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for Persons with Disabilities in Korea and Japan”

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Kyun Ho Shim

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Table of Contents

List of Abbreviations.....	iii
List of Tables.....	v
1. Introduction.....	1
1.1. Background.....	1
1.2. Research Question and Relevance of the Topic	3
1.3. Structure of the Thesis.....	5
2. State of the Art	7
2.1. Mandatory Employment Quota System for PWD.....	7
2.2. Anti-Discrimination Policies for PWD.....	8
2.3. Vocational Training/Rehabilitation System for PWD	10
2.4. Multi-Dimensional or/and Other Approaches	14
2.5. Summary of the State of the Art.....	17
3. Methodology	20
3.1. Overview of the Methodology.....	20
3.2. Analytical Framework for Mandatory Employment Quota System for PWD	23
3.3. Analytical Framework for Anti-Discrimination Legislation for PWD.....	25
3.4. Analytical Framework for Vocational Training/Rehabilitation Policies for PWD	28
3.5. Summary of the Analytical Framework	31
4. Analysis.....	33
4.1. Mandatory Employment Quota Systems for PWD in Korea and Japan.....	33
4.1.1. Level of mandatory employment quota	33
4.1.2. Coverage of employers	34
4.1.3. Sanctions and incentives	35
4.2. Anti-Discrimination Legislations for PWD in Korea and Japan	37
4.2.1. Brief process of introduction of the legislations	37
4.2.2. Definition of disability and PWD.....	38
4.2.3. Definition and general types of discrimination against PWD	40
4.2.4. Categories and scope of discrimination against PWD in employment and treatment after employment.....	42

4.2.5. Definition and details of ‘reasonable accommodation’ for PWD in the working space	44
4.2.6. Role of the government and ministries/institutions relevant to the implementation of the anti-discrimination policies against PWD	47
4.2.7. Types and procedures of remedies for discrimination against PWD	49
4.3. Vocational Training/Rehabilitation Policies for PWD in Korea and Japan	54
4.3.1. Vision of the vocational training/rehabilitation system.....	54
4.3.2. Means of the vocational training/rehabilitations system	58
4.3.3. Performance evaluation scheme of the vocational training/rehabilitation system	73
5. Findings and Lessons	76
5.1. Findings and Lessons on Mandatory Employment Quota Systems for PWD.....	76
5.1.1. Findings	76
5.1.2. Lessons	77
5.2. Findings and Lessons on Anti-Discrimination Legislations for PWD	78
5.2.1. Findings	78
5.2.2. Lessons	83
5.3. Findings and Lessons on Vocational Training/Rehabilitation Policies for PWD	84
5.3.1. Findings	84
5.3.2. Lessons	87
6. Conclusion	89
List of References	91
Abstract	97
Zusammenfassung.....	98
초 록.....	99

List of Abbreviations

ADA	Americans with Disabilities Act
CAD	Computer-aided design
CAM	Computer-aided manufacturing
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate social responsibility
DDA	Disability Discrimination Act of Australia
EBP	Evidence-based practice
EDI	Employment Development Institute (under KEAD)
EFTA	European Free Trade Association
EU	European Union
HR	Human resources
ICF	International Classification of Functioning, Disability and Health
IMPACT	Initiative on Methods, Measurement, and Pain Assessment in Clinical Trials
IPS	Individual Placement and Support
JEED	Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers
KEAD	Korea Employment Agency for the Disabled
KSQA	Korean Skills Quality Authority
MHLW	Ministry of Health, Labour and Welfare (of Japan)
NCS	National Competency Standard
NHRCK	National Human Rights Commission of Korea
NIVR	National Institute of Vocational Rehabilitation (under JEED)
NPO	Non-profit organization
OA	Office automation
OECD	Organisation for Economic Co-operation and Development
PDCA	Plan-Do-Check-Act
PES	Public employment services
PESO	Public employment security offices
RIDRIK	Research Institute of the Differently Abled Person's Right in Korea
RTW	Return-to-work

SME	Small and medium sized enterprise
UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
VR	Vocational rehabilitation (or vocational training/rehabilitation)
WHO	World Health Organization

List of Tables

Table 1. Employment rates for PWD and persons without disabilities in Korea and Japan....	1
Table 2. Ratio of employees with disabilities to the total employees in businesses subject to mandatory employment of PWD and fulfillment rate of businesses subject to mandatory employment of PWD in Korea and Japan.....	2
Table 3. Detailed version of analytical framework from Lee, Hong, and Nam (2008, 1-163).....	14
Table 4. Summary of the state of the art	17
Table 5. Summary of the analytical framework.....	31
Table 6. Base amount for employment contribution for PWD according to quota fulfillment ratio in the Korean system	36
Table 7. Employment incentive payment unit cost according to sex and the severity of the disabilities in the Korean system	36
Table 8. Training fields in each Vocational Competency Development Institute in Korea ...	61
Table 9. Types of vocational training/rehabilitation services provided in Korean institutions.....	64
Table 10. Types of vocational training/rehabilitation services provided in Japanese institutions	67

1. Introduction

1.1. Background

“There is no greater disability in society, than the inability to see a person as more.”

Robert M. Hensel (1969 ~ present)

As the Guinness World Records holder for the longest non-stop wheelie in a wheelchair points out, persons with disabilities (hereinafter PWD) are easily prone to be perceived as incapable or less capable than persons without disabilities. Similarly, PWD also face barriers within the society as is mentioned in the Convention on the Rights of Persons with Disabilities (hereinafter CRPD) of the United Nations, an international treaty intended to protect the rights and dignity of PWD, that despite “the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support”, “persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world” (UN General Assembly 2007, 2)

This seems to also play a significant role in a sector where capacity is exchanged with money, namely the labor market. More specifically, while it is estimated that 15% of the world’s population, or above 1 billion people, are PWD, it is also estimated that PWD are roughly 40% less likely to be employed than persons without disabilities, adding up to the figure of 36% of PWD of working age who are employed (ILO 2020, 6-8). This tendency seems to be prevalent also in the Republic of Korea (hereinafter Korea) and Japan, with employment rate of 34.5% for PWD¹ compared to 61.3% for the whole population² as of 2018 in Korea, and 48.6% for PWD compared to 59% for the whole population as of 2018 in Japan (Employment Development Institute 2019, 8; Inagaki 2018).

	Employment Rate (2018)	
	PWD	Non-PWD
Korea	34.5%	61.3%
Japan	48.6%	59.0%

Table 1. Employment rates for PWD and persons without disabilities in Korea and Japan³

The percentage of PWD employed out of total employees in businesses that are subject

¹ Ratio of the employed with disabilities to the working age population with disabilities.

² Ratio of the employed with and without disabilities to the working age population with and without disabilities.

³ Employment Development Institute 2019, 8; Inagaki 2018.

to mandatory employment of PWD in both countries also shows a tendency that does not satisfy the governments' goals. In Korea, for instance, the percentage has shown overall a gradual increase since year 2001 until 2018 from 0.96% to 2.78%, however still falls short of the goal that the government has set, with only 45.5% of the businesses fulfilling the mandatory employment quota for PWD⁴ as of 2018 (Employment Development Institute 2019, 26). Also in Japan, the percentage of PWD employed out of total employees in businesses that are subject to mandatory employment of PWD has fluctuated between 2.11% and 2.39% since 2008 until 2018, with the figure in 2018 still remaining at 2.11%. Similarly, the percentage of businesses fulfilling the mandatory employment quota for PWD in Japan also remains at 46.6% as of 2018 (Employment Development Institute 2019, 40).

	Employees with disabilities / Total employees (2018)	PWD employment quota fulfillment rate (2018)
Korea	2.78%	45.5%
Japan	2.11%	46.6%

Table 2. Ratio of employees with disabilities to the total employees in businesses subject to mandatory employment of PWD and fulfillment rate of businesses subject to mandatory employment of PWD in Korea and Japan⁵

These higher unemployment rates, lower employment rates and underemployment of PWD compared to those without disabilities represent the fact that PWD are in one of the disadvantageous positions in the labor market, and these features become fundamental factors in lowering the income of PWD and households with PWD, which then leads to having a critical impact on the quality of life of PWD (I et al. 2017, 6-7). This can be shown also in the CRPD in the part that highlights “the fact that the majority of persons with disabilities live in conditions of poverty”, and in this regard recognizes “the critical need to address the negative impact of poverty on persons with disabilities” (UN General Assembly 2007, 3). Nevertheless, employment is not only a means of making the ends meet but also a social activity to realize important values in life, and therefore all humans should be guaranteed an equal opportunity for employment, and PWD are not an exception to it (Sim, Kawk, Nam, and Jo 2017, 13). In this context, expanding the employment opportunity for PWD can bring about the effect of not only securing their income but also (re)integrating them into the society (I et al. 2017, 6-7).

However, considering that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (UN General Assembly 2007, 1), as

⁴ Ratio of the businesses fulfilling the mandatory employment quota for PWD to the businesses that are subject to the mandatory employment quota system for PWD.

⁵ Employment Development Institute 2019, 26.

mentioned in the CRPD, normalizing the employment of PWD cannot be achieved solely by one single party in the society, but rather has to be done in a holistic manner, meaning that mainstream policies and programs have an important role in promoting the employment of PWD. In other words, employment promotion of PWD “relies on policies and institutional support, and attitude change to create an enabling environment” (ILO 2020, 2).

With this in mind, Korea and Japan, like many other countries, are also implementing various policies and measures to promote the employment of PWD, by setting mandatory employment quota for PWD, having set of laws to prevent discrimination against PWD in employment and workplace conditions, conducting vocational training/rehabilitation for PWD, raising awareness and including related contents in the education system, providing special education for PWD, offering financial incentives to businesses that employ PWD, etc. (Lee and Lee 2016, 83-92; Choi 2018, 3-125; Nagano 2015, 5-20; Jun et al. 2014, 15-142; Boeltzig-Brown et al. 2013, 169-83; Lee 2013, 5-25; O’Brien and Dempsey 2004, 126-35; Lastly, Scharle and Csillag 2016, 1-24). However, the details of the structure and laws that these policies are based on differ inevitably from country to country and this is not an exception to the two countries that share significant similarities in its legal and welfare systems (I et al. 2017, 154-65).

1.2. Research Question and Relevance of the Topic

In this context, this thesis conducts a comparative analysis with the purpose of finding out answers to the following research question:

What lessons can the Republic of Korea and Japan provide each other and to others for the improvement of various employment promotion policies for persons with disabilities (PWD), based on their similarities and differences?

For the purpose of clarification, however, this research question may need further explanation as to what exactly are to be covered. Firstly, the definition of PWD may be of controversial nature. Even though there are international treaties that deal with disability and PWD, such as the aforementioned CRPD of the United Nations, the definition of disability and PWD are usually written in the relevant domestic laws of each country, as is the case for Korea and Japan. Therefore, the definition of disability and PWD, which is the targeted group for the policies analyzed in this thesis, will be adopted from the relevant domestic laws of each country when analyzing the policies in the respective countries, especially since the policies would naturally be based on their own definitions and scopes.

Secondly, there is the problem of what exactly ‘employment promotion policies’ for PWD is, since it is not a terminology that is universally agreed upon or defined by a certain international organization. Also, so many policies would either directly or indirectly have a

certain degree of influence on the promotion of employment for PWD, starting from mandatory employment quota systems put on businesses with certain conditions, which inarguably is designed to directly promote the employment of PWD, to policies to raise awareness regarding PWD, which may lead to an indirect effect of businesses voluntarily employing more PWD due to the improved awareness towards PWD. However, in this thesis, three types of policies that are arguably more often covered in analyses that deal with policies to promote employment of PWD are covered. Namely, they are the mandatory employment quota system for PWD, anti-discrimination policies or laws for PWD, and vocational training/rehabilitation system for PWD. Therefore other relevant policies that might have direct or indirect effects on the promotion of employment for PWD are out of the scope of this thesis.

Thirdly, regarding the scope of the policies, systems and laws, it seems worth mentioning that only domestic ones are analyzed, meaning that international treaties such as the CRPD are not covered in the thesis. Even though such treaties from the United Nations or the ILO and other relevant organizations might have a certain degree of influences on the domestic policies and laws, the content of those international treaties will not be directly covered in the analysis part. This is because even though many countries are signatories to the conventions or treaties, their domestic policies and laws take very different forms, and therefore such international conventions or treaties will only be mentioned briefly when they are thought to have been influential in the domestic laws and policies.

Regarding the relevance of the topic, it seems first worthwhile to mention the statistics in the '1.1. Background' section above, where big gaps in the employment rate of PWD and the whole population are demonstrated. Considering that PWD in both countries are discriminated in the labor market to that extent, and that even one of the most straightforward policies, the mandatory employment quota system for PWD, is being kept by less than 50 % of the businesses that are supposed to, show the need to conduct an analysis as to what can be improved. Another noteworthy point in this regard is that the gap in the employment rate between PWD and the whole population is relatively smaller in Japan than in Korea. Even though the figure of employment rate for PWD cannot be considered as the only index that matters in the employment promotion of PWD, it is arguably one of the most relevant indices and therefore it would be especially worthwhile to think about what are some possible factors that might lead to this difference –nevertheless, this causality will not be the focal point of this thesis–. Consequently, finding out the possible shortfalls of the systems can function as a cornerstone in investigating the potential improvements that can be made in both systems and also those of other countries. To make a long story short, this analysis can be a first step towards the *improvement of employment promotion policies for PWD* in both countries and also others. More specifically, the analysis conducted in this thesis could be utilized as a source of insights for the improvement needed in the relevant policies for: 1) the *researchers* in the research institutes for public policy; 2) the *policy makers* in the legislative body who design these policies; and 3) *public officials and other human resources* who work with these policies in PWD-related departments of the governmental bodies or PWD-related organizations.

Another point of relevance can be found in the inherent and balanced mixture of similarities and differences between the two countries when it comes to welfare policies in general and also specifically with regard to policies related to PWD. Korea and Japan are known to share historically similar culture, tradition, and ways of thinking due to the fact that they are geographically close to each other, which leads to the fact that they share a great deal of similarities in the structure or form of laws, since Korea adopted a lot of legal systems from Japan since the colonial times. With this in mind and considering the fact that discrimination against PWD is influenced by the characteristics of the country and regional community in which they reside in, together with intangible and environmental factors like culture, tradition, law, system, religion, etc., which actually has resulted in great similarities in the welfare system for PWD between the two countries, it is meaningful to compare such policies of the two countries (Choi 2018, preface - 6).

Nonetheless, at the same time, despite these fundamental similarities, there are also significant differences in the development process and the current status of overall welfare systems for PWD between the two countries. For example, in Korea, a separate set of welfare laws targeting PWD was not established until the 1980s and 90s despite the fact that UN presented various declarations of rights for PWD as a result of raised international interests regarding disability and PWD. On the other hand, Japan adopted relevant laws since as early as the late 1940s and 1950s, separating the welfare systems for PWD from the ones for those suffering from poverty (Byeon 2013, 20-224). On the contrary, Japan was relatively late to ratify the CRPD, which was in 2014, leading to a relatively late establishment of anti-discrimination law for PWD in 2013, which started to take effect since 2016, whereas Korea ratified the Convention in 2008, after already establishing an anti-discrimination law for PWD in 2007 (Choi 2018, 5). Nonetheless, it is rather difficult to encounter multi-dimensional comparative analyses between Korea and Japan on the specific policies that are subject to the analysis of this thesis. Therefore, in short, considering these *similarities and differences* between the policies and systems of the two countries regarding welfare targeting PWD, and the *lack of existing works* with regard to the related contents with the approach of this thesis, Korea and Japan are a *relevant set of countries to be compared for this topic*.

1.3. Structure of the Thesis

This thesis is divided into six chapters. After this introduction chapter, the state of the art will be presented to see what kind of literatures exists with regard to the topic up to date. After the state of the art, the analytical framework will be constructed from the relevant papers mentioned in the state of the art, with which the actual analysis will be conducted. Following the analysis according to the analytical framework, the findings and lessons from the analysis chapter will be illustrated in a separate chapter, which then will be followed by a conclusion.

The followings are several points to be considered regarding the contents and the formal aspects:

♦ The citation was done according to the Chicago Manual of Style with in-text citations, however, contents from websites, online news articles, and citation from laws were put in footnotes.

♦ The names of the Korean laws were written in capital letters and the names of the Japanese laws were written in lower-case letters with only the first letters of the word in capital letters, taking into account the way they are actually written in the translated versions, and also to easily distinguish which laws are from which country.

♦ The translations of the laws from Korea were referred to from the National Law Information Center under the Ministry of Government Legislation of Korea, and the translations of the laws from Japan were referred to from the Japanese Law Translation Database System under the Ministry of Justice of Japan, unless otherwise mentioned in the footnotes.

♦ The term vocational rehabilitation and vocational training is not strictly distinguished in most of the cases in the two countries and therefore will be mentioned as either vocational training/rehabilitation or just vocational training. Therefore, vocational rehabilitation should be distinguished from a pure medical form of rehabilitation.

♦ In Chapter 5, ‘Findings and Lessons’, no citation is provided if the contents are already mentioned with citations in Chapter 4, ‘Analysis’.

2. State of the Art

2.1. Mandatory Employment Quota System for PWD

When it comes to the domestic policies for the purpose of promoting employment of PWD, a universal terminology that refers to such policies does not exist, nor do criteria that define which kinds of policies fall into the category of such policies. Instead, different literatures that cover such policies deal with a variety of specific policies. Arguably, however, one of the most often covered policies for such purpose is the mandatory employment quota system for PWD. The quota system for the employment of PWD is covered in a variety of literatures analyzing diverse aspects of the system from diverse countries. For instance, Agovino, Garofalo, and Marchesano (2016, 135-55) evaluates the influence of the employment promotion measures on the labor market participation of disabled people in Italy, looking at the Law 68 of March 12, 1999, which aims to promote the employment of disabled people. This law, which reiterates the principle that “society has to take care of the right to work of disabled people”, basically pivots the concept of “targeted employment” by basing the employment of PWD on compulsory hiring quotas. In other words, this article considers the employment quota system for PWD as the core tool for the purpose of promotion of employment of PWD.

Abidi and Sharma (2014, 60-68) also looks into the legislation in India that introduced the compulsory quota system for the employment of PWD, in order to analyze the correlation of poverty, disability and employment. The first legislation, ‘Persons with Disabilities Equal Opportunities, Protection of Rights and Full Participation Act, 1995’, sets the 3% reservation for PWD for government jobs and makes it legally binding, and the second version of the legislation in the following year expanded the reservation of the job places to the private sector as well. The article finds that such measurements did not have very meaningful effects on breaking the cycle of disability, unemployment and poverty, and suggests that a multi-pronged and multi-sectoral approach to address the inequalities caused from disability must be created in order to truly break the cycle.

Shim and Choi (2012, 227-49), meanwhile, looks at Japan, looking at the problems of the ‘mandatory employment system’ and the ‘double count method’ and also trying to derive some lessons that could be learnt from Korea in order to improve the employment promotion of PWD, regarding the mandatory employment system. The authors point out that problems such as the failure of proper monitoring, and the calculation of employment rate only based on the degree of disability and not the labor capacity, should be taken into account for the improvement that the Korean policies must go through. Yuyama (2018, 122-27) also looks at the mandatory employment quota system in Japan together with the current employment trends of PWD. In doing so, the author looks at the development process of the quota system from the first introduction of the quota system to the recent status, together with the actual status of the quota especially in the private small and medium sized enterprises (SMEs), and how the employment environment has changed along with the expansion of the quota system and the government’s efforts.

Fuchs (2014, 1-7), on the other hand, provides a comparative view on the quota systems for PWD, looking at EU member countries that adopt the system, in order to find out whether differences in the parameters, aspects, and effectivity of the systems exist between them. The policy brief finds out that the “quota systems only lead to small net employment gains and at times can only be justified for equity reasons.” It concludes, therefore, that strategies have to be developed, which enable a better coordination among the behaviors of employers, employees, involved institutions and the political targets, calling for a provision of balanced setting of sanctions, incentives and support that complement each other.

Also with a comparative approach to analyze the quota systems for PWD, Lee and Lee (2016, 83-92) provides a rather more systematic comparison of the mandatory employment quota systems for PWD of Korea and Japan with an insight to the outcomes of the systems from the point when they began to be implemented. To this end, an analytical framework composed of three aspects is adopted, which are the followings: (1) level of mandatory employment quota; (2) coverage of employers; and (3) sanctions and incentives. The first category, ‘level of mandatory employment quota’, refers literally to the certain percentage of employees that should be designated to PWD. Different countries can demonstrate differences according to (a) the actual figure of quota in percentage; (b) whether they assign different quotas to private and public sector; and (c) the calculation formula of employment quota. The second category, ‘coverage of employer’, refers to which employers are obliged to follow the quota system. Subcategories include (a) whether only private or public sector is subject to the system or both of them are; and (b) the minimum number of all employees in the company to be subject to the system. The last category, ‘sanctions and incentives’, refers to whether there are sanctions to those who do not meet the quota and/or incentives to those who employ PWD, exceeding the quota. This category can also differ between systems depending on (a) whether sanctions and/or incentives depend on the size of the company or organization in terms of number of employees, and/or on gender, disability grade, type of disability, etc. of the employee who are PWD that exceed the quota (only for incentives); and (b) the absolute amount or calculation formula for the amount of financial sanctions and/or incentives.

2.2. Anti-Discrimination Policies for PWD

Another specific policy to promote the employment of the PWD that is covered often is the anti-discrimination policies for PWD that are related to employment and workplace conditions. Since anti-discrimination policies for PWD often cover a wide range of circumstances in which PWD can be discriminated and maltreated, in many cases there might not be any separate legislation that only covers anti-discrimination regarding employment and workplace conditions. However, many literatures cover this specific part of the anti-discrimination legislations, with the object of analyzing how a certain country promotes employment of PWD through such measures.

Among them, many literatures covering the anti-discrimination policies or legislations

for PWD look at the recent history or development of them within a country or countries. For instance, Harwood (2016, 1-23) looks at the strengthening, harmonization and weakening of disability discrimination law within UK, with the purpose of arguing that disabled workers of the UK experience more social injustice than UK workers as whole, due to the limitations of impact of the UK Disability Equality Law. The author therefore starts from mentioning the Disabled Persons (Employment) Act 1944 and the Disability Discrimination Act 1995, and then finally analyzes parts of the Equality Act 2010, especially the 'Reasonable Adjustment Duty' part. Crasnow and Fraser Butlin (2015, 75-86) is also one of the literatures focusing on the 'Reasonable Adjustment Duty' of the Equality Act 2010, posing a question as to whether the comparator is appropriate, since the first question to be asked when a claim is made that the employer should have made a reasonable adjustment is "whether the disabled person was put at a substantial disadvantage by something as compared to a non-disabled person." The authors go through the relevant part of the legislation, since "this comparative exercise may be made by comparing the disabled person with a real employee who is not disabled, i.e. an actual comparator, or by a hypothetical individual" (Crasnow and Fraser Butlin 2015, 75-86).

Maroto and Pettinicchio (2014, 370-407), also looks at the recent history of USA since the Americans with Disabilities Act (ADA) has been passed in 1988, with the purpose of analyzing the limitations of the disability antidiscrimination legislations, with a focus on the labor market. To this end, the article starts off by explaining disability labor market disparities, and then looks at the multiple institutional layers of disability rights policymaking. Subsequently, the step of creating the disability antidiscrimination legislation is analyzed, and also how it was enforced. Also importantly dealt with is the interpretation of the legislation, especially considering the ambiguity that such legislation can have. Even though the purpose of the article is to find out whether the introduction and enforcement of the legislation had an effect, it shows a multiple layer approach to analyze the legislation, including the creation, enforcement, and interpretation.

Lane and Munkholm (2015, 91-113), on the other hand, takes a comparative approach by comparing the recent history of development of such policies/legislations in the UK and Denmark. Looking at the set of legislations that were adopted in the recent decades in the two countries, such as the Disability Discrimination Act 1995 and the Equality Act 2010 of UK, and the 1996 Anti-Discrimination Act and the 2004 Act of the same name of Denmark, the article focuses on a few points of the legislations with regard to employment and workplace conditions. One of the importantly dealt aspects is how the legislation defines disabled person, on which model of disability it is based on, and how it changed through amendments of the legislations or adoption of new ones. Another point the article focuses on is the duty imposed on service providers to make reasonable adjustments in the provision of access to goods, facilities, services and premises. Other than that, points such as the involvement of PWD and burdens of unnecessary bureaucracy are covered.

Choi (2018, 3-125), also analyzes the legislation system of anti-discrimination for PWD of Korea and Japan with a comparative framework, also looking at those of USA, UK and Australia as examples from other regions. Even though the literature takes a broad approach,

the aspects that are related to employment and working conditions include the followings: (1) definition of disability and the disabled (PWD); (2) definition and general types of discrimination against PWD; (3) categories of discrimination against PWD in employment and treatment after the employment; (4) definition and details of ‘reasonable accommodations’ for PWD in the working space; (5) definition and conditions of ‘undue hardship’ for the providers of ‘reasonable accommodations’ for PWD; (6) role of the government and ministries/institutions relevant to the implementation of the anti-discrimination policies against PWD; and (7) types and procedures of remedies. After comparing the different sets of legislations, the author suggests several points that could be learnt by Korea from Japan and other countries analyzed in the literature, also putting an emphasis on the mechanism under which the Japanese legislations function.

Nagano (2015, 5-20), meanwhile, takes a different type of comparative approach, analyzing the anti-discrimination legislation system of Japan based on the changes that have been made following the ‘Amendment of the Act on Employment etc. of Persons with Disabilities’ in 2013. Unlike the aforementioned literatures that looked at the recent development and history of the legislations within certain countries, this article actually focuses on the two different versions, before and after the amendment, and compares them one to one. In order to find the important changes after the amendment, the author suggests a framework of four categories: (1) clarification of the scope of PWD; (2) introduction of prohibition of discrimination against PWD and obligation to provide reasonable accommodation for PWD; (3) inclusion of mental disabilities in the mandatory employment system; and (4) provision of support in processing grievances and resolving disputes from PWD in the working space. Therefore, even though the literature is established on the comparative framework of the legislation systems before and after the amendment, it provides a well-applicable analytical framework to analyze the current status of the anti-discrimination legislations against PWD in Japan and also of other countries.

