

# The Responsibilities of the State in the Fulfillment of Inclusive Education for Persons with Disabilities: Case Study in Indonesia

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**Abstract:** Indonesia has signed The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006 and ratified it through The Law Number 19 of Year 2011 concerning Ratification of The UNCRPD. Inclusive education is one of the mandates that must be realized in The UNCRPD but Indonesia not yet to realize the fulfillment of inclusive education for persons with disabilities. The arrangements for inclusive education in Indonesia are only technically regulated up to primary and secondary education. There are many problems regarding the fulfillment of inclusive education like educational facilities and teaching methods are not yet accessible, The inclusive education system in Indonesia has not yet been built systematically, etc. Indonesia need to make National Strategy to realize Inclusive Education. This research emphasizes the responsibilities of the state in the fulfillment of inclusive education for persons with disabilities in Indonesia. The type of research used is normative juridical research, that examines legal regulations relating to inclusive education for persons with disabilities.

## 1 INTRODUCTION

UNCRPD is one of the international conventions that specifically regulates about the rights for the Persons with Disabilities (The Persons with Disabilities hereinafter abbreviated to PD).(Ariyani, 2017) Indonesia has ratified The UNCRPD through The Law Number 19 Year 2011 concerning The Ratification of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as The Law Number 19 of 2011). This ratification shows the commitment and seriousness of the Government of Indonesia to respect, protect and fulfill the rights of people with disabilities which in the end is expected to improve the welfare of people with disabilities.

PD have the right to be free from torture or cruel, inhumane, degrading human treatment, free from exploitation, violence and abuse, and have the right to obtain respect for their mental and physical integrity based on equality with others, including in it the right to obtain social protection and services in the context of independence, as well as in emergencies. The Government of Indonesia is obliged to realize the rights contained in the convention, through adjusting the laws and regulations, including ensuring the

fulfillment of the rights of PD in all aspects of life such as education, health, employment, politics and government, culture and tourism, and the use of technology, information, and communication.

According to PUSDATIN data from the Ministry of Social Affairs of Indonesia in 2012, the percentage of PD reached 2.45% with a total of 11,580,117 people. By classification, 3,474,035 (people with visual disabilities), 3,010,830 (people with physical disabilities), 2,547,626 (people with hearing disabilities), 1,389,614 (people with mental disabilities) and 1,158,012 (persons with chronic disabilities).(Nurinayah, 2018) The Government of Indonesia in the framework of fulfilling the rights of persons with disabilities, issued several related policies fulfillment of the rights of persons with disabilities among others, by ratifying the UNCRPD through The Law Number 19 Year 2011 and forming The Law Number 8 Year 2016 concerning Persons with Disabilities.

The UNCRPD and The Law Number 19 Year 2011, and The Law Number 8 Year 2016 are the international and national instrument of Human Rights in order to Respect, fulfillment and protection of the rights of PD in Indonesia (Development tools and Human Rights Instruments). The purpose of this

Convention is to promote, protect and guarantee the equality of rights and fundamental freedoms for all PD, as well as respect for the dignity of persons with disability as a part inseparable (inherent dignity). (Fikriyah, 2018)

This ratification of The UNCRPD has made Indonesia as a part of the world community that is committed to realizing optimally all forms of honor values, protection and fulfillment of the rights of persons with disabilities as stated in The UNCRPD. (Nursyamsi *et al.*, 2015) With the ratification of The UNCRPD by Indonesia, Indonesia has declared itself to be definitively bound to The UNCRPD. Ratification is one form of ratification of international agreements so that when the state has ratified an international agreement, the state has bound itself to an international agreement.

Inclusive education is one of the mandates that must be realized in the fulfillment of rights in education in The UNCRPD. Inclusive education is the implementation of universal education, emphasizing human rights, based on equality and without discrimination. Inclusive education is an alternative solution in order to prevent discriminatory treatment for PD. The state based on The UNCRPD is the party most responsible for effectuating inclusive education.

