



The Right to Education in the Convention on the Rights of Persons with Disabilities: How is it Implemented in Indonesia?

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Abstract

This paper analyses the rights to education for persons with disabilities in Indonesia according to the existing national law and the Convention on the Rights of Persons With Disabilities. It is found that the persons with disabilities are still experiencing ambiguity when it comes to the implementation of their rights to education in Indonesia. This paper concludes that the form of protection of the rights for persons with disabilities to obtain education in Indonesia has not met the criteria set by the Convention on the Rights of Persons With Disabilities because there are still differences in access to education for persons with disabilities in Indonesia. The Indonesian government is suggested to implement the rights to education for persons with disabilities equally and non-discriminatory by ensuring an inclusive access to education and providing special educational facilities for persons with disabilities as regulated in legislation and the Convention on the Rights of Persons With Disabilities.

Keywords: human rights; education; disabilities



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Abstrak

Makalah ini menganalisis hak atas pendidikan bagi penyandang disabilitas di Indonesia sesuai dengan hukum nasional yang ada dan Konvensi Hak Penyandang Disabilitas. Ditemukan bahwa penyandang disabilitas masih mengalami ambiguitas dalam hal pelaksanaan hak mereka atas pendidikan di Indonesia. Tulisan ini menyimpulkan bahwa bentuk perlindungan hak-hak penyandang disabilitas untuk memperoleh pendidikan di Indonesia belum memenuhi kriteria yang ditetapkan oleh Konvensi Hak-Hak Penyandang Disabilitas karena masih terdapat perbedaan akses pendidikan bagi penyandang disabilitas di Indonesia. Pemerintah Indonesia disarankan untuk menerapkan hak atas pendidikan bagi penyandang disabilitas secara merata dan tidak diskriminatif dengan memastikan akses pendidikan yang inklusif dan menyediakan fasilitas pendidikan khusus bagi penyandang disabilitas sebagaimana diatur dalam peraturan perundang-undangan dan Konvensi Hak-Hak Penyandang Disabilitas

Kata Kunci: *ham; pendidikan; disabilitas*

A. Introduction

Human rights are a set of principles that arise from values that then become rules to regulate human behavior in relationships with fellow humans.¹ As a country of law, Indonesia views human rights as a universality for the existence and protection of human life and dignity.² For this reason, Indonesia strongly protects and upholds human rights for all Indonesian people, both in the general context and people with

¹Serlika Aprita and Yonani Hasyim, *Law and Human Rights*, Bogor. : Publisher. Mitra Wacana Media, 2017, p. 1

²Andi Akhirah Khairunnisa, The Application of Human Rights Principles in the Formation of Legal Products by Local Governments, *Journal of Government Management*, Vol. 5, No. 1, 2018, p. 68

special needs or people with disabilities.³ People with disabilities are people who experience physical limitations, mental limitations or a combination of both.⁴ Regardless of their special needs, persons with disabilities have equal rights in exercising their human rights, including the right to education.⁵

Article 1 number 2 of the Law on Persons with Disabilities explains that equality of opportunity is a situation that provides opportunities and/or provides access to persons with disabilities to channel their potential in all aspects of state and community administration, one of which is the aspect of equal life related to the fulfillment of state and community administration in the fields of education, health, work, politics and government, culture and tourism, as well as the use of technology, information, and communication as mandated by the Fourth Paragraph

³Nur Cahyadi, Implementation and Fulfillment of the Right to Education for Persons with Mental Disabilities, *Journal of Law*, Vol. 2 No. 2, 2019, p. 1

⁴ Alia Harumdani Widjaja., Winda Wijayanti and R. Yuylitya putrid, Protection of the Rights of Persons with Disabilities in Obtaining Decent Work and Livelihood for Humanity, *Journal of the Constitution*, Vol. 17, No. 1, 2020, p. 205

⁵ Frichy Ndaumanu, Rights of Persons with Disabilities: Between Responsibility and Implementation by Local Governments, *Journal of Human Rights*, Vol. 11, No. 1, 2020, p. 132

of the General Explanation of the Law on Persons with Disabilities.

The right to education for every citizen is regulated in Article 28 C Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that, *"everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and benefit from science and technology, art and culture, in order to improve the quality of life and for the welfare of mankind."* Then, Article 2 of Law No. 8 of 2016 concerning Persons with Disabilities states that the implementation and fulfillment of the rights of persons with disabilities must be based on respect for dignity, individual autonomy, non-discrimination, full participation, human and humanitarian diversity, equality of opportunity, equality, accessibility, ever-evolving capacity and inclusive child identity and, special treatment and more protection.

