



ISSN Print: 2541-5298
ISSN Online: 2541-6464

SRIWIJAYA Law Review

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The Fulfilment of the Right to Education for Persons with Disabilities: A Challenge in a Border Area

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Article	Abstract
<p>Keywords: Human Rights; Person with Disabilities; Right to Education, The Nunukan District.</p> <p>Article History Received: Sept 14, 2019; Reviewed: Jul 1, 2020; Accepted: Jul 25, 2020; Published: Jul 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.402.pp238-248</p>	<p>This study discusses the right to education policy for Persons With Disabilities (PwDs) In Border Area of Nunukan-Indonesia. This research aims to find out whether the legal regulation on human rights for with disabilities provided by the Indonesian government is appropriate or not and to find out whether the government of Nunukan District also provided some policies in handling a person with disabilities, in particular, their right to education. This research used a normative legal method, which complemented with field research. As a result, in order to fulfil human rights for PwDs, the Indonesian government was stipulated plenty of national laws, namely National Education System Law, the Protection of Children Law, and individually regulated by Law No. 8 of 2016 on Persons with Disabilities. Also, the most crucial factor is that the Nunukan District has not been set up the local regulation pertaining to PwDs. Only several policies are stipulated to overcome the right to education problems, but it does not enough to ensure the correct implementation of this right in the field.</p>

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INTRODUCTION

Human rights concept is continuously developed. One of the developments in human rights is the integration of basic human rights norms into the Universal Declaration of Human Rights (UDHR) document on December 10, 1948. The declaration was complemented by two conventions, namely the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, the UDHR was supplemented by two human rights documents, namely ICCPR and ICESR. On the one hand, ICCPR generally regulates, for instance, freedom of speech, and freedom from fear. On the

other hand, ICESCR is a human rights document which contains right to decent work, rights to social security, right to a decent standard of living, right to food, clothing and housing, right to education, and right to participate in culture. Hence, these documents have a significant distinction between fulfilling these rights.

Indonesia has a respectful to human rights aspect. It is evidenced by UDHR provisions decided as one of consideration point in Law No 39 of 1999 on Human Rights. Following the Human Rights Law, both the ICCPR and the ICESCR were ratified by the Indonesian government.

The United Nations (UN) in its report, "Monitoring the Convention on Persons with Disabilities, the 7th Series of Human Rights monitoring guidelines," describes that there are 650 million people with disabilities in the world or about 10% of the total population in the world.¹ Most of the people with disabilities, including children, can mingle with society. However, in fact, the majority of them experience discriminatory treatment, experience rejection, isolated and being the victim of violence. Besides, most of them live in poverty and do not have access to good education as well as become a reason why they still settle at home and do not have the opportunity to work. Even in some countries, PwDs are not permitted to become owners for assets they have. Moreover, the majority (84%) of those with no job/business in the rural area were not looking for work.²

To respect, protect and fulfil the rights of PwDs, Indonesian government regulates plenty of laws, such as Law on ratification of CRPD, Law on Children Protection. On March 30, 2007, in New York, the government signed the Convention on the Rights of Persons with Disabilities. Furthermore, the Convention is ratified by Law No. 19 of 2011. Based on that conditions, where Indonesia has many rules related to human rights so that the practice of respecting, protecting and fulfilling human rights are comprehensive at the availability in theory aspects, but might be debatable in fulfilling aspects.

The Indonesian government is increasingly showing their concern in fulfilling rights for PwDs in where they affirmed Law No 8 of 2016 pertaining PwDs on April 15. The Law defines PwDs are people who have physical, intellectual, mental, and sensory limitations for a long time wherein their interactions with the surrounding environment experience obstacles and difficulties to participate fully and effectively. Arguably, this regulation is new in Indonesia. So that from the availability of supporting regulations in the regional area is still lacking. At present, some regions that regulate rights for PwDs on their regional regulations are still carried out by big cities in Indonesia like Jakarta, Jawa Barat, and Yogyakarta. Meanwhile, small cities have not regulated this matter yet, including North Kalimantan Province and Nunukan Regency in particular. Then, it can be assumed that even if the policies adopted by these small regions are solely on the principle of respect for human rights given without discrimination and based on justice.

