



Legal Protection of the Right to Work for Workers with Mental Health Disorders: A Critical Comparative Analysis between Indonesian Labor Law and ILO Standards

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ABSTRACT

This article examines the extent to which Indonesian labor law protects the right to work for individuals with mental health disorders, and compares these protections with the standards set by the International Labour Organization (ILO). While Indonesia has ratified key international instruments such as the CRPD and ILO Convention No. 111, its domestic legal framework lacks specific, enforceable provisions regarding mental health-based discrimination, reasonable accommodation, and inclusive employment practices. Using a normative-comparative method, the study analyzes national statutes and ILO conventions, identifying gaps in legislative clarity, institutional implementation, and cultural acceptance. The ILO framework, particularly Conventions No. 159 and 111, offers detailed standards on equality of opportunity, vocational rehabilitation, and protection from indirect discrimination—areas where Indonesian law remains deficient. The article proposes harmonization strategies, including legal amendments, institutional reform, and ratification of ILO Convention No. 159. These findings contribute to the broader discourse on disability-inclusive labor law and underscore the urgent need for Indonesia to strengthen legal protections for workers with psychosocial disabilities.

Keywords: Disability Rights, Discrimination, ILO Standards, Inclusive Employment, Indonesian Labor Law, Mental Health, Reasonable Accommodation, Right to Work

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INTRODUCTION

The right to work is a fundamental human right recognized in multiple international instruments and national legal systems. However, in both developed and developing countries, individuals with mental health conditions continue to face structural barriers and systemic discrimination in accessing and retaining employment. In Indonesia, stigma toward mental illness remains pervasive, shaping not only social attitudes but also institutional behavior in labor recruitment, retention, and termination. While legal instruments exist to guarantee equal rights for persons with psychosocial disabilities, the implementation of these principles in practice—particularly in the labor sector—remains fragmented and inconsistent.

Globally, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), ratified by Indonesia through Law No. 19 of 2011, obligates state parties to ensure access to work and employment on an equal basis with others, including reasonable accommodation and protection from discrimination in the workplace.¹ The International Labour Organization (ILO) reinforces this commitment through key instruments such as Convention No. 159 (1983) on Vocational Rehabilitation and Employment (Disabled

¹ Law No. 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

Persons) and Convention No. 111 (1958) on Discrimination in Employment and Occupation, both of which articulate the state's responsibility to remove structural and attitudinal barriers to employment.²

In the Indonesian legal framework, Law No. 8 of 2016 on Persons with Disabilities constitutes the primary statutory reference, affirming that every person with a disability has the right to work without discrimination, and that the state, employers, and society at large must provide support for equal participation.³ However, this law does not distinguish between physical and mental disabilities in its implementation mechanisms. Moreover, the legal and institutional arrangements surrounding mental health-related discrimination in the labor market remain underdeveloped, particularly in terms of regulatory enforcement, awareness among employers, and judicial remedy.

Historically, Indonesian labor law has not been responsive to mental health concerns. The Manpower Law (Law No. 13 of 2003), along with its revisions in the Omnibus Law on Job Creation (Law No. 11 of 2020), largely treats disability as a marginal concern, and fails to mention mental health explicitly.⁴ There are no legal obligations for employers to provide reasonable accommodations for workers with psychosocial impairments, nor are there procedural safeguards to prevent discriminatory dismissals on the basis of mental illness. This legal silence stands in contrast to the global momentum toward integrating mental health into the broader human rights and labor inclusion agenda.

Discrimination against workers with mental health disorders can manifest in both overt and covert forms.⁵ Overt discrimination includes exclusion from recruitment processes due to psychiatric history, termination on grounds of mental instability without proper medical or procedural justification, or imposition of arbitrary health standards not tailored to specific job functions. Covert discrimination, on the other hand, occurs through the lack of workplace support, denial of flexible arrangements, or failure to acknowledge mental illness as a legitimate basis for temporary work adjustments.⁶ In many cases, workers hide their mental health condition out of fear of job loss, creating a cycle of invisibility, silence, and vulnerability.

By contrast, various jurisdictions have developed comprehensive frameworks to address these challenges. Canada, for instance, has established a robust duty to accommodate under its Human Rights Codes, requiring employers to adjust working conditions unless doing so causes undue hardship. Japan mandates employment quotas for persons with disabilities—including psychosocial disabilities—and offers financial incentives and penalties to ensure compliance. The European Union, through Directive 2000/78/EC, prohibits all forms of discrimination on the basis of disability and encourages employers to provide reasonable accommodation in recruitment, retention, and promotion.⁷

In Indonesia, however, three layers of obstacles persist. First, at the normative level, current legislation fails to provide clear definitions, operational standards, and procedural guidance specific to workers with mental disorders. Second, at the institutional level, labor inspectors, courts, and human rights bodies lack technical capacity and protocols to identify, address, and remedy mental health-based discrimination. Third, at the cultural level, societal stigma continues to shape employer attitudes, resulting

² ILO, *Convention No. 159 (1983) on Vocational Rehabilitation and Employment (Disabled Persons); Convention No. 111 (1958) on Discrimination in Employment and Occupation*.

