerful framework for advancing the rights of persons with disabilities. However, ratification alone is not sufficient. Genuine implementation requires strong political will, sustained investment, inclusive policymaking, and robust accountability mechanisms. As states move forward, they must adopt a holistic approach, recognizing the interconnectedness of rights such as education, employment, health, and accessibility. Only then can the promise of the CRPD be fully realized, transforming societies into inclusive spaces where all individuals – regardless of ability – can thrive with dignity and equality.

²⁴ Tatyana Yu. Anopchenko and Vladislav I. Ostrovskiy, *Monitoring the Management of International Cooperation and Integration of Small and Medium-Sized Businesses in the Region: A Substantive Scientific and Methodological Approach*. In *Institute of Scientific Communications Conference*, (Springer International Publishing, 2019), pp. 2245-2255.

Table 3: Study Result summary

| Key Areas | Indonesia | Australia |
|---|--|--|
| Legal and Policy Framework | Ratified CRPD (2011); National Law No. 8/2016 on Disability Rights, Legal reforms exist, but implementation: weak. Few sustained training programs | Strong legal alignment with CRPD, Disability Discrimination Act 1992 and National Disability Strategy in place |
| Awareness & Capacity Building | Limited awareness among government officials, legal professionals, and society. Few sustained training programs | Inclusion is emphasised and supported with funding and teacher training. Some regional disparity still exists |
| Inclusive Education | Education Law promotes inclusion, but special schools are still dominant. Infrastructural and pedagogical barriers | Anti-discrimination laws support workplace inclusion, Financial incentives and employment services exist |
| Employment Opportunities | Low employment rates for persons with disabilities. Limited workplace accommodation, and private incentives | Accessible healthcare policies, Assistive technologies and disability services more available |
| Accessibility (Infrastructure & Digital) | Many public buildings and transportation systems are not accessible. Digital services remain a challenge | Broader coverage with tailored disability benefits. Regular policy reviews and reforms |
| Healthcare Services | Uneven access, especially in rural areas. Barriers including cost, infrastructure, or communication | Independent Human Rights and Disability Discrimination Commissions with legal power |
| International Cooperation | National Commission on Disabilities established, but lacks full independence. | Actively contributes to international disability rights advocacy and development aid |

Source: *Analysed by author based on study findings, 2025*

Conclusion

The Convention on the Rights of Persons with Disabilities (CRPD) represents a transformative shift in how the rights of persons with disabilities are recognized and protected globally. With its comprehensive set of obligations, the CRPD not only positions persons with disabilities as rights holders but also emphasizes their active participation in all facets of society. Through these obligations, ratified states are tasked with creating an environment that fosters equality, removes barriers, and promotes inclusion. However, the effective implementation of these obligations remains a complex and ongoing challenge.

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An examination of the CRPD's impact reveals the legal, social, and infrastructural reforms necessary to build truly inclusive societies. While many countries have made considerable strides in aligning their national laws with the CRPD, the enforcement of these laws and adequate allocation of resources often fall short. Key challenges, including barriers in education and employment, accessibility issues, and the insufficient provision of social protection and healthcare, highlight the significant gap between international commitments and tangible outcomes. Legal reforms, though vital, often face practical obstacles, such as limited funding, lack of professional training, and the persistence of social stigma surrounding disability. These challenges hinder the full realization of the CRPD's potential, underscoring the need for ratified states to move beyond law adoption and actively prioritize resources and action in critical areas such as inclusive education, accessible infrastructure, and integrated healthcare systems.

Finally, while the CRPD marks a significant milestone in the advancement of disability rights, its true success relies on the consistent and sustained efforts of ratified states to remove barriers, ensure accessibility, and create inclusive environments, so that the rule of law and access to justice for disabled persons can be fulfilled comprehensively. This study advocates for a comprehensive and collaborative approach to overcoming the challenges that continue to obstruct the full realization of the rights of persons with disabilities worldwide.

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Website

Australian Human Rights Commission.
Australian Legal Information Institute (AustLII)
Disability Advocacy Network Australia (DANA)

Legislation/treaties

The Australian Constitution
The Indonesia Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)
Disabled Discrimination Act 1992 (Cth)
Law No. 8/2016 concerning Disabilities (Undang-Undang Nomor 8 Tahun 2016 tentang Disabilitas)
Government Regulation (PP) No. 52/2019 on the Efforts to Increase Social Welfare for People with Disability in Indonesia
The Convention on the Rights of Persons with Disabilities (CRPD)

Catatan
Reviewer B



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DOI: <http://dx.doi.org/10.24042/as-siyasi.v3i2.17969>