Furthermore, Article 5 Paragraph (1) of Law No. 8 of 2016 concerning Persons with Disabilities emphasizes that,

"The rights of persons with disabilities are life, freedom from stigma, privacy, justice and legal protection, education, employment, entrepreneurship, and cooperatives, health, politics,

religion, sports, culture and tourism, social welfare, accessibility, public services, protection from disasters, habilitation and rehabilitation, conservation, data collection, living independently and being involved in society, expression, communication, and obtaining information, moving and citizenship, free from acts of discrimination, neglect, torture, and exploitation."

In particular, the right to education for persons with disabilities is regulated in Article 10 of the Law on Persons with Disabilities that, the right to education for persons with disabilities includes: the right to receive quality education, have the opportunity to become an educator, have equal opportunities as a provider of quality education, and get proper accommodation as a student. The rights of persons with disabilities are also regulated in the Convention on the Rights of Persons With Disabilities as an umbrella of international law which is a form of concern and effort of world countries in fulfilling the rights of persons with disabilities to be equal to other members of society.⁶

⁶Dion Teguh Pratomo., Sudarsono and Muhammad Fadli, Implementation of the Protection of the Right to Education for Persons with Disabilities at Gorontalo State University, *Journal of Law*, Vol. 3, No. 2, 2021, p. 5

Article 24 Paragraph (1-4) of the Convention on the Rights of Persons With Disabilities affirms that the rights of persons with disabilities to education consist of, being given equal opportunities, obtaining guarantees of an inclusive education system from States that are signatories to the Convention, guarantees of non-discrimination in the form of exemption from the general education system on the grounds of disability, obtaining access to inclusive primary and continuing education, and receive the support needed in the general education system to facilitate effective education.

Based on data from the Ministry of Social Affairs obtained from the Disability Management Information System, there were 209,604 people with disabilities in 2021 in Indonesia.⁷ Of these, it is known that there are 91,000 children with disabilities who are of school age, but only 31,000 children with disabilities are attending school.⁸ This data shows that the number of people with

⁷The Ministry of PANRB, from the Palace, realizes an Indonesian inclusive society with the synergy of all components of the nation. <https://www.menpan.go.id/site/berita-terkini/dari-istana/wujudkan-masyarakat-inklusi-indonesia-dengan-sinergi-seluruh-komponen-bangsa> accessed January 15, 2021

⁸Wahyu adityo Prodjo. The number of entry data for students with disabilities in inclusive schools is still small.

disabilities who participate in education is still very limited.

The implementation of disability rights is actually not only the responsibility of the government, but also the entire community.⁹ Unfortunately, most people still view people with disabilities as helpless, unable to blend in because of physical and mental retardation, unable to be independent and live because of the compassion of others. The community also views that education will not change the abilities of people with disabilities.¹⁰ Based on the explanation mentioned above, this paper will discuss the right to education of persons with disabilities by referring to the provisions stipulated by the Convention on the Rights of Persons With Disabilities in Indonesia.

<https://www.google.com/amp/s/amp.kompas.com/edukasi/read/2019/11/28/14021431/jumlah-data-masuk-siswa-disabilitas-di-sekolah-inklusif-masih-sedikit> accessed December 28, 2020

⁹Firdaus Arifin, *Human Rights, Theory, Development and Regulation*, Yogyakarta. Thafa Media, 2019, p. 3

¹⁰Harahap Rahayu Repindowaty and Bustanuddin, Legal Protection for Persons with Disabilities According to *the Convention on the Rights Of Person With Disables (CRPD)*, *Journal of Legal Sciences*, Vol.. 3, No.. 1, 2015, p. 4

B. Discussion

1. Protection of the Right to Education for Persons with Disabilities Reviewed from the Convention on the Rights of Persons With Disabilities

The Convention On The Rights of Persons With Disabilities is an international legal instrument that regulates the rights of persons with disabilities. The Government of Indonesia ratified the Convention On The Rights of Persons With Disabilities through Law No. 19 of 2011 concerning the Ratification of the Convention On The Rights of Persons With Disabilities.

The Convention On The Rights of Persons With Disabilities aims to protect, guarantee and facilitate persons with disabilities to be able to develop in accordance with human rights like other members of society, and to be respected as persons with disabilities.¹¹ Even so, there is still a negative understanding of people with disabilities that is rooted in the mindset of society dominated by the concept of "normality".