³ Law No. 8 of 2016 on Persons with Disabilities, Articles 53–55.

⁴ Law No. 13 of 2003 on Manpower; Law No. 11 of 2020 on Job Creation (Omnibus Law).

⁵ Arubayi Damaro Olusoji, “INFLUENCE OF DIVERSITY ON EMPLOYEE SATISFACTION: A STUDY OF TERTIARY INSTITUTIONS IN THE NIGER DELTA REGION OF NIGERIA,” *Journal of Multidisciplinary Research*, March 16, 2023, 47–58, <https://doi.org/10.56943/jmr.v2i1.253>.

⁶ Tri Sulistiyan, “Pekerja Disabilitas dan Tantangan Inklusi di Dunia Kerja,” *Jurnal Hukum dan Pembangunan* 52, no. 2 (2022): 115–134.

⁷ Jennifer Degner, “Mental Disability and Employment: A Comparative Study of Canada and Japan,” *Int'l J. of Comparative Labour Law* 37, no. 1 (2021): 67–88.

in exclusionary practices that operate beneath the legal radar.⁸ These systemic barriers leave workers with mental health conditions without adequate protection or recourse in the face of unfair treatment.

In practical terms, the absence of technical guidelines on reasonable accommodation means that existing legal provisions remain largely symbolic. Without binding regulations and inter-agency coordination, employers receive little guidance on how to support workers with mental health conditions. Furthermore, the absence of disaggregated data on workers with psychosocial disabilities in Indonesia hinders evidence-based policy development and monitoring. As a result, the implementation of inclusive labor norms becomes diffuse, inconsistent, and difficult to assess.

The COVID-19 pandemic has intensified these concerns. Across the world, mental health has emerged as a central issue in post-pandemic labor relations. The shift to remote work, the rise in burnout, economic precarity, and social isolation have all heightened the prevalence of anxiety, depression, and trauma-related disorders. In this context, labor law must evolve to reflect a broader conception of worker well-being that includes psychological health and emotional resilience. Failure to do so will deepen existing inequalities and exclude millions from dignified work.

This article is therefore structured to address the following key questions:

1. How does Indonesian labor law currently address the right to work for persons with mental health disorders?
2. What standards and obligations are established by the ILO and other international legal instruments regarding non-discrimination and inclusion in employment for persons with psychosocial disabilities?
3. What gaps exist between Indonesia's legal framework and international standards, and what reforms are necessary to ensure effective protection?

By adopting a normative-comparative legal method, the study examines statutory, jurisprudential, and policy materials from Indonesia and the ILO. It highlights inconsistencies between legal commitments and enforcement realities, and offers a reform-oriented framework aimed at integrating mental health into inclusive labor law. Ultimately, this article seeks to contribute to the ongoing global conversation on labor justice, equality, and the right to decent work for all—especially those whose mental conditions have rendered them legally invisible and socially marginalized.

RESEARCH METHODOLOGY

This research employs a normative-comparative legal methodology, which is particularly suitable for analyzing the extent to which national laws conform to international standards, especially in areas where rights protection intersects with institutional structures and socio-legal stigma. The primary objective of this study is to critically assess how Indonesian labor law addresses the right to work for persons with mental health disorders, and to evaluate the compatibility of such legal frameworks with relevant international instruments, particularly conventions and recommendations issued by the International Labour Organization (ILO).

Under the normative legal method, the study focuses on statutory analysis and doctrinal interpretation. This includes a close reading of Indonesia's Law No. 8 of 2016 on Persons with Disabilities, Law No. 13 of 2003 on Manpower, and Law No. 11 of 2020 on Job Creation, along with their implementing regulations. These are examined in light of constitutional provisions on human rights (especially Article 28H and Article 27(2) of the 1945 Constitution of the Republic of Indonesia), as well as general principles of labor law, anti-discrimination law, and disability rights law embedded within the national legal system.⁹

⁸ Komnas HAM, *Thematic Report on Mental Disability and Employment Discrimination in Indonesia*, 2021.

⁹ Law No. 8 of 2016 on Persons with Disabilities; Law No. 13 of 2003 on Manpower; Law No. 11 of 2020 on Job Creation; and the 1945 Constitution of the Republic of Indonesia.

