



## Legal Implications of Patterns of Organizing Discriminatory Education for Persons with Disabilities

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### **Abstract**

The CRPD is an up-to-date human rights treaty that includes novel provisions for people with disabilities. This has ramifications for the fields of disability studies and human rights legislation. This article examines the CRPD's equality and discrimination themes as well as the disability model. The CRPD is seen as evidence of a transition away from the medical paradigm of disability and toward the human rights approach. Six arguments are made to distinguish the human rights paradigm from the social model of disability. Furthermore, it is argued that the CRPD adds a new definition of discrimination to international public law. The core principle of equality might be defined as transformative equality, which has both personal and social dimensions. This study employs a mixed technique consisting of a legal doctrinal analysis and a model analysis from the field of disability studies. The primary conclusion is that the social model of disability benefits from the inclusion of the human rights model of disability. Some theories of equality can be traced back to three distinct representations of disability. Formal equality belongs to the medical model, substantive equality to the social model, and transformative equality to the human rights paradigm.

**Keywords:** *Disability Law; Human Rights; Models of Disability*

### **Introduction**

Education is very necessary in an effort to achieve social welfare. The right to education is an essential part of one's human rights. It can even be said that education is a prerequisite for the implementation of other basic rights of a person, for example, the right to a decent life, the right to equality, and the right to education. Within the scope of economic, social and cultural rights, the right of a

person to get a job, to receive payment equal to the work performed, or to take part in cultural life to enjoy the benefits of scientific progress and to obtain higher education based on his ability, is only can be carried out meaningfully after someone gets an education.

Furthermore, the right to education will be linked to Article 26 paragraph (1) of the Universal Declaration of Human Rights (UDHR) which has a different understanding. It is regulated that the right to education is the right to obtain education. In an effort to guarantee the fulfillment of the right to education, it is necessary to provide free education, especially at the lower school level and basic education. It seems clear that the Universal Declaration of Human Rights emphasizes the right to education more than important things that must exist to guarantee its fulfillment. The interesting thing about this article is that the right to education is based on four main principles. First, the principle of equality of opportunity or method; second, the principle of respect for human rights and basic freedoms; third, the principle of tolerance for the sake of peace.<sup>1</sup>

While each country's philosophy will emphasize the specific laws governing the education system, there is a basic philosophy that can be applied in all nations; this philosophy entails a basic set of obligations for every nation. That education must be given to every citizen without exception based on the values that grow and develop in Indonesia and the involvement of the community and management authority and supporting institutions will be greater than the central government.<sup>2</sup>

If you look at the 1948 Universal Declaration of Human Rights (UDHR), there is not a single sentence that indicates a difference between one human being and another human being. The words "everyone", "everyone", "no one", "men and women" describe equal rights for all. The right to inclusive education was redefined in the Convention on the Rights of the Child (1989), the World Declaration on Education for All (1989), the UN Standard Rules on Equal Opportunities for Persons with Disabilities (1993), the Salamanca Declaration and the Unesco Framework for Action (1994), the Law Persons with Disabilities 1997 (Replaced by the 2016 Disability Law), the 2003 National Education System Law and the Dakar Framework for Action (2000). In the 1994 Salamanca Declaration as the basis for accepting everyone and respecting differences.<sup>3</sup>

In addition, Indonesia has also ratified the International Covenant on Economic, Social and Cultural Rights (KIHESB) with Law Number 11 of 2005, which also regulates the right to education in Article 13 and Article 14. KIHESB states that the state is obliged to use its resources maximally to ensure the enjoyment of the right to education. Referring to General Comment No. 13 of the Covenant on Economic, Social and Cultural Rights (KIHSB), regarding the Right to Education, there are 4 (four) essential things that must be considered by the state in all forms of education and at all levels, including:<sup>4</sup>

- a. *Availability*(availability) - Educational institutions and programs must be available in sufficient numbers within the jurisdiction of a country. Functional requirements are based on several factors, including the operational development context; for example, all of these institutions and programs are likely to require buildings or physical protection from the elements, sanitation for different sexes, safe drinking water, trained teachers with competitive salaries, teaching materials, and so on; where some of them also require other facilities, such as libraries, computer laboratories, and information technology.