Ensuring Equal Justice: A Comparative Study on the Rule of Law and Access to Justice for Persons with Disabilities in Indonesia and Australia

Abstract

The objective of this research is to examine the rule of law in access to justice for disabled persons in Australia and Indonesia by comparing each other and what both countries can learn in implementing the rights of people with disability based on Convention on the Rights of Persons with Disabilities (CRPD) in the key area such as legal reforms, inclusive education, accessible employment, social protection, and healthcare. In reality, the implementation of CRPD remains fraught with challenges, these are including inadequate resources, lack of political will, social stigma, and insufficient monitoring mechanisms. Despite legal frameworks being in place, practical barriers persist, especially in areas such as accessible infrastructure, educational opportunities, and healthcare services. This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities. The findings underscore the importance of moving beyond legislative action to ensure that policies are effectively implemented and adequately funded, thus making the CRPD's vision of equality and inclusion a reality for all persons with disabilities.

Keywords: Disabled Persons, Access to Justice, Indonesia, Australia.

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Background of the study
Tujuan
Hasil penelitian
kesimpulan



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Introduction

The rule of law is a cornerstone of democratic governance and constitutionalism. It is not only a safeguard against arbitrary use of state power but also serves as a normative and institutional framework to uphold fundamental rights and freedoms¹. A legal system that truly embodies the rule of law must guarantee equality before the law, legal certainty, procedural fairness, and most importantly, meaningful access to justice for all citizens—including marginalized populations. One such group that has historically faced exclusion and discrimination in legal systems worldwide is persons with disabilities. Ensuring that individuals with disabilities can access justice on an equal footing with others remains a central challenge in the realization of inclusive legal frameworks².

The importance of inclusive access to justice is explicitly recognized in international human rights instruments, particularly the United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006. As of 2024, the CRPD has been ratified by 190 countries, signalling a global shift from viewing disability through a purely medical lens to embracing a social and rights-based approach. Article 13 of the CRPD, titled “Access to Justice,” requires States Parties to ensure effective access to justice for persons with disabilities. This includes the provision of procedural and age-appropriate accommodations, as well as measures to facilitate their full and active participation in all stages of legal proceedings—as witnesses, complainants, defendants, or other relevant roles.

Both Australia and Indonesia have ratified the CRPD—Australia in 2008 and Indonesia in 2011 (via Law No. 19 of 2011). While both countries

¹ Susan Kiefel, “Social Justice and the Constitution Freedoms and Protections”, *James Cook University Law Review* 6, no. 1 (May 24, 2013): 20. <http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/JCULawRw/2013/1.html>.

² Tom Bingham, *The Rule of Law*, (London: Penguin Books, 2011), p. 1-9.

are legally bound by the treaty, their implementation paths differ significantly due to varying legal traditions, socio-political contexts, and institutional capacities³. Australia, with its advanced human rights infrastructure and a well-established common law tradition, has enacted the Disability Discrimination Act 1992 (Cth), which provides substantive and procedural protections for persons with disabilities. Indonesia, a country transitioning from an authoritarian past and marked by legal pluralism and decentralization, has taken a major step by passing Law No. 8 of 2016 on Persons with Disabilities. However, challenges remain in ensuring legal empowerment, institutional coordination, and access to justice at both national and local levels.

This comparative study is driven by a central research question: To what extent have Australia and Indonesia implemented the right of persons with disabilities to access justice, in line with the rule of law and the obligations of the CRPD? The study also explores supporting questions:

- 1) What are the legal and institutional frameworks in each country concerning disability rights and access to justice?
- 2) What barriers – whether legal, procedural, infrastructural, or socio-cultural – continue to hinder implementation?
- 3) Finally, what can Indonesia learn from Australia's more advanced legal and policy frameworks to enhance access to justice for its own disabled population?

Most existing research on disability rights in these two countries has primarily focused on substantive entitlements, such as access to education, employment, and healthcare. For instance, Schalock and Verdugo examined the use of quality-of-life indicators for people with intellectual

³ Elizabeth Ellis, *Principles and Practice of Australian Law*, (Australia: Lawbook Co, 2013), p. 165-6.

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disabilities.⁴ Other studies, including those by Abdal Rohim⁵ studied about the legal protection and rights fulfilment of people with mental health disorders based on Islamic and health legal perspectives. Akhmad Sholeh⁶ studying the accessibility in education sector for persons with disability. Next, Further, Muhammad Dahlan and Syahriza Alkohir Anggoro⁷ studied the rights to work for persons with disabilities in public sector. There is no work studying a comparative study on the rule of law and access to justice for persons with disabilities in Indonesia and Australia.