¹¹Rahayu Repindowaty Harahap and Bustanuddin, Legal Protection for Persons with Disabilities According to *the Convention on the Right Of Person With Disabilities* (CRPD), *Innovative Journal*, Vol. VIII, No. 1, 2015, p. 19

People with disabilities whose appearance or body looks different from the general public, often receive treatment as if they are unwanted and are not accepted as part of the community.¹² Access to equal education is very important in overcoming this phenomenon, with a school environment consisting of educators, education staff and other students. This is to create an inclusive education through the admission of non-disabled students who understand and understand the conditions of students with special needs, especially related to movement.

Socio-cultural and economic barriers as expressed above are a phenomenon experienced by people with disabilities in Indonesia. Continuous socialization and education to the community is expected to open up public insights related to the condition of people with disabilities, so that the process of integration of people with disabilities with the general public is not hampered.¹³

¹² Dini Widinarsih, Persons with Disabilities in Indonesia: Development of Terms and Definitions, *Journal of Social Welfare Sciences*, Vol. 20 No. 2, 2019, p.2

¹³Syarifah Salma and Tamjidnoor, Accessibility of Education for People with Disabilities at Madrasah Ibtidaiyah Negeri (MIN) in Banjarmasin City, *Journal of UIN-Antasari* Vol.18, No.1, 2019, p.146

However, discrimination against people with disabilities in Indonesia in obtaining education is still widely encountered, such as in the differentiation of school facilities and curriculum for people with disabilities in Indonesia, where people with disabilities must attend special schools and do not get quotas in public schools. The placement of people with disabilities in Special Schools actually limits them from interacting with peers who have the opportunity to obtain education in public schools.

At the level of international law, Article 24 Paragraph 2 of the Convention on the Rights of Persons With Disabilities emphasizes that persons with disabilities should not be excluded from the general education system on the basis of their disability conditions and children with disabilities should not be excluded from compulsory and free basic education or from further education on the grounds of disability. The rules contained in Article 24 paragraph 2 of the Convention on the Rights of Persons With Disabilities indicate that persons with disabilities should follow the same educational curriculum as non-disabled students. The goal is for people with disabilities to obtain equal

knowledge to support their sustainability in their activities in the community.

Furthermore, Article 24 paragraph 3 letter d of the Convention on the Rights of Persons With Disabilities affirms that in order to ensure the fulfillment of these rights, States parties are obliged to take appropriate steps to employ teachers, including teachers with disabilities, who are qualified in sign language and/or reading Braille, as well as to provide training for professionals and staff working at various levels of education that raise awareness regarding disability and the use of communication facilities and formats, as well as argumentative and alternative educational techniques and materials to support people with disabilities.

As for the level of education, Article 24 Paragraph 4 of the Convention on the Rights of Persons With Disabilities stipulates that States parties are obliged to ensure the accessibility of secondary general education, vocational training, adult education, and lifelong learning without discrimination and on the basis of equality with others for persons with disabilities. Based on Article 24 paragraphs 3 and 4, States Parties are required to provide educators who are tailored to

the needs of persons with disabilities. This shows that countries and the international community already recognize the right to education for people with disabilities, so they should not be alienated in terms of obtaining education.

However, there are still many people with disabilities who have not obtained the right to education as stipulated by the Convention on the Rights of Persons With Disabilities. This is due to the lack of support from parents, families, and community members for the right to education for people with disabilities. Most people in Indonesia have the view that people with disabilities are someone who is synonymous with compassion, disability and abnormality. Thus, Indonesian people still often separate people with disabilities in the social classification system of the community, including in terms of access to education.

2. Implementation of the Protection of the Right to Education for Persons with Disabilities in Indonesia

Persons with disabilities are part of Indonesian society who have fundamental rights equal to other

members of society while still receiving special treatment intended as an effort to protect them from vulnerability to various human rights violations.¹⁴ The WHO notes that persons with disabilities are considered a condition that causes disturbances in a person's relationship with the environment and they are among the largest minority groups in the world, where 80% of the world's number of persons with disabilities are among developing countries.¹⁵

Persons with disabilities in Indonesia are grouped by age, where people with disabilities in the age group ≥ 60 years have a proportion of 38% and people with disabilities in the school age group in the range of 5-17 years are 10.2%. According to data presented by the Health Research and Development Agency of the Ministry of Health of the Republic of Indonesia in 2021, Indonesia has a population of 273.5 million, which means that the number of people with disabilities in the school-age range is 27.8 million people.