The facts, PD in Indonesia have various problems because they are treated discriminately related to the fulfillment of rights in the field of education, including not accepted as students in public schools and colleges for reasons of disability and/or reasons for infrastructure that has not been accessed; media (tools or facilities) used for student admission examinations at schools and colleges are not accessible to persons with disabilities; some people with disabilities are accepted in public schools and universities/colleges, but it turns out that educational facilities and teaching methods are not yet accessible (SIGAB, 2017); There is no choice of the type of school and college for persons with disabilities. Primary and secondary schools are usually directed to The Special Needs Schools and tertiary institutions are directed to The Special Needs Higher Education). (Syafi'ie, 2015)

The state as the party most responsible for fulfilling the right to education for PD is required to immediately overcome all the problems mentioned above. Based on the background above, the authors raised the issue with the title " The Responsibilities Of The State In The Fulfillment Of Inclusive Education For Persons With Disabilities: Case Study In Indonesia" to be discussed and reviewed in this paper.

## 2 RESEARCH METHODS

The researcher used a type of normative juridical research, namely research focused on examining the application of rules or norms in positive law. (Ibrahim, 2011) The approach method that used in this study is statute approach. (Marzuki, 2009) The researcher also used Analytical Approach. Basically, the task of legal analysis is analyzing legal notions, legal principles, legal rules, legal systems, and various juridical concepts. The researcher also uses Case Approach to learn the application of legal norms or rules carried out in legal practice (Marzuki, 2009)

The purpose of this case study is to find out the implementation and obstacles faced by Indonesia in fulfilling inclusive education. Another objective of this research is to analyze the appropriate juridical policies to be taken in the fulfillment of inclusive education in Indonesia.

Researchers used primary legal material sources including UNCRPD, The Law Number 19 Year 2011, The Law Number 8 Year 2016 and several other regulations. Researchers also used secondary legal material sources including books, journals, proceedings, official documents, sources from the internet relating to the fulfillment of inclusive education for persons with disabilities. Researchers also used primary data by conducting interviews with the Minister of Ireland State with Special Responsibility for Disability Issues as a material for comparing policies in Indonesia with Ireland State.

The method of presenting legal material in this study is presented in the form of descriptions arranged systematically, logically and rationally. Legal materials obtained are analyzed using qualitative methods by describing and interpreting data obtained based on legal norms, theories and applicable doctrines associated with problems regarding the fulfillment of inclusive education for persons with disabilities.

## 3 RESULTS AND DISCUSSION

The responsibilities of the state relating to education are regulated in several instruments related to education. It can be concluded that state responsibility generally relates to fulfilling educational rights among others the obligation to respect, to protect and to facilitate. According to the obligation to respect, the state must avoid all things that can hamper or prevent the fulfillment of the right of education. According to the obligation to protect, the state must take action that can avoid third parties

from intervening in the fulfillment of the right of education. According to the obligation to facilitate, the state must take positive actions that help individuals and communities to obtain the right of education. According to the obligation to provide, the state, in this case, must fulfill the rights of education. If a person or group cannot because of reasons beyond their control, the state must realize their rights in the available ways. (Syafi'ie, 2015)

Furthermore, there are more specific arrangements regarding state responsibilities in the fulfillment of educational rights for disabilities persons : in The UNCRC Article 8 Paragraphs (1) and (2b), Article 16 Paragraphs (1) and (2) and also Article 24 Paragraphs (1) and (2). Article 8 of The UNCRC contains the role and responsibilities of the state to adopt effective and immediate policies with the aim of increasing the awareness of the whole community about the rights of persons with disabilities and to maintain respect for the rights and dignity of persons with disabilities.

Article 16 Paragraphs (1) and (2) of The UNCRC is an affirmation of the role and responsibility of the state to take education policies to protect and prevent persons with disabilities from all forms of exploitation, violence, and harassment, including the gender aspects of these actions. Furthermore, Article 24 paragraph (1) broadly explain that the party States of UNCRC recognize the right of education for persons with disabilities through the fulfillment of the right of education for persons with disabilities without discrimination and based on equal opportunities. The participating countries must guarantee an inclusive education system at all levels and lifelong learning.