[This study aims to fill that gap by offering a doctrinal and comparative legal analysis of how the rule of law operates to either support or hinder access to justice for persons with disabilities in both Australia and Indonesia. The comparison is intentional: Australia represents a high-capacity, liberal democracy with a strong legal culture of rights protection, while Indonesia represents a post-authoritarian, legally pluralistic state grappling with democratic consolidation and institutional reform. This contrast offers valuable insights into the conditions that facilitate or obstruct the realization of access to justice.]

Access to justice in this study is interpreted broadly. It is not limited to physical access to courtrooms or the mere presence of legal representation. Rather, it encompasses a wide range of interrelated elements: legal information must be accessible; legal services must be affordable and culturally competent; judicial processes must be procedurally fair; and legal actors must be trained to interact effectively and

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⁴ Schalock, RL and Verdugo, *Handbook on Quality of Life for Human Service Practitioners*, (USA: Amer Assn on Intellectual & Devel, 2002).

⁵ Abdal Rohim, "Legal Protection and Rights Fulfilment of People with Mental Health Disorders: An Analysis of Islamic and Health Legal Perspectives", *As-Siyasi* 4, no. 2 (Desember 2024).

⁶ Akhmad Sholeh, "Islam dan Penyandang Disabilitas: Telaah Hak Aksesibilitas Penyandang Disabilitas terhadap Pendidikan", *Jurnal An-Nur* 4, no. 2 (Desember 2014).

⁷ Muhammad Dahlan and Syahriza Alkohir Anggoro, "Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik: Antara Model Disabilitas Sosial dan Medis", *Undang: Jurnal Hukum* 4, no. 1 (Juni 5, 2021).

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respectfully with persons with disabilities. Importantly, the CRPD's concept of "reasonable accommodation" is central—it requires modifications and adjustments that do not impose a disproportionate burden, yet enable individuals with disabilities to participate equally.

Furthermore, this paper operates on the principle that access to justice must be framed in terms of substantive, not merely formal, equality. Treating all individuals, the same under the law may perpetuate existing disadvantages. Substantive equality demands recognition of structural barriers and mandates differentiated treatment to level the playing field. This understanding is increasingly reflected in the jurisprudence of international and domestic courts, reinforcing the obligation of states to ensure not only theoretical legal equality, but actual, practical access to justice.

In Australia, a comprehensive legal and institutional architecture exists to support access to justice. The Australian Human Rights Commission, Legal Aid Commissions, and community legal centres provide pathways for legal redress. The Disability Discrimination Act 1992 (Cth) allows persons with disabilities to file complaints and seek remedies. However, critics argue that gaps remain, particularly in rural and indigenous communities, and in addressing compounded or intersectional forms of discrimination.

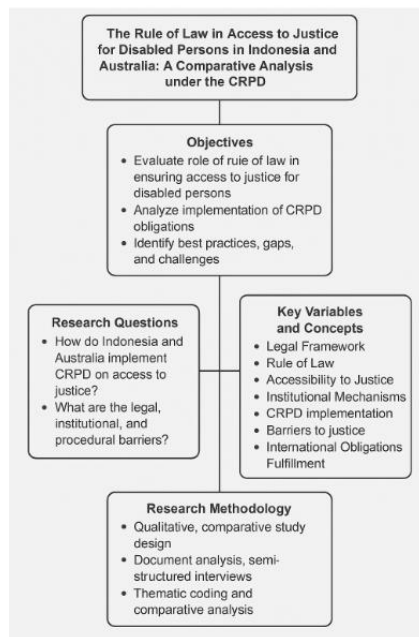
In contrast, Indonesia has made notable legal progress but continues to face significant obstacles. Despite the enactment of Law No. 8 of 2016, challenges such as insufficient accommodations in courtrooms, limited awareness among legal professionals, underfunded legal aid services, and fragmented local governance persist. Disability rights organizations and civil society actors have become crucial in filling institutional voids, but their capacity is constrained by resource limitations and policy incoherence.

Added literatur review

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This study is organized as follows: Part I introduces the conceptual framework and legal definitions of disability and access to justice. Part II outlines the methodology, including the legal sources and comparative strategy. Part III presents the legal and institutional frameworks in each country. Part IV offers comparative insights and policy implications, with attention to best practices from the Australian experience. The conclusion offers recommendations for future reforms and identifies areas for further research.

