



Pattern of Fulfillment of Education Rights of Persons with Disabilities in Indonesia in Inclusive Education Regulation (Critical Study of Law Number 20 of 2003 Concerning the National Education System)

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Abstract. The fulfillment of the right to education for persons with disabilities has been guaranteed in the 1945 Constitution Article 31 paragraph (1) which states that every citizen has the right to education. This phrase in principle places the entirety of Indonesian citizens without exception getting the right to education. If you look at Law Numbers. 20 Of 2003 concerning the National Education System (Uu Sisdiknas) disability education is directed at special education. This has explicitly fulfilled the right to disability education, but special education creates a pattern of segregation and discrimination due to the grouping of learners who seem to place people with disabilities in a special group and separate from the non-disability group. This research is categorized into normative legal research types based on issues and or themes raised as research topics using philosophical and analytical research approaches that are analyzed descriptively analytically. The results showed that the national education law still follows the old pattern of segregative education by placing persons with disabilities in the exclusiveness of special education which results in disparative actions, this is because the National Education Law does not provide space for inclusive education which causes regular schools to have reasons to reject students with disabilities. In addition, there is a vagueness of norms in the National Education Law precisely in the explanation of the article that places inclusive education as part of special education which is actually different in meaning, concept and purpose. Therefore, the vagueness and limited concept of inclusive education in the National Education Law has an impact on the segregation and discrimination of persons with disabilities.

Keywords: Persons with Disabilities · Discrimination · Segregation · Inclusive

1 Introduction

One of the important rights that every human being or citizen has the right to have is the right to obtain an education. Education is an effort to help human development in general to be more progressive in both academic development and social emotions so that

they can live in the surrounding environment. Human education in general can develop better and more optimally. The implementation of National education, based on laws that are definitely different, according to the nature of the nature of the philosophy of their respective countries but in that difference, there is a basic philosophy that applies universally in any country, namely the human obligation for each country to provide its National education, every citizen as a human being has the right and obligation to obtain and carry out education (human right and duty on education) [1].

So far, there are five perspectives that influence people's way of thinking about disability issues. The five perspectives include moral, compassion, health, social, and human rights perspectives. The first three perspectives (moral, compassion, and health) focus on the limitations that individuals with disabilities have; this perspective contributes to the social exclusion of their environment experienced by people with disabilities. Meanwhile, the last two perspectives (social model and human rights) focus more on the conditions of society, the environment, and institutions that play a role in creating disability conditions. The moral perspective considers the existence of persons with disabilities as punishment to families/individuals for their actions that violate the norm. The compassionate perspective considers people with disabilities as individuals who are incapable of doing things independently so that they need the help of others and deserve to be pitied. The health perspective considers people with disabilities to be "abnormal" individuals so they must be corrected to be able to adjust to the environment [2].

Meanwhile, the social perspective considers that society/environment has a role in creating disability conditions for people with physical/mental/sensory disabilities; and the human rights perspective recognizes the existence of persons with disabilities as part of diversity in society and recognizes that persons with disabilities have the same rights as nondisable societies. The social model is principled that it is society that must be changed/changed in order to be able to adjust to persons with disabilities, while the human rights model is principled that the fulfillment of human rights is a solution to ensure that individuals with physical/mental/sensory limitations do not experience social exclusion [2]. The meaning is that people with disabilities need to be protected and given a conducive space in society as a respect for their rights, as regulated in various regulations both Nationally and Internationally.

Contemporary arrangements for disability education rights still have a segregative tendency. The pattern of segregative education can be understood to accommodate the special needs experienced by students with disabilities, but the segregative pattern also opens up discriminatory spaces due to differences in treatment to obtain educational rights. The polarization makes people with disabilities given the choice by the state to choose while non-disabled students are free to choose to study. This means that when people with disabilities want to attend regular schools, they cannot be accepted immediately, but schools can refuse on the basis that people with disabilities have special schools, but for non-disabled people, it is the opposite.