The study further analyzes relevant international instruments, with special emphasis on two foundational ILO conventions: Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) and Convention No. 111 on Discrimination in Employment and Occupation. These conventions are treated as part of the corpus of international labor law, and serve as normative benchmarks against which national law is evaluated. Where applicable, other ILO recommendations, general comments from the UN Committee on the Rights of Persons with Disabilities, and soft law materials such as the ILO Code of Practice on Managing Disability in the Workplace (2001) are used as supplementary interpretative tools.¹⁰

In applying the normative method, this research draws upon theories of legal protection, equality, and substantive justice, with particular reference to how legal systems define, classify, and enforce the concept of "reasonable accommodation" for individuals with psychosocial disabilities. These theories support the analysis of whether legal provisions merely offer formal recognition of rights, or whether they also establish institutional obligations and accountability mechanisms to ensure their fulfillment in practice. As part of this normative analysis, particular attention is given to the concept of indirect discrimination, where facially neutral rules or omissions result in exclusionary effects on workers with mental health conditions.¹¹

Complementing the normative approach is a comparative legal analysis, which allows the study to juxtapose Indonesia's national legal system with international standards, and selectively, with comparative experiences from jurisdictions such as Canada, Japan, and the European Union. These comparisons do not seek to establish uniformity but to identify best practices, interpretive trends, and implementation models that may inform regulatory reform in Indonesia. The comparative component is limited to legal texts, case law, and policy frameworks, and does not rely on empirical or socio-anthropological field data.¹²

The choice of Indonesia as the national case study is grounded in its dual commitment to human rights (through ratification of the CRPD and several ILO conventions) and its social-cultural complexity, where stigma against mental illness remains entrenched. Indonesia's pluralistic legal system, which blends civil law tradition with constitutional and administrative norms, presents both opportunities and challenges for disability rights enforcement. The selection of ILO standards as the international comparator is justified by the fact that the ILO remains the primary global authority on labor rights, with conventions that are binding upon ratification and accompanied by reporting mechanisms and technical support structures.¹³

As for the sources of law, this research relies on primary legal materials, including legislation, government regulations, international conventions, ILO instruments, and constitutional texts. In addition, secondary sources such as academic commentaries, journal articles, thematic reports from human rights institutions (e.g., Komnas HAM), and expert analyses from labor law scholars are consulted to enrich the doctrinal and theoretical discussion. All sources are critically evaluated for their normative content, interpretive clarity, and applicability to the Indonesian legal and policy context.¹⁴

¹⁰ ILO, *Convention No. 159 (1983)*; ILO, *Convention No. 111 (1958)*; ILO, *Code of Practice on Managing Disability in the Workplace* (Geneva: ILO, 2001); UN Committee on the Rights of Persons with Disabilities, *General Comment No. 2 on Accessibility* (2014).

¹¹ Lisa Waddington and Anna Lawson, "Reasonable Accommodation and Non-discrimination: Towards a More Unified European Perspective," *European Anti-Discrimination Law Review* 13 (2011): 14–23.

¹² Jennifer C. Degner, "Mental Disability and Employment: A Comparative Study of Canada and Japan," *International Journal of Comparative Labour Law* 37, no. 1 (2021): 67–88.

¹³ ILO, *Handbook of Procedures Relating to International Labour Conventions and Recommendations* (Geneva: ILO, 2019), 25–31.

¹⁴ Komnas HAM, *Thematic Report on Mental Disability and Employment Discrimination in Indonesia*, 2021; Tri Sulistiyan, "Pekerja Disabilitas dan Tantangan Inklusi di Dunia Kerja," *Jurnal Hukum dan Pembangunan* 52, no. 2 (2022): 115–134.

The analysis is conducted using qualitative-descriptive and prescriptive techniques. First, the study describes the current legal landscape and identifies textual provisions relevant to the rights of workers with mental health conditions. Second, it interprets these provisions in light of prevailing legal theories and international obligations. Third, it prescribes reform directions and institutional measures necessary to bridge identified normative and enforcement gaps. This multi-step approach ensures that the study is not merely descriptive but analytically grounded and normatively engaged.

It is important to note that this study does not utilize empirical methods, such as interviews, surveys, or field observations, although it does refer to documented reports and case examples to illustrate points of normative failure or institutional weakness. The emphasis remains on legal consistency, institutional design, and interpretive alignment between Indonesian law and ILO-based labor rights standards. In this regard, the study aims to contribute to the development of legal doctrine and policy reform proposals in the area of inclusive labor law, especially for individuals with mental health conditions whose legal visibility has been historically limited.

To ensure methodological rigor, the study adopts a critical lens that avoids normative formalism. It challenges tokenistic or symbolic legal provisions, seeks operational clarity in legal texts, and promotes actionable legal reforms based on international best practices. Ultimately, this methodological approach allows the research to offer substantive insights into how Indonesian labor law can evolve to better protect one of the most vulnerable groups in the workforce: persons with mental health disorders.

RESULT AND DISCUSSIONS

Legal Norms and Implementation Gaps in Indonesia's Protection of Workers with Mental Health Disorders

Indonesia's legal framework formally recognizes the right to work for persons with disabilities, including those with mental or psychosocial impairments. However, the substantive realization of this right remains severely underdeveloped, particularly in the case of workers with mental health disorders. Although legislative reforms have advanced disability inclusion in recent years, they have not translated into effective protection for individuals with mental illness, largely due to normative vagueness, institutional fragmentation, and persistent social stigma.