2.3. Vocational Training/Rehabilitation System for PWD

Also one of the often covered policies that are related to the promotion of employment of PWD is the vocational training or rehabilitation offered to PWD. Unlike the other aforementioned policies, literatures that write about the vocational training or rehabilitation for PWD vary to a wide extent in terms of the scope and approach. Some analyze systemically how the policies are formulated and implemented with which institutions, while some try to interpret or look at the policies from a certain perspective or theory. Chun et al. (2016, 57-74) is one of the latter, which analyzes in an article that aims to look at career development for youth with disabilities in Korea in terms of how the South Korean culture impacted the delivery of training/rehabilitation services for PWD. The review argues that “since service providers in the Korean context are typically responsible for treatment decisions and service recipients tend to adhere to advice from persons in authority, a predominantly medical model of care proliferates naturally within the culture.” Considering

that the medical model of disability aligns with the filial piety and social hierarchy constructs of the Korean culture, the review says that the Korean training/rehabilitation system naturally suggests that “families be included as early as possible in the training/rehabilitation process to ensure rapport building and potentially empower more decision-making on the part of families and individuals” (Chun et al. 2016, 57-74). The authors also analyze the system by breaking it down to ‘post-secondary vocational education programming in special schools’, ‘integrated job-centered schools’, ‘special school based enterprises’, and ‘community based vocational education and training’.

Gruber, Titze, and Zapfel (2014, 224-38) also looks at the vocational rehabilitation system from a certain theory, but focuses on that of Germany. More specifically, the paper “shows one way of structuring the complexity of the process of vocational rehabilitation by describing employment related to exclusion and inclusion mechanisms of disabled people from a systems-theoretical perspective and by structuring the determinants for labour-market participation within a multi-level approach” (Gruber, Titze, and Zapfel 2014, 224-38). The authors argue that vocational rehabilitation, which tends to be a complex field, can be conceptualized, using a systems theory framework, as a process including several steps ideally leading to successful integration of the people who go through it into the labor market. The paper also argues that each of these process steps is affected by several influencing factors that potentially cause selection, and they can be broken down to ‘recognition/acceptance’, ‘participation in measures’, and ‘integration into the labor market’.

Another work that looks at vocational rehabilitation from a certain perspective is a journal article by Escorpizo et al. (2011, 126-33). However, the authors, contrary to the aforementioned literatures, do not cover a certain vocational rehabilitation system of a single country, but rather takes a general approach to offer a conceptual definition for vocational rehabilitation. In defining it, the International Classification of Functioning, Disability and Health (ICF) is adopted, which is a “universal conceptual framework and classification system which was intended by the WHO to describe and understand the different components of functioning of a person given a health condition” (Escorpizo et al. 2011, 126-33). By adopting the ICF, the authors find five essential elements of foci towards a conceptual definition of vocational rehabilitation, which are the following: focus on engagement or re-engagement to work as outcome; along a work continuum in terms of time and phase; involving various health conditions or events such as impairment, limitation or restriction, leading to work disability; being patient-centered and evidence-based; and lastly being a multi-professional or multidisciplinary intervention.

Reneman et al. (2013, 576-84) also adopts the International Classification of Functioning, Disability and Health (ICF) in combination with the Initiative on Methods, Measurement, and Pain Assessment in Clinical Trials (IMMPACT) in order to “develop a core set of diagnostic and evaluative measures specifically for vocational rehabilitation” (Reneman et al. 2013, 576-84). However, the article focuses on the cases of the Netherlands and also vocational rehabilitation for patients with subacute and chronic musculoskeletal pain.

Unlike the aforementioned papers that looked at the vocational rehabilitation from a certain perspective, theory or framework, there are other literatures that analyze different types of vocational rehabilitation systems, and then deriving different models, into which different systems can be classified or which different systems can be set as a goal. Andersson et al. (2011, 1-10), for instance, reviews the international literature on vocational rehabilitation, but focusing on different organizational models of collaboration together with different barriers and facilitating factors. Taking a rather meta-analysis approach, the paper is based on scientific journals that deal with vocational rehabilitation, and categorizes seven different models of collaboration for vocational rehabilitation that can be found in different countries. Namely, ‘information exchange’, ‘case coordination’, ‘interagency meetings’, ‘multidisciplinary teams’, ‘partnership’, ‘co-location’ and ‘pooling of budgets’ models were identified. Fleming, Del Valle, Kim, and Leahy (2013, 146-59) also provides a literature review that examines “the last 25 years of rehabilitation research with specific attention to empirical studies related to active employment-focused interventions and present models of best practices that already exist within the literature” (Fleming, Del Valle, Kim, and Leahy 2013, 146-59). The studies were classified into seven categories including ‘interagency collaboration’, ‘counselor education and customer outcomes’, ‘services to a targeted group’, ‘supported employment and evidence-based practice’, ‘empowerment and customer self-concept’, ‘essential elements of service delivery’, and ‘miscellaneous vocational rehabilitation services and outcomes’.

A similar approach of reviewing various systems of vocational rehabilitation in a comparative manner is taken by Belin (2016, 6-86), which investigates the systems for rehabilitation/return to work in the 28 European Union (EU) Member States and four European Free Trade Association (EFTA) countries. The report analyzes “what factors play a role in the development and implementation of a rehabilitation/return-to-work system (RTW)” (Belin 2016, 6-86), and also finds out which factors functioned as success factors for the systems in the analyzed countries. The analysis investigates different elements that constitute a vocational rehabilitation/RTW system in those countries, including: ‘the procedures for medical and vocational rehabilitation (with an emphasis on vocational rehabilitation)’, ‘the obligations of employers with regard to the reintegration of workers following a sickness absence and supporting measures provided to employers’, and ‘the procedures for compensation of sickness absence and allocation of disability benefits’. By doing so, four different profiles are identified, into which the 32 countries can be classified, which are ‘countries with comprehensive rehabilitation/RTW systems’, ‘countries with a step-wise approach to rehabilitation/RTW’, ‘countries with ad hoc elements for a rehabilitation/RTW system’, and ‘countries with rehabilitation for people with disability’.

Another type of literatures that covers vocational rehabilitation breaks down the system into several sections, in other words adopts a framework, in order to analyze the vocational rehabilitation systems of one or more countries. Waddell, Burton, and Kendall (2008, 1-54) is one of them, providing a review to provide an evidence base for policy development on vocational rehabilitation of UK, especially to “assess the evidence on the effectiveness and cost-effectiveness of vocational rehabilitation interventions” and to “develop practical

suggestions on what vocational rehabilitation interventions are likely to work, for whom, and when” (Waddell, Burton, and Kendall 2008, 1-54). To this end, the review especially looks at the ‘delivery’ and ‘timing and coordination’ within UK, the former being broken down further to ‘primary healthcare interventions’, ‘workplace interventions’, ‘structured vocational rehabilitation interventions’, and ‘social security and policy interventions’.

A report by Jun et al. (2014, 15-142) also provides information on the Korean vocational training/rehabilitation with the purpose of providing help to cooperating countries to develop and implement policy for vocational training for PWD from its introduction to the date of the publication of the report. Therefore, this report offers a rather broader and holistic overview of the system, starting with the ‘purpose and achievements’ of the Korean vocational training/rehabilitation policy, followed by the ‘background of introducing the policy’, and the actual ‘process and system of implementation’, which includes ‘enactment and revision of employment promotion and vocational training/rehabilitation of disabled persons act’, the ‘mid-to long-term plan of the program’, ‘organization and management systems’, and ‘methods of financing’. Also, the ‘operation of vocational competency development centers for the disabled’ and ‘how the other training institutes are supported’ are explored more in detail.

Boeltzig-Brown et al. (2013, 169-83), in a similar context, provides an overview regarding the enabling legislation, key policies and measures, and personnel resources of the vocational rehabilitation service system in Japan. The authors especially put emphasis on the roles played by the “engagement of a mandatory disability employment quota for public-sector and private-sector employers administered by public employment security offices (PESO), and public employment and rehabilitation services delivered through a network of PESO offices, local and regional vocational centers, vocational training centers and employment support centers for persons with disabilities” (Boeltzig-Brown et al. 2013, 169-83). The article therefore goes through the historical development, institutional structure and funding, personal resource and staff training, and local vocational centers for PWD.

Lee (2013, 5-25) also analyzes the vocational training/rehabilitation policy of Japan for persons with severe disabilities with the purpose of clarifying the problems that the Korean policy is facing, based on the fact that Japan and Korea are both located in the same region, and that they share huge similarities in the legislation and administration systems. Therefore, even though this literature is not fundamentally based on a comparative structure, it provides a set of criteria that builds up to be an analytical framework, which is also adoptable in a comparative analysis. The four main sets of criteria that compose the analytical framework are the followings: (1) change in the philosophy and ideology of the policy; (2) content of the policy for supporting the severely disabled; (3) delivery system of the policy; and (4) human resources who carry out the policy. More specifically, the first criterion analyzes what legislations have been enacted throughout the modern history, combined with the reasons, ideas, and the principles behind them. The second criterion of the analytical framework analyzes the definition of severe disability, the eligibility for vocational training/rehabilitation, and the training/rehabilitation institutions. The third criterion is composed of the structure of

the central administrative body for the policy, and the supporting process between institutions that are in charge of the vocational training/rehabilitation of the severely disabled. The last criterion analyzes the various types of personnel dedicated to vocational training/rehabilitation, especially focusing on which role they play for people with which types of disabilities.

Lastly Lee, Hong, and Nam (2008, 1-163), on the other hand, compares and analyzes the vocational training/rehabilitation systems of Korea, Germany and Japan in a comparative manner. The literature establishes an analytical framework to analyze the systems, which takes the followings as the core areas and elements of vocational training/rehabilitation systems for PWD: (1) vision; (2) means; (3) enforcement; and (4) evaluation. On top of this, the authors also add the ‘environment of the labor market for PWD’ as an element that surrounds all the four elements mentioned above. More specifically, the subcomponents that are analyzed under each main element are the followings:

(1) Vision	(a) goal and ideology; (b) history
(2) Means	(a) organization; (b) legislation; (c) policies; (d) human resources; (e) finances
(3) Enforcement	(a) support system; (b) delivery system; (c) training process; (d) specialized training for specific disabilities
(4) Evaluation	(a) evaluation system; (b) evaluation method

Table 3. Detailed version of analytical framework from Lee, Hong, and Nam (2008, 1-163)⁶

2.4. Multi-Dimensional or/and Other Approaches

Unlike the works that mostly deal with or focus on one certain type of policies to promote the employment of PWD, which are mentioned in the above sections, other works take a rather multi-dimensional or holistic approach, looking at more than just one type of policies and some of them also including different aspects from what have been covered in the above mentioned works. Kovacevic (2014, 57-77) is one of such papers, “which reassesses the limits of the obligation for reasonable adjustments, as well as the circle of protected persons, since comparative law recognizes the practice of reserving employment quotas exclusively for people with severe disabilities.” In other words, the paper looks at the legal framework for employment of PWD in Serbia, but with a special focus on the advantage and challenges of implementation of ‘quota-levy system’, and on the ‘obligation of reasonable adjustment of the workplace’ to the needs of PWD, of which the latter arguably falls into the category of anti-discrimination policy for PWD in workplace. The author concludes that the actual effectiveness of the employment quota system for PWD depends on

⁶ Adopted from Lee, Hong, and Nam (2008, 1-163).

the scope of workers to which the system is applied, since without any other specific measures, the system only leads to hiring persons with minor limitations, who are more or less alright even without the quota system in finding and keeping jobs. Therefore, the author argues that specific positive discrimination for persons with severe disabilities is the key to solving this problem. Also, it is argued that the reasonable adjustment standard should be more clearly drawn since the standard is related to the ‘assessment of the candidate’s capability to do the job with or without the reasonable adjustment’ and also the ‘request for effective adjustment’, which is “an adjustment that really enables a person with disabilities to carry out the work for an employer” (Kovacevic 2014, 57-77).

Corby, William, and Richard (2019, 41-56) is also one of the papers that cover both the quota-levy system together with anti-discrimination law, but unlike the previous paper, comparing two countries, namely France and Great Britain. First, the ‘legal regimes’ of the two countries are compared, including the French quota-levy scheme and the British public sector quality duty, which embraces also the anti-discrimination rationale, followed by the ‘judicial resistance’, ‘enforcement mechanisms’ from the state, individuals, and the trade union, and ‘labor activation policies’. The authors conclude that the above analyzed factors are the main reasons that France shows a higher rate of employment of PWD compared to Great Britain, and that those factors are not mutually exclusive and therefore researches must consider multiple explanations for the disadvantage of minority groups.

Kim (2011, 27-35) also compares the Korean employment policies for PWD to that of Germany, USA, UK, and other countries, regarding the quota system and the prohibition of discrimination, including the workplace accommodation provisions. More specifically, in terms of the discrimination prohibition system, the American with Disabilities Act (ADA) of USA, together with similar legislations from Canada, Australia, Germany and especially UK, the Disability Discrimination Act (DDA) of 1995. Also analyzed are the parts of legislations from ADA and DDA 1995 that deal with workplace accommodations, followed by a comparison of quota systems of Korea with various OECD countries.

Curran et al. (2019, 1-199) conducts a rather bigger analysis, comparing “various jurisdictions with regard to the measures for eliminating inequality of persons with disabilities and for encouraging their integration in the workplace” of 13 countries. The report therefore focuses on legal rules and programs with the purpose of treating PWD equally in the workplace, including before, during and at the end of employment in both private and public sectors. Questions designed in this report to be answered provide a framework that it takes, which are the followings: ‘What is the legal basis for protection/rights of employees with regard to those with disabilities?’; ‘What is the scope of the protection?’; ‘How is disability defined in order for rights/protections to arise?’; ‘What forms of non-discrimination protection are provided for?’; ‘What duties exist for the employer to accommodate people with disabilities?’; ‘What incentives or other assistance are available to employers to accommodate people with disabilities?’; ‘How are rights enforced?’; and ‘How does the legal framework operate in practice?’ Since the report takes a very holistic approach to look at all the relevant legislations in each country that are related to equal treatment of PWD with

regard to workplace and employment, aspects such as mandatory employment quota scheme, anti-discrimination legislation for PWD regarding workplace and employment, reasonable accommodation for PWD in workplace, and vocational rehabilitation are all covered.

There are also other works that take a broader approach, but together with a focus on other aspects than what have been mentioned above. For example, Jun et al. (2017, 1-15) provides an overview of history of relevant policies and legislations to the employment promotion of PWD within Korea ever since the first set of legislations has been enacted. However, instead of only focusing on the quota system, anti-discrimination laws, and vocational training/rehabilitation, this case study takes a step further and analyzes how the government tried to counter negative perceptions about PWD, including how implementation of education programs to raise awareness regarding PWD has been carried out. Especially, laws that have been enacted to oblige business owners of certain types and size to carry out education that raise awareness regarding PWD are analyzed. Another noteworthy point for this case study is that it also puts special focus on the financing aspects of the policies, also mentioning how to ensure a stable flow of funds through levies on non-compliant business.

O'Brien and Dempsey (2004, 126-35) is also one of the papers that put focus on the education along with the aforementioned aspects of employment promotion policies for PWD, however the education that it analyzes in a comparative manner is different from what Jun et al. (2017, 1-15) analyzes, since it refers to special education that is offered to PWD to lead them to workplace. The article compares relevant status and legislations of Australia, Finland, and Sweden, focusing on the fact that policies related to the promotion of employment of PWD is led to a tension between the "simultaneous achievement of person-centered principles for people with disabilities and a desire for improved service efficiencies and accountability" (O'Brien and Dempsey 2004, 126-35). Also focusing on the fact that usually only low skilled jobs are offered to those with intellectual disabilities, the article proposes that improving the level of education and training available for those who have intellectual disabilities could be the key to the improvement of employment opportunities for them. Moreover, the article covers labor market programs for job seekers with disabilities that are offered, which is not an aspect that was covered in the previous works mentioned above.

Lastly, Scharle and Csillag (2016, 1-24) provides even a broader analysis of various policies that exist in different EU Member States in a comparative manner. After going through 'types of policies that support labor market integration', 'recent policy developments', and 'role of public employment services', the paper shows different measures and services to support labor market integration of job seekers with disabilities according to the following categories: 'preventive measures' including mandatory rehabilitation during sick leave in Denmark, experience rating in the Netherlands, and early intervention by the employer of the Dutch gatekeeper protocol; 'assessment of disability' including involvement of health specialists in Austria, and reform of evaluating eligibility for disability benefit in Estonia; 'financial incentives to encourage job search and re-employment' including that of Norway and the Netherlands; 'rehabilitation measures to improve employability' including personalized services provided in-house by the public employment services (PES) of UK, in-

house rehabilitation services provided by the Hungarian PES, subcontracted services for specific sub-groups in the Netherlands, specialized programs for particular subgroups in Denmark, Individual Placement and Support (IPS), social enterprise for placing jobseekers with disabilities in Austria, and sheltered employment in Spain; and lastly, ‘engaging employers’ including the quota system in Austria and Spain, wage subsidy in Sweden, workplace adjustment scheme in the UK, job creation by reallocating tasks in the workplace in the Netherlands, anti-discrimination campaign in the UK, and appealing to corporate social responsibility (CSR) commitments of the two ticks symbol of the UK.

2.5. Summary of the State of the Art

Type	Citation	Features
Mandatory Quota System	Agovino, Garofalo, and Marchesano (2016, 135-55)	Evaluation of the influence of ‘targeted employment’ of PWD on the labor market participation of disabled people in Italy
	Abidi and Sharma (2014, 60-68)	Analysis of Indian legislation introducing the quota system to analyze the correlation of poverty, disability and employment
	Shim and Choi (2012, 227-49)	Analysis of problems of the mandatory employment system’ and ‘double count method’ of Japan
	Yuyama (2018, 122-27)	Analysis of development process of the quota system in Japan
	Fuchs (2014, 1-7)	Comparative analysis of the quota systems of EU Member States regarding parameters, aspects, and effectivity
	Lee and Lee (2016, 83-92)	Systematic comparison of the mandatory employment quota systems for PWD of Korea and Japan
Anti-Discrimination Policy	Harwood (2016, 1-23)	Analysis of ‘strengthening’, ‘harmonization’, and ‘weakening’ of disability discrimination law within UK
	Crasnow and Fraser Butlin (2015, 75-86)	Analysis of ‘Reasonable Adjustment Duty’ of the Equality Act 2010 of UK
	Maroto and Pettinicchio (2014, 370-407)	Analysis of the recent history of USA since ADA has been passed in 1988
	Lane and Munkholm (2015, 91-113)	Analysis of the recent history of development of anti-discrimination policies in UK – definition of PWD, model of disability, amendments and adoption of new legislations, ‘reasonable adjustments’, and ‘burden of unnecessary bureaucracy’
	Choi (2018, 3-125)	Comparative analysis of Korea and Japan – (1) definition PWD; (2) definition and general types of discrimination; (3) categories of discrimination in employment and treatment after the employment; (4) details of ‘reasonable accommodations’; (5) definition and conditions of ‘undue hardship’ for employers; (6) role of the government

		and ministries and institutions; and (7) types and procedures of remedies
	Nagano (2015, 5-20)	Analysis of Japanese legislation before and after amendment – (1) clarification of the scope of PWD; (2) introduction of prohibition of discrimination against PWD and obligation to provide reasonable accommodation for PWD; (3) inclusion of mental disabilities in the mandatory employment system; and (4) provision of support in processing grievances and resolving disputes from PWD in the working space
Vocational Training /Rehab System	Chun et al. (2016, 57-74)	Analysis of the impact of South Korean culture on the delivery of VR – categorization of ‘post-secondary vocational education programming in special schools’, ‘integrated job-centered schools’, ‘special school based enterprises’ and ‘community based vocational education and training’
	Gruber, Titze, and Zapfel (2014, 224-38)	Conceptualization of the German VR system using a systems theory framework – steps of ‘recognition/acceptance’, ‘participation in measures’, and ‘integration into the labor market’
	Escorpizo et al. (2011, 126-33)	Establishment of a conceptual definition for VR through International Classification of Functioning, Disability and Health (ICF)– 5 foci of ‘engagement or re-engagement to work as outcome’; ‘along a work continuum in terms of time and phase’; ‘involving various health conditions or events such as impairment, limitation or restriction, leading to work disability’; ‘being patient-centered and evidence-based’; and lastly ‘being a multi-professional or multidisciplinary intervention’
	Reneman et al. (2013, 576-84)	Development of a core set of diagnostic and evaluative measures also using ICF together with the Initiative on Methods, Measurement, and Pain Assessment in Clinical Trials (IMMPACT) focusing on the Dutch system
	Andersson et al. (2011, 1-10)	International literature review on VR on organizational models of collaboration – ‘information exchange’, ‘case coordination’, ‘interagency meetings’, ‘multidisciplinary teams’, ‘partnership’, ‘co-location’ and ‘pooling of budgets’ models
	Fleming, Del Valle, Kim, and Leahy (2013, 146-59)	Literature review on VR with specific attention to active employment-focused interventions and present models of best practices – ‘interagency collaboration’, ‘counselor education and customer outcomes’, ‘services to a targeted group’, ‘supported employment and evidence-based practice (EBP)’, ‘empowerment and customer self-concept’, ‘essential elements of service delivery’, and ‘miscellaneous vocational rehabilitation services and outcomes’
	Belin (2016, 6-86)	Investigation of rehabilitation/return to work systems of

		European countries with focus on factors that play a role in the development and implementation – elements to be analyzed: ‘the procedures for medical and vocational rehabilitation’, ‘the obligations of employers with regard to the reintegration of workers following a sickness absence and supporting measures provided to employers’, and ‘the procedures for compensation of sickness absence and allocation of disability benefits’
	Waddell, Burton, and Kendall (2008, 1-54)	Evidence base for policy development on UK’s VR system – focus on ‘primary healthcare interventions’, ‘workplace interventions’, ‘structured vocational rehabilitation interventions’, ‘social security and policy interventions’, and ‘timing and coordination’
	Jun et al. (2014, 15-142)	Introduction of Korean VR from its introduction to current status – focus on ‘purpose and achievements’, ‘background of introducing the policy’, ‘process and system of implementation’, ‘operation of vocational competency development centers for the disabled’ and ‘how the other training institutes are supported’
	Boeltzig-Brown et al. (2013, 169-83)	Overview of enabling legislation, key policies and measures, and personnel resources of the Japanese VR system
	Lee (2013, 5-25)	Analysis of Japanese VR system for severe disability – criteria: (1) change in the philosophy and ideology of the policy; (2) content of the policy for supporting the severely disabled; (3) delivery system of the policy; and (4) human resources who carry out the policy
	Lee, Hong, and Nam (2008, 1-163)	Comparison of VR systems in Korea, Germany, and Japan – categories: ‘vision’, ‘means’, ‘enforcement’, and ‘evaluation’
Multi-Dimension and Other Approach	Kovacevic (2014, 57-77)	Analysis of legal framework for employment of PWD in Serbia – advantage and challenges of implementation of ‘quota-levy system’, and on the ‘obligation of reasonable adjustment of the workplace’ to the needs of PWD
	Corby, William, and Richard (2019, 41-56)	Comparative analysis of quota-levy system and anti-discrimination law of France and Great Britain – ‘legal regimes’, ‘judicial resistance’, ‘enforcement mechanisms’, and ‘labor activation policies’
	Kim (2011, 27-35)	Comparison of Korean employment policies for PWD with Germany, USA, UK, and other countries regarding the quota system, prohibition of discrimination, and workplace accommodation provisions
	Curran et al. (2019, 1-199)	Comparison of various jurisdictions with regard to the measures for eliminating inequality of PWD and for encouraging their integration in the workplace of 13 countries, including mandatory employment quota scheme, anti-discrimination legislation for PWD regarding workplace and employment, reasonable accommodation for PWD in

		workplace, and VR
	Jun et al. (2017, 1-15)	History of relevant policies and legislations within Korea including the quota, anti-discrimination, VR, education programs to raise awareness regarding PWD, and financial aspects
	O'Brien and Dempsey (2004, 126-35)	Comparison of Australia, Finland, and Sweden, regarding the quota, anti-discrimination, VR, special education for PWD, and labor market programs for job seekers with disabilities
	Scharle and Csillag (2016, 1-24)	Comparison of EU Member States regarding 'types of policies that support labor market integration', 'recent policy developments', and 'role of public employment services' – case studies of 'preventive measures', 'assessment of disability', 'financial incentives to encourage job search and re-employment', 'rehabilitation measures to improve employability', and 'engaging employers'

Table 4. Summary of the state of the art⁷

3. Methodology

3.1. Overview of the Methodology

As has been shown in the 'State of the Art' chapter, employment promotion policy does not refer to a single policy but is rather a multi-dimensional term that can include many types of policies relevant to the promoting the employment of PWD in the society. Even though many other policies and measures can be considered as having this function and goal, due to the limitation of space and also considering the direct relevance to the objective of employment promotion, this thesis will analyze the mandatory employment quota systems for PWD, anti-discrimination policies or legislations for PWD related to employment and workplace conditions, and lastly the vocational training/rehabilitation systems for PWD of Republic of Korea and Japan.

First, the **mandatory employment quota systems** of the two countries are chosen as one of the policies to be analyzed due to its obvious objective, principle, and effect related to the employment promotion of PWD. The quota system is a representation of a deeply embedded policy approach based on the long-existing acceptance by the societies of social obligation to employ PWD (Thornton 1998, 4-5), basically targeting to stimulate labor demand through obliging the employers to employ a certain share of PWD as employees (Fuchs 2014, 2). In other words, taking into consideration that discrimination against PWD from the employers' side on the ground of insufficient productivity is prevalent in the society (Agovino, Garofalo, and Marchesano 2016, 136), the mandatory employment quota systems for PWD exist on the premise that PWD are unable to compete for an occupation on the open

⁷ Summarized by the author himself.

labor market, justified by equity reasons (Fuchs 2014, 3-5). Also, aside from the principle it stands on, even though the effectivity of the employment quota system for PWD cannot be completely independently analyzed, it is analyzed that it has at least windfall games, squeeze out- and substitutional effects, together with a small net employment gains (Fuchs 2014, 3-5). In this thesis, the analytical framework for the mandatory employment quota systems for PWD of the two countries will be made taking an eclectic approach from a journal article by Lee and Lee (2016, 83-92), “Comparing Employment Quota Systems for Disabled People Between Korea and Japan”, and a policy brief from the European Centre for Social Welfare Policy and Research by Fuchs (2014, 1-9), “Quota Systems for Disabled Persons: Parameters, Aspects, Effectivity.”

Second, the **anti-discrimination policies for PWD with regard to employment and workplace conditions** between the two countries are compared. This type of policy is usually designed to combat redistributive injustice and unfair recognition, the former linked to “maldistribution”, through which PWD experience higher rates of unemployment, and the latter linked to “misrecognition”, with which PWD are more likely to experience ill-treatment in workplaces (Harwood 2016, 1-2). The introduction of such policies has started from the general change of trends in the industrialized world since the 1990s, being reoriented from caretaking to work-promoting, from segregationist to integrationist, and from welfare to civil rights (Bagenstos 2003, 650), in other words, it can be considered as a relatively new type of policy to promote the employment of PWD (Oh 2016, 185-86).