The pattern of inclusive education in persons with Disability as mentioned above is the combination of regular education with special education into one school system, which is united to bring together differences in student needs, but this inclusive education pattern is not yet in accordance with the National Education System, article 5 paragraph 2. The content and provisions of article 5, article 15 and article 32 of the Law on the

National Education System indicate that there is a special group, namely citizens who have extraordinary abnormalities and intelligence so that they require special education. This shows that there is an educational orientation that tends to be “segregative” and has not been oriented “inclusive”, because in the National Education System Law, it has not clearly or completely stated the norm specifically of the term “inclusive education”, thus that the existence of a pattern of segregation education is contrary to the pattern of inclusive education. The principle of continuing to provide integral access to education for every person with disabilities in their local community will be difficult to meet because not every school will accept students with special needs.

2 Research Method

This research is categorized into normative legal research types based on issues and or themes raised as research topics. The research approach used is philosophical and analytical, that is, research that focuses on rational, critical and philosophical views, and ends with conclusions aimed at generating new findings as answers to the main problems that have been set. And will be analyzed with an analytical descriptive method, namely by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.

3 Result and Discussion

3.1 Education Patterns Have Fulfilled Aspects of Fulfilling the Right to Disability Education

Indonesia has long made rules for people with disabilities. The terminology used by the Indonesian government on disability has also changed in accordance with the issuance of bari laws and regulations. Starting with the title of “disabled” in 1947, “people in a state of physical deprivation or rokhani” in 1954, “Tuna” in 1974, “Disabled people” in 1992, “People with disabilities” in 1991 and 2003, and most recently the term “children with special needs” and in 2016 used the term persons with disabilities [3]. On the other hand, practitioners and bureaucracy circles still show a dualism between those who want to change (progressive) and those who want to be safe only (conservative), so that it tends to cause endless polemics and debates, the irony is that this actually happens to the extraordinary educational community itself [4].

The Government of Indonesia issued Law Number 20 of 2003 concerning the National Education System. Law Number 20 of 2003 explains that the provision of education for students with special needs or having extraordinary intelligence can be held in public elementary schools [5].

Inclusion is seen as a process of responding to the diversity of needs of all learners through increased participation in learning, culture, and society, as well as reducing exclusions in and from education. The implementation of inclusive education requires schools to make adjustments both in terms of curriculum, educational facilities and infrastructure, as well as a learning system that is tailored to the individual needs of students [6].

Article 1 of the Regulation of the Minister of National Education of the Republic of Indonesia No. 70 of 2009 concerning “Inclusive Education for Students Who Have Disabilities and Have Potential for Intelligence and/or Special Talents”, that: “what is meant by inclusive education is an education delivery system that provides opportunities for all students who have disabilities and have the potential for intelligence and/or special talents to take part in education or learning in one educational environment jointly with learners in general.”

Meanwhile, the term inclusive education is not known in the National Education Law which uses the term “special education and special services” which is described in Article 32 of Law No.20 of 2003 concerning the National Education System: (i) Special education is education for students who have a level of difficulty in following the learning process due to physical, emotional, mental, social disorders, and/or have the potential for intelligence and special talents. (ii) Special service education shall be education for learners in remote or underdeveloped areas, remote indigenous peoples, and/or experiencing natural disasters, social disasters, and economic inadequacies.

Based on this, both “special education” and “special service education” have the same learners. That is, “inclusive education” has a very different nature from “special education” and “special service education”, since both education is carried out separately from regular education for children who do not “have special needs”. Meanwhile, inclusive education for persons with disabilities with special needs is carried out in an integrated manner together with non-disabilities in regular education.

Therefore, if inclusive education is defined as education for all, and includes all persons with disabilities without exception, by including persons with disabilities in public classes with non-disabilities, then persons with disabilities who have special services in the National Education Law must be interpreted more broadly, not only those with physical barriers (blind, hearing impaired) and nonphysical (intellectual), but also persons with disabilities with learning barriers due to geography, socioeconomic and cultural factors [7]. This problem of naming is substantive because educational institutions have a legal basis to reject students with disabilities because people with disabilities have special schools. This indicates that the polarization of the implementation of disability education in Indonesia is still segregative and or discriminatory.