The principal legal instrument governing disability rights in Indonesia is Law No. 8 of 2016 on Persons with Disabilities, which repealed the previous Law No. 4 of 1997 and introduced a rights-based approach in line with the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Indonesia ratified in 2011.¹⁵ Article 53 of the 2016 Law explicitly affirms that "every person with a disability has the right to obtain employment without discrimination," and Article 54 requires the state to provide vocational training and job placement services for persons with disabilities.¹⁶ However, the law does not provide specific or detailed provisions addressing the rights of persons with mental health conditions, nor does it elaborate on the duties of employers to provide reasonable accommodation in such cases.

Even more critically, the law uses broad and ambiguous definitions. The term "disability" includes mental and intellectual impairments, but the categories are not disaggregated in a way that supports tailored regulatory or policy interventions. As a result, persons with mental health disorders are often rendered invisible in administrative data, program planning, and workplace regulation. Furthermore, while the law mandates the state to ensure employment access, it does not impose specific legal obligations on private-sector employers beyond general non-discrimination clauses.¹⁷ There is no mandatory quota system or enforcement mechanism tied to mental disability inclusion, unlike in some other jurisdictions such as Japan or Germany.

¹⁵ Law No. 8 of 2016 on Persons with Disabilities, preamble and Articles 1–2.

¹⁶ Ibid.

¹⁷ Tri Sulistiyan, "Pekerja Disabilitas dan Tantangan Inklusi di Dunia Kerja," *Jurnal Hukum dan Pembangunan* 52, no. 2 (2022): 115–134.

In the labor sector, the primary legislation is Law No. 13 of 2003 on Manpower, as amended by Law No. 11 of 2020 on Job Creation (the "Omnibus Law"). This framework contains provisions on equal employment opportunity and the protection of vulnerable groups. However, it fails to mention disability explicitly, let alone the category of mental illness. Provisions on medical examination, termination, and incapacity are drafted in general terms and do not incorporate disability-sensitive language. Notably, Article 153 of Law No. 13/2003, which prohibits discriminatory termination, does not include mental health as a protected category.¹⁸ As a result, workers with psychosocial conditions remain at risk of termination or exclusion without legal recourse.

Secondary legislation, such as Government Regulation No. 60 of 2020 on Disability Services, aims to operationalize Law No. 8/2016, but its implementation has been limited. There is no dedicated regulation or ministerial decree specifically addressing mental health in the workplace, nor are there detailed guidelines for reasonable accommodation, flexible working arrangements, or psychosocial support for employees. In practice, this regulatory silence contributes to the marginalization of workers with mental health disorders, particularly in formal employment settings.

The institutional architecture for labor inspection and dispute resolution also lacks capacity to address mental health discrimination. The Directorate General of Labor Inspection under the Ministry of Manpower does not maintain disaggregated data on cases involving mental disability. Inspectors are not trained to detect subtle or indirect forms of discrimination, such as job refusal on the basis of psychiatric history, or the failure to provide supportive work environments. Similarly, the Industrial Relations Court system has not developed a jurisprudence on mental health-related employment disputes, and very few cases have reached litigation, partly due to low legal literacy, stigma, and fear of retaliation among affected workers.¹⁹

In addition to legal and institutional gaps, societal perceptions of mental illness further undermine the rights of workers. Cultural attitudes in many parts of Indonesia equate mental illness with unpredictability, danger, or incompetence, making employers reluctant to hire or retain workers with disclosed psychiatric conditions. A 2021 thematic report by Komnas HAM found that employers often impose blanket fitness-for-work criteria that disqualify applicants with past or present mental health diagnoses, regardless of the nature or relevance of the condition to the job.²⁰ Such practices are rarely challenged due to the absence of procedural protections and anti-discrimination enforcement mechanisms.

Moreover, public-sector employment, which could serve as a model for inclusion, lacks affirmative policies. The Civil Service Law (Law No. 5 of 2014) provides for employment of persons with disabilities, but administrative selection processes continue to include medical and psychological assessments that may unintentionally disqualify individuals with treatable mental health conditions. There is no clear guideline on how agencies should assess fitness for duty in a manner that complies with human rights norms and avoids indirect discrimination.²¹

From a budgetary and planning perspective, mental health is also underprioritized in national employment and disability strategies. The Ministry of Manpower does not allocate targeted funding for mental health inclusion in the labor sector, and cross-sectoral coordination with the Ministry of Health, Social Affairs, and Human Rights remains weak. In contrast to physical disability, which has received more attention in accessibility and vocational training initiatives, psychosocial disability remains a blind spot in programmatic design and policy discourse.

In sum, Indonesia's current legal and institutional framework presents a fragmented and inconsistent approach to protecting the right to work for persons with mental health disorders. Legal norms exist in

¹⁸ Law No. 13 of 2003 on Manpower, Article 153(1); see also Law No. 11 of 2020 on Job Creation.