A more concrete purpose of anti-discrimination policies for PWD related to employment and workplace conditions is to improve the representation of PWD by prohibiting discrimination on the basis of disabilities in all stages of the employment process, which includes stages starting with recruitment until the end of employment. More specifically, also included as targets of prohibition of discrimination are performance appraisal, promotion practices, pay equity, employee benefits, termination, dismissals, compulsory retirement, layoffs, and also addressed is the provision of reasonable accommodations necessary for PWD to fully perform their jobs (Kim 2011, 28). Throughout these stages, the anti-discrimination policies for PWD can have both positive and negative influences on the labor demand for PWD, the positive one being a reduction of employing costs, since the policy functions as a *de facto* hiring subsidy, considering that it cancels off the potential costs of lawsuit when PWD have been rejected from being employed, and the negative one being an increase in the firing costs of PWD, accommodation costs for PWD, and the equal-pay provision, which all can lead to exacerbating the decline in employment of PWD (Acemoglu and Angrist 2001, 923-24). Regarding the labor supply aspect, anti-discrimination policies for PWD can be expected to reduce the cost of entering the labor force for PWD, and consequently to increase labor force participation, through its required accommodation obliged from the legislations. Also, it can be argued that greater accommodation of limitations of PWD can result in increased productivity of them, and therefore increasing the likelihood of their employment (Hotchkiss 2004, 889).

Considering the positive and negative impacts such policies can have theoretically that

have been mentioned above, together with the ongoing controversy over the actual impact of the policies on the employment rate of PWD, and the income inequality between PWD and non-PWD, justification of the anti-discrimination policies for PWD regarding employment and workplace conditions as an employment promotion policy for PWD is arguably at stake. However, such policies are aimed to ‘guarantee and promote the employment of PWD through prohibiting discrimination against them on the grounds of disability’ and therefore is not to be judged only by the impact it has on the actual employment rate or income gap, but also to be thought from a qualitative perspective regarding the treatment that PWD get during employment until they stop working (Seo and Hwang 2016, 76-77), and therefore these policies seem to stand firmly in most of the countries as one of the most representative employment promotion policies for PWD.

In this context, the analytical framework for comparing the anti-discrimination policies between Korea and Japan will be adopted from a policy research by Choi (2018, 3-125) “Comparative research on the anti-discrimination legislation for persons with disabilities of Korea and Japan” (in Korean), in combination with a framework introduced in an article by Nagano (2015, 5-20) “Recent Trends and Issues in Employment Policy on Persons with Disabilities”.

Third, the **vocational training/rehabilitation systems for PWD** between the two countries will be comparatively analyzed. Vocational training/rehabilitation for PWD seems to be especially one of the policies for the promotion of employment for PWD that catches attention from various international organizations, also leading to several international standards or frameworks that try to define or shape what vocational training/rehabilitation for PWD is. For instance, the International Labour Organization (ILO) started as early as 1955 to come up with its first recommendation on rehabilitation in relation with PWD, and the World Health Organization (WHO) also has its own explanation on it, which states “rehabilitation of people with disabilities is a process aimed at enabling them to reach and maintain their optimal physical, sensory, intellectual, psychological and social functional levels” (Belin 2016, 16). Also the United Nations Convention on the Rights of Persons with Disabilities (CRPD) mentions that “habilitation and rehabilitation services and programmes” are to “enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life” (UN General Assembly 2007, 16), including employment.

Also considering that the Convention 159 of ILO ‘Vocational Rehabilitation and Employment (Disabled Persons) Convention’, which is a more recent document of ILO that deals with vocational rehabilitation for PWD, notes that the purpose of vocational rehabilitation is to “enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person’s integration or reintegration into society” and that the Organisation for Economic Co-operation and Development (OECD) mentions that vocational rehabilitation is aimed to “increase the productivity of people with disability by restoring and developing their skills and capabilities so they can participate in the general workforce” (OECD 2010, 80), it can be said that vocational rehabilitation for PWD in general

“aims to enable persons with physical or mental impairments or disabilities to overcome barriers to accessing, maintaining or returning to employment or other useful occupation” (Belin 2016, 17).

However, the perception and concept of vocational rehabilitation also has undergone some changes throughout the history of it in different countries and it can be witnessed that unlike the traditional approach, which focused on severe medical conditions, the concept and perception of these days seem to put equal importance on people with common health problems. More specifically, while rehabilitation for people with severe and permanent impairments focuses on overcoming, adapting, or compensating for those impairments, a more modern perception of vocational rehabilitation for common health problems puts more emphasis on identifying and addressing health-related, personal/psychological and social/occupational obstacles to participate in the workforce or return to it. Also, in recent days, vocational rehabilitation is not thought to be a mere matter of healthcare alone but rather a field that requires a combination of healthcare and workplace interventions so that it can address both health problem and work issues. Similarly, the role of the individuals getting the vocational rehabilitation is becoming more important, and therefore it is thought to be the case that vocational rehabilitation is an active process of change that depends on the participation, motivation, and effort of the individual, supported by the healthcare and workplace (Waddell, Burton, and Kendall 2008, 11).

Considering all these aspects, the analytical framework in the analysis part for the purpose of comparing the vocational training/rehabilitation systems of Korea and Japan will be adopted from a report from Employment Development Institute (EDI) of Korea Employment Agency for Persons with Disabilities (KEAD) by Lee, Hong, and Nam (2008, 1-163), “Comparison on the Vocational Competency Development Training System of ROK, German and Japan.”

3.2. Analytical Framework for Mandatory Employment Quota System for PWD

Comparing the mandatory employment quota systems for PWD takes rather not such a complex approach, consisting of three major criteria and a few sub-criteria underneath each of them, driven from Lee and Lee (2016, 83-92). First of all, the **‘level of mandatory employment quota’** is compared, set as a percentage of PWD that should be employed out of all the employers in the company or organization. Different levels of mandatory employment quota in different countries reflect different reasons that introduced or to introduce regulations for mandatory quota, some resulting in relatively low levels due to the fact that it was rationalized from economic needs –especially in order to supplement labor shortage in certain circumstances–, while some resulting in higher levels due to the fact that it was introduced from a human rights perspective to enhance equality. Also, many countries, that are a member of the European Union (EU) for example, take guidelines that are agreed among the representatives of stakeholders including PWD, corporates, and the governments

to set the level, whereas in other countries, such as Korea and Japan, the level is adjusted by the government considering the employment rates of PWD (Lee and Lee 2016, 85).

The ‘level of mandatory employment quota’ can again be broken down to three sub-criteria. The first one is the ‘actual figure of quota in percentage’, which is ultimately set by the government or other responsible organization (Lee and Lee 2016, 87), and ranges to a great extent, from 2% in Spain to 7% of Italy in Europe for example (Fuchs 2014, 2). The second one is ‘whether the quota is different for private and public sector’, considering that not all countries assign the same quota for both sectors, sometimes obliging a higher percentage to the public sector. The third one is the ‘calculation formula of the quota’, since different countries seem to adopt different methods of calculating the quota in terms of what are included in the nominator and what are included in the denominator (Lee and Lee 2016, 88).

Secondly, the ‘**coverage of employers**’ is compared as in what types of employers are obliged to follow the mandatory employment quota system for the PWD. Different countries can be found applying the quota system to different types of employers, setting certain conditions that make the employers fall under the obligation. For example, certain systems only oblige the employers in the public sector to follow the quota system, as it is the case in Belgium, whereas other countries apply the obligation to both public and private sectors, be it different percentages for each sector or not. Also, in most of the cases, the quota system is not applied to employers with less than a certain amount of employees in the corporation or organization, and this amount also varies to a great extent (Lee and Lee 2016, 86-88). Therefore, the ‘coverage of employers’ can be broken down to two sub-categories, namely ‘whether only private or public sector is subject to the system or both of them are’, and ‘the minimum number of all employees in the company to be subject to the system’.

Lastly, the ‘**sanctions and incentives**’ are compared, which are systematic mechanisms to promote the employers to abide by the quota system and also encourage them to even over-satisfy the percentage of PWD employed. In other words, sanctions are put on employers who do not fulfil the obliged percentage of quota system and are typically in a form of payments or fines, whereas incentives are utilized for employers who fulfil the obligation to a further extent than what is required, in a form of subsidy for example (Lee and Lee 2016, 87-89). The spectrum of sanctions also ranges from almost completely non-existent fines in Spain to relatively high sanctions up to additional payroll tax of 4% (Fuchs 2014, 3). The sub-categories under ‘sanctions and incentives’ will be consisted of ‘whether sanctions and/or incentives depend on the size of the company or organization in terms of number of employees, and/or on gender, disability grade, type of disability, etc. of the employee with disabilities’ and ‘the absolute amount or calculation formula for the amount of financial sanctions and/or incentives’.

3.3. Analytical Framework for Anti-Discrimination Legislation for PWD

Considering that Korea and Japan share a great deal of similarities in the form and structure of legislations, which also applies to the anti-discrimination legislations for PWD (Choi 2018, 5), the comparative framework for analyzing both countries' legislation is rather categorized straightforward. First of all, a **brief process of introduction of the legislations** in each country will be analyzed. Anti-discrimination legislations in different countries have been introduced at very different times, –the Americans with Disabilities Act (ADA) being introduced in 1990, whereas the Japanese legislation was introduced in 2013, taking effect only since 2016– and the process and context in which each legislation was introduced differs greatly –the British Equality Act embracing various types of discrimination on the basis of not only disability but also sex, religion or belief, age, race, etc., whereas the Korean legislation was introduced almost solely through the efforts of various organizations of PWD– (Choi 2018, 1-31).

Second, the **definition of disability and the disabled (PWD)** will be compared. How different anti-discrimination legislations in different countries define disability and PWD shows what kind of model of disability or disability paradigm is predominant in each country, which means it demonstrates how PWD are perceived in the society (Zajadacz 2015, 190). Even though the terminology 'model of disability' or 'disability paradigm' does not have a single fixed definition or categorization and different scholars classify them according to different standards (Henderson and Bryan 2011, 6-11; Retief and Letšosa 2018, 1-7; Priestley 1998, 75-94), it can generally be divided into 'medical model' and 'social model' of disability. The medical model focuses on the 'impairment' of the PWD as an individual, independent from socioeconomic/political environment, leading social policies to 'cure' or help the PWD 'adjust' to the social structure, whereas the social model focuses on the social structure that 'disables' those with impairments, leading social policies to bring social change so that people with impairments are as much 'abled' as people without them (In 2013, 6-10). Also aside from models of disability, different legislations can take different approaches in defining disability and PWD, for example some of them only including those who currently have disabilities, while others also include discrimination based on past disabilities or other aspects that were perceived as disabilities, as object of prohibition (Choi 2018, vi). Therefore, by comparing the definition of disability and PWD written in the anti-discrimination legislations of each country, it will be analyzed which model of disability is predominant in that country, together with distinct features or limitations in it.

Third, the **definition and general types of discrimination against PWD** will be compared. Together with how disability and PWD are defined, this aspect is also of essence since the goal of anti-discrimination policies is to prohibit the discriminations done against PWD on the basis of disabilities, and therefore how discrimination is defined impacts how and how well PWD are protected against them. Types of discriminations are usually classified into direct discrimination, indirect discrimination, failure to make reasonable adjustments (accommodations), and discrimination against the use of auxiliary equipment or service animals. However, this also differs between countries, for example those of USA, UK,

and Australia explicitly mentioning harassment and victimization against PWD also as a distinct type of discrimination against PWD (Choi 2018, vi). Also, when defining the scope of discrimination on the basis of disability, different legislations show different approaches. For example, certain legislations consider discrimination based on past diseases, as well as discrimination against people who are related to PWD as discrimination subjected to prohibition by the legislation. Not only that, applying the same standard or evaluation that is applied to non-PWD to PWD or people who are in disadvantageous positions, or being discriminated due to the fact that someone filed a civil complaint against the employer or organization regarding discrimination against PWD is also considered as a discrimination according to some legislations (Choi 2018, 16-18). In the analysis of the legislations of Korea and Japan, therefore, how the definition of discrimination against PWD based on disabilities is written in each legislation will be compared, together with the general types of discrimination each legislation presents.

Fourth, the **categories and scope of discrimination against PWD in employment and treatment after the employment** in each of the legislation will be compared. Unlike the third criterion that dealt with the different forms of discrimination, this one deals with in which fields related to employment and workplace conditions the discrimination can occur and to which extent such discrimination is subject to prohibition by each legislation. Anti-discrimination legislations for PWD usually deal with a wide scope of discrimination possibly including employment, education, physical and information accessibility, transportation, discrimination in the field of goods and services, judicial and administrative processes and services, political rights, maternity and paternity rights, gender, family, home, welfare facilities, health rights, etc. Moreover, some legislations also define discriminatory treatment and conditions through policies or system as discrimination subject to prohibition based on them, concretely prohibiting intangible discrimination against PWD by the government. Some even go into the categorization more deeply and define inadequate preparation of communication services or other related services for people with hearing impairment, or differentiate and put more weight on discrimination against women or children with disabilities (Choi 2018, 39). However, in the analysis part of the Korean and Japanese legislations, how two of them differ in terms of categorizing discrimination in different fields within the scope of employment and workplace conditions –since this scope can also be broken down more in detail– will be analyzed, considering the topic of the thesis.

Fifth, the **definition and details of ‘reasonable accommodations’ for PWD in the working space** written in each legislation will be comparatively analyzed. How different anti-discrimination legislations define the ‘reasonable accommodations’ differs but the trend shows that more legislations include intangible measures on top of tangible measures, which are thought to be a more traditional interpretation of the term. Tangible measures in different legislations include facilities, equipment, buildings, products, software, etc. –in many cases with regard to physical accessibility–, whereas intangible measures include accessibility for information, services, policies, aid, etc. Especially, since the provision of accessible services or policies has a positive impact on the social integration and independent living of PWD, the intangible types of reasonable accommodation is becoming more important (Choi 2018, vii).

Meanwhile, the principles of reasonable accommodation also differ from legislation to legislation, some just mentioning simply the purpose of the ‘reasonable adjustment’ – minimizing the functional limitations caused from disabilities and maximizing participation and social integration of PWD–, whereas some specify the requirements for providing reasonable accommodations –for example, 1) changing the way things are done when PWD are put at a substantial disadvantage by a provision, criterion or practice of their employer; 2) making changes to overcome barriers created by the physical features of a workplace; and 3) providing extra equipment or auxiliary aid or getting someone to do something to assist the PWD (auxiliary service)– (Choi 2018, 21-22).

Also relevant, regarding the concept of ‘reasonable accommodation’, is the concept of ‘undue hardship’ or ‘excessive burden’. This concept is often of ambivalent and interpretative nature, leading to different applications case by case and country by country, and therefore unlike other categories that are relatively more concretely stipulated in the legislation itself, in this category, judicial precedents may be utilized more often as key evidentiary material (Choi 2018, vii). Nevertheless, as in any kind of legislation, statutory law provides an important basis and how this concept of ‘undue hardship’ is written in each legislation also differs from country to country. For example in certain legislation, ‘undue hardship’ is defined as an action that requires ‘significant difficulty or expense’ and it takes into consideration the nature and cost of accommodation, overall financial status of the accommodation provider, total number of employees, the impact of accommodation on expenditure, resources and managing the facility, and the nature of the business or facility – including revenue, field of business, geographical features, etc.–. Meanwhile, another legislation take into consideration the nature of the benefit or detriment to occur, effect of the disability of any person concerned, financial circumstances and estimated amount of expenditure required, and the availability of financial and other assistance by the accommodation provider (Choi 2018, 22-23). In the analysis, therefore, how the ‘reasonable accommodation’ is defined and categorized in each legislation will be analyzed, together with how ‘undue hardship’ is concretely defined and what kind of conditions are to be taken into consideration in the two legislations

Sixth, the **role of the government and ministries/institutions relevant to the implementation of the anti-discrimination policies against PWD** will be analyzed. Since the anti-discrimination legislation for PWD is not an equivalent to the anti-discrimination policies but rather a basis for implementing them, how different governmental bodies carry out the policies based on the legislation is also of importance, and how they are supposed to be done is also written in the legislation. Emphasizing and enumerating such roles in detail can bring about an effect of enhancing the sensibility of public officials who provide services to the public including the PWD, consequently leading to minimizing potential discrimination against PWD on site. However, how the role of relevant governmental bodies is codified in the legislation also differs to a certain extent from country to country. For instance, certain legislation only embodies the role and function of the responsible bodies in an abstract and declaratory manner, whereas another legislation classifies them more in detail with separate response guidance and response instructions (Choi 2018, viii). In this regard, how the role

and function of relevant governmental bodies are written in each legislation will be compared in the analysis part.

Lastly, seventh, the **types and procedures of remedies for discrimination against PWD** will be analyzed. Although the main purpose of anti-discrimination legislation is to prevent discrimination against PWD from happening in the first place, it cannot always be one hundred percent prevented and therefore the legislation also includes what types of remedies in case of discrimination exist and how it proceeds. Many aspects in this category also differ from country to country, for example, the relevant body, to start with. Some countries have independent institutions ready that are in charge of the remedy, and they usually have the advantage of having expertise in the related field, especially that of human rights, whereas other countries utilize institutions within a different ministries in the government, of which the advantage would be that adequate administrative measures can be taken according to the types of discrimination. Another difference that exists between different countries is whether it puts emphasis on legal measures to directly face the discrimination in terms of remedy or whether it puts more focus on the administrative measures such as consulting or counseling (Choi 2018, viii). Therefore the features of remedy procedures for discrimination against PWD in the two countries will be comparatively analyzed looking at the relevant legislations.

3.4. Analytical Framework for Vocational Training/Rehabilitation Policies for PWD

Unlike the aforementioned two policies for the promotion of employment of PWD, which are relatively straightforward and not as complex, the vocational training/rehabilitation system demonstrates rather more complex and therefore distinct features depending on the country. This is the case since it is not a mere set of regulations or legislations, but rather a multi-dimensional policy that requires an actual delivery of specific services, which in turn necessitates responsible organizations to carry out various steps to bring the services into effect, and also financing for the administration related to the services (Lee, Hong, and Nam 2008, 4-8). Considering this, the analytical framework to compare the vocational training/rehabilitation systems of Korea and Japan will be composed of three main categories—leaving out one main category from the original analytical framework suggested by Lee, Hong, and Nam (2008, 4-8) due to the overlapping nature—, which then will be divided into also several sub-categories.

First of all, the **vision of the vocational training/rehabilitations systems of the two countries** will be analyzed, which can be divided further into a *brief history of the systems* that led to the vision of the systems of these days, and the *current goal and principle in implementing the system*. How different countries ended up developing the vocational training/rehabilitation systems that they have now cannot help but to differ, since it is not a mere consequence of legislation and amendments but rather of interactions of different circumstances and legislations (Lee, Hong, and Nam 2008, 4-8). Therefore, to better understand why and how the current form of vocational training/rehabilitation systems of the

two countries demonstrates certain features, a brief history of the development of vocational training/rehabilitation systems in the two countries will be covered. Afterwards, the current goal and principles of the vocational training/rehabilitation will be analyzed. Since the goal and principles of vocational training/rehabilitation systems in many countries are affected by international organizations like UN and ILO, a significant part might overlap, however, the goal and principles introduced in the relevant domestic legislations can differ also to a great extent as a result of complex circumstances within the country (Lee, Hong, and Nam 2008, 4-134). In this context, the goal and principles of the vocational training/rehabilitation systems in the two countries will be analyzed, looking at different legislations that are relevant.

Secondly, the **means of the vocational training/rehabilitations systems of the two countries** will be analyzed, which can be divided into five different sub-categories, namely the a) **organization**; b) **relevant legislation**; c) **types of services**; d) **human resources**; and e) **financing**.

As have been already mentioned, vocational training/rehabilitation requires a rather complex structure compared to the previous two other policies for employment promotion of PWD, and therefore also requires different organizations that take charge of different roles in the vocational training/rehabilitation system. Therefore, firstly how different roles are distributed to different organizations or governmental bodies will be analyzed. After that, various types of legislations that are relevant to the vocational training/rehabilitation will be analyzed. Unlike the anti-discrimination legislation for PWD, the basis for vocational training/rehabilitation is usually spread over various legislations that shape the system (Lee, Hong, and Nam 2008, 9-114). In some systems, it might be mentioned in each legislation that deals with different types of disabilities (Lee 2013, 10), whereas in other cases, there are more dominant separate laws that deal with the vocational training/rehabilitation itself in all types of disabilities (Lee, Hong, and Nam 2008, 4).

Types of services in the vocational training/rehabilitation systems might also differ between countries, since the term itself includes various types of services provided to PWD. For instance, there could be services provided by the public sector or private sector, the latter especially provided in the companies itself. Also, there could be training/rehabilitation services provided based on individual capacities from the same institution or tailor-made services provided to individuals from different business areas, or there could be specified services for distinct disabilities (Lee, Hong, and Nam 2008, 67-117). Therefore, the kinds of different specific vocational training/rehabilitation services that exist in the two countries will be comparatively analyzed. Also, in order to carry out the different kinds of services that exist within the vocational training/rehabilitation system, personnel to carry out these services are required, and the type of human resources necessary would also depend on countries. Even though term vocational training/rehabilitation implies that the main type of human resources that is required would be related to training or therapeutic area, different countries can have different types of human resources available such as psychologists, education experts, medical experts, advisors, job counsellors, supporters to help the PWD adapt to the workplace, etc. Also the regulations related to these personnel can differ between countries

such as the required licenses or training hours to be qualified to become a part of the human resources in the vocational training/rehabilitation system (Lee, Hong, and Nam 2008, 5). Considering this, the different types of human resources in the vocational training/rehabilitation systems of the two countries will be compared, together with different features of them, including qualifications and the roles that they take.

To make the things mentioned above all possible, however, the vocational training/rehabilitation system has to be somehow financed. How each country finances its system also differs since it can either be financed through the already existing finances of the social insurance schemes or be financed from separate funds explicitly for the system itself. Normally the finances come from various sources and it can depend on the types of services provided and therefore countries show varying features regarding the financing of the system (Lee, Hong, and Nam 2008, 5-6). Therefore, the different financing means for the vocational training/rehabilitation systems of the two countries will be comparatively analyzed.

Lastly, the **performance evaluation scheme of the vocational training/rehabilitation systems** of the two countries will be analyzed. Once the vocational training/rehabilitation services are delivered to the PWD, the providers are evaluated but with different and distinct evaluation methods or criteria. These criteria can include number of trainees, employment rate among them, employment retention rate, ratio of different types of disabilities, proportion of tailor-made trainings, completion rate, dropout rate, proportion of female PWD, acquisition rate of licenses, etc. (Lee, Hong, and Nam 2008, 96-129). Accordingly, the evaluation scheme of the vocational training/rehabilitation systems of the two countries will be analyzed.

3.5. Summary of the Analytical Framework

Mandatory Employment Quota System	
Level of mandatory employment quota	Actual figure of quota in percentage
	Is the quota different for private and public sector?
	Calculation formula of the quota
Coverage of employers	Is only private or public sector subject to the system, or are both of them?
	Minimum number of all employees in the company to be subject to the system
Sanctions and incentives	Do the sanctions and/or incentives depend on the size of the company or organization in terms of number of employees, and/or on gender, disability grade, type of disability, etc. of the employee with disabilities?
	Absolute amount or calculation formula for the amount of financial sanctions and/or incentives
Anti-Discrimination Legislation for PWD	
Brief process of introduction of the legislation	How did the current legislation come to take the form it does now and what kinds of parties participated dominantly in the legislation process?
Definition of disability and the disabled (PWD)	How is disability or PWD defined and what is the scope of people who are subject to the protection by the legislation?
	Looking at the definition, which model of disability can be said to be prevalent?
Definition and general types of discrimination against PWD	How is discrimination against PWD on the basis of disability defined and what is the general scope of it?
	What general types of discrimination based on disability are mentioned?
Categories and scope of discrimination against PWD in employment and treatment after the employment	How are different types of discrimination based on disability categorized within the scope of employment and treatment after employment?
Definition and details of 'reasonable accommodations' for PWD in the working space	How is the concept of 'reasonable accommodations' defined?
	What is the scope of 'reasonable accommodations' related to employment and workplace conditions?

(continued)	How is the concept of ‘undue hardship’ defined?
	What are the conditions that have to be taken into account to be admitted as ‘undue hardship’?
Role of the government and ministries /institutions relevant to the implementation of the anti-discrimination policies against PWD	What are some governmental bodies or independent institutions to contribute to anti-discrimination for PWD?
	What roles are each of them supposed to play?
	How does the manner with which the roles are described differ?
Types and procedures of remedies for discrimination against PWD	What is the relevant body/organization in charge of remedies?
	What are the types of remedies and how do they proceed?
	Is more emphasis put on legal measures or administrative measures?
Vocational Training/Rehabilitation System for PWD	
Vision	Brief history of the vocational training/rehabilitation policies
	Current goal and principle in implementing the system
Means	<i>Organization</i> : How are different roles distributed to different organizations or governmental bodies in order to deliver the services?
	<i>Relevant legislation</i> : What are the legislations that are relevant to the vocational rehabilitation?
	<i>Types of services</i> : What kinds of different specific vocational training/rehabilitation services exist and how are they provided?
	<i>Human resources</i> : What kind of human resources for vocational training/rehabilitation are utilized and what are the regulations for them?
	<i>Financing</i> : How is the vocational training/rehabilitation system financed?
Evaluation	What are the criteria with which the performance of the providers of vocational training/ rehabilitation services is evaluated with?

Table 5. Summary of the analytical framework⁸

⁸ Summarized by the author himself.

4. Analysis

4.1. Mandatory Employment Quota Systems for PWD in Korea and Japan

4.1.1. Level of mandatory employment quota

The actual figure of quota assigned to PWD in employment for businesses that are subject to the mandatory employment quota system in terms of percentage differs between Korea and Japan. First of all, the Korean system was introduced in 1991 and the quota was 1.1%, indifferent from public or private sector, as a result of the introduction of the ‘PROMOTION, ETC. OF EMPLOYMENT OF DISABLED PERSONS ACT’ (Byeon 2013, 137-38). Having raised the percentage gradually, the Korean government currently sets the quota at 3.4% of the total employee for the public sector,⁹ and 3.1% for the private sector as of 2020, according to the government website of Korea.¹⁰ Therefore, it can be witnessed that different quotas are assigned to the private and public sector, with a slightly higher percentage assigned to the public sector.