Table 1: Study Frameworks



Source: Author's summary based on study framework, 2025

Research Method

This study employs a comparative doctrinal legal research methodology, underpinned by a qualitative, normative, and analytical

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approach to assess how two distinct legal systems—Australia and Indonesia—interpret and implement the right of access to justice for persons with disabilities in accordance with the standards set by the Convention on the Rights of Persons with Disabilities (CRPD).⁸ The core objective is to understand how the rule of law operates in enabling or constraining this right across divergent socio-legal contexts, and to identify both convergences and divergences in legal and institutional practices.

Table 2: Description of Research Method

| Component | Description |
|----------------------------|--|
| Research Design | Comparative qualitative legal research design using doctrinal and non-doctrinal methods. |
| Approach | Normative-empirical approach combining legal analysis with field data on implementation. |
| Jurisdictions Studied | Indonesia and Australia |
| Data Sources | <ul style="list-style-type: none"> - Primary legal sources (e.g., CRPD, national laws, court decisions) - Secondary sources (academic journals, reports, policy briefs) |
| Empirical Data | Interviews and document analysis related to legal institutions, courts, and disabled persons' organizations in both countries. |
| Legal Instruments Analyzed | <ul style="list-style-type: none"> - Convention on the Rights of Persons with Disabilities (CRPD) - Constitution of Indonesia and Australia - Disability laws and regulations |
| Key Themes | <ul style="list-style-type: none"> - Legal access and barriers for disabled persons - Implementation of CRPD obligations - Role of national institutions and civil society |
| Data Collection Methods | <ul style="list-style-type: none"> - Literature review - Legal document analysis - Stakeholder interviews (limited, purposive sampling) |
| Analysis Technique | Thematic content analysis and comparative legal analysis |
| Ethical Considerations | Compliance with research ethics including confidentiality, informed consent (for |

⁸ Amrit Kharel, "Doctrinal Legal Research", *SSRN Electronic Journal* (February 26, 2018), <https://doi.org/10.2139/ssrn.3130525>.

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| | |
|-------------|---|
| | interviews), and respect for vulnerable populations. |
| Limitations | Limited access to detailed case law in Indonesia, time constraints in data collection, and language barriers in interpreting legal texts. |

Source: Author's summary based on methodology part, 2025

Discussion/Result

This study reveals several key findings concerning the implementation of the right to access to justice for persons with disabilities within the legal frameworks of Australia and Indonesia. Using Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) as a normative benchmark, the results highlight how two countries with divergent legal cultures, institutional capacities, and levels of socio-economic development have responded to their international legal obligations to ensure equal access to justice.⁹

Legal and Institutional Frameworks

Australia has established a relatively comprehensive legal and institutional infrastructure for ensuring access to justice for persons with disabilities. The Disability Discrimination Act 1992 (Cth) serves as the primary legislative instrument, explicitly prohibiting discrimination on the basis of disability in various spheres, including legal proceedings. The Act provides a justiciable cause of action for individuals who experience discrimination, enabling them to seek redress through the Australian Human Rights Commission (AHRC) or the court system.

Complementing this are various support structures such as specialist legal aid services, community legal centres, and accessibility guidelines for courtrooms and legal procedures. Courts in Australia are increasingly

Commented [U5]: Pembahasan awal diskusi uraikan teori atau konsep yang relevan dengan penelitian ini. seperti hukum akses keadilan, teori kesetaraan substantif sebagai pisau analisis.

⁹ Mathe Scholten and Gather J. Adverse, "Consequences of Article 12 of the UN Convention on the Rights of Persons with Disabilities for Persons with Mental Disabilities and an Alternative Way Forward", *Journal of Medical Ethics* 44, no. 4 (April, 2018), p. 226-233, DOI: 10.1136/medethics-2017-104414.

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required to make "reasonable adjustments" to ensure procedural fairness, such as providing sign language interpreters, easy-read materials, and allowing the presence of support persons.

By contrast, Indonesia's legal framework, while making notable progress since the enactment of Law No. 8 of 2016 on Persons with Disabilities, remains underdeveloped in its implementation mechanisms. The law includes principles of non-discrimination, equal recognition before the law, and access to justice, aligning conceptually with the CRPD. However, it lacks detailed operational procedures, enforcement mechanisms, and institutional clarity.

Moreover, although the National Commission on Human Rights (Komnas HAM) and several ministries have developed programs to support the rights of persons with disabilities, coordination remains fragmented, and implementation is highly dependent on local government capacity.¹⁰ Indonesia's legal pluralism and decentralization also mean that judicial and administrative responses vary significantly across regions, with rural and under-resourced areas facing the most acute deficits.

Practical Barriers to Access

Despite Australia's stronger legal and institutional systems, several practical barriers persist. Intersectional discrimination – especially affecting Indigenous Australians with disabilities – remains a substantial issue. Many Aboriginal and Torres Strait Islander people experience compounded disadvantage in accessing the legal system due to geographic isolation, linguistic differences, socio-economic marginalization, and lack of culturally competent services.