¹⁹ Komnas HAM, *Thematic Report on Mental Disability and Employment Discrimination in Indonesia* (Jakarta: Komnas HAM, 2021), 19–20.

²⁰ Ibid

²¹ Law No. 5 of 2014 on State Civil Apparatus; Komnas HAM, *Catatan Akhir Tahun 2022*, 34–36.

broad strokes but are insufficiently translated into enforceable obligations and responsive mechanisms. Regulatory instruments lack specificity, judicial institutions lack precedent, and administrative bodies lack resources and training. At the same time, cultural stigma exacerbates exclusionary practices, rendering legal protections ineffective in practice.

This situation stands in contrast with Indonesia's international commitments, particularly under the CRPD and ILO conventions. Without meaningful reform, the country risks perpetuating structural discrimination and violating its own legal obligations. The next section of this article will examine how the ILO's normative framework addresses the employment rights of persons with psychosocial disabilities and what lessons Indonesia might draw from these international standards to reframe its approach to inclusive labor law.

ILO Standards on the Right to Work for Persons with Psychosocial Disabilities

The International Labour Organization (ILO), as a specialized agency of the United Nations, plays a pivotal role in articulating and promoting global standards on decent work, non-discrimination, and the rights of persons with disabilities, including those with psychosocial or mental health conditions. As part of its normative function, the ILO has developed a robust body of conventions, recommendations, and codes of practice that frame the legal and policy dimensions of disability-inclusive employment. These standards serve not only as binding obligations for ratifying states but also as global benchmarks against which national laws and practices can be evaluated.

Among the most relevant instruments for workers with mental health disorders is ILO Convention No. 159 (1983) on Vocational Rehabilitation and Employment (Disabled Persons). Although the convention does not use the specific term "mental health" or "psychosocial disability," its broad definition of disability—"an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment"—encompasses those with mental health conditions.²² This expansive formulation aligns with the modern understanding of disability under the CRPD, where the environment plays a key role in shaping disability through barriers to participation.

Convention No. 159 obligates ratifying states to formulate, implement, and periodically review national policies on vocational rehabilitation and employment of persons with disabilities. These policies must be based on the principle of equality of opportunity and treatment and must cover both public and private sectors. The Convention further emphasizes the importance of community-based vocational rehabilitation services, access to mainstream employment, and the use of affirmative action or quota systems where necessary.²³ While the Convention does not prescribe a uniform model, it allows states to adapt measures according to their legal and institutional frameworks, provided that the outcome reflects substantive equality.

Equally relevant is ILO Convention No. 111 (1958) on Discrimination in Employment and Occupation, which prohibits any distinction, exclusion, or preference that impairs equality of opportunity or treatment in employment or occupation. The convention identifies discrimination based on race, color, sex, religion, political opinion, national extraction, or social origin. Although disability is not explicitly listed, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has, through its interpretive reports and comments, clarified that discrimination based on disability—including mental disability—is within the scope of the Convention when read in conjunction with later instruments and evolving jurisprudence.²⁴

Importantly, both conventions adopt a substantive equality framework, meaning that formal equality is not sufficient. Instead, states must take proactive steps to eliminate systemic barriers and to ensure that

²² ILO, *Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons)*, 1983, Art. 1.

²³ Ibid

²⁴ ILO, *General Survey on the Fundamental Conventions concerning Rights at Work* (Geneva: ILO, 2012), 49–52.

workers with disabilities can effectively enjoy their rights. This includes the adoption of positive measures, the modification of rules and practices that indirectly discriminate, and the provision of reasonable accommodation—an emerging standard that has gained legal status through the CRPD and ILO guidance documents.

In addition to binding conventions, the ILO has issued Recommendation No. 168 (1983) as a companion to Convention No. 159, providing more detailed guidance on the content and implementation of national policies. Paragraphs 4 and 5 of the Recommendation emphasize that persons with disabilities should be consulted through representative organizations, and that vocational rehabilitation services should be tailored to the individual needs and aspirations of each person, including those with mental health conditions.²⁵ It further recommends the integration of persons with disabilities into the open labor market and the removal of attitudinal and environmental barriers, which are particularly acute in the case of mental illness due to stigma and misinformation.

Moreover, the ILO's Code of Practice on Managing Disability in the Workplace (2001), though non-binding, provides practical guidance to employers, trade unions, and governments on how to develop inclusive workplace policies. The Code recognizes mental health as a component of disability and urges employers to create supportive and stigma-free work environments, implement confidential and non-discriminatory recruitment practices, and provide access to mental health services and flexible work arrangements.²⁶

In recent years, the ILO has increased its focus on mental health through initiatives such as the Global Business and Disability Network (GBDN) and publications on psychosocial risks and workplace well-being. The ILO's Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), while not disability-specific, recognize psychosocial risks as part of occupational health concerns, underscoring the obligation of employers and states to create mentally safe workplaces.²⁷

Furthermore, the ILO's alignment with the CRPD, particularly Article 27 on the right to work and employment, has reinforced the organization's commitment to inclusive employment strategies that respect the autonomy, dignity, and capabilities of persons with psychosocial disabilities. The CRPD explicitly calls for the elimination of discrimination based on disability in "recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions."²⁸ While the CRPD is not an ILO instrument per se, the synergy between the two regimes has produced a consolidated international legal framework that legitimizes and operationalizes mental health inclusion in labor markets.