Japan, on the other hand, started its mandatory quota system for PWD in 1976 based on the ‘Act on Employment Promotion etc. of Persons with Disabilities’¹¹ with a percentage of 1.6%. In other words, it started earlier than Korea with a higher percentage. However, the percentage was set at 2.2% for the private sector as of April 2018, and for the public sector, the percentage stayed the same at 2.3% (Yuyama 2018, 122-23). Currently, as of 2020, the quota stays the same at 2.2% for private sector, whereas for the central and local governments, the quota is 2.5%, and for the boards of education in each prefecture, the quota is 2.4%.¹² Therefore, it could be seen that the Japanese system also assigns a slightly higher figure to the public sector but at the same time, demonstrates relatively lower figures compared to that of Korea.

Regarding how each country calculates the quota, the Korean system simply puts the number of full-time employees with disabilities in the nominator and the total number of full-employees regardless of disabilities in the denominator and ignores decimal points. In setting the percentage, the disability prevalence rate, the ratio of employees with disabilities to the total employees, the number of unemployed PWD, etc. are considered, and when persons

⁹ Employees in the public sector include public officials, and non-public officials and employees in public institutions.

¹⁰ “장애인 고용의무제도 [Mandatory Employment Quota System for PWD],” Gov.kr, last modified June 22, 2020, <https://www.gov.kr/portal/service/serviceInfo/PTR000050031>.

¹¹ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960].

¹² “障害者雇用対策について [About the Employment Measures for Persons with Disabilities],” Ministry of Health, Labour, and Welfare, accessed September 10, 2020, <https://www.mhlw.go.jp/content/000581102.pdf>.

with severe disabilities are hired, they count as two (but their working hours should be 60 hours or more per month).¹³ On the other hand, the Japanese system puts the sum of number of employees with disabilities and number of unemployed PWD in the nominator, and the sum of number of total employees regardless of disabilities and number of total unemployed persons regardless of disabilities,¹⁴ and the different counting system for different circumstances also apply to the Japanese system but to a more complex extent, where part-time workers with disabilities (non-severe disabilities, 20 hours or more but less than 30 hours per week) only count as 0.5, part-time workers with severe physical or intellectual disabilities (20 hours or more but less than 30 hours per week) count as 1, full-time workers with severe physical or intellectual disabilities (30 hours or more per week) count as 2, and persons with mental disorders are counted as 1 when working full time (30 hours or more per week) and as 0.5 when working part time (20 hours or more but less than 30 hours per week) regardless of its severity.¹⁵

4.1.2. Coverage of employers

Regarding what kinds of businesses or organizations fall under the mandatory employment quota system, Korea and Japan also show a difference. First, Korea started with encouraging businesses with 300 or more full-time employees to employ a certain percentage of PWD, however, as of 2020, all central and local government bodies –regardless of the size of the organization–, and public institutions and private sector businesses with 50 or more full-time employees are subject to the system. Nevertheless, sanctions against entities that do not meet the quota are only put on those with 100 or more full-time employees, be it public or private sector.¹⁶

On the other hand, the Japanese system started with a stricter condition of entities with 63 or more regular employees having to follow the system. Since the April 2018 amendment, this condition has been tightened up to 45.5 regardless of public or private sector (Yun, Gim, Byeon, and Jeong 2018, 105). Just as in Korea, sanctions only apply to entities with 100 or

¹³ ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES [Act No. 15851, 16. Oct, 2018., Partial Amendment], Article 28-3.

¹⁴ (number of employees with disabilities + number of unemployed PWD) / (number of total employees regardless of disabilities + number of total unemployed persons regardless of disabilities - number of exempted employees).

¹⁵ “障害者雇用率制度について [About the Employment Quota System for Persons with Disabilities],” Ministry of Health, Labour, and Welfare, accessed September 10, 2020, <https://www.mhlw.go.jp/content/000581102.pdf>.

¹⁶ “장애인 고용의무제도 [Mandatory Employment Quota System for PWD],” Gov.kr, last modified June 22, 2020, <https://www.gov.kr/portal/service/serviceInfo/PTR000050031>.

more full-time employees (Yuyama 2018, 122).

4.1.3. Sanctions and incentives

Even though both systems oblige businesses or organizations under certain conditions to hire a certain quota of PWD, it would have little effectiveness if there were not measures taken in case they do not follow the obligation or when they surpass the criteria and hire more PWD. Therefore, both systems have sanctions and incentives ready in case they do not meet the quota or surpass the quota respectively, in order to maximize the effectiveness of the systems.

First, the Korean system utilizes a type of sanction called the ‘employment contribution’ for PWD in order to adjust the financial burden that entities that do not meet the quota have to bear in a fair manner, since entities that meet the quota are arguably and potentially bearing a certain extent of financial loss, considering that certain PWD can potentially have limitations in the labor force. The businesses and organizations that are subject to this employment contribution are those with 100 or more monthly average full-time employees, regardless of public or private sector. The monthly contribution is calculated with ‘the number of persons short of the quota’ multiplied by ‘the base amount for levy according to the employment rate of persons with disabilities’ and is paid annually.¹⁷ This base amount, which is the amount that has to be paid per person short of the quota, is decided annually by the Minister of Employment and Labor, based on the average amount of extra cost that has to be born as a result of hiring PWD and has to be 60% or more of the minimum wage (Yun, Gim, Byeon, and Jeong 2018, iii). As of 2020, the base amount for entities that have fulfilled 3/4 or more of the quota but have failed to completely fulfill the quota is 1,078,000 Korean won. The base amount for entities that fulfilled 1/2 or more but less than 3/4 of the quota is 1,142,680 Korean won, while for those that fulfilled 1/4 or more but less than 1/2 of the quota, the base amount is 1,293,600 Korean won. Those that hired one or more PWD but less than 1/4 of the quota, the base amount is 1,509,200 Korean won, and finally for those that did not hire any PWD, the base amount is 1,795,310 Korean won.¹⁸

¹⁷ “Employment Contributions/Incentives,” Korea Employment Agency for Persons with Disabilities, accessed July 31, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2201>.

¹⁸ Ibid.

Quota Fulfillment Ratio	3/4 or more - less than 1	1/2 or more - less than 3/4	1/4 or more - less than 1/2	less than 1/4 (but 1 or more person)	None (0 person)
Base Amount	1,078,000 Korean won	1,142,680 Korean won	1,293,600 Korean won	1,509,200 Korean won	1,795,310 Korean won

Table 6. Base amount for employment contribution for PWD according to quota fulfillment ratio in the Korean system¹⁹

On the other hand, when businesses or organizations hire more PWD than they are obliged to, the government provides what is called the ‘employment incentive’ for PWD. The purpose of the system is to promote job stability and employment of PWD, and employers who employ more PWD than the quota according to the number of average monthly full-time employees with disabilities are subject to this incentive system. The amount is calculated with ‘employment incentive payment unit cost’ multiplied by ‘the number of PWD that exceed the quota’, however, the unit cost depends on sex and the severity of the disabilities, as described in the table below, and whichever is lower between the unit cost and 60% of monthly payment of each PWD with his/her sex and severity of the disabilities is paid.²⁰

	Mild Disabilities		Severe Disabilities	
	Male	Female	Male	Female
Payment Unit Cost	300,000 Korean won	450,000 Korean won	600,000 Korean won	800,000 Korean won

Table 7. Employment incentive payment unit cost according to sex and the severity of the disabilities in the Korean system²¹

Japan, just like Korea, also utilizes both sanction and incentives to more effectively run the system, however, in a different way from Korea. For instance, the introduction of the sanction ‘payment of levies’ for PWD in 1976 was the actual starting point for effectively obliging private sector companies to follow the system (Yuyama 2018, 123), and still only applies to private sector businesses, since the Japanese government argues that the public sector is already contributing enough to the mandatory employment quota system for PWD because it is administered by the government with its general accounts (Lee et al. 2017, 58).

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

The private sector businesses that are subject to the system are those with 101 or more regular employees and unlike the Korean system, the Japanese system applies a single base amount regardless of how much the business is short of its quota, which is 50,000 Japanese yen which is the same amount ever since it has been raised to the current amount in 1992 (Yun, Gim, Byeon, and Jeong 2018, 29).

The incentives provided to employers that hire PWD exceeding the quota, on the other hand, is relatively more complex and detailed compared to that of Korea. Firstly, for employers with 101 or more regular employees who employ PWD exceeding the quota are eligible to apply for what is called the ‘adjustment allowance for employing persons with disabilities’ and as of 2019, the adjustment allowance per PWD is 27,000 Japanese yen per month. Secondly, for employers with 100 or less regular employees whose employees with disabilities exceed a fixed number –whichever is greater between an accumulative number of 4% of all regular employees per month in that fiscal year and 72 persons– are eligible to apply for what is called the ‘reward’, and the amount per PWD per month is 21,000 Japanese yen as of 2019. Thirdly, employers with more than 100 regular employees are eligible to apply for ‘special adjustment allowance for supporting persons with disabilities working at home’ when they place orders with PWD working at home or organizations supporting home-based work and at the same time, the total amount they pay in that fiscal year exceeds a certain amount. Fourthly, the ‘special rewards for supporting persons with disabilities working at home’ can be given to employers with the same conditions as the ‘special adjustment allowance for supporting persons with disabilities working at home’, but with 100 or less regular employees. Lastly, ‘grants’ are available to employers when they attempt to hire or continue to employ PWD, including improvement of facilities and equipment, special measures to ensure appropriate employment management, etc.²²

4.2. Anti-Discrimination Legislations for PWD in Korea and Japan

4.2.1. Brief process of introduction of the legislations

Korea and Japan both have legislations that are directly or indirectly related to anti-discrimination for PWD in order to protect them and prevent discrimination in multiple aspects of everyday life. Among them, in case of Korea, the most relevant legislation directly related to the anti-discrimination for PWD is the ‘ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC.’

The anti-discriminatory bill for PWD in Korea was mainly proposed under the leadership of associations of PWD ever since the relevant discussions had been started by an

²² “Levy and Grant System for Employing Persons with Disabilities,” Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers (JEED), accessed July 31, 2020, https://www.jeed.or.jp/english/book/outline_2019/pageindices/index13.html#page=13.

association called the ‘Open Network’. The Open Network first presented the first draft of the bill in February 2001, with the purpose of looking at PWD not from a perspective of sympathy or charity but rather approaching them from a human rights point of view. The Open Network, together with the ‘Research Institute of the Differently Abled Person’s Right in Korea (RIDRIK)’, made several efforts to pass the law around the country, including signature collecting, pilgrimages, filing a petition, holding their own public hearing and so on, however, in vain. Later in late 2002, these two associations together with other 33 organizations formed a task force to carry forward the passing of the bill, which later became an alliance. Even after the alliance had made fierce efforts for several years, it was only in 2006 when PWD held sit-ins in front of the National Assembly and also National Human Rights Commission of Korea (NHRCK) for 129 days in total, that the Commission admitted that there is a need for a separate anti-discriminatory legislation for PWD and advised the government to enact the law. After several political debates and conflicts within the National Assembly, the law was promulgated in April, 2007 (Choi 2018, 29-31).

On the other hand, the most relevant law for the purpose of preventing discrimination against PWD and protecting them in case it happens in Japan is the ‘Act for Eliminating Discrimination against Persons with Disabilities’. Japan was relatively late in passing a separate anti-discriminatory law for PWD, in 2013, not only compared to Korea but also to other OECD countries, considering that relevant laws were passed in 1990 in USA, in 1992 in Australia, in 1995 in UK, in 2002 in Germany, etc. Before this separate law was passed, the ‘Basic Act for Persons with Disabilities’ was the law that touched upon the basic principles of anti-discrimination against PWD after its amendment in 2004, and it was not until when Japan signed the CRPD in 2007 and amended the same law in 2011 that the law included some of the relevant articles. In 2009, when the Democratic Party started to rule, a roadmap to reform the systems regarding PWD in order to ratify the CRPD was established and the Democratic Party submitted the bill to the National Diet in 2013, after thorough discussions under the leadership of the Cabinet Office. The ‘Act for Eliminating Discrimination against Persons with Disabilities’, after being passed, has been enforced since 2016 (Choi 2018, 32-33).

4.2.2. Definition of disability and PWD

The definition of disability and PWD is an important basis for preventing discrimination against PWD and protecting them from it, and therefore is stipulated in the legislations relevant to the anti-discrimination for PWD of each country.

First, in case of Korea, the definition is stipulated both in the ‘ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC.’ and the ‘ACT ON WELFARE OF PERSONS WITH DISABILITIES’. The former defines disability in a relatively simple way, stating that “A disability which is a basis of any discriminatory act prohibited under this Act means a physical or mental impairment or loss of function that

substantially limits an individual's personal or social activities for an extended period of time" and that persons with disabilities mean individuals with disabilities described in the aforementioned paragraph.²³ Looking at the terminology 'impairment' being used to describe and define disability, it can be seen that the definition in this Act more or less represents the 'medical model of disability', which can have the risk of dealing with disability outside of the socio-economic context and putting the responsibility on the individuals (In 2013, 6-10). The 'ACT ON WELFARE OF PERSONS WITH DISABILITIES' defines disability and PWD in a slightly different manner, which specifies that "physical disability" means "a disability of principal external bodily functions and of internal organs, etc." and "mental disability" means "a disability caused by psychological development disorder or mental disease".²⁴ Naturally, "person with a disability" is defined as "a person whose daily life or social activity is substantially hampered by physical or mental disability over a long period of time".²⁵ Nevertheless, both of the definitions imply that the impairment or loss of function in an individual with disabilities is the only or main cause making them unable to fully participate in the society or carry out certain things that persons without disabilities would be able to.

In case of Japan, disability and PWD are defined by the 'Act for Eliminating Discrimination against Persons with Disabilities' and the 'Act on Employment Promotion etc. of Persons with Disabilities'. The former stipulates that "person with a disability refers to a person with a physical disability, a person with an intellectual disability, a person with a mental disability (including developmental disability), and other persons with disabilities affecting the functions of the body or mind (hereinafter referred to collectively as "disabilities"), and who are in a state of facing substantial limitations in their continuous daily or social life because of a disability or social barrier", and that "social barrier means items, institutions, practices, ideas, and other things in society that stand as obstacles against persons with disabilities engaging in daily or social life".²⁶ Looking at the fact that this definition explicitly mentions 'social barrier' as one of the factors that 'dis'-able the individuals with disabilities can be seen as a lead that indicates the 'social model of disability' inherent in this law, since it refers to the societal aspect as one of the causes that PWD may be unable to fully participate in the society or carry out certain things that persons without disabilities would be able to.

The 'Act on Employment Promotion etc. of Persons with Disabilities' of Japan, also

²³ ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 2, paragraph (1) and (2).

²⁴ ACT ON WELFARE OF PERSONS WITH DISABILITIES [Act No.14892, 19. Sep, 2017., Partial Amendment], Article 2, paragraph (2).

²⁵ Ibid., Article 2, paragraph (1).

²⁶ Act for Eliminating Discrimination against Persons with Disabilities [Act No. 65 of June 26, 2013], Article 2, paragraph (i) and (ii).

provides a definition stating that “person with disability means those who, because of physical, intellectual, mental (including developmental) disabilities or other impairments of physical or mental functions, are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time”,²⁷ which, in contrast to the definition of the aforementioned law, resembles the definitions of the Korean laws. The fact that even a set of two closely related laws demonstrate different models of disability in its definitions arguably implies that either there is an inconsistency within the legal system of how it looks at disability and PWD or different laws are embodying the changing trend of perspective on disability and PWD in progress at a different speed.

4.2.3. Definition and general types of discrimination against PWD

How each country deals with the definition and general types of discrimination against PWD also differs to a wide extent. First, the ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. of Korea defines what a discriminatory act prohibited under the Act is in a fairly detailed manner, compared to the Japanese law. It stipulates that such act includes the followings:

“1. Treating persons with disabilities unfavorably by means of restriction, exclusion, segregation or denial on the ground of such disabilities without justifiable grounds;

2. Applying disability-blind standards that cause persons with disabilities to be unfairly treated without justifiable grounds, despite the absence of explicitly unfavorable treatment, such as restriction, exclusion, segregation or denial;

3. Refusing to provide legitimate convenience to persons with disabilities without justifiable grounds;

4. Directly placing, or permitting or promoting to place, any advertisement that indicates or encourages unfavorable treatment of persons with disabilities, such as restriction, exclusion, segregation or denial of such persons, without justifiable grounds. In such cases, an advertisement shall include any act normally considered to have the effect of advertising that causes unfair treatment of persons with disabilities;

5. Committing any act defined in subparagraphs 1 through 4 against individuals representing or accompanying persons with disabilities for the purpose of helping such persons (including guardians or protectors of children with disabilities or other persons reasonably recognized to help persons with disabilities; hereinafter referred to as “persons related to persons with disabilities”). In such cases, any act committed by persons related to

²⁷ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960], Article 2, paragraph (i) (translation from Nagano 2015, 8).

persons with disabilities against such persons shall be subject to the determination of a discriminatory act prohibited under this Act;

6. Interfering with the rightful use of guide dogs or auxiliary equipment for persons with disabilities, etc., or committing any act prohibited under subparagraph 4 against guide dogs or auxiliary equipment for persons with disabilities, etc.”²⁸

It can be seen that in the Korean Act, discriminatory act against PWD is defined and categorized at the same time, even though it does not explicitly provide a categorization with specific names for different types of discrimination. The subparagraph 1 can be categorized as ‘direct discrimination’ since it touches upon discrimination done against the individual with disabilities ‘on the ground of the disabilities’. The subparagraph 2 can be categorized as ‘indirect discrimination’ since it mentions ‘despite the absence of explicitly’ unfavorable treatment, such as restriction, exclusion, segregation or denial, but deals with unfair treatment that can be done on PWD due to not applying the appropriate standards that are needed for PWD. The subparagraph 3 deals with discrimination through a denial of providing ‘legitimate convenience’, which is called the ‘reasonable accommodation’ in CRPD. The paragraph (2) of the same Article 4 of the Act explains that “legitimate convenience” means “any or all human and material arrangements and measures that will lead persons with disabilities to participate in activities on an equal basis with persons without disabilities, including convenient facilities, equipment, tools and services designed to take into account the gender of a person with a disability, as well as the type, degree and nature of a disability”.²⁹ Since discrimination through denial of reasonable accommodation is explicitly mentioned in the CRPD as a type of discrimination against PWD, this can be separately categorized.

Subparagraph 4 demonstrates a notable feature of the Act in that it shares a separate subparagraph to deal with prohibition of ‘advertisement’ that includes the discriminatory acts against PWD defined in the Act. This is because in the first draft of the bill, this Article included ‘documents, pictures, videos, records, and products of electronic media that indicates or encourages unfavorable treatment of persons with disabilities’ as subjects of prohibition of discrimination, however, it was deemed that this might collide with the freedom of art and expression, and in the end it only embodied ‘advertisement’ (National Human Rights Commission of Korea 2017, 38). The subparagraph 5 makes sure that discriminatory acts can also be done on persons representing or accompanying PWD, not only because it might have an indirect impact on the PWD but also for the sake of discrimination against certain group of people itself. Lastly, subparagraph 6 can be analyzed as embodying the principle of accessibility for PWD –just like it is mentioned in the Article 9 of the CRPD– in that it prohibits discrimination against what are often needed by PWD in

²⁸ ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 4, paragraph (1).

²⁹ Ibid., Article 4, paragraph (2).

order to access certain aspects of the society or to overcome the social barriers PWD often face.

On the contrary, the ‘Act for Eliminating Discrimination against Persons with Disabilities’ of Japan does not share a separate article or paragraph in providing a concrete definition on what ‘discrimination on the basis of disability’ is, which is what the Act is trying to eliminate. Instead, a document from the Cabinet Office of Japan called ‘Annual Report on Government Measures for Persons with Disabilities (Summary) 2016’,³⁰ explains what ‘unfair discriminatory treatment’ and ‘failure to provide reasonable accommodation’ are intending to include, which are the two main pillars subject to prohibition by the Act. It is mentioned in the document that ““Unfair discriminatory treatment” refers to acts including refusing, restricting, or adding conditions to the provision of goods and services simply due to someone’s disabilities without justifiable grounds, and all entities are prohibited from committing such acts regardless of whether they are the national government, local governments, or businesses sectors”³¹.

4.2.4. Categories and scope of discrimination against PWD in employment and treatment after employment

When it comes to the scope of discrimination against PWD covered in the law, the Korean law distinguishes the scope into six sections under the Chapter II of the ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. Sector 1 covers the field of ‘Employment’, Sector 2 ‘Education’, Sector 3 ‘Provision and Use of Goods and Services’, Sector 4 ‘Judicial and Administrative Procedures, Services and Political Rights’, Sector 5 ‘Motherhood, Fatherhood, Sexuality, etc.’ and Sector 6 ‘Family, Home, Welfare Facilities, Right to Health, etc.’. Noteworthy is that the whole Chapter III is spared to cover the related contents of ‘WOMEN WITH DISABILITIES AND CHILDREN WITH DISABILITIES, ETC.’.

Regarding the Sector 1, ‘Employment’, the prohibition of discrimination against PWD intended by the Act in the field of employment is stipulated more in detail under Article 10 of the Sector. The Article 10 stipulates that “No employer may engage in any discriminatory practice against any person with a disability in terms of recruitment and hiring, wage and benefit plans, job training, placement, promotion or transfer, nor retirement, resignation or layoff.” Also mentioned under the same Article is that “No labor union under subparagraph 4 of Article 2 of the Trade Union and Labor Relations Adjustment Act may reject the admission

³⁰ “Chapter 1 Basic Policy for Eliminating Discrimination against Persons with Disabilities,” the Cabinet Office of Japan, accessed August 5, 2020, <https://www8.cao.go.jp/shougai/english/annualreport/2015/pdf/s1-1.pdf>.

³¹ Ibid.

of any worker with a disability into a union, or treat his/her differently in regard to his/her rights and activities as a member.”³² On top of that, Article 32 (Prevention of Harassment, etc.) prohibits harassment against PWD on the basis of disability, including in workplaces.

Therefore, in general, it could be said that it embodies most of the aspects mentioned in the CRPD under Article 27, ‘work and employment’, which mentions equal right to work and all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions, equal remuneration for work of equal value, protection from harassment, and redress of grievances. Also mentioned in the Convention under the same Article are the contents related to the exercising of labor and trade union rights, reasonable accommodation, and protection from forced or compulsory labor. Consequently, in comparison, the aspects that are not mentioned in the Act of Korea are the contents related to working conditions, and protection from forced or compulsory labor. On the contrary, the Korean law explicitly mentions the non-discriminatory principle in retirement, resignation or layoff, which is not mentioned in the CRPD.

On top of that, another noteworthy point in the Korean law is that it spares a separate Article, Article 12, to deal with the ‘prohibition of medical examination’, which stipulates under paragraph (1) that “No employer may conduct a pre-employment medical examination to find whether the applicant is a person with a disability: Provided, That the foregoing shall not apply where such examination is required in the nature of assigned duties or for placement, etc.” and also under paragraph (3) that “No employer may disclose personal information about the health conditions, disabilities or previous disabilities of persons with disabilities which has come to his/her knowledge under the proviso to paragraph (1).”³³ Although the CRPD mentions the principle of freedom from medical or scientific experiment on PWD without their consent under Article 15, what is mentioned in the Korean law is of another dimension in that it prevents measures that could be used to filter certain people in the process of employment due to their disabilities.

When it comes to the Japanese law, the ‘Act for Eliminating Discrimination against Persons with Disabilities’ does not explicitly deal with categories or scope of discrimination against PWD, be it in general or with regard to employment and treatment after the employment. For instance, Chapter III of the Act, ‘Measures to Eliminate Discrimination on the Basis of Disability by Administrative Organs, etc. and Companies’, consists of Articles about ‘Prohibition of Discrimination on the Basis of Disability by Administrative Organs’, ‘Prohibition of Discrimination on the Basis of Disability by Companies’, ‘Handling Directions for Government Employees’, ‘Handling Directions for Employees of Local Public

³² ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 10.

³³ Ibid., Article 12, paragraph (1) and (3).

Entities’, ‘Handling Guidelines for Companies’, ‘Collection of Reports, Advice, Guidance, and Recommendations’, and ‘Special Provisions on Measures by Employers’. All of them except for the last one do not deal with PWD as employees in administrative organs or companies but rather prohibits discrimination against PWD in general, when carrying out their roles –in other words, when PWD are the ones who are being served–, and hence are not directly relevant to the ‘employment and treatment after employment’ of PWD. The last part, ‘Special Provisions on Measures by Employers’ also only mentions that “The measures for the elimination of discrimination on the basis of disability to be taken toward employees by an administrative organ, etc. and companies in position as an employer is governed by the provisions of the Act on Employment Promotion, Etc. of Persons with Disabilities (Act No. 123 of 1960).”³⁴

In the 2013 amended version of the Act on Employment Promotion, Etc. of Persons with Disabilities, the whole Chapter II-2 was added in the process of ratifying the CRPD, named ‘Prohibition of Discrimination against Persons with Disabilities, Etc.’,³⁵ which was non-existent before the amendment and therefore discrimination against PWD was only covered indirectly by the Civil Code and certain provisions of the labor law (Nagano 2015, 9). Under the part ‘Prohibition of Discrimination against Persons with Disabilities’ in this Chapter, Article 34 stipulates “Employers must give equal opportunities to persons with disabilities as to persons without disabilities in recruiting and hiring employees” and Article 35 stipulates “Employers must not treat persons with disabilities in an unfair and discriminatory manner in terms of the decision of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for employees, compared to employees without disabilities, on grounds that they are persons with disabilities.”³⁶

4.2.5. Definition and details of ‘reasonable accommodation’ for PWD in the working space

Regarding the ‘reasonable accommodation’ addressed in the CRPD, the failure to provide reasonable accommodation to PWD in the employment and working conditions sector is prohibited by law in both countries. In the Korean law, the ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. stipulates under Article

³⁴ Act for Eliminating Discrimination against Persons with Disabilities [Act No. 65 of June 26, 2013], Article 13.

³⁵ The translation is done by the author, referring to Nagano 2015, 9-12. There is no official translation yet.

³⁶ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960], Article 34 and 35 (translation from Nagano 2015, 8).