Article 24 paragraph (2) of the UNCRC contains guarantees of the state on the rights of persons with disabilities related to the education system, the right to compulsory and free basic education, the right to further education, access to basic and advanced education, the provision of accommodation, educational facilities, and supporting facilities in academic and social environments.

The mandate in The UNCRC, The fulfillment of the right of education for persons with disabilities can be summed up broadly, among others:

1. That the state party is obliged to adopt policies from the national level to the regional level, which aim to increase public awareness about the importance of education rights for disability persons as well as policies that are oriented towards respecting human rights for disability persons.

2. That the state is obliged to protect disability persons and prevent all forms or kinds of exploitation, harassment, and discrimination in the aspect of gender towards persons with disabilities.
3. That the state guarantees the realization of inclusive education system in all levels of education ranging from the basic, middle to tertiary level)

Based on Mandate in The UNCRC about the responsibilities of states in the fulfillment of inclusive education for persons with disabilities, Government of Indonesia have prepared three types of education :

1. Segregated Education is education that separates disabled students from other non-disabled students. Examples of this type of education are special schools or special schools.
2. Integrated Education is education that allows disabled students to take education together with non-disabled students in regular schools. The consequence of this education is that disabled students must be able to follow the curriculum and learning carried out in regular schools.
3. Inclusive Education is education where disabled students can take education together with non-disabled students in regular schools. In inclusive education, of course, there are curriculum modifications and learning that is adapted to students with disabilities. (Setiati, 2017) Inclusive education has a broader goal to make society equitable and more just for all citizens in every aspect of life including education. The concept of inclusion has to be understood as well as implemented through a comprehensive lens, which would not plan for any segregated approach or intervention for any particular group or context. (Ahsan, 2018)

In order to realize inclusive education, an institution that specifically builds support services for students with disabilities is required. This institution by the Law Number 8 Year 2016 on Persons With Disabilities is called "Disability Service Unit". This unit will help schools and universities to fulfill the special needs of students with disabilities, which The UNCRC and The Law on Persons with Disabilities are called "fulfillment of decent accommodation". Schools and Universities also need the presence of "Special Guidance Teachers". In fact, the Government has never recruited them. As a result, regular schools and colleges that accept persons with disabilities do not have experts who help them how to adapt the learning process for persons with disabilities. (Indrawati, 2018)

The government must ensure that inclusive education runs optimally, by including a Special Guidance Teachers scheme in receiving state civil apparatus teachers in order to fulfill Special Guidance Teachers needs. (Utomo *et al.*, 2018) The government also should make a Government Regulation that regulates the fulfillment of adequate accommodation for persons with disabilities who take Inclusive education, but the regulation has not yet been made until now.

Inclusive education is a process for making changes to the education system so that it produces equal and quality education. (Ahsan, 2014) Inclusive education is a way to foster a positive attitude and is a fair step for people with disabilities in the community. (Robinson, 2017) The Fact, inclusive education system in Indonesia has not yet been built systematically and this is also the duty of the state to establish an inclusive education system that is not discriminatory. Furthermore, for provisions regarding inclusive education can be applied until to the local level, the local government through decentralization is authorized to more contribute towards implementing inclusive education through the establishment of policies that are inclusive.

State through Government should support the implementation of inclusive education by giving sufficient financial support for schools and colleges. financial support is needed especially to support the fulfillment of facilities needed by PD and improve the quality of teaching resources. (Lindsay, 2018)

In order to realize inclusive education, the Government of Indonesia also must immediately realize a special curriculum for inclusive schools (in all levels of education ranging from the basic, middle to tertiary level) and their supporting facilities so that teaching and learning activities in inclusive schools can run effectively.

The researcher compared the fulfillment of inclusive education in Indonesia with State of Ireland. Ireland is a country that committed to the UNCRPD. Ireland has The Minister of State for Disability Issues. This minister is is a junior ministerial post at the Departments of Employment Affairs and Social Protection, Justice and Equality, and Health of the Government of Ireland. The Minister of State for Disability Issues works together with the senior Minister in the department and has special responsibility for all disability and equality issues.