Despite these normative advances, challenges persist. The ILO does not have enforcement powers comparable to courts or treaty bodies, and the monitoring of state compliance relies largely on self-reporting and periodic reviews by the CEACR. In many countries, including Indonesia, ratification of ILO Convention No. 159 remains pending, and while Convention No. 111 has been ratified, its interpretation in domestic legal systems often remains narrow and disconnected from disability-based claims.²⁹

Nevertheless, the ILO's comprehensive and evolving framework offers important lessons for Indonesia. First, it demonstrates the necessity of explicit legal recognition of mental disability within national labor laws. Second, it affirms the centrality of reasonable accommodation and individualized support measures. Third, it underscores the need for tripartite dialogue, where workers, employers, and governments jointly design inclusive employment strategies. Fourth, it promotes the mainstreaming of mental health into occupational safety and health policies, a gap that remains acute in Indonesia's regulatory landscape.

²⁵ ILO, *Recommendation No. 168 concerning Vocational Rehabilitation and Employment (Disabled Persons)*, 1983, paras. 4–6.

²⁶ ILO, *Code of Practice on Managing Disability in the Workplace* (Geneva: ILO, 2001), Sections 2 and 4.

²⁷ ILO, *Occupational Safety and Health Convention (No. 155)*, 1981; *Recommendation (No. 164)*, 1981.

²⁸ United Nations, *Convention on the Rights of Persons with Disabilities*, Article 27.

²⁹ ILO, *Status of Ratification of Fundamental and Technical Conventions by Country: Indonesia*, accessed September 2025, <https://www.ilo.org>.

In conclusion, the ILO provides a robust and flexible normative architecture for promoting the rights of workers with psychosocial disabilities. Its standards are grounded in equality, dignity, and participation, and its tools—ranging from conventions to codes of practice—offer both legal authority and operational guidance. For Indonesia, aligning its national legal system with ILO standards is not merely a matter of ratification or formal compliance, but an opportunity to reconstruct its labor law paradigm to include one of the most excluded populations in the workforce. The next section of this article will critically compare Indonesia's existing framework with these ILO norms to identify legal and institutional gaps, and to propose a rights-based model for inclusive employment reform.

Comparative Analysis and Harmonization Proposals

The preceding sections have demonstrated that while both Indonesia's national legal framework and the International Labour Organization (ILO) affirm the right to work for persons with disabilities, there exists a substantial gap in the protection of workers with mental health disorders, particularly in terms of legal specificity, enforcement mechanisms, and institutional practices. This section offers a comparative synthesis and presents strategic recommendations to harmonize Indonesian labor law with ILO standards, focusing on the principles of non-discrimination, reasonable accommodation, and equality of opportunity.

The most immediate divergence between Indonesia and ILO standards lies in the scope and clarity of legal recognition. ILO Convention No. 159 and associated recommendations explicitly include both physical and mental impairments within their definitions of disability.³⁰ In contrast, Indonesian legislation—particularly Law No. 8 of 2016 on Persons with Disabilities—mentions "mental" and "psychosocial" disabilities but fails to operationalize this recognition in terms of enforceable employment rights, workplace obligations, or administrative procedures.³¹ The ILO framework, in contrast, connects definitional clarity with institutional mandates, requiring states to provide vocational rehabilitation, workplace inclusion, and job placement services with tailored support.

Secondly, Indonesian labor law, particularly Law No. 13 of 2003 and the Omnibus Law (Law No. 11 of 2020), lacks explicit anti-discrimination provisions with respect to disability, especially psychosocial conditions. While the ILO's Convention No. 111 may not enumerate disability as a ground of discrimination in its text, its interpretive application has evolved to encompass disability through substantive equality jurisprudence and cross-referencing with instruments such as the CRPD.³² Indonesia's failure to incorporate a comprehensive non-discrimination clause specific to mental health conditions contributes to the invisibility of these workers in both policy and dispute resolution.

A third point of divergence is in the absence of reasonable accommodation provisions under Indonesian labor law. The ILO, through Recommendation No. 168 and its Code of Practice on Managing Disability, clearly endorses individualized support measures, flexible working arrangements, and employer duties to adjust job tasks, environments, or schedules in line with the worker's needs.³³ Indonesia, by contrast, lacks legal or policy instruments requiring such accommodations, rendering the right to work for persons with mental health conditions largely theoretical. Without these accommodations, workers may be hired but are unlikely to retain employment under equitable conditions.