¹⁴ Ananta Refla Nanda and Ratna Herawati, Obstacles and Solutions for Persons with Disabilities in Semarang City in Accessing Jobs, *Indonesian Journal of Legal Development*, Vol.3, No.3, 2021, p.332

¹⁵Nuraiman, *Persons with Disabilities in Children*, Rineka Cipta, Jakarta, 2014, p. 1

This figure shows that people with disabilities in Indonesia are quite high. Most of these people with disabilities are those who live in vulnerable, underdeveloped, and have weak economic conditions or in poor conditions due to restrictions, obstacles, difficulties and reductions in the rights of people with disabilities. This shows that most people with disabilities in Indonesia still experience discrimination, including discrimination to obtain education.

As for the percentage of people with disabilities in Indonesia, according to data from the Health Research and Development Agency of the Republic of Indonesia in 2021, there are 30.7% of people with disabilities who do not go to school, 28.2% who do not complete basic education, and only 17.6% of people with disabilities have successfully completed their education to college. This data shows that the majority of people with disabilities in Indonesia do not have access to education. In fact, people with disabilities also have the right to receive education properly and equally like other members of society. To overcome this and fulfill its responsibilities as part of the international community, the Indonesian government has established laws and regulations to protect the right to

education for persons with disabilities, which is stated in Article 5 Paragraph 1 letter e of the Law on Persons with Disabilities which states that one of the basic rights owned by persons with disabilities is the right to education. In terms of guaranteeing the implementation of the right to education for persons with disabilities, the Indonesian government provides extraordinary educational facilities and infrastructure for persons with disabilities starting from primary to secondary levels.

Data from the Central Statistics Agency shows that in the 2020/2021 school year, Indonesia has as many as 2,250 schools for children with special needs at various levels of education. Of these, 2,017 schools are in the form of Extraordinary Schools with details of 552 Extraordinary Schools with the status of public schools and 1,465 Extraordinary Schools with the status of private schools. Inclusive education is a strategy that aims to reduce, even eliminate limitations or barriers in accessing education for children with disabilities. The inclusive education model was discussed at the World Conference on Special Needs Education held in June 1994, attended by the world's Ministers of Education who declared the Salamanca Statement, which

recognizes the special characteristics that each child has, guarantees the right of every child to education, recommends that the education system be designed to be able to accommodate the very varied needs and characteristics of children, encourage inclusive educational services for children with special needs in regular schools, and affirm that inclusive education is the most effective way to combat discriminatory attitudes. The principle of inclusive education is that as long as possible, all children should learn together regardless of the difficulties or differences that may exist in them.

Inclusive education is an educational service system that allows all children with disabilities to get services in nearby schools and in regular classes, for that it is necessary to restructure the school, so that a community is formed that supports the implementation of the system, and the special needs of children with disabilities can be met. . On the other hand, Extraordinary Schools have not been able to accommodate all children with disabilities because they are only located in the city center/district, so that children who are far from the city center have difficulty

accessing Extraordinary Schools because of the school's remote location.

As a result of the above, many children with disabilities who are in areas far from the city center/district do not go to school. Therefore, an inclusive education model is presented to overcome these problems which is a manifestation of fulfilling the aspects of equality and non-discrimination against children with disabilities to get equal opportunities in education.

Despite these efforts, in fact the number of students has not increased. This happened due to the lack of awareness from families about the importance of education for people with disabilities. In fact, support from parents and teachers, fellow children with disabilities, friends, and the surrounding community is one of the important factors in the implementation of education for people with disabilities. From this problem, the provisions in national laws and regulations and the provisions in the Convention on the Rights of Persons With Disabilities have not been implemented or implemented as they should. This is because the paradigm and societal view of people with disabilities is still difficult to change, so that even

though the rules regarding the prohibition of discrimination against people with disabilities already exist, there are still many children with disabilities who do not get education due to lack of support from the surrounding environment.

C. Conclusion

Persons with disabilities are a vulnerable and marginalized group in society. In the international and national context, the human rights movement and economic development have improved, but the disability group is still on the last line to be able to enjoy it. The implementation of the right to education for persons with disabilities in Indonesia is not in accordance with the Convention on the Rights of Persons With Disabilities because there is still limited access to education for persons with disabilities in Indonesia. The implementation of the protection of the right to education for persons with disabilities is carried out by providing inclusive educational facilities for persons with disabilities in accordance with Law No. 8 of 2016 concerning Persons with Disabilities.

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