¹⁰ Azadeh Chalabi, "Developments and Challenges of Designing National Human Rights Action Plans: 1994–2024", *Journal of Human Rights Practice* 17, no. 2 (Maret 20, 2025), <https://doi.org/10.1093/jhuman/huaf002>.

Remote regions in Australia often lack sufficient legal aid infrastructure or disability specialists, and court staff may not be adequately trained in dealing with individuals with intellectual or psychosocial disabilities. While legal standards exist, enforcement and uniform implementation remain a challenge. Moreover, some procedural accommodations are only provided upon request, which assumes that individuals are both aware of their rights and able to navigate complex legal systems—conditions not always met.¹¹

In Indonesia, barriers are even more pronounced. The physical inaccessibility of court buildings, the lack of sign language interpreters, limited legal aid services, and the absence of awareness among judicial personnel significantly impair access. Moreover, cultural stigmas and paternalistic attitudes toward disability further obstruct meaningful participation in legal processes. In many cases, persons with disabilities are seen as passive recipients of assistance rather than active rights-holders, which undermines the spirit of the CRPD.

Court proceedings often lack even basic accessibility accommodations. For instance, blind litigants do not receive documents in Braille or accessible digital formats. Individuals with cognitive or intellectual disabilities frequently lack access to supported decision-making mechanisms, and there are no clear legal procedures to ensure that their testimonies are taken seriously or presented appropriately in court.¹²

Procedural Accommodations and Legal Empowerment

Australia has made important strides in promoting procedural accommodations as required by the CRPD. These include changes to

¹¹ Australian Human Rights Commission, *Inquiry into Australia's Human Rights Framework 2023*, Report, Australia.

¹² Australian Human Rights Commission, *About Disability Rights: Annual Report and Non-Financial Statement 2019-2020*, Report, Australia, <https://humanrights.gov.au/our-work/publications>.

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courtroom procedures to allow for communication support, flexible scheduling, simplified language in court documents, and training for judicial officers on disability rights. Some states, like Victoria and New South Wales, have pioneered programs to support persons with cognitive impairments to participate effectively in legal proceedings.

Australia has also institutionalized supported decision-making in some areas, moving away from substitute decision-making models that undermine legal agency. The National Disability Insurance Scheme (NDIS), while not directly linked to the justice system, provides supports that can empower individuals to assert their legal rights.¹³

In Indonesia, there is limited evidence of procedural accommodations being mainstreamed into the justice system. While Law No. 8/2016 mandates equal treatment and non-discrimination, it does not outline clear obligations for courts to provide reasonable accommodations. Legal professionals often lack training in disability rights, and court guidelines do not contain disability-sensitive protocols.

Moreover, legal empowerment is largely driven by civil society organizations, which play a crucial role in providing legal aid, conducting community outreach, and training advocates with disabilities. However, such initiatives are mostly urban-centric and lack sustained governmental support or nationwide coverage.

Role of Civil Society and Advocacy

In both countries, civil society organizations have played a crucial role in advancing access to justice for persons with disabilities. In Australia, organizations such as People with Disability Australia, the Disability Advocacy Network Australia (DANA), and numerous local disability

¹³ Australian Human Rights Commission, *About Disability Rights*, p. 45.

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advocacy groups have contributed to litigation, policy development, and public awareness campaigns.¹⁴

These groups have also engaged in strategic litigation to establish precedents in disability rights law, particularly around anti-discrimination, access to public services, and equal treatment in administrative and judicial processes. Notably, the Australian Human Rights Commission facilitates conciliation processes that are more accessible and less intimidating than formal court procedures.¹⁵

In Indonesia, civil society actors such as SIGAB (Sasana Inklusi dan Gerakan Advokasi Difabel), Perhimpunan Jiwa Sehat, and LBH (Legal Aid Institute) provide crucial services in the absence of state support. They offer legal counselling, represent clients in court, and conduct disability rights training for law enforcement and judiciary officials. However, their impact is constrained by resource limitations, lack of political support, and fragmented coordination with state institutions.

Comparative Strengths and Gaps

A comparative synthesis shows that Australia has successfully translated many CRPD principles into actionable laws and institutional practices, though challenges remain in ensuring uniform access across marginalized populations. Its strength lies in its human rights-based

¹⁴ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability 2013, Report, Australia*, <https://www.humanrights.gov.au/sites/default/files/document/publication/Access%20to%20Justice%20in%20the%20Criminal%20Justice%20System%20for%20People%20With%20Disability%20-%20Issues%20Paper%20April%202013.pdf>

¹⁵ Alysia Blackham and Dominique Allen, "Resolving Discrimination Claims Outside the Courts: Alternative Dispute Resolution in Australia and the United Kingdom", *Australian Journal of Labour Law* 31 (January 2019), p. 253-278, DOI:10.2139/ssrn.3362157.