Institutionally, the ILO promotes tripartite mechanisms and integrated monitoring systems to support inclusive employment. National strategies must be coordinated among government agencies, employer associations, and labor unions. In Indonesia, coordination across ministries—namely Manpower, Health, Social Affairs, and the National Disability Commission—remains weak, and no central body exists to

³⁰ ILO, *Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons)*, 1983, Art. 1

³¹ Law No. 8 of 2016 on Persons with Disabilities, Arts. 53–55.

³² ILO, *General Survey on the Fundamental Conventions concerning Rights at Work* (Geneva: ILO, 2012), 49–52.

³³ ILO, *Recommendation No. 168* (1983); ILO, *Code of Practice on Managing Disability in the Workplace* (2001), Sections 2–5.

oversee disability-inclusive employment across the full labor market spectrum.³⁴ The absence of cross-sectoral oversight and disaggregated data collection contributes to poor policy design and a lack of accountability.

In terms of dispute resolution and legal redress, the ILO recommends accessible, timely, and rights-sensitive complaint mechanisms, including legal aid, ombudspersons, or independent monitoring bodies. In Indonesia, mechanisms such as the Industrial Relations Court and labor inspectorate have not developed the institutional culture or jurisprudence to detect, investigate, or adjudicate discrimination based on mental disability. In practice, workers with psychosocial conditions rarely report violations, and when they do, the claims are often dismissed for lack of legal grounds or evidence.³⁵

Despite these gaps, opportunities for harmonization exist. The ILO framework is not prescriptive in institutional design, allowing for adaptation according to local conditions. Moreover, Indonesia has already ratified ILO Convention No. 111 and the CRPD, indicating a normative commitment that can be leveraged for regulatory and procedural reform. Ratification of ILO Convention No. 159, which remains pending, would signal Indonesia's willingness to fully align its employment practices with international best standards. To move toward harmonization, several key reforms are proposed:

1. Legal Amendments to Recognize Mental Health in Employment Law

Amend Law No. 13 of 2003 and Law No. 11 of 2020 to include mental disability as a protected category, prohibit discrimination based on psychosocial conditions, and establish enforceable duties for employers regarding accommodation and workplace inclusion.

2. Implementation Guidelines for Reasonable Accommodation

The Ministry of Manpower should issue a ministerial regulation defining what constitutes reasonable accommodation for mental health conditions in various employment settings. This regulation should include examples, assessment procedures, and employer obligations.

3. Ratification of ILO Convention No. 159

Indonesia should ratify Convention No. 159 to solidify its international obligations and gain access to technical support from the ILO in designing inclusive vocational and employment systems.

4. Creation of a National Employment Disability Oversight Body

Establish a cross-ministerial task force or secretariat under the National Commission on Disability (KND) to coordinate policy implementation, monitor compliance, and oversee grievance mechanisms related to employment discrimination.

5. Integration of Mental Health in Occupational Safety and Health (OSH) Frameworks

Amend relevant OSH regulations to include psychosocial risk management, mental wellness programs, and protocols for reintegrating workers returning from mental health-related leave.

6. Capacity Building for Labor Inspectors and Industrial Court Judges

Training modules should be developed in partnership with the ILO and Komnas HAM to build institutional sensitivity to psychosocial disability, equipping officials with the knowledge to interpret discrimination and failure-to-accommodate claims effectively.

7. Public Sector Leadership in Mental Health Inclusion

Pilot inclusive hiring and workplace mental health policies in public institutions, including civil service and state-owned enterprises (BUMN), as a model for private sector adoption.

By implementing these reforms, Indonesia can bring its labor law framework into substantive alignment with ILO norms, and, more importantly, uphold the dignity, rights, and agency of workers with mental

³⁴ Komnas HAM, *Thematic Report on Mental Disability and Employment Discrimination in Indonesia* (2021), 22–25.

³⁵ Ibid

health disorders. Legal harmonization in this area is not merely a matter of international compliance; it is a moral imperative grounded in constitutional values, human rights, and social justice.

CONCLUSION AND SUGGESTIONS

This study has critically examined the legal status and practical challenges surrounding the protection of the right to work for individuals with mental health disorders in Indonesia, in light of comparative international standards established by the International Labour Organization (ILO). It has demonstrated that while Indonesia's legal framework formally recognizes disability rights, it fails to provide substantive, enforceable protections for workers with psychosocial disabilities. In contrast, the ILO's normative system offers a comprehensive and operational framework built on principles of non-discrimination, reasonable accommodation, and inclusive labor market participation.

The findings reveal that Indonesian law lacks specificity in defining and protecting the employment rights of individuals with mental health conditions. Key legislation—including the Law on Persons with Disabilities, the Manpower Law, and the Job Creation Law—provides general protections but omits actionable duties for employers, fails to mandate reasonable accommodation, and does not empower institutions to resolve discrimination claims effectively. Meanwhile, ILO Conventions Nos. 159 and 111, supported by detailed recommendations and codes of practice, offer a mature legal architecture for integrating workers with psychosocial disabilities into the labor market.