Based on interviews with Finian McGrath, Minister of Ireland State with Special Responsibility for Disability Issues on July 11, 2019, said that Ireland is very committed to implementing the

UNCRPD. Ireland have ministries that specifically handle Disability Issues and establish the National Disability Inclusion Strategy (NDIS) 2017 – 2021. The National Disability Inclusion Strategy (NDIS) NDIS 2017– 2021 contains a wide range of practical commitments to improve the position of people with disabilities. NDIS provides a mechanism for joined-up working to deliver on Ireland’s commitments to implementing the UNCRPD.

According to NDA independent assessment of progress under NDIS 2017-2018, NDIS takes a whole of Government approach to improving the lives of people with disabilities both in a practical sense, and also in creating the best possible opportunities for people with disabilities to fulfil their potential. The Strategy comprises the following eight themes: Equality and Choice, Joined up policies and public services, Education, Employment, Health and Wellbeing, Person centered disability services, Living in the Community; and Transport and access to places

The Strategy was prepared on foot of a comprehensive consultation process that took place during 2016 and was completed early in 2017. The purpose of this process was to identify and agree specific actions and timescales for delivery under the themes set out above. Implementation of the Strategy is being overseen by a Steering Group, which comprises representatives of the key government departments and agencies and of disability stakeholders. The Group is chaired by the Minister of State. The National Disability Strategy Steering Group will publish an annual report on progress made in each year of the Strategy starting in 2018, and there will also be a midterm review.

Finian McGrath also explained that The NDIS Steering Group, oversees and monitors the implementation of NDIS, Steering Group will have an important role in guiding on progress in this area. The National Disability Authority (NDA) will also play a critical part in the implementation of the Convention, and will be carrying out a review of progress with respect to the Strategy’s key indicators in this regard. In the NDIS 2017-2021, Ireland supports the fulfillment of inclusive education, including:

- a. Set up systems and policies to support children and young people with disabilities to move into and out of education
- b. Train teachers and schools new skills to support students with disabilities
- c. Encourage people with disabilities to take part in third level education

- d. Make sure that schools can use information technology to help students with disabilities
- e. Improve the Special Needs Assistant (SNA) Scheme, etc.

Indonesia doesn't have the National Disability Inclusion Strategy like Ireland to handle all the issues of disability. Indonesia can adopt the policies and/or steps taken by Ireland because Ireland is one of the most committed countries to realize the mandate of the UNCRPD even though Ireland has only ratified it in 2018 but the steps taken in realizing inclusive education are very real. Indonesia can create a special division under the Ministry of Social Affairs which deals with disability issues. through this division, can make a national strategy to overcome the problem of disability in Indonesia. The division will be overseen and fostered by a steering group formed by the social ministry. Indonesia through the Ministry of Social Affairs can form an Independent Legal Entity consisting of various elements as a body that will work together with the Special Division to create a national disability inclusion strategy.

#### 4 CONCLUSIONS

Indonesia as one of the countries that ratified The UNCRPD has accommodated The UNCRPD provisions, among others, by providing three educational options for persons with disabilities: segregated education, integrated education, and Inclusive education. Indonesia doesn't have the National Disability Inclusion Strategy like Ireland to handle all the issues of disability. The Next Steps of Indonesia to handle issues about inclusive education, Indonesia can create a special division under the Ministry of Social Affairs to make National Disability Inclusion Strategy where one of the Strategy is Strategy to fulfill inclusive education in Indonesia among others: Establish The National Disability Inclusion Strategy sustainably; Establish Steering Group that specifically oversees, monitors, provides input and also guidance related to the national Disability Inclusion Strategy from all parties concerned with persons with disabilities in synergy (non-government organizations, disability groups, government, experts or from universities, communities, etc); Build institutions that specifically build support services for students with disabilities in schools and colleges; Make implementing regulations for laws relating to the fulfillment of the right of inclusive education for persons with disabilities in the form of government regulation that regulates the fulfillment of adequate accommodation for persons

with disabilities who take Inclusive education; Improve the Special Guidance Teachers scheme or the Special Needs Assistant (SNA) Scheme; Build the inclusive education system systematically not discriminate; make policies and implement inclusive education; also provides financial support for the development of inclusive education up to the regional level.

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