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approach, formal complaint mechanisms, and structured accommodations.¹⁶

Indonesia, while showing normative alignment with the CRPD, struggles with implementation, enforcement, and institutional preparedness. Legal reforms remain textual rather than transformative, and the justice system lacks disability-specific procedural safeguards. Furthermore, awareness and education among legal professionals are inadequate, limiting the reach of reform efforts.

The decentralized nature of Indonesian governance, combined with strong cultural norms around dependency and stigma, further complicates reform. By contrast, Australia's centralized regulatory bodies, independent commissions, and active monitoring mechanisms contribute significantly to the realization of access to justice.

The International Obligations Under the CRPD for Ratified States

The Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations in 2006, marked a major advancement in promoting the rights and dignity of persons with disabilities worldwide.¹⁷ It establishes a comprehensive set of obligations for ratifying states, requiring them to ensure equal treatment, eliminate discrimination, promote accessibility, and guarantee full societal participation for individuals with disabilities. However, while the CRPD's ratification has been widespread, the extent and effectiveness of its implementation vary significantly across countries.

¹⁶ Mary Anne Noone and Lola Akin Ojelabi, "Alternative Dispute Resolution and Access to Justice in Australia", *International Journal of Law in Context* 16, no. 2 (June 3, 2020), p. 108-127.

¹⁷ Arlene Kanter, *The Failure of the United States to Ratify the CRPD n Recognizing Human Rights in Different Cultural Contexts*, (Singapore: Springer Singapore, 2020), p. 97-132.

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Misal: Bagaimana Australia vs. Indonesia memenuhi atau gagal memenuhi CRPD?

Legal and Policy Obligations

At the core of the CRPD is the requirement for states to harmonize national laws and policies with the Convention's principles. Article 4 mandates the adoption of legislative and administrative measures to uphold the rights of persons with disabilities.¹⁸ While many countries have enacted disability-specific legislation following ratification, the gap between legislation and enforcement remains a serious issue. In some contexts, legal protections exist in name only, hindered by weak implementation, insufficient budgets, and limited political will.

Moreover, corruption, lack of institutional capacity, and low public awareness about the rights of persons with disabilities contribute to ongoing systemic barriers. Legislative reforms must be accompanied by robust enforcement mechanisms, public education initiatives, and capacity-building for legal professionals, policymakers, and service providers. Without these, the impact of new laws is greatly diminished, and disabled individuals remain vulnerable to discrimination and exclusion.¹⁹

Inclusive Education and Employment

Education and employment are crucial domains for realizing the rights of persons with disabilities, both of which are directly addressed in the CRPD. Article 24 promotes inclusive education, calling for the integration of students with disabilities into mainstream education systems. However, many countries continue to operate segregated education systems, limiting opportunities for interaction and equal participation. Even in inclusive settings, students with disabilities often face barriers such as inaccessible classrooms, lack of assistive technology, and teachers untrained in inclusive pedagogy. The absence of individualized support

¹⁸ Popovych T, "Legal Obligation as The Legal Value", *Law Review of Kyiv* 43 (2020).

¹⁹ Stefano Bertea, *Contemporary Perspectives on Legal Obligation*, (United Kingdom: Routledge, 2022).

and accommodations can hinder academic achievement and self-development.²⁰

Similarly, Article 27 emphasizes the right to work, yet unemployment and underemployment among persons with disabilities remain alarmingly high. Many workplaces are not adapted for inclusivity, and reasonable accommodations—a key concept under the CRPD—are often lacking. Misconceptions about the capabilities of persons with disabilities, combined with economic concerns about accommodation costs, further reduce employment opportunities. To address these gaps, governments must invest in inclusive education systems, vocational training, and employer incentives such as tax breaks. Empowering the private sector to create inclusive environments and fostering positive attitudes through awareness campaigns are also vital steps toward fulfilling CRPD obligations.²¹

Accessibility and Infrastructure

A central pillar of the CRPD is accessibility, enshrined in Article 9. Despite progress in some high-income countries, inaccessible infrastructure remains a widespread problem, especially in developing contexts. Public transportation, buildings, digital services, and communication tools often lack the necessary accommodations for persons with disabilities. This limits access to education, employment, healthcare, and civic participation.²²

²⁰ Australian Human Rights Commission, *Disability Rights: Disability Legal Services* 2025, Australia, <https://www.humanrights.gov.au/disability-rights-disability-legal-services>.