<sup>1</sup> SK Jahangir Ali, "Cultural and Educational Rights of Minorities: A Human Right and Constitutional Law Perspective" Indian Journal for Social Studies and Humanities, Vol 1, No. 2 2013, p. 3.

<sup>2</sup> Zamroni Abdussamad, Mohammad Hidayat Muhtar, Dolot Alhasni Bakung, Legal Model for Fulfilling Educational Rights for Persons with Disabilities in the Covid-19 Pandemic Era, KnE Social Sciences / 3rd International Conference on Law Reform (3rd INCLAR), p. 317.

<sup>3</sup> Compare, Ainurrofiq Dawam, EMOH" School: Rejecting "Commercialization of Education" and "Intellectual Cannibalism" Towards Multicultural Education, Yogyakarta: Inspeal Ahimsakarya Press, 2003, p. 30.

<sup>4</sup> Paragraph 6 "General Comment No.13 The Right to Education (Article 13 of the ICESCR)", United Nation Committee on Economic, Social and Cultural Rights, 1999.

- b. *Accessibility*(accessible) - Educational institutions and programs should be accessible to everyone without discrimination. Three general character dimensions of accessibility, namely:
- 1) Non-discrimination: education must be accessible to everyone, especially for vulnerable groups, legally and factually, and without discrimination anywhere.
  - 2) Physical accessibility: education must be safe and physically accessible.
  - 3) Economic accessibility: education costs must be affordable for everyone. The scope of this accessibility refers to the provisions of Article 13 (2) of the IHESB in relation to primary, secondary and tertiary education; where primary education should be “free of charge for all,” the State should progressively pursue free secondary and tertiary education.
- c. *Acceptability*(acceptability), namely the formulation and substance of education, including the curriculum and teaching methods, must be easily accepted, in accordance with local culture, and of good quality.
- d. *Adaptability*(appropriateness), education must be flexible and adaptable to the ever-changing needs of society and communities and must always be able to respond to the needs of students regardless of their social and cultural status.

Based on the formulation of the points above, according to the author, Indonesia has only fulfilled the first aspect, namely availability by forming special schools and inclusive schools, but in several aspects it has not been comprehensively fulfilled, for example the Accessibility aspect which, as explained earlier, requires that access to special schools is 1 SLB in each city/regency made these schools only concentrated in the district and city capitals. The Acceptability aspect has not been accommodated inclusively, this has an impact on differences in schools with different teaching methods between special and regular schools with disabilities. The Adaptability aspect is still not optimal, this is because many regular schools that are close to places where people with disabilities live refuse because the rules provide a choice to attend special schools or inclusive schools. This causes, as explained in the background, to affect the level of participation of students with disabilities at all levels of education.

The right to education emphasizes three types of state obligations, namely the obligation to respect, protect and fulfill. The obligation to respect requires the state to avoid actions that impede and/or interfere with the enjoyment of the right to education. The obligation to protect requires the state to implement measures to prevent third party interference or interference in the enjoyment of the right to education. The obligation to fulfill requires the state to implement positive steps that enable and assist individuals and communities in the enjoyment of the right to education.<sup>5</sup>

Based on these rules, the state has the responsibility to fulfill the right to education. The state is obliged to fulfill the right to education in two ways, namely the obligation to conduct and the obligation to achieve specified results. One manifestation of the obligation to achieve the specified results is progressively compulsory and free basic education for all, including special education programs for persons with disabilities. Meanwhile, one of the implementations of fulfilling the obligation to take action is to make and report an action plan to fulfill the right to education.