3.2 Legal Implications of Educational Patterns for the Fulfillment of Segregative Rights of Persons with Disabilities

The segregation of education which is an educational pattern by separating students with disabilities and regulars is increasingly unclear with the explanation of article 15 of the National Education Law which states: “Special education is the provision of education for different students or students who have extraordinary intelligence which is organized inclusively or in the form of special education units at the primary and secondary education levels.”

If you look at the meaning of special education in the explanation of article 15 of the national education law, there is a vagueness of legal norms because inclusive education is considered part of special education using the phrase “organized inclusively”. Whereas as it is known that inclusive education is a development of segregative special education which was manifested in the samalanca declaration of 1994. This becomes

anti thesa when the elaboration of inclusive education is divided into two main points in the Disability Law with two different meanings, meaning that explicitly the naming of the inclusive education law in the disability law does not depart from the National Education Law which does not provide a definition of inclusive education but is a mandate of the CRPD which was ratified in 2011. Therefore, it can be said that the legislative ratio argument in the disability law related to the pattern of providing disability education does not necessarily depart from the National Education Law as an umbrella norm, this has an impact on the standard uncertainty regarding what exactly is meant by inclusive education as also regulated in the Minister of National Education Number 70 of 2009 concerning inclusive education. Explicitly, the naming in this implementing regulation has no legal basis in the National Education Law regarding inclusive education. This also has an impact on the formulation of derivative/implementing regulations as in *permendiknas* No. 70 of 2009 concerning inclusive education, Article 3 Paragraph 2.

The above two implementing regulations provide the same on the concept that is actually completely different between special education and inclusive education as a result of the vagueness of the norms in the National Education Law. Special education implemented with SLB has a limited range because it only serves students with visual, hearing, physical, or a combination of them so as to discriminate against other types of disabilities such as mental limitations, learning difficulties, and developmental delays [8]. In addition, there is this same naming that makes all the characteristics and identification of learners with disabilities have no legal certainty whether to attend special or inclusive educational institutions and the educational institutions have reason to refuse on the basis that it has been arranged that persons with disabilities have special schools that explicitly lead to discriminatory actions.

In this case, professionals in extraordinary education consider that the implementation of schools with two systems (special schools and regular schools) as implemented in Indonesia to date, manifestly shows the existence of discrimination that is contrary to moral values, human rights, and is seen as inefficient. While the pattern of inclusive education is believed to be able to lead towards achieving universal primary education, UPE [9].

Based on this, the vagueness of norms affects the pattern of providing education for persons with disabilities, namely there is a dualism of the pattern of providing education for persons with disabilities with a special and inclusive approach which has an impact on legal uncertainty in norms, concepts and implementation.

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 mentioned the provision that the state is obliged to use its resources to the maximum to ensure the enjoyment of the right to education [10].

Availability, a variety of educational institutions and programs must be available in sufficient quantities within the jurisdiction of a country. Functional needs are based on several factors, including the context of operational development. Accessibility, a variety of educational institutions and programs must be accessible to everyone without discrimination. Three dimensions of the general character of accessibility, namely: non-discrimination, acceptability, adaptability.

Based on the formulation of the points above according to the author Indonesia, it has only fulfilled the first aspect, namely availability by forming special schools and inclusive schools, but in some aspects it has not been fulfilled comprehensively, for example the Accessibility, which as previously explained that access to special schools is required by 1 SLB in each city/district making these schools only centralized in the district and city capitals. The Acceptability, has not been accommodated inclusively, this has an impact on the differences in schools with different teaching methods between disability-specific and regular schools. The Adaptability, is still not optimal, because regular schools close to the residence of people with disabilities refuse because the rules provide the option to attend special schools or Inclusive schools.