11 (Duty to Provide Legitimate Convenience) of Sector 1, ‘Employment’, that “Each employer shall provide the following legitimate convenience to persons with disabilities so that they can work on an equal basis with persons without disabilities in performing their respective duties: 1. Installing or remodeling facilities or devices; 2. Modifying or adjusting working hours to accommodate rehabilitation, function tests, treatment, etc.; 3. Providing training opportunities or legitimate convenience in training; 4. Modifying instruction manuals or reference materials; 5. Improving examination or evaluation procedures; 6. Installing and operating auxiliary equipment for persons with disabilities, such as screen readers and enlargement programs, paperless braille handsets, magnifying readers, and print-to-voice converters, and placing support staff, including readers and Korean sign language interpreters.” It is also mentioned in the subparagraph (2) of the same Article that “No employer may assign any person with a disability to different tasks against his/her will on the basis of disability without justifiable grounds” in order to prevent employers from misusing the legitimate convenience.³⁷

When it comes to Japan, the Act on Employment Promotion, Etc. of Persons with Disabilities stipulates under Article 36-2 of the part ‘Measures to Ensure Equal Opportunities for Persons with Disabilities and Persons without Disabilities in the Employment Sector’ of the newly added Chapter II-2 in 2013, that “Employers must take necessary measures in recruiting and hiring employees, taking into account the characteristics of the disability, following a request from a person with disabilities, in order to improve the circumstances that hinder the securing of equal opportunities between persons with disabilities and persons without disabilities. However, this shall not apply to cases where the burden is too heavy on employers.” Also, under Article 36-3, it is mentioned that “Employers must take steps such as preparing the facilities necessary for the smooth performance of work, the allocation of support personnel and other necessary measures, taking into account the character of the disabilities the workers have, in order to improve the circumstances that hinder the securing of equal opportunities between persons with disabilities and persons without disabilities or that hinder persons with disabilities from exercising their abilities. However, this shall not apply to cases where the burden is too heavy on employers.”³⁸

Even though the Japanese Act itself does not elaborate on what could be some examples of reasonable accommodation, the Annual Report on Government Measures for Persons with Disabilities (Summary) 2016³⁹ of the Cabinet Office mentions on page 6 and 7

³⁷ ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 11.

³⁸ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960], Article 36-2 and Article 36-3 (translation was done by the author himself).

³⁹ “Chapter 1 Basic Policy for Eliminating Discrimination against Persons with Disabilities,” the Cabinet Office of Japan, accessed August 8, 2020, https://www8.cao.go.jp/shougai/english/annualreport/2016/pdf/chapter_1.pdf.

a couple of points regarding reasonable accommodation for PWD. It is stated in the document that “Reasonable accommodation is diverse and highly individual, varying depending on the nature of disabilities and the specific circumstances or conditions under which social barriers must be eliminated.” The document also mentions on the same pages that “Furthermore, the content of reasonable accommodation may change according to the progress of technology, changes in social conditions, etc. The Basic Policy lists the following items as examples of reasonable accommodation conceivable at present:

- Accommodation for physical environments such as placing a portable slope over a step for wheelchair users and handing them products that are displayed on high shelves
- Accommodation for communications such as writing, reading aloud, and using sign language as well as giving explanation using simple expressions
- Flexible change of rules and practices according to the nature of disabilities such as adjustment of rest breaks” and that “Intentions may be communicated using necessary means (including interpreters) such as language (including sign language), braille, enlarged text, written messages, showing of real objects, signs including gestures, and communication by means of touch.”⁴⁰

An interesting aspect in case of Japan is that the same Annual Report from 2015⁴¹ explicitly mentions that “the obligation to provide reasonable accommodation is imposed on organizations including governmental agencies as entities that ought to take the lead in implementing these measures, while the obligation to provide reasonable accommodation is limited to the obligation to make endeavors for businesses sectors” since “the relationship between persons with disabilities and businesses sectors depends on the specific situation, which means that reasonable accommodation can take various forms.”⁴²

Also regarding the concept of ‘excessive burden’, the same document on the same pages elaborates on the concept, providing more detail on the part of the Japanese Act on Employment Promotion, Etc. of Persons with Disabilities, where it says “However, this shall not apply to cases where the burden is too heavy on employers” for Articles 36-2 and 36-3, regarding the obligation to provide reasonable accommodation. It is elaborated that “An excessive burden is to be judged comprehensively and objectively according to specific circumstances or conditions of each case. The Basic Policy lists the elements to be considered in judging an excessive burden as follows: Degree of influence on administrative and business affairs (whether it impairs the purpose, content, or function of administrative and

⁴⁰ Ibid., page 6-7.

⁴¹ “Chapter 1 Basic Policy for Eliminating Discrimination against Persons with Disabilities,” the Cabinet Office of Japan, accessed August 5, 2020, <https://www8.cao.go.jp/shougai/english/annualreport/2015/pdf/s1-1.pdf>.

⁴² Ibid.

business affairs), degree of feasibility (physical or technical constraints or personnel or organizational constraints), degree of cost and burden, scale of administrative and business affairs, and fiscal and financial conditions.”⁴³ On the other hand, the Korean anti-discriminatory law only mentions the discriminatory acts described in the law shall not be deemed a discriminatory act when “refraining from any discriminatory act prohibited under paragraph (1) might incur an excessive burden or undue hardship” under subparagraph (3)-1 of Article 4⁴⁴, and does not specify or define the concept of ‘excessive burden’.

4.2.6. Role of the government and ministries/institutions relevant to the implementation of the anti-discrimination policies against PWD

Regarding the relevant parties in charge of carrying out and taking responsibility of the anti-discriminatory policies for PWD, Article 8 (Duties of State and Local Governments) and Article 9 (Relationship with other Acts) of the ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. of Korea specify that the State and local governments, and the National Human Rights Commission of Korea (NHRCK) are to be those relevant parties. More specifically, Article 8 stipulates that “The State and local governments shall be responsible for preventing any discrimination against persons with disabilities and persons related to persons with disabilities and providing remedies for infringement of rights of persons with disabilities discriminated against, and take affirmative measures to rectify discrimination described in this Act for the purpose of substantively eliminating discrimination against persons with disabilities” and that “The State and local governments shall render technical, administrative and financial assistance so that persons with disabilities may be provided with legitimate convenience”, covering the preventive, remedial, and affirmative measures against discrimination against PWD that ought to be carried out by the State and the local governments, on top of their responsibility to also provide reasonable accommodation to PWD. Article 9, on the other hand, stipulates that “Except as provided for in this Act, the prohibition of discrimination based on disabilities and remedies for infringement of rights shall be governed by the National Human Rights Commission Act”, implying that NATIONAL HUMAN RIGHTS COMMISSION ACT will be applied for measures against discrimination against PWD for more specific cases or aspects not mentioned in the Anti-Discriminatory Act.⁴⁵

The National Human Rights Commission of Korea (NHRCK), according to the

⁴³ Ibid.

⁴⁴ ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 4, subparagraph (3)-1.

⁴⁵ Ibid., Article 8 and 9.

NATIONAL HUMAN RIGHTS COMMISSION ACT, is established “to contribute to the recognition of human dignity and worth as well as to the safeguard of the basic order of democracy” and “to ensure that inalienable fundamental human rights of all individuals are protected and the standards of human rights are improved”⁴⁶ and therefore does not exclusively deal with human rights violation through discrimination against PWD, however it is naturally included in the scope of the Commission’s role. Article 19 (Duties) of the same Act stipulates that investigation and remedy with respect to human rights violations and discriminatory acts are the duties of the Commission, together with the ‘presentation and recommendation of guidelines as to categories of and determination standards for human rights violations, and preventive measures therefor’. When it comes to the methods of investigation, Article 36 of the same Act provides four of them, which are the followings:

“1. To require a petitioner, a victim or a respondent (hereinafter referred to as “the party”) or an interested person to present himself or herself, hear statements or submit a written statement;

2. To require the party, an interested person or a related agency, etc., to submit such materials as deemed related to matters subject to investigation;

3. To carry out a field examination or appraisal of any such place, facility or material as deemed related to matters subject to investigation;

4. To refer to the party, an interested person or a related agency, etc., for such fact or information as deemed related to matters subject to investigation.”⁴⁷

After or during the investigation, the Commission can make recommendations on agreement or of remedies through mediation, based on Article 40, Article 42, and Article 44. First of all, Article 40 stipulates “With respect to any petition of which the investigation is in progress or has been completed, the Commission may propose a remedy necessary for the fair resolution of the case concerning the petition and offer recommendations on agreement to the party.” Secondly, Article 42 stipulates “A mediation committee may initiate the procedure of conciliation regarding a petition submitted to a mediation committee upon the application of the party or ex officio on the case of a violation of human rights or a discriminatory act”, “If both parties fail to reach an agreement during the course of mediation procedures, the competent mediation committee may make a decision in lieu of the mediation in order to fairly settle the case”, and under paragraph (4) “A decision in lieu of mediation may include any of the following: 1. Cessation of a violation of human rights or a discriminatory act subject to investigation; 2. Reinstatement, compensation for damage or other necessary remedies; 3. Measures necessary for the prevention of recurrence of the same or similar violation of human rights or discriminatory acts.” Lastly, Article 44 stipulates “If the

⁴⁶ NATIONAL HUMAN RIGHTS COMMISSION ACT [Act No.14028, 03. Feb, 2016., Partial Amendment], Article 1.

⁴⁷ Ibid., Article 36.

Commission deems that there occurred any violation of human rights or discriminatory acts as a result of the investigation of any petition, it may recommend the respondent or the head of the institution or the organization to which he/she belongs or the supervisory institution thereof to” implement the three remedies mentioned in paragraph (4) of Article 42 or/and rectify or improve any relevant statute, institution, policy or practice.⁴⁸

On the other hand, the Japanese system shows a fundamental difference in terms of what it utilizes in carrying out the anti-discriminatory measures for PWD. The Act for Eliminating Discrimination against Persons with Disabilities of Japan stipulates under Article 11 of the part ‘Handling Guidelines for Companies’, that “In line with the basic policy, the competent minister is to provide the necessary directions to enable companies to appropriately handle the matters provided for in Article 8 (hereinafter referred to as “handling guidelines”).”⁴⁹ Article 9 and Article 10 also stipulate in the same manner that the head of national government administrative organs and incorporated administrative agencies, etc. are to provide ‘handling directions for government employees, etc.’ and the organizations of local public entities and local incorporated administrative agencies are to ‘endeavor’ to provide ‘handling directions for employees of local public entities, etc.’ in order to prevent the violation of the rights or interests of PWD through discriminatory treatment on the basis of disability and to provide PWD with reasonable accommodation when needed. These handling guidelines and directions are to include contents regarding the purpose of the guideline and direction, the concept, contents and examples of discriminatory treatment on the basis of disability and reasonable accommodation, improvement of the consultation system and the means of providing consultation services, training and development of employees, etc. (Choi 2018, 49).

4.2.7. Types and procedures of remedies for discrimination against PWD

When it comes to remedial measures for discriminatory or unfair treatment done against PWD, the legal/administrative systems of the two countries in carrying out those measures differ to a notable extent. First, the Korean system provides two types of remedial measures, broadly speaking, one being the remedial procedure through the court and the other

⁴⁸ Ibid., Article 40, 42, and 44.

⁴⁹ Article 8 of the Act stipulates under paragraph (1) that “When carrying out its business, a company must not violate the rights or interests of persons with disabilities through disparate and unfair discriminatory treatment on the basis of disability comparing to persons without disability” and under paragraph (2) that “If a person with a disability expresses the genuine willingness to eliminate the social barrier, the company, in carrying out its business, must endeavor to provide reasonable accommodation to implement the elimination of the social barrier so long as the burden associated with the relevant implementation is not disproportionate, in accordance with the sex, age, and state of the disability of the person with a disability so that the rights and interests of the person with the disability is not violated.”

being the remedy by the NHRCK. Article 48 (Remedial Measures by Court) of the Anti-Discriminatory Act of Korea stipulates “If discrimination against a victim is clearly explained upon request by the victim before or after filing the lawsuit regarding a discriminatory act prohibited under this Act, the court may order appropriate interim measures, such as discontinuation of the discriminatory act, until judgment on the merits is rendered”, “The court may render judgment to discontinue a discriminatory act, to improve working conditions, such as wages, and to take proactive measures to rectify such act, upon request by the victim”, and that “If the court determines that proactive measures are necessary to discontinue discriminatory acts and to rectify discrimination, it may specify the time period for the implementation thereof and, if not implemented, order adequate compensation for any period of delay. In such cases, Article 261 of the Civil Execution Act shall apply *mutatis mutandis*.”⁵⁰ In other words, considering that lawsuits can possibly incur excessive financial cost and take an excessive length of time, during which time the discriminatory treatment can possibly be continued, the remedial measures ordered by the court can be thought as temporary measures to resolve the condition in which discriminatory treatment is taking place, so that the victim can swiftly recover his/her status (Choi 2018, 51).

Another remedial measure that can be taken is done by the NHRCK, which is elaborated in detail on the website of the NHRCK. First, it is stated that a complaint to the Commission can be filed if “Human rights under the provisions of Article 10 through 22 (of the Constitution) are violated by state agencies, local governments, detention or correctional facilities while such entities perform their duties” and/or “There exists a discriminatory act of any violation of the right of equality by a juristic person, organization or private individual”, which means “without any reasonable grounds, in case a person is unlawfully discriminated by” various factors including disability and medical history. The complaint can be filed either “by a person aggrieved by human rights violations and unlawful discriminatory acts” or “by a third party, who knows of such violations and discriminations, on behalf of the affected person.” The principle of ‘prohibition of unfavorable treatment’, meanwhile, states that “Any person shall not be subject to removal from his/her office, transfer to another position, disciplinary action and unjust treatment, or other unfavorable measures in status or treatment on account of his/her petition, statement, witness, presentation of materials or reply under this Act”,⁵¹ which is stated also under Article 55 (Prohibition on Unfavorable Treatment, and Supports) of the NATIONAL HUMAN RIGHTS COMMISSION ACT, together with the paragraph (2) of the same Article, which states that “The Commission may give any necessary support or reward to a person who either reveals the fact of a violation of human

⁵⁰ ACT ON THE PROHIBITION OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES, REMEDY AGAINST INFRINGEMENT OF THEIR RIGHTS, ETC. [Act No.15272, 19. Dec, 2017., Partial Amendment], Article 48.

⁵¹ “How to File a Complaint,” National Human Rights Commission of Korea, accessed August 11, 2020, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004001>.

rights or a discriminatory act, or finds or presents relevant evidence or materials.”⁵² Under these conditions, the complaint can be filed either by calling, sending a mail/fax/email, or visiting.⁵³

When a complaint is filed, the procedure afterwards consists of three steps, namely ‘receipt of complaints’, ‘investigation of the cases’ and ‘deliberation and decision’. First, the complaint is received either verbally or in a written form and also “persons accommodated in detention or protection facilities may file written complaints directly to the Commission or submit complaints to the Commission’s investigators upon their visit and interview.”⁵⁴ When the complaint is received by the Commission, receipt certificates must be delivered or forwarded to the complainants. Second, upon receiving of the complaints, the investigators of the Commission are to conduct investigations as follows:

- “♦ Investigators may request that the complainant, victim, respondent, or other related person submit written statements. Those requested to submit written statements should submit them to the Commission within fourteen days.

- ♦ Investigators may request that the complainant, victim, respondent, or other related person submit materials deemed pertinent to the investigation. Investigators may also request the relevant persons to present themselves, hear their opinions, or inquire into certain facts or information when necessary.

- ♦ Investigators may conduct investigations or assessments on-site concerning the place, facility, materials, etc. in question. Investigators may seek expert opinions when necessary.”⁵⁵

The complainants can withdraw their complaints through due procedures either via mail, in person or on the phone. Also, in case it is evident that it is more suitable to file the complaints to another government agency according to the remedial procedures stipulated in other laws, the case shall be immediately transferred to the concerned agency from the Commission. Moreover, the Commission can conduct an ex officio investigation by a resolution of its subcommittee even when there is no complaint filed, if there is sufficient evidence that grave human rights abuses or discriminatory acts has taken or is taking place. Third, the Commission, either through the Plenary Committee, Standing Commissioners’ Committee, or other committees, shall deliberate on the findings as a result of the investigation of the complaints, and can either: make a recommendation; dismiss the

⁵² NATIONAL HUMAN RIGHTS COMMISSION ACT [Act No.14028, 03. Feb, 2016., Partial Amendment], Article 55, paragraph (1) and (2).

⁵³ “How to File a Complaint,” National Human Rights Commission of Korea, accessed August 11, 2020, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004001>.

⁵⁴ “Complaint Handling Process,” National Human Rights Commission of Korea, accessed August 11, 2020, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004002001>.

⁵⁵ Ibid.

complaint; reject the complaint without deliberation; recommend for settlement; transfer the complaint; or take other such actions. Afterwards, the Commission is to forward to the complainant a written guide and written notice of case handling results within 14 days after the decision.⁵⁶

When the complaint is accepted and the Commission determines that human rights violations have occurred on the basis of its investigation findings, the Commission can recommend the respondent, or the head of the institution or organization to which the respondent belongs or its supervisory authority to conduct either “Cessation of a violation of human rights or a discriminatory act subject to investigation”, “Reinstatement, compensation for damage or other necessary remedies”, “Measures necessary for the prevention of recurrence of the same or similar violation of human rights or discriminatory acts” as stated under Article 42, paragraph (4) of the NATIONAL HUMAN RIGHTS COMMISSION ACT,⁵⁷ or rectify or improve the laws, institutional schemes, policies, or practices. However, when the complaint filed happens to constitute a criminal act, the investigation shall be completed by the Prosecution or the Ministry of National Defense within three months upon its notification.⁵⁸

On the contrary, the Japanese system puts more emphasis on the roles of the government and local entities in providing consultations in order to resolve discriminations against PWD. When, despite such consultations, discriminatory or unfair treatments continue or no necessary measures are taken, the competent minister in the related field in which such circumstances take place comes in to play a role (Choi 2018, 53-54). First, under Chapter IV of the Anti-Discriminatory Act of Japan, Article 14 of the part ‘Development of System for Consultations and Prevention of Disputes’ stipulates that “The national government and local public entities are to respond accurately to consultations from persons with disabilities and their families and other relevant persons concerning discrimination on the basis of disability, and are to work for the development of a necessary system to ensure that they are able to prevent or resolve any disputes relating to discrimination on the basis of disability.”⁵⁹ To this end, one of the more specific measures to be taken is the establishment of ‘Regional Support Councils for Eliminating Discrimination against Persons with Disabilities’. Regarding these Councils, paragraph (1) of Article 17 of the same Act stipulates that “The organizations of the national government and local public entities engaged in doing work in the field of medicine, nursing care, or education or other fields connected to the independence and social

⁵⁶ Ibid.

⁵⁷ NATIONAL HUMAN RIGHTS COMMISSION ACT [Act No.14028, 03. Feb, 2016., Partial Amendment], Article 42, paragraph (4).

⁵⁸ “Complaint Handling Process,” National Human Rights Commission of Korea, accessed August 11, 2020, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004002001>.

⁵⁹ Act for Eliminating Discrimination against Persons with Disabilities [Act No. 65 of June 26, 2013], Article 14.

participation of persons with disabilities may form a regional support council for eliminating discrimination against persons with disabilities (hereinafter referred to as a “regional support council”) composed of the relevant organizations in order to effectively and smoothly conduct measures for the elimination of discrimination on the basis of disability based on consultations on discrimination on the basis of disability conducted by the relevant organizations in the area of the local public entity as well as case examples relating to the consultations.”⁶⁰

In order to realize the goals of the regional support council, the council is to “exchange necessary information and is to hold discussions on measures for the elimination of discrimination on the basis of disability based on consultations from persons with disabilities and case examples relating to the consultations” and the relevant organizations and constituent members of the council are to “carry out measures for the elimination of discrimination on the basis of disability based on the case examples relating to the consultations in consideration of the results of the discussions”⁶¹ according to Article 18 of the same Act. The reason that the Japanese system focuses more on consultation roles through regional approach is that the scope of activity of PWD in terms of everyday and social life can be wide and situated in various aspects of life. Therefore, it is often the case that which organization is fit and authorized to carry out the consultations in certain aspects of life of PWD is not clear cut and consequently it is rather more suitable to take a regional approach where most of the activities of PWD are taking place, in order to better resolve discrimination against PWD independently within the region (Choi 2018, 54).

Lastly, even though the Japanese system counts on the employers to independently and voluntarily take appropriate measures to prevent and resolve discriminatory or unfair treatments against PWD referring to the ‘handling guidelines’ provided by a competent minister, if and when appropriate measures are not being taken –for example, when an employer continuously violates the law through same or similar discriminatory or unfair treatments against PWD and therefore it is deemed logical not to expect due improvement from the employer’s side on a voluntary basis–, the competent minister “may seek a report or provide advice, guidance, or recommendations to companies with regard to the matters provided for in the companies”⁶² according to Article 12 of the same Act. Nonetheless, even in this case, with the fundamental principle of the Act in mind, which is to respect the voluntary actions of the employers, the ground rule is to call for improvement based on collection of reports, advices, and guidance (Choi 2018, 54).

⁶⁰ Ibid., Article 17, paragraph (1).

⁶¹ Ibid., Article 18.

⁶² Ibid., Article 12.

4.3. Vocational Training/Rehabilitation Policies for PWD in Korea and Japan

4.3.1. Vision of the vocational training/rehabilitation system

A. A brief history of the system

The idea of vocational training and rehabilitation for PWD started together with the idea of employment protection for PWD in Korea, nevertheless, with a limited group of beneficiaries which included those who contributed to the nation and became disabled in doing meritorious deeds. More specifically, through the enactment of the ‘VETERANS BENEFIT ACT’ in 1950, the ‘POLICE BENEFIT ACT’ in 1951, and the ‘VETERAN BENEFIT RECIPIENT EMPLOYMENT ACT’ in 1961, the vocational training/rehabilitation was first initiated for soldiers and police officers who were in need of it (Jun et al. 2014, 36). Then, the enactment of the ‘WELFARE ACT FOR PHYSICALLY AND MENTALLY DISABLED’ in 1981 first specified the details about trainings to be provided to those with physical and mental disability to help them adapt to working environments and functions. This led to the establishment of welfare facilities including rehabilitation centers and labor facilities for PWD so that they can receive vocational rehabilitation. Nonetheless, this WELFARE ACT did not embody specific regulation on working life through vocational training and it was not until 1990, when the ‘EMPLOYMENT PROMOTION OF DISABLED PERSONS ACT’ was enacted, that more focus was put on vocational training and rehabilitation (Jun et al. 2014, 50-51).

The new Act suggested the purpose of vocational training for PWD by employing measures such as vocational guidance, training, and job placement. It also embodied other articles about vocational training, for example, Article 8, which stipulated that “The Minister of Labor shall take measures to conduct vocational training for the disabled for smooth promotion of employment of the disabled” and “The Minister of Labor shall whenever deemed necessary to help disabled persons to have a professional life, implement vocational adjustment training programs for their adaptation to an occupational environment and may grant a subsidy, as training allowance in this case.” Later, the Act was revised to the current ‘ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES’ and it now more emphasizes a professional life suited to the expectations, aptitude and abilities of the PWD through workplace skill development training. Through these enactments and the establishment of the Korea Employment Promotion Agency for the Disabled (current name: Korea Employment Agency for the Disabled, KEAD), the vocational training/rehabilitation system in Korea became more organized and the Agency has ever since established various vocational training centers and customized training centers, especially after the opening of the Employment Development Institute (EDI) under the Agency in 2000 (Jun et al. 2014, 53-58).

After the Korea Employment Promotion Agency for the Disabled became the main organization to carry out vocational training and rehabilitation for PWD, the systems went through big changes around 2005, skill training-oriented specialized vocational schools being reformed to comprehensive vocational competency development centers, and the role and

function of training systems being re-established to foster customized human resources for PWD. On top of that, ‘specialized vocational competency assessments’ and various vocational rehabilitation programs started to be operated in full scale, while centers started to enlarge its connection with supporting organizations based on the training networks between provinces. Gradually, more institutes were established to provide specialized training services with the type of disability in consideration and also help those with severe disabilities, such as Ilsan Institute for Visual Disability, Busan Institute for Mental Disability, Daejeon Institute for Hearing Disability, Jeonnam Institute for Brain Disability, and Daegu Institute for Visual Disability (Jun et al. 2014, 63-66).

In 2008, the Agency created the brand of what is called ‘Shared Customized Training’s, connecting vocational training with corporate social responsibility (CSR) and operated 130 customized training courses in connection with 183 companies, including major ones. As the trend started to reflect more practicality into the system, recently, the Agency seeks to strengthen demand-based vocational training, and also to extend the needs and applications within various industrial fields (Jun et al. 2014, 72-75).

In Japan, on the other hand, the first law to cover vocational rehabilitation was the 1960 ‘Disabled Persons Employment Promotion Law’, which provided a framework for Japan’s disability employment policy, including that of vocational rehabilitation service system. Prior to this legislation, employment and related services for PWD were provided by public employment security offices (PESO), usually only to those with disabilities that are severe. After the enactment of the 1960 Law, ‘Vocational Centers for Persons with Physical Disabilities’ were established, together with a quasi-governmental agency responsible for implementing the measures stipulated by the Disabled Persons Employment Promotion Law, Employment Promotion Corporation (currently Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers, JEED) (Boeltzig-Brown et al. 2013, 171-73).

Between 1980 and 1990, the groundwork for rehabilitation service delivery, center operations, and staff training was laid and after reviewing rehabilitation approaches, methods, and techniques used in the United Kingdom, the United States, and Australia, the Japanese system was able to introduce the work sample method for vocational evaluation of PWD in 1981. Since 1986, newly hired counselors of the Employment Promotion Corporation received practical training for nine months in addition to the three month theoretical training at the headquarters of the National Institute of Vocational Rehabilitation. Also several amendments to the Disabled Persons Employment Promotion Law extended the coverage of vocational rehabilitation to those with intellectual and mental disabilities from being exclusively limited to those with physical disabilities (Boeltzig-Brown et al. 2013, 173-75).

Between 1991 and early 2010s, the system went under more growth and also the focus was shifted from vocational evaluation to vocational skills development. The adoption of simulated work assessment made it possible to make use of more onsite assessments, moving towards supported employment and the use of job coaching strategies in the centers. Also, the

Services and Supports for Persons with Disabilities Law of 2005 made stronger the shift of trend from welfare to work, and the number of employment support providers, such as welfare agencies and medical facilities, has been increasing (Boeltzig-Brown et al. 2013, 175-76).