James Nickel argues that contemporary human rights are far more concerned with seeing the realization of equality requiring legal action by the state, through the provision of welfare assistance,

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<sup>5</sup> Ibid, Paragraphs 46-47.

accessibility and educational services.<sup>6</sup>Therefore contemporary human rights are not only related to individual rights in general but individual rights in particular, for example persons with disabilities are the main acronym in fulfilling rights including the right to education.<sup>7</sup>

Indonesia has always had laws governing persons with disabilities. Even two years after Indonesia's independence, in 1947, the law for persons with disabilities was promulgated. The presence of this regulation shows that the Indonesian government has long cared for persons with disabilities. The vocabulary used by the Indonesian government on disability has also expanded in response to the passage of new laws and regulations. Beginning with the terms "disabled" in 1947, "those with physical or mental disabilities" in 1954, "The Tuna" in 1974, "Persons with Disabilities" in 1992, "Persons with Disabilities" in 1991 and 2003, and most recently are "children. with special needs" and "persons with disabilities" in 2016.<sup>8</sup>

Disability Law itself is central, questions about the role of law in creating, perpetuating, fighting discrimination against persons with disabilities are important matters with profound implications for social justice. The right to education with disabilities is still experiencing quite serious problems because it is considered that persons with disabilities are considered detrimental, there is exclusion and marginalization of persons with disabilities. This is based on the view that persons with disabilities have body/mind differences that deviate from generally accepted norms of 'ability' in terms of physical, sensory, cognitive, neurological, or emotional functioning.

Equality in the field of education is not only seen from the implementation of the curriculum but starts from the right to education which is possessed by students, the right to education is guaranteed by the 1945 Constitution, namely in Article 31 which states that every citizen has the right to education. As a manifestation of the state's responsibility in education, it should fulfill students' sense of justice, so that students do not feel discriminatory which results in a lack of attractiveness to receive education.

On that basis, whenever possible, all persons with disabilities should study together regardless of the difficulties or differences that exist. The 8th International Congress on Inclusion of Children with Disabilities into Society: Towards Full Citizenship, which was held in June 2004 in Stavanger, affirmed the equal rights of persons with disabilities and those without disabilities. Full citizenship has the consequence that every person with disabilities has equal opportunities in all aspects of life, such as health services, education, treatment programs, and recreation.<sup>9</sup>

The choice of going to special schools in the end does not provide opportunities for people with disabilities to live side by side with non-disabled people. The pattern of segregation education prioritizes providing educational services on the basis of the deficiencies that exist in persons with disabilities, while actually behind these deficiencies there are a number of potentials that must be accommodated and have not been optimally touched.<sup>10</sup>

This view of diversity replaces the old (segregative) view of uniformity that has been in effect so far. Currently, differences are no longer seen as deviations so they must be treated exclusively, but instead, must be seen as potential wealth. Therefore, no different from normal humans, persons with disabilities have equal opportunities in all aspects of life and livelihood. This equal opportunity is

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<sup>6</sup> James W. Nickel, Op. cit, p. 10.

<sup>7</sup> Zamroni Abdussamad, The Discourse on Legal Utopia for The People with Disabilities in Order to Remove the Educational Segregation, Jambura Law Review, Vol 3, Issue 2, 2021, p. 380.

<sup>8</sup> Zamroni Abdussamad., Sudardono, Imam Koeswahyono, Istislam, "Analysis of The Pattern of Education for Persons with Disabilities in Law Number 20 of 2003 Concerning the National Education System". International Journal of Environmental, Sustainability, and Social Sciences, Vol 3, No (3), 2022, p. 751.

<sup>9</sup> *Ibid*, p. 31.

<sup>10</sup> Siti Masitoh "Educational Inclusion Alternative Education for All", paper at the Seminar on Inclusion Education as a Solution to the Educational Rights of Persons with Disabilities, organized by the Institute for the Empowerment of the Blind, Surabaya, 3 April 2008, p. 1.

implemented through the provision of access to create conditions and a more supportive environment so that people can fully live in society.

### **A. Formulation of the Problem**

1. How are the implications of providing education for persons with disabilities reviewed in terms of human rights?
2. How do the implications of violations of human rights in the education of persons with disabilities affect the patterns of discrimination in educational institutions?