The right to education emphasizes on three types of state obligations, namely the obligation to respect, protect and fulfill. The obligation to respect demands the state to avoid actions that hinder and/or interfere with the enjoyment of the right to education. The obligation to protect requires the state to implement measures to prevent interference or interference of third parties in the connoisseurship of the right to education. The obligation to fulfill the demands of the state to implement positive measures that enable and assist individuals and communities in the enjoyment of the right to education [10].

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

James Nickel argues that contemporary human rights are much more concerned with seeing the realization of equality requires the act of legal formation by the state, through the provision of welfare assistance, accessibility and educational services [11]. 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 the fulfillment of rights including the right to education. Equality in the field of education is not only seen from the application of the curriculum but starts from the right to education that is denied 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 get an education without discrimination. On that basis as long as possible, all persons with disabilities should study together regardless of the difficulties or differences that exist. Full citizenship gives the consequence that every person with a disability has equal opportunities in all aspects of life, such as health services, education, care programs, and recreation [11].

The choice to attend a special school ultimately gives people with disabilities less opportunities to coexist with non-disabled people. The pattern of segregation education prioritizes providing educational services on the basis of existing deficiencies in people with disabilities, while actually behind these shortcomings there are a number of potentials that must be accommodated and have not been touched to the fullest [12].

This view of diversity replaces the old (segregative) view of uniformity that has prevailed so far. Today, differences are no longer seen as perversions so they should be treated exclusively, but rather, should be viewed as potential wealth. Therefore, no different from normal human beings, people with disabilities have equal opportunities in all aspects of life and livelihood. This same opportunity is carried out through the provision of access to create a more supportive state and environment in order to fully live in society.

If in the old pattern, namely the modeling of special schools that are segregative, 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 prevails today, students become subjects of education that are understood every potential. It is this new pattern that is developed in inclusive education. Schools should accommodate all students regardless of physical, intellectual, social emotional, linguistic or other conditions [13]. In principle it is incompatible with the spirit of human rights [14] who are oriented towards equal treatment and accommodate affirmatively to marginalized legal subjects as well as persons with disabilities.

Comprehensively, all materials on human rights in Indonesia do not provide a limit on who is entitled to human rights, including in the scope of education, namely that all citizens have the same rights in accessing education as well as persons with disabilities as citizens. Departing from it, it can be said that the segregative model of education pattern in principle violates human rights. [15] because it implicitly participates in organizing discriminatory education by separating students even though inclusive education is a human right. The human rights disability model instituted by the CRPD values the value of the social model of disability by recognizing that disability is socially constructed and not just a matter of a person's individual medical condition.

The pattern of human rights goes beyond this approach by stating that persons with disabilities do have human rights that can be upheld. Persons with disabilities do not rely on discriminating charities; on the contrary, persons with disabilities have the right to laws such as decent welfare services and inclusive education that requires the global community to resist all forms of discrimination against persons with disabilities [16].

As Mona Montakef convincingly said, the right to education has become a human right. In this regard, the human right to education is seen as the right of empowerment is not only a certain human right but also a fundamental instrument for advancing other human rights. In fact, this view makes education the fundamental anchor of the entire human rights agenda [17]. It can be said that the right to education for persons with disabilities inclusively and emphasizing inclusive education is a human right. This is important because the education pattern of persons with disabilities in the National Education Law should fully accommodate the convention on the rights of persons with disabilities (CRPD) for the provision of inclusive education for persons with disabilities and not inheritance with regard to segregative education patterns that tend to be discriminatory.

4 Conclusion

Regulation of the Pattern of providing education for persons with disabilities in Law Number. 20 Year 2003 on the current National Education System still tends to be segregative or does not reflect justice. Arrangements that are still segregative have implications for discriminatory actions in the sense that people with disabilities are not free to choose in their education but are only given a choice. Therefore, the fulfillment of rights in every side of the life of persons with disabilities as citizens must be carried out in an equitable manner so that the implementation of education for persons with disabilities leads to educational equality.

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