This normative gap is compounded by institutional and cultural deficiencies. Labor inspectorates and courts are undertrained to recognize mental health discrimination. Employers lack incentives or regulatory pressure to accommodate workers with mental illness. Stigma, fear, and lack of legal literacy further marginalize those most in need of protection. As a result, the right to work for individuals with mental health disorders in Indonesia remains largely theoretical. To close this gap and align national law with international standards, the following policy and legal recommendations are proposed:

1. Legal Reform and Ratification
 - a. Amend Law No. 13 of 2003 and its derivatives to explicitly include mental disability as a protected category.
 - b. Insert provisions on reasonable accommodation, employer obligations, and enforcement mechanisms.
 - c. Ratify ILO Convention No. 159 to formalize Indonesia's commitment to inclusive employment and unlock technical cooperation from the ILO.³⁵
2. Regulatory Framework on Accommodation
 - a. Issue ministerial regulations detailing the types, procedures, and standards of reasonable accommodations for workers with mental health conditions.
 - b. Provide legal certainty for employers while safeguarding worker autonomy and participation.
3. Strengthen Institutional Coordination
 - a. Establish a National Task Force on Inclusive Employment involving the Ministry of Manpower, BPJS Ketenagakerjaan, the Ministry of Health, Komnas HAM, and the National Disability Commission.
 - b. Develop integrated data systems on disability-inclusive employment, disaggregated by disability type.
4. Enhance Monitoring and Redress
 - a. Equip labor inspectors and industrial judges with specialized training on mental health discrimination and CRPD/ILO standards.
 - b. Create accessible complaint mechanisms with procedural safeguards for claimants with psychosocial disabilities.
5. Public Sector as a Model
 - a. Require public institutions and state-owned enterprises (BUMN) to adopt inclusive recruitment, mental health wellness policies, and disclosure protections.
 - b. Use civil service reform as a lever for broader structural change.
6. National Campaigns Against Stigma

- a. Collaborate with civil society and media to conduct public awareness campaigns about mental health and work.
- b. Promote narratives of capability, dignity, and legal equality to reshape employer attitudes and societal norms.

By adopting these measures, Indonesia can move from symbolic inclusion to substantive realization of the right to work for persons with mental health disorders. Harmonizing domestic law with ILO standards will not only fulfill international obligations but also reflect the constitutional mandate to uphold human dignity, social justice, and non-discrimination. In a post-pandemic world where mental health has become a global concern, legal systems must respond with clarity, empathy, and enforceable rights. Indonesia has the legal foundation and institutional capacity to lead such transformation—what remains is the political and moral will to act.

REFERENCES

International Labour Organization (ILO). Convention No. 111 on Discrimination in Employment and Occupation. Geneva: ILO, 1958.

———. Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons). Geneva: ILO, 1983.

———. Recommendation No. 168 concerning Vocational Rehabilitation and Employment (Disabled Persons). Geneva: ILO, 1983.

———. Code of Practice on Managing Disability in the Workplace. Geneva: ILO, 2001.

———. General Survey on the Fundamental Conventions concerning Rights at Work. Geneva: ILO, 2012.

———. Handbook of Procedures Relating to International Labour Conventions and Recommendations. Geneva: ILO, 2019.

———. Status of Ratification of Fundamental and Technical Conventions by Country: Indonesia. Accessed September 2025. <https://www.ilo.org>.

Komnas HAM (National Human Rights Commission). Thematic Report on Mental Disability and Employment Discrimination in Indonesia. Jakarta: Komnas HAM, 2021.

———. Catatan Akhir Tahun 2022. Jakarta: Komnas HAM, 2022.

Law No. 5 of 2014 on State Civil Apparatus (Aparatur Sipil Negara).

Law No. 8 of 2016 on Persons with Disabilities.

Law No. 11 of 2020 on Job Creation (Omnibus Law).

Law No. 13 of 2003 on Manpower.

Law No. 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities (CRPD).

Olusoji, Arubayi Damaro. "INFLUENCE OF DIVERSITY ON EMPLOYEE SATISFACTION: A STUDY OF TERTIARY INSTITUTIONS IN THE NIGER DELTA REGION OF NIGERIA." Journal of Multidisciplinary Research, March 16, 2023, 47–58. <https://doi.org/10.56943/jmr.v2i1.253>.

Sulistiyani, Tri. "Pekerja Disabilitas dan Tantangan Inklusi di Dunia Kerja." Jurnal Hukum dan Pembangunan 52, no. 2 (2022): 115–134.

United Nations. Convention on the Rights of Persons with Disabilities. New York: United Nations, 2006.

Waddington, Lisa, and Anna Lawson. "Reasonable Accommodation and Non-discrimination: Towards a More Unified European Perspective." European Anti-Discrimination Law Review 13 (2011): 14–23.