### **B. Research Methods**

This research is categorized into the type of normative legal research, this is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical analysis and philosophy, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.<sup>11</sup> It will also be analyzed using descriptive analytical methods, namely by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.<sup>12</sup>

### **C. Discussion**

#### **1. The Implications of Organizing Disability Education Are Reviewed in Terms of Human Rights**

If in the old pattern, namely the special school model which is segregative in nature, educators only become people who have power over students and students are only objects of educational models, then in the new paradigm of education that is currently in effect, students become educational subjects whose full potential is understood. This new pattern has been developed in inclusive education. Schools should accommodate all students regardless of their physical, intellectual, social, emotional, linguistic or other conditions.<sup>13</sup>

In principle not in accordance with the spirit of human rights<sup>14</sup> which is oriented towards equal treatment and affirmative accommodation for marginalized legal subjects such as persons with disabilities. As has been formulated in the text of the Second Amendment to the 1945 Constitution, the provisions governing human rights have received very strong constitutional guarantees in the Constitution. Already most of the contents of this Constitution actually originate from the formulation of a Law that was passed previously, namely the Law on Human Rights. If reformulated, then the material that has been adopted into the formulation of the 1945 Constitution includes the following materials:<sup>15</sup>

- a. Everyone has the right to live and has the right to defend his life and existence.
- b. Everyone has the right to form a family and continue offspring through a legal marriage

<sup>11</sup> Compare, Ishaq, *Legal Research Methods and Thesis Writing*, Thesis and Dissertation, Bandung: ALFABETA, 2017, p. 45.

<sup>12</sup> Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011, p. 22.

<sup>13</sup> Salamanca's Statement and Framework for Action on Special Needs Education. Translated by Didi Tarsidi (Jakarta: Braillo Norway, 2000, p. 3.

<sup>14</sup> According to Paton that the essence of rights is not power guaranteed by law, but power guaranteed by law to realize an interest, because the human will does not work without any intention (in vacuo) but wants certain goals, namely interests. Ronald Dworkin said that rights are best understood as those that have the highest level of background justification for political decisions that state a goal for society as a whole. Dworkin places rights as something that must be upheld by anyone. See, Peter Mahmud Marzuki, *Introduction to Law*, Kencana Prenada Media Group, Jakarta, 2008, p. 172.

<sup>15</sup> For more details, see the 1945 Constitution in a comprehensive manner article 28.

- c. Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.
- d. Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against discriminatory treatment
- e. Everyone is free to embrace religion and worship according to their religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return.
- f. Everyone has the right to freedom of belief, to express thoughts and attitudes, according to his conscience.
- g. Everyone has the right to freedom of association, assembly and expression.
- h. Everyone has the right to communicate and obtain information to develop his personality and social environment and has the right to seek, obtain, possess, store, process and convey information using all types of available channels.
- i. Everyone has the right to protection of himself/herself, family, respect, dignity and property under his control rights, and are entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right.
- j. Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.
- k. Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy environment and to receive health services.
- l. Everyone has the right to get facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice.
- m. Everyone has the right to social security which enables his/her full self-development as a human being with dignity.
- n. Everyone has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone.
- o. Everyone has the right to self-development through meeting their basic needs, the right to receive education and to benefit from science and technology, art and culture, in order to improve the quality of life and for the welfare of mankind<sup>81</sup>.
- p. Everyone has the right to advance himself in fighting for his right collectively to develop his community, nation and country.
- q. Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.
- r. Everyone has the right to work and receive fair and proper compensation and treatment in a work relationship.
- s. Everyone has the right to citizenship status.
- t. The state, under no circumstances, cannot diminish everyone's right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted for retroactive legal basis
- u. The state guarantees respect for cultural identity and the rights of traditional communities in accordance with the times and the level of civilization of the nation.
- v. The state upholds the ethical and moral values of humanity taught by every religion, and guarantees the freedom of every citizen to embrace and practice their religion's teachings.
- w. The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.
- x. In order to promote, uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.