B. Current goal and principle of the system

When it comes to the goal of the vocational training/rehabilitation system, Korea has several different laws that are either directly or indirectly relevant. First of all, in the ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES, Article 1 states that the purpose of facilitating vocational rehabilitation for PWD is “so that they may be able to enjoy their lives with human dignity through vocational lives fit for their abilities.”⁶³ Also under Article 9 of the same Act, it is stated “particularly with an aim of enhancing self-supporting abilities of persons with severe disabilities.”⁶⁴ The ACT ON THE DEVELOPMENT OF VOCATIONAL SKILLS OF WORKERS, on the other hand states under Article 1, that the purpose is “to improve their social and economic status by facilitating and supporting the development of vocational skills throughout their lifetime, nurturing a technical and skilled workforce necessary for industrial sites”.⁶⁵ The EMPLOYMENT INSURANCE ACT also states under Article 19, that “The Minister of Employment and Labor shall operate programs for employment security and vocational skills development to prevent unemployment, promote employment, increase employment opportunities, provide opportunities to develop and improve vocational skills and assistance therefor, and otherwise improve employment security for the benefit of workers who are or were insured or persons who have intention to find jobs”.⁶⁶ Lastly, the VOCATIONAL EDUCATION AND TRAINING PROMOTION ACT states under Article 1, that “The purpose of this Act is to contribute to the enhancement of living standards of the citizens and development of the national economy by prescribing matters necessary for the promotion of vocational education and training so as to provide all citizens with the opportunity for various types of vocational education and training suitable for their character and aptitude and to improve the efficiency and quality of vocational education and training.”⁶⁷ Combining all these goals mentioned in the related laws, it could be said that the

⁶³ ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES [Act No. 15851, 16. Oct, 2018., Partial Amendment], Article 1.

⁶⁴ Ibid., Article 9.

⁶⁵ ACT ON THE DEVELOPMENT OF VOCATIONAL SKILLS OF WORKERS [Act No.16413, 30. Apr, 2019., Amendment by Other Act], Article 1.

⁶⁶ EMPLOYMENT INSURANCE ACT [Act No.14496, 27. Dec, 2016., Partial Amendment], Article 19.

⁶⁷ VOCATIONAL EDUCATION AND TRAINING PROMOTION ACT [Act No.15525, 27. Mar,

goal of vocational rehabilitation and training is to develop potentials of PWD by overcoming the limitations that they face due to disabilities, and to support them so that they are equipped with the competence and skills demanded in the labor market, and consequently to secure and maintain stable employment (Lee, Hong, and Nam 2008, 102).

The principle of vocational rehabilitation and training for PWD, with which the actual policies can only then be implemented in a stable manner, consists of generally five elements in Korea: (1) safeguarding the fundamental human rights; (2) jointly fulfilling the social responsibilities; (3) realizing normalization; (4) pursuing equal employment; and (5) realizing genuine labor. In other words, when the vocational training/rehabilitation system functions as it is supposed to, it should not only bring economic stability to PWD and their families, but also realize the dignity of PWD, and also promote self-realization in the society as a member (Lee, Hong, and Nam 2008, 102-103).

On the other hand, in case of Japan, the Act on Employment Promotion, etc. of Persons with Disabilities states under Article 1 that the purpose of the Act is “to ensure equal opportunities and treatment between persons with disabilities and persons with no disabilities in the field of employment, to enable persons with disabilities to effectively exercise their abilities, to implement vocational rehabilitation measures, and other measures to promote persons with disabilities to become independent in their vocational lives by finding employment suited to their abilities, thereby ensuring the employment security of persons with disabilities.”⁶⁸ The Human Resources Development Promotion Act states under Article 1 that the purpose of the Act is to “promote the development and improvement of the abilities workers need for their jobs” and thereby “to ensure security of employment and improvement of the status of workers, as well as to contribute to the development of the economy and society as a whole.”⁶⁹

The main principle of vocational training/rehabilitation system in Japan is also heavily dependent on the concept of normalization, the Article 8 of the Act on Employment Promotion, etc. of Persons with Disabilities stating that “Measures for vocational rehabilitation shall be implemented comprehensively and effectively in accordance with the type and degree of disability of each person with disabilities and conditions such as desire, aptitude, and work experience.” and “Vocational rehabilitation measures shall be implemented in appropriate coordination with medical and social rehabilitation measures as necessary.”⁷⁰ This sets the principle that the physical and mental circumstances of PWD shall

2018., Partial Amendment], Article 1.

⁶⁸ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960], Article 1 (translation was done by the author himself).

⁶⁹ Human Resources Development Promotion Act [Act No. 64 of 1969], Article 1.

⁷⁰ Act on Employment Promotion, etc. of Persons with Disabilities [Act No. 123 of July 25, 1960], Article 8 (translation was done by the author himself).

be taken into consideration also when carrying out vocational training and rehabilitation, and also that various social factors limiting PWD from participating in the society and realizing their potentials should be removed so that they are in a setting where they can fully make use of their competence (Lee, Hong, and Nam 2008, 60).

4.3.2. Means of the vocational training/rehabilitations system

A. Organization

Regarding organizational matters, in Korea, the general and fundamental structure is set by the Minister of Employment and Labor, who establishes a framework every five years regarding employment promotion and vocational rehabilitation for PWD.⁷¹ However, when it comes to more practical matters, various vocational rehabilitation services and competency development programs are provided by the Korea Employment Agency for Persons with Disabilities (hereinafter KEAD), more specifically, through competency development centers under the Agency. The competency development bureau of the Agency is in charge of “making and adjusting vocational competency development program plans, improving institutions, surveying training demand, assessing program and management achievement, development and distribution of job types for training, budgeting, development of curriculum standards and equipment, support for private and public training institutes and individual vocational competency development, vocational skill contests for the disabled (local, national and international) and support for awardees” and “directing vocational competency development training, supplying training facilities and equipment, development and distribution of training and education methods, building network operations, international cooperation, cyber vocational competency development training” (Jun et al. 2014, 77). Currently, there are five Vocational Competency Development Institutes, seven Customized Training Centers, and thirteen Vocational Training Centers for Persons with Developmental Disabilities around the country.⁷²

In Japan, also the Minister of Health, Labour and Welfare is responsible for the general structure of vocational training and rehabilitation for PWD, especially, the employment development department under the Ministry (Lee, Hong, and Nam 2008, 62). The Ministry is in charge of fundamental roles, such as financial support, organizing prefectural human resources development implementation plan, producing vocational training implementation plan, and management of entrusted trainings. Nonetheless, the Ministry collaborates with and usually supports two different implementing bodies, which are the Japan Organization for

⁷¹ ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES [Act No.15851, 16. Oct, 2018., Partial Amendment], Article 7, paragraph (1).

⁷² “About KEAD, Organization,” Korea Employment Agency for Persons with Disabilities, accessed August 26, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2005>.

Employment of the Elderly, Persons with Disabilities and Jobseekers (hereinafter JEED) and the Prefectures.⁷³ First, JEED plays a role in a wide range of fields in the vocational training and rehabilitation for PWD based on the Act, operating Large Region Vocational Centers for Persons with Disabilities and Local Vocational Centers for Persons with Disabilities in order to provide vocational rehabilitation services. On top of that, it also conducts vocational rehabilitation research and training in order “to promote the development of infrastructures and improvement of the quality of vocational rehabilitation services” through National Institute of Vocational Rehabilitation (NIVR).⁷⁴ Also, levy and grant system for employing PWD is operated by the organization, together with support and educational activities for employers concerning PWD employment.⁷⁵ On the other hand, Prefectures have public employment security offices called Hello Work Offices, summing up to close to 500 offices all around the country (Lee, Hong, and Nam 2008, 63). These offices provide fundamental training services, taking the regional personnel needs into account, and usually beginners who want to acquire operating skills for machines and equipment are targeted. Also, “trainings dealing with the regional current situation to develop human resources necessary for local industries” are a main role of the offices.⁷⁶

B. Relevant legislation

The two main legislations to shape the vocational training/rehabilitation system of Korea are the ‘ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES’ and the ‘ACT ON THE DEVELOPMENT OF VOCATIONAL SKILLS OF WORKERS’. The former stipulates under Article 12 that “The Minister of Employment and Labor shall implement occupational ability development training programs for persons with disabilities to help them to have vocational lives suitable for their expectations, aptitude, abilities, etc.” and also that a loan or subsidy could be granted to those who establish and operate an institution or program for the occupational ability development training for the expenses as required.⁷⁷ The latter, on the other hand, sets the basic principles of vocational skills development training under Article 3,

⁷³ “Vocational Training,” Ministry of Health, Labour and Welfare, accessed August 26, 2020, https://www.mhlw.go.jp/english/dl/Overview_eng_02.pdf.

⁷⁴ “Employment Services for Persons with Disabilities,” JEED, accessed August 26, 2020, <https://www.jeed.or.jp/english/disability/index.html>.

⁷⁵ Ibid.

⁷⁶ “Vocational Training,” Ministry of Health, Labour and Welfare, accessed August 26, 2020, https://www.mhlw.go.jp/english/dl/Overview_eng_02.pdf.

⁷⁷ ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES [Act No.15851, 16. Oct, 2018., Partial Amendment], Article 12.

which are: 1) the training shall be systemically conducted throughout the lifetime in a way that conforms to the hope, aptitude, and abilities of the individual worker; 2) the autonomy and creativity in the private sector shall be respected based on labor-management participation and cooperation while the training is conducted; 3) the workers that receive the training shall not be discriminated against on the grounds of gender, age, physical conditions, forms of employment, religion, social status, etc. and therefore will be guaranteed equal opportunities; 4) when the training is conducted for certain groups of persons, such as seniors, female workers, etc., an emphasis shall be placed.⁷⁸

In Japan, also the two main legislations that are directly related to the vocational training/rehabilitation for PWD are the ‘Act on Employment Promotion etc. of Persons with Disabilities’ and the ‘Human Resources Development Promotion Act’. The former stipulates under Article 19 that the Minister of Health, Labour and Welfare shall establish and operate facilities to promote the independence of persons with disabilities in their working lives, which are National Institute of Vocational Rehabilitation (NIVR), Large Region Vocational Centers for Persons with Disabilities, and Local Vocational Centers for Persons with Disabilities, and also mentions that the responsible body for performing that role is JEED. The latter also sets the basic principles for the promotion of human resources development under Article 3, just like the case in Korea, which is to carry out the development systemically by stages throughout the entire period of vocational life of the workers, while considering their vocational life planning, so that they can adapt to the changes in their duties caused by structural changes in the industries, technological advances, and other changes in the economic environment. Also, under Article 15-6 of the same Act, among five facilities mentioned that should be established “so that workers may acquire the trade skills needed for their jobs and knowledge thereon systematically by stages”, Polytechnic Schools for Persons with Disabilities is included, which are “facilities for providing ordinary or advanced vocational training for physically or mentally disabled persons who have difficulty in receiving vocational training at facilities listed in the preceding items, in a manner corresponding to their abilities”.⁷⁹

C. Types of services

The actual types of vocational training and rehabilitation services provided to PWD in Korea have gone through major changes in its focus in the past years. While the services previously in the 2000s focused on fostering PWD who can work in the fields where high added value is created, inevitably leading to concentrating more on persons with mild disabilities and leaving persons with severe disabilities behind, since around 2010s, the focus

⁷⁸ ACT ON THE DEVELOPMENT OF VOCATIONAL SKILLS OF WORKERS [Act No.16413, 30. Apr, 2019., Amendment by Other Act], Article 3, paragraph (4).

⁷⁹ Human Resources Development Promotion Act [Act No. 64 of 1969], Article 15-6.

of the system started to pivot to focusing more on demand-based vocational training and increased participation of persons with severe disabilities (Jun et al. 2014, 75; Lee, Hong, and Nam 2008, 115).

Currently, there are mainly four types of institutions under or that cooperate with KEAD. The first one is the ‘Vocational Competency Development Institutes’ of which there are five around the country. All five Institutes provide different types of training fields which are the following:⁸⁰

Location	Training Fields
Ilsan	intelligent machinery, electronics, smart information, design, print publishing media, precious metal crafts, convergence software
Busan	marine design, CAD/CAM, electronics, smart information, digital architecture design, system control, smart mechatronics
Daegu	smart management (management accounting, service marketing), CAD/CAM, electronics, smart information, design, intelligent robot control
Daejeon	semiconductor display, CAD/CAM, smart information, design, 3D printing
Jeonnam	mold design, electronics, smart information, design, drone control

Table 8. Training fields in each Vocational Competency Development Institute in Korea⁸¹

Within the Institutes, there are three types of training services and the first one is the ‘competitive professional training’. The fields covered are the following: computer-aided design and manufacturing (CAD/CAM), mold design, mechatronics, electronic devices, electronic control circuit design, smart mobile device, software development, computing administration, computer graphic design, digital content design, 3D design, electronic publishing, architecture design, interior architecture, jewelry CAD, confectionery/bakery, barista, management accounting. The second type of training is the ‘specialized training’ provided by experts for each type of disability. The common courses provided in all five Institutes are industry-academy affiliated courses, certificate courses, mature special courses, women’s special courses, mental special courses, and practical (development) courses. In the Busan and Daejeon Institutes, ‘food master courses’ are also provided as one of the

⁸⁰ “Vocational Competency Development Institute,” KEAD, accessed August 29, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2307>.

⁸¹ Ibid.

specialized trainings. The last type of training provided is the ‘sensory disability specialized training’ through the auditory training center. Auditory training center is “an organization established in the Ilsan Vocational Competency Development Institute, dedicated to vocational training for the hearing impaired,” providing “vocational ability development training and employment support services considering the characteristics of the deaf”.⁸² The center operates for persons with severe hearing impairments, and therefore provides hearing-friendly training method and practice room, together with dedicated sign language interpreter placement and counseling support, and the training subjects are mainly CAD/CAM and electronics related.⁸³

In order to get into the Institutes, those eligible –job seeking PWD who are 15 years of age or older– can apply by visiting, online or on the phone, and then they go through a screening process by either a general field evaluation or practical work evaluation, depending on the trainings they want to participate in. Both of the evaluations include evaluations on basic learning ability, hand function, psychology –and the latter also includes an evaluation on the work performance and attitude–, and also an interview and medical observation. If they fail the screening process or in the end do not want to get the training, they are connected to the employment support services provided by local branches. If they pass the screening process and want to get the training, the training will take minimum of one month (120 hours) and maximum of two years. The benefits given to those who take the training include the full support of training expenses, training allowance and transportation expenses, accommodation, injury insurance during the training period, and support for adaption to the company for one year after employment placement and completion of training.⁸⁴

The second type of institution is the ‘Customized Training Centers’. There are seven Centers around the country, in Seoul, Incheon, Gyeonggi, Cheonan-Asan, Jeonju, Changwon, and Jeju, and they provide vocational training reflecting “the actual needs of the company from the curriculum designs to the selection of trainees, customized training and employment”.⁸⁵ In other words, the centers provide customized training for the specific works that PWD will have to carry out in certain companies, in cooperation with participating companies. The customized training provided by the Centers are expected to enhance corporate image by fulfilling corporate social responsibility (CSR), placing human resources on the spot and therefore being able to immediately utilize them, saving time and cost for retraining, making possible direct participation of businesses in evaluating and selecting trainees and curriculum design required by them, and offering training and operation of field-

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ “Customized Training Center,” KEAD, accessed August 29, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2308>.

oriented curriculum which would lead to enhancing adaptation and satisfaction. Also, just like Vocational Competency Development Institutes, the Centers provide training benefits of coverage of all training expenses and transportation expenses, training allowance, and accident insurance.⁸⁶

More specifically, the Centers go through several steps to actually realize customized training for PWD. First, the Centers find companies for customized training, with a focus on companies that fall under the condition for the mandatory employment quota for PWD. Second, the Centers analyze the jobs based on the job description, suitability for PWD, and working environment. Then, the Centers design customized training that suits the company's work, that lasts from one month (120 hours) up to one year, and the training may also include personality and social training if the company requires it. When the training is designed, the Center signs an agreement with the company and then registered job seeking PWD that meet the conditions set by the company are able to apply for the training, and are selected by the company. After the actual training is conducted, recruitment takes place, post-support is offered for one year after the completion of the training, and in case of unemployment, job search counselling is offered.⁸⁷

The third type of institution is the 'Vocational Training Centers for Persons with Developmental Disabilities'. These Centers seek to support successful employment through systematic vocational training through conducting not only job training but also sociality training according to the characteristics of individuals with developmental disabilities. The services provided in these Centers are mainly composed of three, which are job training, job experience, and infrastructure support. The 'job training' is offered in a form of specialized training for each type of disability for job seekers with developmental disabilities that have completed the 1st phase of the Employment Success Package,⁸⁸ for a period of one to six months. The 'job experience' is divided into a basic course and intensive course, the former for freshmen (1st graders) of special education high schools, provided 4 hours or more, and the latter for sophomores and juniors (2nd and 3rd graders) of special education high schools, provided for 20 or more hours. Lastly, the 'infrastructure support' is offered in a form of special course and parent education for persons with developmental disabilities, and also includes teacher education for persons in charge of special education, employer training for employers and HR managers, and expert network for experts in developmental disabilities.⁸⁹

The trainees are also selected among eligible persons, which are prospective high

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Employment supporting program provided by the Ministry of Employment and Labor for low income vulnerable groups with regard to employment.

⁸⁹ "Vocational Training Center for Persons with Developmental Disabilities," KEAD, accessed August 29, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2309>.

school graduates with developmental disabilities (including intellectual and autistic disorders), through evaluations of basic learning, psychology, work, and medical conditions, and an interview on top of that. The training period is a minimum of one month and maximum of six months, and the benefits for taking the trainings are same as the above two, except for the fact that the trainees in these Centers can receive employment success allowance when they successfully find a job after taking the training, and also the fact that they are provided with job placement and adaptation guidance.⁹⁰

Lastly, the fourth type of service provided is the ‘vocational skill development training support’ that KEAD provides in cooperation with public and private institutes. Public training is provided by 34 institutions of Korea Polytechnic University to support persons with mild disabilities to receive integrated training with non-PWD “in order to enhance the effectiveness of vocational training, improve social adaptability, and increase employment rate”.⁹¹ Private training is offered by 47 private institutes through 86 courses to support women and elderly with disabilities that want to receive training near their homes.⁹²

Institution	Services Provided
Vocational Competency Development Institutes	Competitive professional training
	Specialized training
	Sensory disability specialized training
Customized Training Centers	Customized training for the specific works that PWD will have to carry out in the cooperating companies
Vocational Training Centers for Persons with Developmental Disabilities	Job training
	Job experience
	Infrastructure support
Vocational Skill Development Training Support	Public training (Korea Polytechnic University)
	Private training

Table 9. Types of vocational training/rehabilitation services provided in Korean institutions⁹³

⁹⁰ Ibid.

⁹¹ “Private Institute Training,” KEAD, accessed August 29, 2020, <https://www.kead.or.kr/english/home/sub.do?menukey=2310>.

⁹² Ibid.

⁹³ Edited by the author himself referring to the contents above.

The Japanese vocational training/rehabilitation system takes a rather different structure from that of Korea, in which various entities take part in providing various types of services. First, the prefectures within the Japanese territory administer one of the service providers, which is the public employment security offices, the Hello Work Offices, of which there are more than 540 around the country as of 2020. More specifically, administered by the prefectural labor bureaus under the Ministry of Health, Labour and Welfare (MHLW), the Offices are not only in charge of providing services to PWD but also to others who are seeking for jobs. The services provided for PWD by the Offices are vocational guidance, employment information, referral of PWD by disability point to vocational rehabilitation and other service providers, work preparation and vocational training –including three months trial employment, and three to twelve months work experience for persons with mental disabilities–, assistance with job search and placement, work adaptation, post-employment advice/guidance/support, and specialist support for PWD working at home. Also, there are services provided for employers, which include processing of employers’ annual reports to determine whether they are meeting the mandatory employment quota for PWD, advice, guidance, consultation, and support (mostly in a form of grants and subsidies) regarding employment of PWD, and special guidance for meeting the quota (Boeltzig-Brown et al. 2013, 174).

Second, JEED administers Large Region Vocational Rehabilitation Centers for PWD and Local Vocational Rehabilitation Centers for PWD. More specifically, since JEED is not only dedicated to employment promotion of PWD, it has National Institute of Vocational Rehabilitation (NIVR) under the Organization that administers those Centers. The Large Region Vocational Rehabilitation Centers, consisting of National Vocational Rehabilitation Center for Persons with Disabilities in the Saitama Prefecture and National Kibi-Kogen Vocational Rehabilitation Center for Persons with Disabilities in the Okayama Prefecture, “provide vocational rehabilitation services, including vocational evaluation, guidance, and training in cooperation with medical rehabilitation facilities”,⁹⁴ with assigned vocational counselors and training instructors for persons with mental/developmental disabilities and higher brain dysfunctions. The training fields in the Center in Saitama include machinery, electric/electronic engineering, architectural drafting, information processing, office business, sales/logistics, and hotel service, whereas those of the Center in Okayama include machinery, electric/electronic engineering, information processing, office business, clerical work/sales/logistics, and cooking assistance/restaurant service. These Large Region Vocational Rehabilitation Centers for PWD, aside from providing these training services, compile manuals and other types of documents regarding vocational training content and teaching techniques, etc. for PWD and distribute them to other vocational ability development facilities for instructors and also assist establishing and operating other training

⁹⁴ “Promotion of Vocational Rehabilitation Services,” JEED, accessed August 30, 2020, <https://www.jeed.or.jp/english/disability/u603g2000000016l-att/u603g20000000b7x.pdf>.

courses for PWD.⁹⁵

The Local Vocational Rehabilitation Centers for PWD “serve as core vocational rehabilitation facilities in each prefecture by offering vocational rehabilitation services based on local needs”, “providing vocational counselors for persons with disabilities and working in close cooperation with related bodies such as public employment offices (Hello Work), Employment and Life Support Centers for Persons with Disabilities, hospitals, and special needs schools”.⁹⁶ The Centers conduct vocational evaluation upon eliciting individual employment desires and provide consultation and guidance. Based on these steps, Vocational Rehabilitation Plan is created according to individual conditions with support content and assistance methods for adjustment to the workplace. After that, work preparation support is provided based on personalized curricula to understand and improve vocational challenges required for employment or work adjustment, and also to acquire vocational knowledge, and improve social skills. The Centers also support employers in “assisting their new employment, helping workers adjust to their current workplaces and improve their careers, and helping those on sick leave return to work”,⁹⁷ based on Employer Support Plans which are made according to the employers’ needs. Moreover, the Centers train and dispatch job coaches to assist persons with intellectual and mental disabilities in adjusting to the workplace and provide comprehensive employment support for persons with mental disabilities to return to work and promote continued employment.⁹⁸

Third, private providers of vocational training for PWD provide vocational training in various fields, usually focusing on persons with particular types of disabilities, such as physical, intellectual, mental, or visual (Boeltzig-Brown et al. 2013, 175). Entrusted by the prefectures, the training courses offered by these providers include knowledge/skill training course, practicable skill training course (training at enterprises for practical human resource development), E-learning course (IT skills), early training course in special support education schools, and employed worker training. To maximize the effectiveness and efficiency of the training, these providers work close with the Hello Work Offices, and also in collaboration with special support schools, PWD organizations, welfare/medical/health institutions, and the labor bureau of the prefectures.⁹⁹

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ “Vocational Training,” Ministry of Health, Labour and Welfare, accessed August 31, 2020, https://www.mhlw.go.jp/english/dl/Overview_eng_02.pdf.

Lastly, non-profit organizations (NPOs) administer Employment and Life Support Centers for PWD, counting up to 334 Centers nationwide as of 2018.¹⁰⁰ These Centers also provide work-related supports such as job search assistance and workplace adaptation, but also offer support for daily life and life planning which include health/disability management, transportation, financial management, utilization of health and welfare services, and leisure activities. For the employers, the Centers process employer applications for adjustment allowances, rewards, and grants under the levy system, and also provide training and awareness-raising activities related to employment of PWD (Boeltzig-Brown et al. 2013, 175).

Institution	Services Provided
Hello Work Offices	Vocational guidance / employment information
	Vocational training / work preparation
	Referral of PWD to vocational rehabilitation and other service providers
	Assistance with job search and placement
	Work adaptation and post-employment advice/guidance/support
	Specialist support for PWD working at home
	Advice, guidance, consultation, and support for employers
Large Region Vocational Rehabilitation Centers for PWD (under JEED)	Vocational rehabilitation services
	Vocational evaluation, guidance, and training
	Medical rehabilitation
	Distribution of manuals and other types of documents regarding vocational training content and teaching techniques
	Assistance in establishing and operating other training courses for PWD
Local Vocational Rehabilitation Centers for PWD (under JEED)	Vocational evaluation/consultation/guidance
	Work preparation support
	Support for employers
	Training and dispatching of job coaches

¹⁰⁰ “障害者就業・生活支援センターについて [About employment and life support center for person with disabilities],” Tokyo Labor Bureau, accessed August 31, 2020, https://jsite.mhlw.go.jp/tokyo-roudoukyoku/hourei_seido_tetsuzuki/shokugyou_shoukai/0720.html.

Private providers of vocational training for PWD	Knowledge/skill training course
	Practicable skill training course
	E-learning course
	Early training course in special support education schools
	Employed worker training
Employment and Life Support Centers for PWD	Job search assistance & workplace adaptation
	Support for daily life & life planning
	Adjustment allowances, rewards, and grants for employers
	Training and awareness-raising activities related to employment of PWD

Table 10. Types of vocational training/rehabilitation services provided in Japanese institutions¹⁰¹

D. Human resources

There are various types of human resources that are either directly or indirectly related to the vocational training/rehabilitation for PWD in Korea, however one of the fundamental ones would be the Vocation Rehabilitation Counselor. Interestingly, the Vocation Rehabilitation Counselor is fostered with private certification, and is not a national license. There are three levels for the certification, level 3 being the lowest and level 1 being the highest, and they are all given by the Korea Association of Vocational Rehabilitation Counselor when they fulfill certain conditions and pass the tests. These Counselors do not only provide services but also develop suitable vocational models for PWD and employ PWD by operating those models. The roles they play include discovering PWD in need of vocational training/rehabilitation, interviewing them, diagnosis, evaluation of eligibility for the services, establishment of training/rehabilitation plans, provision of services according to the plans, job placement and post-employment guidance, etc. Therefore, during the process of fostering these Counselors, various subjects should be taken by candidates, including not only those directly related to vocational training/rehabilitation, but also law, case studies, career development, labor market status, independent living, etc. (Korea Disabled People's Development Institute 2015, 53-56). Similarly, there are 'Vocational Life Counselors for PWD', which is certified with a national license, but their role is limited to supporting PWD with workplace adaptation and vocational life within the businesses.¹⁰²

¹⁰¹ Edited by the author himself referring to the contents above.

¹⁰² “장애인 직업생활상담원 양성교육 [Candidate Training for Vocational Life Counselors for Persons with Disabilities],” GOV.KR, accessed August 31, 2020, <https://www.gov.kr/portal/service/serviceInfo/PTR000050134>.