²¹ Australian Human Rights Commission, *Access to Justice in the Criminal Justice System for People with Disability*, p. 4-5.

²² Andrea Broderick, "Of rights and Obligations: The Birth of Accessibility", *The International Journal of Human Rights* 24, no. 4 (August 13, 2019), p. 393-413, <https://doi.org/10.1080/13642987.2019.1634556>.

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Digital accessibility, for example, is still a challenge. Government websites and online platforms frequently fail to follow international accessibility standards, leaving many individuals unable to access essential information and services. Similarly, healthcare facilities often lack physical access and disability-friendly communication methods, creating disparities in health outcomes.²³

Improving accessibility requires more than just infrastructure development; it involves inclusive design, stakeholder consultation, and ongoing evaluation. States must adopt universal design principles, provide accessible technology, and ensure public services—including health and transportation—are adapted for all.

Social Protection and Health

Social protection and healthcare services for persons with disabilities are emphasized in Articles 25 and 28 of the CRPD. Yet, persons with disabilities are disproportionately affected by poverty, unemployment, and exclusion from basic social services. Many social protection systems are not designed to meet the specific needs of disabled individuals, resulting in inadequate support and increased vulnerability.

Access to healthcare is often limited due to financial constraints, physical barriers, and a lack of trained personnel sensitive to disability-related needs. In many countries, assistive devices and rehabilitation services are not publicly funded, placing an undue burden on individuals and families.

To fulfil CRPD commitments, states must ensure that social protection programs are inclusive and needs-based, and that healthcare

²³ Chibike Amucheazi and Chidebe Matthew Nwankwo, "Accessibility to Infrastructure and Disability Rights in Nigeria: An Analysis of the Potential of the Discrimination Against Persons with Disability (Prohibition) Act 2018, *Commonwealth Law Bulletin* 46, no. 4 (June 7, 2020), p. 689-710, 10.1080/03050718.2020.1781674.

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systems are equipped to deliver equitable, accessible services. Funding for assistive technologies, community-based rehabilitation, and disability-sensitive health training is essential to closing the gap.

Monitoring and International Cooperation

Monitoring mechanisms, mandated under Article 33, are essential for tracking the implementation of the CRPD. However, in many countries, monitoring bodies are underfunded, poorly staffed, or lack enforcement authority. This undermines accountability and allows violations of disability rights to persist.²⁴

Article 32 calls for international cooperation in areas such as capacity-building, research, and technology transfer. While some progress has been made, political instability and limited financial resources hinder cooperation, particularly in low- and middle-income countries. Effective collaboration between governments, international organizations, and civil society is key to sharing best practices and resources.

In conclusion, the CRPD represents a powerful framework for advancing the rights of persons with disabilities. However, ratification alone is not sufficient. Genuine implementation requires strong political will, sustained investment, inclusive policymaking, and robust accountability mechanisms. As states move forward, they must adopt a holistic approach, recognizing the interconnectedness of rights such as education, employment, health, and accessibility. Only then can the promise of the CRPD be fully realized, transforming societies into inclusive spaces where all individuals – regardless of ability – can thrive with dignity and equality.

²⁴ Tatyana Yu. Anopchenko and Vladislav I. Ostrovskiy, *Monitoring the Management of International Cooperation and Integration of Small and Medium-Sized Businesses in the Region: A Substantive Scientific and Methodological Approach*. In *Institute of Scientific Communications Conference*, (Springer International Publishing, 2019), pp. 2245-2255.

Table 3: Study Result summary

| Key Areas | Indonesia | Australia |
|---|--|--|
| Legal and Policy Framework | Ratified CRPD (2011); National Law No. 8/2016 on Disability Rights, Legal reforms exist, but implementation: weak. Few sustained training programs | Strong legal alignment with CPRD, Disability Discrimination Act 1992 and National Disability Strategy in place |
| Awareness & Capacity Building | Limited awareness among government officials, legal professionals, and society. Few sustained training programs | Inclusion is emphasised and supported with funding and teacher training. Some regional disparity still exists |
| Inclusive Education | Education Law promotes inclusion, but special schools are still dominant. Infrastructural and pedagogical barriers | Anti-discrimination laws support workplace inclusion, Financial incentives and employment services exist |
| Employment Opportunities | Low employment rates for persons with disabilities. Limited workplace accommodation, and private incentives | Accessible healthcare policies, Assistive technologies and disability services more available |
| Accessibility (Infrastructure & Digital) | Many public buildings and transportation systems are not accessible. Digital services remain a challenge | Broader coverage with tailored disability benefits. Regular policy reviews and reforms |
| Healthcare Services | Uneven access, especially in rural areas. Barriers including cost, infrastructure, or communication | Independent Human Rights and Disability Discrimination Commissions with legal power |
| International Cooperation | National Commission on Disabilities established, but lacks full independence. | Actively contributes to international disability rights advocacy and development aid |