The Indonesian Constitution regarding the elaboration of the 1945 Constitution of the Republic of Indonesia which has been carried out by the State against persons with disabilities in terms of education for persons with disabilities and also regarding the basic policy of organizing National education, of course, we can see in the Preamble of the fourth paragraph of the 45th Constitution of the Republic of Indonesia, which is included in an integral unit of the goals of the State, namely enrich the life of a nation. This means that the Republic of Indonesia explicitly recognizes the human right to education. Therefore, the State is obliged to carry out national education, which is regulated in Article 31 paragraphs 1 and 2 of the 1945 Constitution. Article 31 paragraph 1 reads: "Every citizen has the right to receive education"; and paragraph 2 reads: "The government seeks and organizes a national teaching system, which is regulated by law".

Comprehensively, all material on human rights in Indonesia does not provide any restrictions on who is entitled to human rights, including in the scope of education, that is, all citizens have the same rights in accessing education as persons with disabilities as citizens. This is increasingly emphasized in Law number 39 of 1999 (UU HAM) article 12 explains:

"everyone has the right to protection for personal development, to obtain education, to educate himself, and to improve the quality of his life so that he becomes a human being who has faith, is pious, responsible, has noble character, is happy, and is prosperous in accordance with human rights".

Article 42 of the Human Rights Law states that:

"Every citizen who continues to have physical and/or mental disabilities receives special care, education, training and at the expense of the State, to guarantee a decent life in accordance with human dignity, increase self-confidence and the ability to participate in the life of society, nation, and state".

Departing from that, it can be said that the model of segregative education patterns in principle violates human rights<sup>16</sup> because implicitly participating in organizing discriminatory education by separating students. This is also supported in the CRPD statement which states that inclusive education is a human right. The human rights disability model instituted by the CRPD respects the value of the social model of disability by recognizing that disability is socially constructed and not simply a matter of an individual's individual medical condition.

The human rights pattern goes beyond this approach by asserting that persons with disabilities do have human rights that can be enforced. Persons with disabilities do not depend on charities that discriminate; conversely, persons with disabilities have legal rights such as proper welfare services and inclusive education. The CRPD requires the global community to fight all forms of discrimination against persons with disabilities.<sup>17</sup> The inclusive education model that is accommodated in the CRPD and proclaimed as a legal human right requires the education sector of each member country that has signed and ratified the CRPD to educate students with disabilities in the same class as regular students.

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<sup>16</sup> The segregative educational model usually offers a variety of specialized schools, focusing on the needs of the student in question. Students with special needs are of course also given the opportunity to attend regular schools if they meet the prerequisites, but segregative education systems generally develop special schools for persons with disabilities in order to provide a homogeneous education in a teaching environment. Inclusive and integrative education is carried out with a heteronomous nature while segregation education is seen as discriminatory because special schools promote and support exclusion not only in education but also after returning to society. See, M. Düwell, C. Rehmann-Sutter and D. Mieth, *The Contingent Nature of Life – Bioethics and the Limits of Human Existence*, Berlin: Springer, 2008, p.

<sup>17</sup> John-Stewart Gordon, "Is Inclusive Education a Human Right?", *Journal of Law, Medicine & Ethics*, Volume: 41 Issue: 4, December, 2013, p. 766.

As Mona Montakef convincingly says, the right to education has become a human right. In this case, the human right to education is seen as a right to empowerment not only as a specific human right but also as a fundamental instrument for advancing other human rights. In fact, this view makes education the fundamental anchor of the entire human rights agenda.<sup>18</sup>

To guarantee the fulfillment of human rights for persons with disabilities, the government issued Law Number 18 of 2016 concerning persons with disabilities. The existence of the law on persons with disabilities, is not only a legal umbrella for persons with disabilities, but guarantees that persons with disabilities are protected from all forms of injustice, violence and discrimination. Broadly speaking, the Law on Persons with Disabilities regulates the variety of Persons with Disabilities, the rights of Persons with Disabilities, the implementation of respect, protection, and fulfillment of the rights of Persons with Disabilities. That way, the existence of the law will strengthen the rights and better opportunities for persons with disabilities. Starting from the right to life, the right to get a decent job, better education and easy access to public facilities.