Next, Social Workers play a rather important role in the vocational training/rehabilitation for PWD, who are certified with a national license, stipulated under Article 11 of the SOCIAL WELFARE SERVICES ACT.¹⁰³ The Social Workers are to support various groups of people, including adolescents, elderly persons, women, families, PWD, etc. in overcoming the social or personal problems they face, through professional knowledge in the social welfare and social science field. Social Workers are not only in charge of supporting those in need resolve their problems, but also of planning, conducting and evaluating social welfare programs for those who need financial support, legal advices, etc., and especially supporting persons with mental disabilities to return to the society through conducting vocational and life training/rehabilitation and also through conducting education, guidance and consultation for the families of PWD.¹⁰⁴ There are also three levels for the license, level 1 being the highest one, and in order to acquire the highest level of the certification, the candidates have to pass a test conducted by the government, whereas the lower two levels require other conditions then passing a test (Korea Disabled People's Development Institute 2015, 60-63).

Lastly, there are Speech-Language Pathologists, who are certified with a national license and are in charge of mediating for or rehabilitating persons with speech and language disorders, including developmental language disorders –which could be caused by general developmental disabilities, auditory disorder/hearing impairment, emotional disorders, brain lesions, autism, etc. –, phonological and articulation disorders, voice disorders, fluency disorders, neurogenic communication disorders, hearing-language impairments, etc.¹⁰⁵ There are two levels for the certificate, level 1 being the higher one which requires Master's degree or PhD in the related area with experience in the field. Candidates have to pass a test composed of various subjects relevant to the roles they have to play in order to acquire the license, and rehabilitation institutions that conduct rehabilitation for speech and language disorders have to have a certain number of these Pathologists in the institution by the Enforcement Decree of the ACT ON WELFARE OF PERSONS WITH DISABILITIES (Korea Disabled People's Development Institute 2015, 56-59).

Other than these human resources who are professional manpower in the field related to PWD or social welfare, of which one of the biggest target groups is the PWD, other types of manpower also play important roles in the vocational training/rehabilitation system of Korea. For instance, the Vocational Skills Development Teachers, who are also certified with a

¹⁰³ SOCIAL WELFARE SERVICES ACT [Act No.14325, 02. Dec, 2016., Partial Amendment], Article 11.

¹⁰⁴ “사회복지사란 [Who are Social Workers?],” Korea Association of Social Workers, accessed September 2, 2020, <http://lic.welfare.net/lic/ViewCertRegime.action>.

¹⁰⁵ “언어재활사란? [Who are Speech-Language Pathologists?],” Korean Association of Speech-Language Pathologists, accessed September 2, 2020, <http://www.kslp.org/infomation/infomation.php>.

national license,¹⁰⁶ play a role not only in vocational training for non-PWD, but also for PWD. Also, vocational evaluators (private license), occupational therapists (national license), physical or physio-therapists (national license), etc. play their own roles within the vocational training/rehabilitation system of Korea (Lee, Hong, and Nam 2008, 118-20).

In Japan, also some of the human resources utilized in vocational training/rehabilitation for PWD are directly related to the field, but also other human resources who are not necessarily exclusively trained to deal with services provided to PWD come in handy. For instance, one of the major role players in the field is the Vocational Training Instructor. Vocational Training Instructors in Japan are certified with a national license for those who have either completed a training course for the instructor training, successfully passed the vocational training instructor examination, or are recognized as having an equal or higher ability for vocational training instructor's duties, stated under Article 28 of the Human Resources Development Promotion Act. These Instructors are in charge of conducting vocational training not only in facilities for non-PWD but also for PWD, and also play the role of vocational training coordinators in related facilities of the Prefectures. However, in order to be able to carry out the training for PWD, the Instructors have to take certain amount of training programs in the Human Resources Development Polytechnic University, regarding employment of PWD in companies, current status of PWD employment, supporting employment of PWD, vocational training of PWD, etc. (Lee, Hong, and Nam 2008, 68). Also stated in the same Act under Article 12 is the Human Resources Development Promoter, who are in charge of planning and implementing vocational training within the businesses, meaning they are placed in the companies, however, they are also in charge of general vocational training, not exclusively for PWD (Lee, Hong, and Nam 2008, 69).

On the other hand, there are types of human resources that are relatively more directly related to the vocational training/rehabilitation for PWD, including the Vocational Training Advisors for Persons with Disabilities. These Advisors are assigned to Prefectures –one per each– in order to improve the vocational training system for PWD and strengthen cooperation with related organizations in each Prefecture. Selected among persons who have knowledge in vocational training and guidance and/or experience in designing and implementing guidance programs for PWD in related facilities or institutions, the Advisors' roles include: 1) advice and guidance regarding the establishment and operation of training courses at vocational training schools for persons with intellectual disabilities; 2) advice and guidance regarding the acceptance of PWD at other general public vocational human resources development schools; 3) providing vocational training know-how for PWD to private organizations such as companies and social welfare corporations; and 4) formation of a network of institutions related to vocational human resources development for PWD in the region (Lee, Hong, and Nam 2008, 69).

¹⁰⁶ ACT ON THE DEVELOPMENT OF VOCATIONAL SKILLS OF WORKERS [Act No.16413, 30. Apr, 2019., Amendment by Other Act], Article 33.

Vocational Counselors for Persons with Disabilities are also one type of human resources directly related to the vocational training for PWD. The Counselors are certified with a national license, stipulated under the Article 24 of the Act on Employment Promotion etc. of Persons with Disabilities, after passing a national test. The Counselors are employed by JEED and their roles include conducting job evaluation for the purpose of workplace adaption for PWD or proper selection of jobs through consultations, conducting actual training for attitude, work competency, interpersonal relationship, etc., and facilitating office automation (OA) lessons for persons with visual impairments. Not only that, the Counselors provide supports to employers, offering consultations and providing information regarding employment of PWD, designing specific employment plans for PWD, connecting other relevant organizations, and providing post-employment services. Especially, the Counselors visit the companies that hired PWD regularly to support the continuation of the employment (Lee, Hong, and Nam 2008, 70-72).

Next, Job Coaches are a type of professional human resources who visit entities that have employees with disabilities to support them, in accordance with the plans made by the above mentioned Counselors. In other words these Job Coaches actually work in the same companies where the PWD supported are working, to directly provide professional support to them and also the employers, together with consultations and suggestion for the improvement of working environment. There are different Job Coaches, including those who belong to the local vocational centers for PWD, those who belong to partner organizations such as social welfare corporates or NPOs, and those who are directly employed by individual companies that employ PWD (Lee, Hong, and Nam 2008, 72-76).

Lastly, the Career Counselors for Persons with Disabilities¹⁰⁷ are certified by JEED, after taking training programs offered by the Organization. These Counselors provide consultations to the employees with disabilities within the companies about their careers, and it is stipulated under Article 79 of the Act on Employment Promotion, etc. of Persons with Disabilities that companies that employ PWD shall assign these Counselors in the business. The Counselors' roles consist of those related to the improvement of the job specifications or vocational competency; those related to maintenance of the working environment in order to make it PWD-friendly; those related to interpersonal relationship or guidance on company regulations; those related to the health maintenance of the PWD; and those related to the caring of career and vocational life of the PWD (Lee, Hong, and Nam 2008, 77-78).

¹⁰⁷ 障害者職業生活相談員, no official translation could be found since the Act that stipulates about it does not provide official English translation.

E. Financing

When it comes to the financing of the vocational training/rehabilitation for PWD in Korea, there are three major sources of finances, one called Employment Promotion and Vocational Rehabilitation Fund for Persons with Disabilities, the other from the employment insurance fund, and the last one a fund from the industrial accident compensation insurance. The first Fund is established by the Minister of Employment and Labor “in order to execute business affairs for the employment promotion and vocational rehabilitation of persons with disabilities including the operation and management of the Agency and the payment of the employment incentive.”¹⁰⁸ The financial resources of the fund consist of contributions or donations from the Government or any non-governmental entity, contributory charges, surcharges, and overdue charges from the employers that do not meet the mandatory employment quota for PWD, earnings accrued from the operation of the Fund and other revenues of the Agency, and different types of loans.¹⁰⁹ The fund is to be used not only for training expenses and allowances for those who conduct vocational adaptation training and occupational ability development training for PWD, and PWD who take the training, but also is granted as loans or subsidies for self-employed PWD, and for expenses that have incurred due to reasons related to vocational training/rehabilitation for PWD. The Fund can also be used as employment incentives for PWD given to the employers, or as loans or subsidies to cover the expenses incurred due to equipment and instruments for PWD to business owners.¹¹⁰

The employment insurance fund is also partially used as the budget for employment facilities and equipment support for PWD, and also as loans for the cost for employment equipment installation budget. In other words, this fund is mostly used to support the employers and not for the actual vocational training/rehabilitation for PWD (Jun et al. 2014, 80-81). On top of that, the fund from the industrial accident compensation insurance is also utilized to support the PWD regarding vocational training/rehabilitation. For instance, the ‘vocational rehabilitation benefits’ are “paid to persons who require vocational training to be reemployed among recipients of disability benefits” in the form of vocational training costs and vocational training allowances, and to business owners who retain employment of recipients of disability benefits in the form of return-to-work subsidies, vocational adaption training costs and rehabilitation exercise costs.¹¹¹

¹⁰⁸ ACT ON THE EMPLOYMENT PROMOTION AND VOCATIONAL REHABILITATION OF PERSONS WITH DISABILITIES [Act No.15851, 16. Oct, 2018., Partial Amendment], Article 68.

¹⁰⁹ Ibid., Article 69.

¹¹⁰ Ibid., Article 71.

¹¹¹ INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT [Act No.16273, 15. Jan, 2019., Partial Amendment], Article 72 ~ Article 75.

In Japan, instead of establishing a separate fund to finance the vocational training/rehabilitation for PWD, the system is mostly financed through government subsidies. For instance, JEED is funded by two major sources of finance, which are government subsidy and the fees that the Organization receives for the services provided. In 2017, for instance, about 65% of the annual budget for operating JEED was from government subsidies (Jeong, Lee, Im, and Jeong 2018, 57). Also, for public vocational training and vocational training for PWD provided in the prefectural context, the operating costs and facility/equipment costs are subsidized up to 1/3 by the Government and also up to 1/3 by the Prefecture. Also worthy of mentioning would be that since the Japanese system relatively does not separate vocational training/rehabilitation for PWD from that for non-PWD, the financing system also seems to take a rather general approach and distribute certain amount of budgets for the whole vocational training system to that for PWD (Jeong, Lee, Im, and Jeong 2018, 66-67).

4.3.3. Performance evaluation scheme of the vocational training/rehabilitation system

When it comes to the evaluation of the performance of vocational training/rehabilitation system for PWD, the Korean system demonstrates arguably a rather unsystematic aspect. First of all, KEAD itself, which plays the biggest role in the system with its sub-organizations, does not have an official evaluation scheme for the performance of the Agency or its sub-organizations, but rather for its internal usage, measures indices such as number of trainees, employment rate of those trained, retention rate, proportion of persons with severe disabilities among the total number of trainees and those employed after the training, proportion of customized trainings, satisfaction rate, etc. (Lee, Hong, and Nam 2008, 128). On the other hand, Jun et al. (2014, 23-29) suggests, as criteria of evaluation, the employment rate of trainees who have completed the training in KEAD, rate of trainees getting a job in workplaces with a mandatory employment quota, whether the training system reflects the National Competency Standard (NCS) –in which knowledge, skills and culture required by industry are systematized according to each industry and level–, ratio of persons with severe disabilities among the total number of trainees, intensity of the training programs for persons with severe disabilities, customer satisfaction, accessibility to the training programs, difference of outcomes between trainees who took customized trainings and those who took general trainings, and wage-income effect of the employed who took the training. Lee (2017, 69-75), meanwhile, evaluates the expansion of job fields for PWD in vocational training, looking at how many and what kind of new job fields or new expertise were integrated into the vocational training/rehabilitation system, especially for persons with severe disabilities, also taking into consideration the satisfaction rate from those who took the training from these new fields and the employment rate of PWD in those field who took those trainings. In other words, the Agency itself does not have an official standard and mechanism for the evaluation, but organizations such as the Employment Development Institute under KEAD are evaluating the system differently in their own reports.

Also, for private organizations that provide vocational training/rehabilitation, the Korean Skills Quality Authority (KSQA) is in charge of assessing the performance and legitimacy of the organizations, be it for PWD or non-PWD. By assessing the training organizations' appropriateness and competency, the organizations can be qualified to get consignments from the government for the trainings. The assessment first deals with the organization's appropriateness with 'law observance' and 'financial soundness'. Then, the organization competency assessment is carried out, which is divided into 'training outcome' and 'on-site assessment'. With regard to the 'training outcome', training organizations for the unemployed are assessed with employment rate, satisfaction survey, dropout rate, trainee evaluation results, opening rate, and employment wage, whereas the organizations for current workers are assessed with completion rate, satisfaction survey, trainee evaluation results, and opening rate. Regarding the 'on-site assessment', organization management (leadership of the president, development of the organization, information and security), training course management (developing training course, operation, improvement), facility & equipment (training facility, equipment, safety accident prevention), trainer management (securing trainer/lecturer, working condition, improvement of benefits), and trainee management (trainee attraction, difficulty handling, after-care) are assessed. In the end, the organizations are either given a 5year, 3year, 1year accreditation, or are rejected.¹¹²

In Japan, the performance evaluation and quality assurance is carried out in the same context as it is for that of non-PWD. In other words, the vocational training/rehabilitation for PWD is mostly controlled and evaluated by JEED. The institutes that provide the training are to be visited monthly in order to monitor and evaluate the training, and one out of three times is to be done unannounced (Jeong, Lee, Im, and Jeong 2018, 4). By visiting, the training contents, trainers' qualifications, the appropriateness of equipment and facilities are evaluated, and the opinions of the trainees are also to be taken into consideration (Jeong, Lee, Im, and Jeong 2018, 71-72). Also the National Institute of Vocational Rehabilitation (NIVR) under JEED evaluates whether enough research was done on vocational training/rehabilitation for PWD, and whether enough research was done in order to develop more jobs and fields for PWD in the vocational training/rehabilitation system (Lee 2017, 32).

In the meantime, since almost 80% of the vocational training in general is commissioned to private service providers in Japan, guidelines based on the ISO 29990 "Learning services for non-formal education and training — Basic requirements for service providers" are to be developed and spread for the purpose of guiding private service providers in vocational training. The guidelines require the service providers to not only transparently open to the public their training contents, but also to identify the training requirements fully, develop proper curricula, assure the quality of the trainers, and prepare a proper evaluation tool for the effectiveness of the trainings. On top of that, they also require the providers to maintain the management system for the training, keep record of the business

¹¹² "Training Organization Assessment," Korean Skills Quality Authority, accessed September 7, 2020, http://eng.ksqa.or.kr/what/2100_business_1.html.

plans, together with financial management and internal audit. Moreover, the PDCA cycle (Plan-Do-Check-Act cycle) is to be utilized for the purpose of quality assurance, the P being the specification of training requirements, D being the implementation of the training services, C being the evaluation of the training services, and A being the reexamination and improvement of the services (Jeong, Lee, Im, and Jeong 2018, 74).

Also, the Ministry of Health, Labour and Welfare (MHLW) of Japan carries out ‘trade skill tests’ for certain job categories, divide into certain levels. The job categories are closely linked to the fields that are trained in the vocational training/rehabilitation institutes and therefore, how many of those who took the training got what level of licenses through these trade skill tests in which field is also considered in evaluating the vocational training/rehabilitation system of Japan (Lee, Hong, and Nam 2008, 96-97).

5. Findings and Lessons

5.1. Findings and Lessons on Mandatory Employment Quota Systems for PWD

5.1.1. Findings

From the analysis part, we could see that Korea and Japan both utilize their own types of mandatory employment quota system for PWD as one of the tools to promote the employment of PWD. According to the observation, the systems demonstrate some minor and major differences when it comes to the schemes and the implementation. To start with, some mild differences can be observed when it comes to the figures-related details. For instance, the *Korean system has a higher quota in terms of percentage*, with 3.4% of the total employee for the public sector, and 3.1% for the private sector (as of 2020), and these figures are somewhat higher compared to those of Japan with 2.2% for private sector, 2.5% for the central and local governments, and 2.4% for the boards of education in each prefecture (as of 2020). Also regarding the standard for the application of the mandatory quota system, Japan shows a slightly stricter criterion with 45.5 or more regular employees, compared to 50 or more full-time employees in Korea (however when it comes to central and local government bodies, regardless of the number of employees).

Arguably bigger differences lie in other aspects including the double/half counting systems, incentives, and sanctions. First, regarding the double/half counting system, the *Japanese system classifies the employees by different types of disabilities, severity of the disabilities, and working hours, and counts them as either 0.5, 1, or 2*, which is more complex than the *Korean system, which counts persons with severe disabilities as 2* if they work more than certain hours per month. Second, regarding the incentive systems, the *Japanese system has a more variety of incentives*, while the Korean system only has one type of incentives. Nevertheless, the focus in the two systems is different, considering that the Japanese system mostly takes the *circumstances of the ‘employers’* into account in classifying the different types of incentives, whereas the Korean system considers the *severity of the disabilities and the sex of ‘PWD’* in deciding the amount of incentives in terms of monetary means. Also, the *amount of incentives is inarguably higher in Korea*, considering the amount is between 300,000 Won and 800,000 Won, whereas the amount in Japan lies approximately somewhere between 21,000 Yen and 27,000 Yen.¹¹³

Third, regarding the sanctions, the Korean system is more complex, imposing different base amounts *depending on how much the employer falls short of the quota*, whereas the Japanese system *only has one base amount*. Also, the base amount differs to a great extent, the lowest Korean amount being almost the double of the Japanese one, and the highest Korean amount being more than triple of the Japanese one. Lastly, one of the noteworthy differences is that the Japanese system is *not actually an obligation for the public sector*, and

¹¹³ 100 Japanese Yen equals approximately 1116.34 Korean Won as of 7:59 AM UTC, September 15, 2020, according to Morningstar for Currency and Coinbase for Cryptocurrency.

therefore the public sector is not subject to sanctions even if they do not meet the quota, since the Japanese logic is that the public sector already contributes enough to the employment promotion of PWD and is under enough burden. This is quite the contrary in comparison with the Korean system, not only considering that the public sector is equally subject to sanctions, but also because the central and local government bodies in Korea are subject to the mandatory quota system regardless of the number of employees.

5.1.2. Lessons

From these findings, we can derive some lessons to be learnt from either side or come up with a new type of system by combining certain aspects from the two systems. First looking at the quota itself in percentage and the criterion in terms of the total number of employees in the businesses or organizations to fall under the mandatory system, if we compare the figures to other OECD member states, it can be witnessed that *both Korea and Japan have relatively less strict obligations*. For instance, if we compare the figures with Germany, which obligates companies or organizations with 20 or more employees to employ 5% for both private and public sector and 6% for certain public sector entities,¹¹⁴ with France, which obligates companies or organizations with 20 or more employees to employ 6%,¹¹⁵ with Austria, which obligates companies or organizations with more than 24 employees to employ 4% for both private and public sectors,¹¹⁶ and with Italy, which obligates companies with 15 or more employees to hire one or more PWD and those with more than 50 employees to hire 7%,¹¹⁷ it could be said that both countries, considering its economic status and its status as OECD member states, have *certain room for improvement left ahead*.

Second, the Korean system can refer to the Japanese system in terms of the double/half counting system. Since the goal of double/half counting system is to prevent the entities subject to the system from hiring only persons with minor disabilities –who are anyways

¹¹⁴ “Disability in Global Directory, Germany,” Disability:IN, accessed September 16, 2020, <https://private.disabilityin.org/global/Germany/>.

¹¹⁵ “Disability in Global Directory, France,” Disability:IN, accessed September 16, 2020, <https://private.disabilityin.org/global/france/>.

¹¹⁶ Renate van der Zee, “The bank that wants to employ more disabled workers: ‘It’s a win-win situation’,” *The Guardian*, October 4, 2017, <https://www.theguardian.com/inequality/2017/oct/04/austria-bank-wants-to-employ-more-disabled-workers-win-win-situation#:~:text=In%20Austria%2C%20the%20law%20requires,extra%20legal%20protection%20against%20dismissal.>

¹¹⁷ BLB Studio Legale, “JOBS ACT: DISABILITY HIRING QUOTAS. NEW RECRUITMENT OBLIGATIONS FOR COMPANIES,” *BLB Studio Legale*, March 30, 2018, <http://www.blblex.it/newsletter.php?id=703&lang=en>.

more likely to successfully find the same job compared to persons with severe disabilities—, the Japanese system, which *differentiates persons with non-severe disabilities, with severe disabilities, and with mental disorders, and also takes into consideration the working hours, and on top of that, has the ‘half’ counting system*, can be referred to for the improvement of the Korean system, which only has the ‘double’ counting system, with less classifications. Third, the Japanese system can learn several lessons from the Korean system when it comes to the sanctions, since the Japanese system does not impose sanctions on public sectors and has only one base amount, which has not been raised ever since 1992, regardless of how short of the quota the business is. Since this can potentially undermine the effectiveness of the system itself, the Japanese sanction system should *be applied to both public and private sectors, raise the base amount, and differentiate it between companies* that fall far short of the quota and those that almost meet the quota. Lastly, the incentive system can be improved by *combining the positive aspects of both systems*. For instance, it could be designed in a way that takes the types of disabilities, sex of the employees with disabilities, and also the circumstances of the employers, and prepares different base amounts to be supported as an incentive according to those standards—and the base amounts should be calculated carefully to be effective enough—.

5.2. Findings and Lessons on Anti-Discrimination Legislations for PWD

5.2.1. Findings

A. Process of the legislations

When it comes to the legislation process of anti-discrimination laws for PWD in Korea and Japan, *both countries were late in introducing a separate anti-discriminatory law explicitly for PWD*, compared to western countries or other OECD member states, but among the two, Japan was especially late to do so since it only started to take effect since 2016. The aspect of the issues that caused the legislation in the two countries was also different. In Korea, *the associations of PWD*, who are parties directly interested regarding such laws, took charge of putting pressure on the government and the National Assembly to pass such laws. On the other hand, in Japan, the initiative was started from the *ruling parties*, partially due to international pressure such as the ratification of the CRPD. In other words, the approach in Korea was relatively *bottom-up*, coming from the actual demand and resentment of the interested parties, while in Japan, a more *top-down* approach was taken, coming from the leadership of the country to catch up with the international standards.

B. Definition of disability and PWD

Regarding one of the most important aspects regarding the anti-discrimination laws for PWD, namely the definition of disability and PWD, it could be observed that the two main laws in Korea both represent the *medical model of disability*. Considering that the social

model of disability is a model that came up against the limitations of the medical model of disability, and to bring the whole society to the stage to take responsibility and be conscious about disability and PWD (Retief and Letšosa 2018, 3-5), the way disability and PWD are defined in the Korean laws arguably demonstrates a worrisome context, since disability can be seen as each individual's problem to overcome on their own, rather than something that the whole society should devote itself to prevent from becoming an obstacle in various aspects of everyday life. On the other hand, the Japanese laws demonstrate a different type of problem, in that different laws are *not coherent in defining* what disability and PWD are, but nevertheless show that at least partially, the *social model of disability has penetrated* through the Japanese society.

C. Definition and general types of discrimination against PWD

The way that the definition and general types of discrimination against PWD are specified in the laws also shows relatively notable differences between the two countries. First, the definition of discrimination against PWD is stipulated *fairly in detail in the Korean law*, whereas the *Japanese law does not cover the definition separately at all* and is to be referred to other documents from the Cabinet Office reporting on the Act, which is arguably unusual compared to other relevant laws in other countries.¹¹⁸ Also regarding the general types of discrimination, even though it is not explicitly categorized, the *Korean law covers various types of discrimination* against PWD that can be classified as direct discrimination, indirect discrimination, discrimination through failure to provide reasonable accommodation, discrimination against persons related to PWD, and discrimination through interference in accessibility of PWD. On the other hand, the *Japanese law does not cover the general types of discrimination* against PWD, which is obvious considering that the definition itself is not covered. One limitation that both laws share is that it does not cover bullying or harassment against PWD as one of the discriminatory acts prohibited by the relevant laws, unlike certain laws including the Equality Act of the UK and Disability Discrimination Act (DDA) of Australia (Choi 2018, 38-39).

D. Categories and scope of discrimination against PWD in employment and treatment after employment

Also when we focus more on the discrimination actually in the field of employment and treatment after employment, the Korean law and the Japanese law show great differences. First of all, the *Korean law is more specific in dividing the discrimination into multiple*

¹¹⁸ Sec. 12112 of Americans with Disabilities Act (ADA); Article 15 of the Equality Act of UK; Section 3 of General Act on Equal Treatment of Germany; Section 15 of the Persons with Disabilities Empowerment Act of Thailand; Article 8, paragraph (e), subparagraph (2) of the Equal Rights for People with Disabilities Law of Israel; etc.

sections according to various sectors, including employment. On the other hand, the *Japanese law does not touch upon various sectors* in which discrimination against PWD can occur, but mostly focuses on the service providing aspect of administrative organs and companies, and only points to the Act on Employment Promotion, Etc. of Persons with Disabilities when it comes to the employment sector. Secondly, also within the employment sector, the *Korean law covers a broader spectrum of aspects* where discrimination against PWD can occur, compared to the Japanese law. For instance, the Korean law explicitly mentions aspects such as promotion, retirement, resignation and layoff, whereas the Japanese law just mentions ‘other treatments for employees’. Also, the Korean law touches upon issues regarding the participation in labor unions and medical examination for PWD in the hiring process, whereas the Japanese law does not deal with such aspects. Lastly, however, *the shortcomings of the Korean law compared to the CRPD seems to be equally present in the Japanese law* as well, considering that contents regarding protection from forced or compulsory labor is not present –however, the Japanese law has one more shortcoming of not embodying the contents regarding harassment–. Nonetheless, regarding the *contents related to working conditions, the Japanese law seems to have partially embodied them*, since it mentions ‘utilization of welfare facilities’.

E. Definition and details of ‘reasonable accommodation’ for PWD in the working space

Most fundamental aspects regarding the ‘reasonable accommodation’ that could be found would be that while the *Korean anti-discriminatory act elaborates on the concept, providing multiple examples* on what could actually be done in the employment sector, the Japanese law on employment promotion of PWD *only mentions the basic principle* on the obligation to provide the reasonable accommodation but *fails to provide any concrete examples*. Even though the annual report on government measures for PWD from the Cabinet Office of Japan provides examples and more detailed principles, this obviously differs from it being stipulated in the law itself. Another notable difference is that the *Korean law seems to include both tangible and intangible measures* in a relevantly more balanced manner, considering that examples such as ‘Modifying or adjusting working hours to accommodate rehabilitation, function tests, treatment, etc.’, ‘Providing training opportunities or legitimate convenience in training’, and ‘Providing training opportunities or legitimate convenience in training’ are mentioned, whereas the examples of reasonable accommodation mentioned in the Annual Report of *Japan focus more on the tangible aspects*, only mentioning ‘Flexible change of rules and practices according to the nature of disabilities such as adjustment of rest breaks’ as an example of intangible measure that could be taken. Also noteworthy is that the Korean law has a kind of safety net provision for *preventing the misuse of the concept of reasonable accommodation* on the employers’ side, whereas the Japanese law does not, and also that the Japanese law is apparently *only applied to the public sector entities* as an obligation and *only as an obligation to make endeavors for private sector companies* according to the Annual Report, even though it is not stipulated in the law itself.