Source: *Analysed by author based on study findings, 2025*

Conclusion

The Convention on the Rights of Persons with Disabilities (CRPD) represents a transformative shift in how the rights of persons with disabilities are recognized and protected globally. With its comprehensive set of obligations, the CRPD not only positions persons with disabilities as rights holders but also emphasizes their active participation in all facets of society. Through these obligations, ratified states are tasked with creating an environment that fosters equality, removes barriers, and promotes inclusion. However, the effective implementation of these obligations remains a complex and ongoing challenge.

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An examination of the CRPD's impact reveals the legal, social, and infrastructural reforms necessary to build truly inclusive societies. While many countries have made considerable strides in aligning their national laws with the CRPD, the enforcement of these laws and adequate allocation of resources often fall short. Key challenges, including barriers in education and employment, accessibility issues, and the insufficient provision of social protection and healthcare, highlight the significant gap between international commitments and tangible outcomes. Legal reforms, though vital, often face practical obstacles, such as limited funding, lack of professional training, and the persistence of social stigma surrounding disability. These challenges hinder the full realization of the CRPD's potential, underscoring the need for ratified states to move beyond law adoption and actively prioritize resources and action in critical areas such as inclusive education, accessible infrastructure, and integrated healthcare systems.

Finally, while the CRPD marks a significant milestone in the advancement of disability rights, its true success relies on the consistent and sustained efforts of ratified states to remove barriers, ensure accessibility, and create inclusive environments, so that the rule of law and access to justice for disabled persons can be fulfilled comprehensively. This study advocates for a comprehensive and collaborative approach to overcoming the challenges that continue to obstruct the full realization of the rights of persons with disabilities worldwide.

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Australian Human Rights Commission.
Australian Legal Information Institute (AustLII)
Disability Advocacy Network Australia (DANA)

Legislation/treaties

The Australian Constitution
The Indonesia Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945)
Disabled Discrimination Act 1992 (Cth)
Law No. 8/2016 concerning Disabilities (Undang-Undang Nomor 8 Tahun 2016 tentang Disabilitas)
Government Regulation (PP) No. 52/2019 on the Efforts to Increase Social Welfare for People with Disability in Indonesia
The Convention on the Rights of Persons with Disabilities (CRPD)

**3. Bukti Konfirmasi Hasil Review
Diterima (Accepted)
(7 Mei 2025)**



Muhammad Syuib <m.syuib@ar-raniry.ac.id>

Accepted

1 message

As Siyasi Journal of Constitutional Law <as_siyasi@radenintan.ac.id>

7 May 2025 at 13:39

To: m.syuib@ar-raniry.ac.id

Muhammad Syuib:

We have reached a decision regarding your submission to As-Siyasi: Journal of Constitutional Law, "Ensuring Equal Justice: A Comparative Study on the Rule of Law and Access to Justice for Persons with Disabilities in Indonesia and Australia".

Our decision is to: Accept Submission

as-siyasi as-siyasi

as_siyasi@radenintan.ac.id

**4. Bukti Konfirmasi Artikel Accepted
and Publish Online
(15 Mei 2025)**



Muhammad Syuib <m.syuib@ar-raniry.ac.id>

Notification of Your Paper Publication

1 message

As Siyasi Journal of Constitutional Law <as_siyasi@radenintan.ac.id>
To: m.syuib@ar-raniry.ac.id

15 May 2025 at 17:31

Dear Author

We are pleased to inform you that your paper titled "Equal Access to Justice for Persons with Disabilities: A Comparative Legal Analysis of Indonesia and Australia under the CPRD" has been published in Volume 5, Issue 1 of **As-Siyasi: Journal of Constitutional Law**. We sincerely thank you for your contribution in enriching the scholarly discourse in the field of constitutional law.

To access your article, please visit <https://ejournal.radenintan.ac.id/index.php/assiyasi/article/view/26855>

We hope this publication will provide valuable insights and become a useful reference for the development of constitutional law.

Should you require any further assistance, please do not hesitate to contact us.

Once again, thank you for your participation in our journal. We look forward to your future contributions.

Best Regards

Editor As-Siyasi Journal of Constitutional Law