It is hoped that the spirit of the Law on Persons with Disabilities can provide equal rights properly, but in this law there are still several provisions that are misunderstandings. For example, there is still a special and inclusive class division contained in article 10 which makes this law not yet a complete reference basis in fulfilling the right to education for persons with disabilities in an inclusive manner as mandated in the convention on the rights of persons with disabilities (CRPD) and emphasizing on Inclusive education is a human right.

## **2. Implications of Violating Human Rights in Education of Persons with Disabilities Impacts Discrimination Patterns in Educational Institutions**

Law No. 8 of 2016 concerning Persons with Disabilities article 1 defines the limitation of persons with disabilities as "Anyone who experiences physical, intellectual, mental and/or sensory limitations for a long time in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights". This definition replaces the previous understanding of the existence of people who have partial organ dysfunction or mental disorders by using the term disabled.

As stated in the Law. No. 4 of 1997 concerning persons with disabilities article 1 paragraph 1 explains the term disabled as follows "everyone who has physical and/or mental disabilities, which can interfere with or constitute obstacles and obstacles for him to carry out properly". Law No. 4 of 1997 saw disability as a form of abnormality. People with disabilities are abnormal people, they are 'others', 'others'. Of course this understanding is built from the perspective of people who feel normal, because their organs are complete and have no functional impairment. Experiencing a disability, either from birth/congenital or as a child or adult is a personal tragedy.

As a tragedy, having a disability is truly a disaster, because they are considered to no longer have hope, to be able to live a normal life; school, work, family and achieve adequate welfare. The only way to correct the disorder is through medical and social rehabilitation. This treatment is as much as possible to repair organs that are not functioning so that they can function even though they are not completely perfect. This explanatory model is often referred to as the medical model. The medical explanation model places the problem of disability into an individual problem and is solely a matter of abnormalities in the physical or mental organs.<sup>19</sup>

<sup>18</sup> M. Montakef, "Das Menschenrecht auf Bildung und der Schutz vor Discriminierung. Exclusionrisiken und Inclusionchancen," Berlin, Studie des Deutschen Instituts für Menschenrechte, 2006, p. 12.

<sup>19</sup> Mukhotib MD, Nurul Saadah, In the Banjarmasin City Roadmap towards the City of Inclusion, 2016, p. 21.



It is this social construction that forms an undervalued perception of persons with disabilities. Persons with disabilities are considered abnormal creatures that need to be pitied, considered a burden and unproductive. It is this kind of perception that ultimately creates an attitude of discrimination and marginalization of persons with disabilities. as a "disgrace" that must be covered or something that must be "normalized" according to common sense which is accepted as "truth".

Paton stated that the essence of rights is not power guaranteed by law, but power guaranteed by law to realize an interest, because the human will does not work without any intention (in vacuo) but wants certain goals, namely interests. Ronald Dworkin said that rights are best understood as those that have the highest level of background justification for political decisions that state a goal for society as a whole. Dworkin places rights as something that must be upheld by anyone.<sup>20</sup>

Education is the human right of every individual without exception. Regardless of social status, ethnicity, religion and physical condition. Laws that guarantee the learning rights of persons with disabilities and marginal as in Government Regulation No. 13 of 2020 as a derivative of law No. 8 of 2016 which guarantees the implementation and facilitation of education for persons with disabilities by the Central Government and Regional Governments which is carried out in all channels, levels, and all types of education both inclusively and specifically.