Meanwhile, the concept of ‘*undue hardship*’ or ‘*excessive burden*’, which functions as a condition for exemption from providing reasonable accommodation, is *not elaborated in the laws of the two countries* in terms of its principles or examples, but rather simply mentioned as an condition of exemption. Nonetheless, this aspect is partially covered in case of Japan, through its explanation in the Annual Report of the Cabinet Office on government measures for PWD, and it *focuses relatively on the financial cost aspect*, while not mentioning the effect of the disabilities that the individual has as a criterion for judging whether it leads to undue hardship.

These points combined together, considering that the same document of Japan mentions that ‘the obligation to provide reasonable accommodation is limited to the obligation to make endeavors for businesses sectors’ on top of the fact that conditions of undue hardship or excessive burden are explained in detail, it could arguably be interpreted that the *Japanese legal system leaves a bigger room for at least the private sector businesses not to carry out the reasonable accommodation*, or that it is relatively more favorable towards employers. This can also be seen in article from the Japan Times, where it is mentioned that “But the examples (of reasonable accommodation) do not cover every situation and leave room for interpretation and negotiation. Also, the central and local governments are legally mandated to take measures, but private-sector entities are only asked to “strive” to take action.”¹¹⁹

F. Role of the government and ministries/institutions relevant to the implementation of the anti-discrimination policies against PWD

Putting the two legal systems into comparison, the *Korean one seems to provide more concrete and structured provisions* on which entities are responsible in carrying out the measures of the anti-discriminatory law. First, while the Korean law stipulates that ‘the State and local governments’ shall be responsible for the preventive, remedial and affirmative measures regarding discrimination against persons with disabilities and persons related to persons with disabilities, the Japanese law stipulates rather in a more vague manner that “The people must endeavor to contribute to the elimination of discrimination on the basis of disability considering that eliminating discrimination on the basis of disability is important in realizing the society provided for in Article 1”, where Article 1 states the purpose of the Act. In other words, the *Korean law states clearly that the fundamental responsibility of realizing the purpose of the Act lies on the State and the local governments, whereas the Japanese law basically does not point to who is fundamentally responsible*. Second, the Korean law *renders the responsibility and rights to the NHRCK* to investigate, mediate and propose remedies, especially regarding what is not specifically covered by the Anti-Discriminatory Act, whereas

¹¹⁹ Otake Tomoko, “New law bans bias against people with disabilities, but shortcomings exist, say experts,” *The Japan Times*, May 2, 2016, <https://www.japantimes.co.jp/news/2016/05/02/reference/new-law-bans-bias-against-people-with-disabilities-but-shortcomings-exist-say-experts/>.

the Japanese law *does not specify any organization or institution* that takes charge of carrying out the measures intended by the law. Third, the Korean law states that *the Minister of Justice has the right to issue an order for correction* “if any person having received a recommendation under Article 44 of the NATIONAL HUMAN RIGHTS COMMISSION OF KOREA ACT due to a discriminatory act prohibited under this Act fails to comply with such recommendation without justifiable grounds” under Article 43 (Order of Correction) of the Anti-Discriminatory Act, whereas the Japanese law *does not mention any specific Ministers or person in high position* to be responsible to take certain actions, usually mentioning ‘the head of national government administrative organs and incorporated administrative agencies, etc.’ or ‘the competent minister’.

Nonetheless, the *Japanese system demonstrates a more detailed approach in preparing handling guidelines and directions* to be provided to companies and governmental entities, compared to the Korean system, in order to more practically regulate personnel in those sectors. However, when it comes to the employment sector, this aspect can be rather irrelevant since it mostly covers how the employees of companies and governmental entities should treat PWD when they carry out their public services or run their business, rather than contents regarding treatment of their own employees.

G. Types and procedures of remedies for discrimination against PWD

When it comes to the remedial measures for discrimination against PWD, the Korean system and the Japanese system also show a great difference. First, the two systems differ in that the *Korean system has an independent organization, the NHRCK*, to deal with such human rights violation cases or discriminatory cases, whereas the *Japanese system does not and focuses on the regional dimension*. This can be analyzed in a way that the *Korean system is more centralized and that the Japanese system is more decentralized*. Both systems of course have their own pros and cons, the Korean one being more specialized in dealing with human rights related issues and therefore arguably more fit to provide remedial measures based on the human rights violation principles, whereas the Japanese one can focus more on the specific cases within the scope of the actual field in which the problematic issue is present, making it possible to take into consideration the detailed aspects of the cases, rather than taking generalist approach (Choi 2018, 55). Second, the *Korean system puts more emphasis on drawing a result of the remedy*, since either the NHRCK or the court receives the filed complaint or lawsuit and then focuses on handing them over the result that ‘they’ have reached through ‘their’ investigation. On the other hand, the *Japanese system focuses more on the resolving process through consultations* with those affected by discrimination, as it is stipulated also in the law as the role of the regional support council, rather than reaching certain results drawn by remedial organizations. This can be shown also in the principle of the law, which is to respect the voluntary actions of the employers to improve the problematic cases.

5.2.2. Lessons

Considering that certain laws function as a fundamental base for carrying out the related policies, it seems in general, the *Korean anti-discriminatory law for PWD is crafted in a way that includes more details and concrete examples*, compared to that of Japan. Also considering the CRPD, even though there could be room for improvement for the Korean law as well, it arguably seems feasible to say that the *Japanese law needs to include more details in the definition and types of discrimination against PWD* in general and also in the field of employment and treatment after employment. Also regarding the *reasonable accommodation*, the Japanese law should embody the concept in the law itself and consider both tangible and intangible aspects, and impose it fairly on the private and public sector, instead of providing an exemption on the private sector. Nonetheless, the Korean law, together with the Japanese law, should *endeavor to include more various types of reasonable accommodation* as the concept becomes more important and more complex in reality. On top of that, both laws should include the concept of *undue hardship* and the detailed principles of it in order to maintain a balanced stance for both employers and employees.

On the contrary, when it comes to the definition of disability and PWD, the *Korean law has to try to move towards a social model of disability*, which can partially be observed in the Japanese law, so that disability can be thought of from a more social point of view, and consequently the whole society can be conscious of disability and PWD, and become more inclusive towards them.

Regarding the organizational matters, it is hard to say which system is better fit for the purpose of anti-discriminatory measures for PWD. However, considering that a centralized approach with a single organization in charge of dealing with relevant matters has the advantage of being possibly more efficient and systematic, but on the other hand, a decentralized and regional approach has the advantage of possibly being more effective and tailor-made, *a new model of combining the advantages of the two different systems would be ideal*. For instance, having a *central independent organization* that deals with anti-discriminatory and remedial measures exclusively for PWD –which is also not the case in Korea since NHRCK deals with various human rights issues of various groups of people–, but at the same time *strengthening the roles and functions of regional offices* to carry out more preventive measures and consultations, the advantages of centralized approach and decentralized approach could possibly be combined, guaranteeing both efficiency and effectiveness.

5.3. Findings and Lessons on Vocational Training/Rehabilitation Policies for PWD

5.3.1. Findings

A. History, goals, and principles

The vocational training/rehabilitation system for PWD, in terms of services provided to not only certain groups of PWD but to general PWD, was *established earlier in Japan*, compared to Korea, since it was actually not until 1990 that Korea put meaningful focus on it, whereas Japan started as early as 1960, and between 1980 and 1990 the groundworks for more detailed aspects of the system was already laid. Nonetheless, relatively more recently, the two systems has gone through similar changes in general, moving towards a system that focuses more on the ‘training’ part rather than ‘rehabilitation’, putting emphasis on the vocational skills development aspect.

Consequently, the current goals and principles for the vocational training and rehabilitation of the two countries seemed to demonstrate a great deal of similarities. Both systems focus on the fact that PWD should be able to live an independent life on the basis of their *capacities to work*, enjoying their *vocational life* as much as possible. Also mentioned in both of the systems is the concept of *normalization*, in which removal of obstacles of PWD realizing their potentials is important, and also the importance of considering the *circumstances of the individuals with disabilities*. Nevertheless, differences can be also seen, in terms of on which aspect the focus is put. For instance, the Korean laws and principles seem to emphasize the ‘*human dignity*’ and ‘*human rights*’ *aspect*, taking an approach that is relatively more fundamental to the issue, whereas the Japanese laws seem to focus more on the fact that PWD should be given equal opportunities compared to non-PWD, putting more weight on the *fairness*.

B. Organizational matters

Putting the organizational matters for the system in comparison, both countries seem to share the common factor of imposing the role and responsibility of vocational training/rehabilitation to certain organizations established by the relevant laws under the Ministries of each country, KEAD in Korea and JEED in Japan. However, as it can be seen right away from the name of the organizations, the two differ fundamentally in that KEAD is an organization *solely in charge of employment promotion of ‘PWD’*, whereas JEED is an organization for a *wider range of group of people*, including not only PWD, but also the elderly and job seekers. Another difference is that while the Korean system is relatively more *centralized around KEAD* with the local centers all being under the Agency, the Japanese system seems to *disperse the roles* to the prefectural public employment security offices, the Hello Work Offices, so that the local circumstances can be better taken into consideration in the process of training/rehabilitation. Nonetheless, also in the case of Hello Work Offices, they are not solely responsible for PWD, but rather are targeting various types of persons

seeking for jobs. Therefore, the structure itself can be said to be *more centralized and specialized in PWD* in Korea, whereas the Japanese structure is *more de-centralized and generic*.

C. Legislative matters

The relevant legislations for vocational training/rehabilitation for PWD of Korea and Japan show surprisingly high similarities, in that the employment promotion laws of PWD cover the fundamental contents and guidelines for carrying out the training, and the vocational skills development laws of each country cover the basic principles with which the training and rehabilitation are to be conducted. However, aside from both of the countries emphasizing a life-long vocational training with individuals' circumstances in consideration, the basic principles differ in details. For instance, the Korean legislations explicitly mentions that the *autonomy of the private sector* shall be respected, whereas the Japanese one does not cover any contents about the counterpart of PWD, and also while the Korean one stresses the *non-discrimination principle and also preferential treatment principle* for those more at stake, the Japanese one does not cover any related contents thereto. On the contrary, the Japanese one stresses that the training be conducted *in accordance with the social changes* that can occur and have an influence on the vocational lives of those in need of the training, arguably emphasizing the flexibility of the system, while the Korea one does not cover any related contents thereto either.

D. Types of services

The main difference in the types of services provided between Korea and Japan would be that while the majority of the services provided in Korea is *explicitly for PWD* except for very specific cases that are designed to develop social skills of PWD by putting them together with non-PWD, in Japan, one of the main role players in the vocational training/rehabilitation system, the Hello Work Offices, is designed to *provide services not only to PWD but also to non-PWD*. The fact that the Hello Work Offices are administered by each Prefecture, taking a regional approach, makes it arguably inevitable to conduct the services not exclusively for PWD but also to others in need of it, which is closely linked to what have been discovered as differences in the organizational matters. Nonetheless, even though KEAD of Korea is an organization exclusively dedicated to PWD, while JEED of Japan is in charge of not only PWD employment but also that of other vulnerable groups, the Japanese system *successfully provides institutions with services exclusively dedicated to PWD*, through the Large Region Vocational Rehabilitation Centers for PWD and the Local Vocational Rehabilitation Centers for PWD.

Another difference would be that the Japanese institutions not only focus on providing vocational training/rehabilitation services to the PWD who are looking for a job or support in

workplace adaptation, but also on *providing various types of support and subsidies for employers*. These supports include advice, guidance, consultation, grants, and subsidies, and are provided relatively systematically, through Employer Support Plans for instance in the Local Vocational Rehabilitation Centers for PWD. On the other hand, even though the Korean system also provides employer training, it is *limited to the field of developmental disabilities*, and more detailed supports or subsidies for employers like in Japan cannot be found.

E. Human resources

There are some notable differences when it comes to the types of human resources in the context of vocational training/rehabilitation between Korea and Japan. The first noteworthy point to mention would be that one of the most important types of manpower related to the system in Korea, the Vocation Rehabilitation Counselor –together with the Vocational Evaluator–, is *not certified by a national license but by a private association*, while *private associations or institutions do not come into play in the certification process* for human resources related to the system in Japan. Possibly in a similar context, the second difference can be found in that the two main role players of Japan with regard to the system, JEED and the Prefectures, are to *assign or employ certain types of human resources*, Vocational Counselors for Persons with Disabilities and Vocational Training Advisors for Persons with Disabilities respectively, while the Korean system *does not impose any kind of such regulations*.

Thirdly, while it seems that most of the human resources in the Korean system are to play their roles in organizations or institutions where vocational training/rehabilitation services are provided, various types of human resources in the Japanese system *play a role actually in the companies, providing support for PWD who are already employed*, by visiting them, or even being hired by the companies to be able to support the PWD onsite and also *support the employers*. Lastly, in general, it seems arguably feasible to say that there are more various types of human resources in Japan, playing different roles that are rather more directly related to vocational training/rehabilitation for PWD in different contexts compared to Korea, demonstrating a *more systematic approach*.

F. Financing

The first notable difference that can be observed between the financing mechanisms of the two countries when it comes to the vocational training/rehabilitation system for PWD would be that while the Korean system utilizes *three different funds, accumulated from various resources*, either exclusively for the system or partially into the system, the Japanese system *does not establish separate funds* for the system but rather cover the expenses from government and prefectural subsidies. More specifically, the Korean funds have *different*

functions, for instance, running the KEAD, provided as loans for equipment installation, as vocational rehabilitation benefits, etc., whereas the Japanese system *does not distinguish the usage specifically*, and the organizations are rather just subsidized or are on their own to run on their profits. A second difference that can be observed is that while the same source of finance to support and operate the vocational training/rehabilitation for PWD is *utilized to support, subsidize, and provide loans to employers* who employ PWD, the Japanese system does not utilize the same financial resources for that purpose.

G. Evaluation

The main difference in the evaluation schemes of the vocational training/rehabilitation systems of Korea and Japan is that while the Japanese system is *comprehensively evaluated through JEED and specific guidelines are developed* for evaluating private providers, the Korean system *does not have an official scheme* from KEAD but rather different reports evaluate the system differently. Even though also in Korea, the private providers are evaluated by the Korean Skills Quality Authority (KSQA), it is *more focused on the accreditation aspect*, which is a less strict approach of quality assurance and evaluation. On the other hand, the Japanese system *utilizes the PDCA cycle (Plan-Do-Check-Act cycle)* in order to evaluate and improve the system accordingly, rather than simple accreditation. On top of that, since the Japanese system obligates JEED to do an *onsite evaluation* by visiting monthly, and regularly unannounced, it seems that the evaluation in Japan is arguably carried out in a *more strict way*.

5.3.2. Lessons

With regard to the organizational/legislative matters and types of services provided, it is hard to say which system is superior to the other, but they rather demonstrate distinctive features and therefore different types of pros and cons accordingly. Therefore, the positive aspects of the two systems can be combined to establish a potentially better system, for instance, *a centralized system*, but at the same time *with enough emphasis on the regional aspect* that can take the local features better into consideration, that focuses *exclusively on the employment promotion of PWD*, rather than for various vulnerable groups. Of course this can be limited by financial matters or shortage of human resources, however, such system would be ideal if the advantageous aspects of the two systems are actually realized. The laws can also be supplemented in a way that *respects the private sector* as well, providing more grounds for support towards employers, that includes more specific details regarding the *non-discrimination principle* together with the *preferential treatment principle* for more vulnerable groups within the PWD group, and also that includes contents regarding the *flexibility of the system* according to the social and industrial changes.

Regarding the human resources, on the other hand, the Japanese system arguably

demonstrates a *more systematic approach*, controlling it with *national licenses* and imposing *regulations to assign or employ certain types of human resources in each organization*. Considering that one of the most important role players in the Korean system is certified from a private association, it seems feasible to say that the Korean system can refer to the Japanese system to *better arrange the human resources system and control it comprehensively* from the government. Also regarding the evaluation schemes for the system, Japan seems to take a *more strict and systematic approach with more regulations*, while the Korean system does not fully have an official evaluation system to assure the quality and control the system effectively. Therefore, also regarding the evaluation system, the Korean system could refer to the Japanese system and supplement insufficient aspects of it. On the other hand, regarding the financial aspect, it is hard to say which approach is better fit to support the system, however, in order to clearly distinguish the financial resources for different purposes of the system, for the sake of financial health and transparency, it could arguably be said that *establishing and operating separate funds* like in the case of Korea could be more ideal.

6. Conclusion

This thesis conducted a comparative analysis between Korea and Japan with a set of three measures that can be considered as employment promotion policies for PWD, in the context of growing demands for such policies. After going through various literatures that are relevant to the topic, an eclectic analytical framework could be derived, with which the three measures, the mandatory employment quota system for PWD, the anti-discriminatory legislations for PWD, and the vocational training/rehabilitation system for PWD, were comparatively analyzed. According to that analysis, the findings and lessons for both countries or for a more ideal approach could be provided.

First, for the mandatory employment quota system for PWD, it could be seen that both systems can learn some lessons from each other or from other countries to establish a more ideal system. To start with, both systems seemed to have set the quota at a too low level, compared to other OECD member states. Next, a more complex double/half counting system with more criteria seemed to be necessary in Korea in order to avoid exploiting the system. Lastly, a better and more complex incentive system for both countries seemed necessary, while Japan seemed to be behind in developing a proper sanction system, which should be applied fairly to both public and private sector.

Second, when it comes to the anti-discriminatory legislations for PWD in Korea and Japan, the Korean law seemed to have embodied more details and concrete examples, together with the contents mentioned in the CRPD, in many aspects. Also, the fact that the Japanese law provides an exemption for the principle of reasonable accommodation for the private sector seemed to be a possible risk factor regarding the effectiveness of the law. Nonetheless, the Japanese law partially implying the social model of disability with regard to the definition of disability and PWD seemed to be a lesson to be taken from Korea, which only demonstrated the medical model of disability. Lastly, regarding the organizational matters in the remedial and preventive process for anti-discriminatory measures for PWD, the two countries showed great differences and therefore a new model that combines the advantages of the two systems seemed ideal, taking a centralized and specialized approach together with the strengthening of regional branches and approaches.

Third, the vocational training/rehabilitation systems for PWD in Korea and Japan also demonstrated distinctive features. However, it seemed that the Japanese system is more systematic in several aspects, compared to Korea, leaving room for improvement for Korea. For instance, the human resources were fostered, certified and controlled more systematically in Japan compared to Korea, which is similar to the fact that the Japanese system operates a more systematic and strict evaluation scheme for the system. Regarding the organizational and legislative matters, both countries showed some advantages and drawbacks in different aspects, indicating that a new model can be developed by combining the positive aspects of the two, a centralized and specialized system complemented by regional institutions, for instance. The financing mechanism also demonstrated a fundamental difference, however being hard to be judged which one is better fit.

Based on these findings and lessons, further research is recommended to be conducted. Considering that this thesis is based on observations of a comparative analysis, the next step to be taken can be actually developing detailed improvement plans for legislations or the systems, which can embody the recommended directions in this thesis to overcome the drawbacks of each system. Moreover, since one of the limitations that this thesis has is that it cannot cover every policy or legislation that are indirectly related to the promotion of PWD employment, other measures such as awareness raising towards PWD, special education for PWD, etc. can be other subjects to be analyzed in further researches.

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Abstract

While economic development takes place and quantitative indices keep on promising a better future of the nations, qualitative aspects such as that of welfare seem to be often at risk of being left behind and overlooked. As one of the vulnerable social groups, the most fundamental aspects of the lives of persons with disabilities are therefore frequently at stake, among which the vocational life takes up a considerable part. This is also the case for Republic of Korea and Japan, where persons with disabilities are exposed to a higher risk of being unemployed and being discriminated in the workplace compared to persons without disabilities, calling for an improvement of the relevant policies. In light of this, for these two neighboring countries in the Northeast Asian region that share a great deal of similarities in a variety of aspects, including the social and legal system, the policies related to the promotion of employment for persons with disabilities would be one of the ideal areas to be analyzed in a comparative manner, considering the fundamental similarities and distinct details they display.

With this in mind, this master's thesis aims to conduct a comparative analysis between the Republic of Korea and Japan, with regard to the three measures that are relevant to the promotion of employment for persons with disabilities. Namely, the three measures include the mandatory employment quota system for persons with disabilities, the anti-discriminatory legislations for persons with disabilities with a focus on the field of employment and treatment after employment, and the vocational training and rehabilitation system for persons with disabilities. These three types of measures are analyzed in a comparative manner through an eclectic analytical framework drawn from a number of relevant works, which are dealt with in the state of the art chapter. The findings from the analysis indicate that despite the fundamental similarities in the overall structure of the three measures, the details show considerable differences, with its own strengths and weaknesses. Consequently, it is shown how the two countries can possibly improve the shortcomings of the three measures or come up with new systems that combine the advantages of the both. These findings, therefore, serve as a basis for possible future researches, especially on more detailed ways to complement the systems or to design alternative systems.

Zusammenfassung

Während die wirtschaftliche Entwicklung stattfindet und quantitative Kennzahlen weiterhin eine bessere Zukunft der Nationen versprechen, scheinen qualitative Aspekte wie der des Wohlstands oftmals gefährdet zu sein, zurückgelassen und übersehen zu werden. Als eine der schutzbedürftigen sozialen Gruppen stehen daher häufig die grundlegendsten Aspekte des Lebens von Menschen mit Behinderungen auf dem Spiel, zu denen das Berufsleben einen erheblichen Anteil einnimmt. Dies gilt auch für die Republik Korea und Japan, wo Menschen mit Behinderungen im Vergleich zu Menschen ohne Behinderungen einem höheren Risiko ausgesetzt sind, arbeitslos zu werden und am Arbeitsplatz diskriminiert zu werden, was eine Verbesserung der einschlägigen Maßnahmen erfordert. In Anbetracht dessen, wäre für diese beiden Nachbarländer im nordostasiatischen Raum, die in einer Vielzahl von Aspekten, einschließlich des Sozial- und Rechtssystems, viele Gemeinsamkeiten aufweisen, eine Politik zur Förderung der Beschäftigung von Menschen mit Behinderungen eine der idealen Bereiche, die unter Berücksichtigung der grundlegenden Ähnlichkeiten und unterschiedlichen Details, die sie aufweisen, vergleichend analysiert werden sollten.

In diesem Sinne, zielt diese Masterarbeit darauf ab, eine vergleichende Analyse zwischen der Republik Korea und Japan in Bezug auf die drei Maßnahmen durchzuführen, die für die Förderung der Beschäftigung von Menschen mit Behinderungen relevant sind. Zu den drei Maßnahmen zählen die Beschäftigungspflicht für Menschen mit Behinderungen, die Antidiskriminierungsgesetze für Menschen mit Behinderungen mit Schwerpunkt auf dem Gebiet der Beschäftigung und der Behandlung nach der Beschäftigung, sowie die Berufliche Bildung und Rehabilitation für Menschen mit Behinderungen. Diese drei Arten von Maßnahmen werden auf vergleichende Weise anhand eines eklektischen analytischen Rahmens analysiert, der sich aus einer Reihe von relevanten Arbeiten zusammensetzt, die im Kapitel zum Forschungsstand behandelt werden. Die Ergebnisse der Analyse zeigen, dass trotz der grundsätzlichen Ähnlichkeiten in der Gesamtstruktur der drei Maßnahmen, die Details wesentliche Unterschiede mit ihren eigenen Stärken und Schwächen aufweisen. Folglich wird gezeigt, wie die beiden Länder möglicherweise die Mängel der drei Maßnahmen verbessern oder neue Systeme entwickeln können, die die Vorteile beider kombinieren. Diese Erkenntnisse dienen daher als Grundlage für mögliche zukünftige Forschungen, insbesondere zu detaillierteren Möglichkeiten, die Systeme zu ergänzen oder alternative Systeme zu entwerfen.

초 록

오늘날 많은 국가들이 경제발전을 이룩함에 따라 양적인 지표들은 더 나은 미래를 보장하고 있는 것처럼 보이지만, 복지부문과 같은 질적인 요소들은 그에 비해 간과되는 경우가 빈번하게 나타나고 있다. 이 가운데, 사회 취약계층 중 하나인 장애인에게 있어서는 삶의 가장 근본적인 부분들마저 위협에 처해 있는 경우가 다반사이며, 이 중 큰 부분을 차지하는 것이 바로 고용 및 노동과 관련된 부분이다. 한국과 일본 또한 이러한 상황에서 예외일 수 없는데, 비장애인에 비해 높은 장애인 실업률이나 장애인이 직장에서 차별 당할 가능성이 높다는 점 등이 이러한 사실을 방증하고 있다. 이러한 맥락에 더해, 동북아에 위치한 이웃국가로서 두 나라가 사회제도 및 법적 제도를 비롯한 여러 부분에서 유사성을 가지고 있다는 점을 고려한다면, 한국과 일본은 근본적인 유사성과 차별적인 양상들을 동시에 보여준다는 점에서, 장애인 고용촉진 정책에 대한 비교분석의 대상 국가로서 가장 적절한 표본들 중 하나라고 볼 수 있다.

이러한 점에서 이 석사학위 논문은 장애인의 고용촉진과 밀접하게 관련된 세 가지의 정책에 대해 한국과 일본의 현황을 비교분석한다. 이 세 가지 정책은 고용할당을 통한 장애인 고용의무제도, 장애인 차별금지법 중 고용 및 노동과 관련된 부분, 그리고 장애인 직업재활 및 훈련 정책으로 이뤄져 있으며, 본 논문은 문헌검토를 통해 도출된 분석틀을 활용하여 이 세 가지 정책을 분석한다. 분석의 결과, 두 국가는 세 정책 모두에 있어서 근본적인 구조적 유사성을 보여줌에도 불구하고, 구체적인 내용에 있어서는 차별성을 나타내며, 이에 따라 서로 다른 장단점을 지니고 있다는 것을 알 수 있었다. 이를 통해, 각 국가가 세 가지 정책의 단점을 서로 어떻게 보완할 수 있는지 모색하였으며, 각 제도의 강점을 결합하여 새로운 제도를 도출해낼 수 있는 가능성 또한 엿보았다. 이러한 결론을 통해 추후 관련된 연구들에서는 상기 정책을 보완할 수 있는 구체적인 방안이나 대안이 될 수 있는 제도를 강구할 수 있을 것으로 생각된다.