This argument also makes educational institutions discriminatory against persons with disabilities. As a result of the polarization of thinking that people with disabilities are obstacles. Throughout 2018 there were still cases where children with disabilities were refused entry to school. Several communities have carried out advocacy and the mass media have reported it. One of the cases involving RF was a student at Rangkasbelitung State Middle School, Lebak, Banten. His determination to continue his education to a higher level at several SMKs in Rangkasbitung was dashed because of his disability. Another case occurred with BKR, a child with mobility impairments who was rejected at several elementary schools in Pekanbaru, and two children with visual impairments from Makassar who were rejected when registering for New Student Admissions (PPDB) for SMA and SMK in South Sulawesi.<sup>21</sup>

The cases that occurred in the three regions are facts that have been revealed in the mass media. If you investigate more deeply, you will find many cases of rejection of Persons with Disabilities. The reasons are always the same: first, children with disabilities do not attend public schools, but special schools (SLB). When he was in college, he was always directed to enter the Special Education Department (PLB). Second, educational institutions always argue that schools do not yet have accessible infrastructure and that there are no accompanying teachers with disabilities. Third, educational institutions think that people with disabilities do not have enough capacity in public schools. This reason has resulted in several children with disabilities being expelled from school because they are considered difficult to follow the teaching and learning standards and assessments that have been set at school.<sup>22</sup>

Discrimination in tertiary institutions against disabilities, for example based on community monitoring that cares about disabilities, illustrates that, in the mechanism of the National Selection for Entrance to State Universities (SNMPTN). In the list of universities and their majors, there are several options for the requirements for prospective students who register, namely; not blind, deaf, mute, quadriplegic, partially color blind, totally or partially color blind.

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<sup>20</sup> Seatzu, Francesco, Loc, cit, p. 125.

<sup>21</sup>M. Syafi'ie, "Questioning the Right to Education for Disabilities", is quoted in <https://law.uui.ac.id/blog/2018/11/13/menyoal-hak-education-bagi-difabel-oleh-m-syafiie-shmh/>, May 25th, year 2022.

<sup>22</sup> *Ibid.*

One example at the University of Indonesia. For architecture majors, for example, there are code requirements 1 (blind), 2 (deaf), and 5 (partially color blind). Likewise for medical education majors, there are code requirements 1 (blind), 2 (deaf), 3 (speechless), 4 (paradise), 5 (partially color blind) and 6 (totally or partially color blind). Interestingly, not all science majors use these requirements. In the Department of Nutrition and Public Health Sciences, both of them did not limit students with disabilities to become students. Indeed, there are several universities that have provided services for people with disabilities. However, the number of persons with disabilities who receive tertiary education is only a small number, not only a problem of education costs and adaptation, but also discriminatory treatment from educational institutions. Various efforts continue to be made so that people with disabilities get better rights and opportunities. The government must care more about people with disabilities according to the mandate of Law Number 8 of 2016 concerning Persons with Disabilities.<sup>23</sup>

The refusal of persons with disabilities to enter schools or tertiary institutions for reasons that are substantively contrary to the law is one of the many portraits of discrimination that persons with disabilities feel in educational institutions. A further problem is when people with disabilities are denied entry to schools or colleges, they have to live alone and do not have enough knowledge base to develop in the future. The cut off access to education has resulted in people with disabilities being increasingly excluded from the world of work and are always a part of people with social welfare problems.

Another problem is when people with disabilities are accepted into educational institutions, there are still many obstacles that occur, starting from inaccessible school infrastructure, inappropriate teaching methods for teachers because there is no adequate profile assessment, curriculum that is not carried out according to the assessment profile, and designations and negative stigma is often raised by parties in the educational environment. Therefore, directly or indirectly students with disabilities are used to being victims of violence and the rights attached to their dignity as human beings are deprived in such a way. The existing picture of persons with disabilities in the world of education shows how persons with disabilities experience serious discrimination.

The education system in all types, paths and levels of education must be reformed. Inclusive schools which are currently being developed by the government and supported by civil society are at least one way out in the midst of discriminatory education governance for persons with disabilities.

Further developments by the Government through the Minister of National Education Regulation No. 70 of 2009 concerning Inclusive Education for Students with Disabilities and Special Intelligences and/or Talents, defines inclusive education as a system of providing education that provides opportunities for all students who have disabilities and have intelligence and/or special talents to attend education or learning in an educational environment together with students in general.

There are two objectives of inclusive education, first, to provide the widest possible opportunity for all students who have physical, emotional, mental and social disabilities or have the potential for intelligence and/or special talents to obtain quality education according to their needs and abilities. Second, realizing the implementation of education that respects diversity and is not discriminatory for all students.<sup>24</sup>

The definition and goals of inclusive education formulated in regulations provide an explanation that the government is trying to overcome the exclusion that befalls people with disabilities where so far they have always been directed to study in Special Schools (SLB). The government through Minister of

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<sup>23</sup> Megie Lessy, "Discrimination on Learning Rights of Disabled and Marginalized Children", Journal of IKN Vol.X. Number 1. January-June 2020, p. 12.

<sup>24</sup> Baihaqi, MIF. and M. Sugiarmin, Understanding and Helping ADHD Children, Bandung: PT.Refika Aditama, 2012.

National Education Regulation No. 70 of 2009 states that district/city governments designate at least 1 (one) elementary school, and 1 (one) junior high school in each sub-district, and 1 (one) secondary education unit to organize inclusive education which is obliged to accept students who are deemed have abnormalities. However, normatively, government regulations that specifically regulate inclusive education are not strict enough to guarantee the fulfillment of the right to inclusive education for persons with disabilities.

This regulation still states that the acceptance of students in educational units takes into account the resources owned by the school. Consideration of the lack of resources has resulted in several schools in Indonesia so far not wanting to accept and/or expel persons with disabilities. This old regulatory approach in viewing the disabled is still considered a person with a disability, is considered a person who has a disability, and is not normal. An approach that has long been criticized at the community level because it violates the rights of persons with disabilities who should be free from negative stigma.

Even though if you look at it philosophically in the 1945 Constitution article 31 paragraph (1) confirms that every citizen has the right to get a proper education. The law states that every citizen, if reflected again, people with disabilities are Indonesian citizens with any form of physical condition, where each of them has the same rights and obligations as other Indonesian citizens. Then Article 28 point AJ which regulates human rights, in this case has implications for persons with disabilities. The rights of every citizen have also been regulated in statutory regulations, especially in the 1945 Constitution where the law does not limit someone who has physical and/or intellectual limitations from obtaining rights.

As in the last two decades, the global disability community has sought to combat the view of disability issues or persons with disabilities as objects of charity or sick people in need of healing. They also seek to redefine persons with disabilities as full and equal members of society, who make important contributions to their families and communities. This changed mindset emphasizes that opportunities for persons with disabilities to reach their full potential are not hindered by their weaknesses or deficiencies, but by unhealthy and unsupportive behavior from society, as well as social barriers for persons with disabilities.

Realizing the agenda of fulfilling the rights of persons with disabilities within the framework of human rights, according to Mansour Fakih, it is necessary to think about several social efforts, namely the need to educate "normal" human awareness of the human rights of persons with disabilities to every individual in every household, to state development policies through government agencies. More concretely, for example, the implications of the ratification of the convention that gave birth to the law on persons with disabilities in development planning. Not only organizing persons with disabilities, but also the emergence of movements against persons with disabilities for existing NGOs. This is because upholding the human rights of persons with disabilities is not a gift from the state, but must be fought for by persons with disabilities themselves.<sup>25</sup>

## **Conclusion**

The legal implications of regulating a pattern of education delivery that is aggressive towards the right to education for persons with disabilities are: 1) The indirect effect felt by persons with disabilities in a pattern of implementing education that is aggressive is discrimination which results in a decrease in the desire to pursue education. 2) The indirect consequence felt by the family/parents is a feeling of

<sup>25</sup> Mansour Fakih, "Fair Space Access Lays the Foundation of Social Justice for People with Disabilities", in Suharto and Aris Munandar (Ed.), *Main Thoughts of Dr. Mansour Fakih: Reflection of Comrades in Arms* (Yogyakarta: SIGAB, 2004), p. 179.

reluctance to send their children to SLB because when children attend SLB, parents will get a negative stigma in society. The indirect effect felt by the community is the occurrence of conditions of inequality which result in an imbalance in the power of voice and influence between individuals/between groups of persons with disabilities in the development process.

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