In order to fulfil rights for PwDs, there are principles, namely: respect for dignity, individual freedom, without discrimination, full participation, diversity and humanity, equal opportunities, equality, accessibility, capacity building and children's identity, inclusive, protection and special

¹ Navanethem Pillay, 'Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors', 17, 2010, 1–67.

² Christian Mina, *Employment of Persons with Disabilities (PWDs) in the Philippines: The Case of Metro Manila and Rosario, Batangas, Discussion Papers*, 2013.

treatment. Obligation to fulfil rights for persons with disabilities based on these principles is the state obligation, in this case, represented by the government, both the central and regional governments.³ Thus, in practice in Indonesia, rights for persons with disabilities are reaffirmed by the Regional Government through Regional Regulation, which specifically includes the rights for PwDs, including guarantees for the right to education for PwDs.

Regarding Educational right, Article 40 of Law No. 8 of 2016 affirms that the right to education for PwDs must be fulfilled not only by the Central Government but also by the Regional Government. The Central and Regional Governments have an obligation to fulfil this right in all levels of school education related to the authority of each government.⁴ The implementation includes an inclusive education system, twelve-year compulsory education program, school location is close to home, teachers' skill, and necessary facilities.

Nunukan District is one of the administrative regions in Northern Borneo Province as well as the newest province in Indonesia. Nunukan is the largest administrative area and has the most population if compared to other administrative regions in North Kalimantan. Also, geographically this region is an area directly adjacent to Tawau Malaysia either by land or water, so the "border area" variable is represented in this region. The total population in this region is 140,567 inhabitants. As yet, there is no particular local regulation in Nunukan in regarding PwDs. So far, Provisions regarding PwDs are only included in the Regional Regulation on Children. Based on data from the Department of Social Affairs of Nunukan District in 2016, there are 264 people with disabilities in Nunukan Regency. Even though to date, there is no further information whether all of them are PwDs in school-age or not, it causes the lack of data in Nunukan District.

Normatively, PwDs should enjoy their right without problems or barriers as well. However, it requires high commitment from all of the stakeholders, in particular regional government. It is starting from providing legal instrument as a basic needs in state law. Nevertheless, in reality to date, in Nunukan District has not been set up that local regulation. Therefore, with limitations of existing rules, Nunukan Government considered policies to fulfil the rights based on the mandate of the Indonesian Constitution where all citizen must enjoy the right to education, including PwDs. According to the backgrounds, the main question in this study is why Nunukan District Government should be provided policies in order to fulfil the right to education for PwDs in its region.

RESEARCH METHOD

According to the problem, this research used normative legal research method which examines written Law from scope and material and theory aspects⁵ In this research, authors used statutory, and case approaches. A statutory approach is an approach that is carried out by examining all laws and regulations relating to the legal issues being addressed. Meanwhile, Case approach is an approach that is carried out by examining cases related to the issues faced that have perma-

³ N Nurhidayatulloh and others, 'Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW', *Jurnal Dinamika Hukum*, 18.2 (2018), 182–93 <<https://doi.org/10.20884/1.jdh.2018.18.2.810>>.

⁴ Rudyanti Dorotea Tobing, 'Prevention of Child Marriage Age in the Perspective of Human Rights', *Sriwijaya Law Review*, 2.1 (2018), 1–17 <<https://doi.org/10.28946/slrev.vol2.iss1.107.pp1-17>>.

⁵ Abdul Kadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: PT.Citra Aditya Bakti, 2004).

ment legal force. The character of this research is participatory, which is a combination of data and interview result with competent people (local government and particular school principals) as key informants. Data characteristics are primary data and secondary data. Primary data are regulations, various local government policies, and the results of interviews with informants. Meanwhile, secondary data resulted by search of articles related to this problem, research literature, such as conference proceedings, articles or documents from the scientific website, journals, and books related to the topic; and additional resources such as dictionaries, encyclopedias, brochures, and maps. The data in this study were obtained by two research instruments, namely interviews and document studies. Interview techniques refer to unstructured models, while document study techniques collect data with legal documents and availability of literature. This study used qualitative analysis model. Qualitative was used to analyze regional policies and regulations related to human rights standards. According to the research topic, the location of this study was carried out in Nunukan District. Well known, Nunukan is one Administrative Region in Northern Borneo Province. Also, a regency is bordering directly by sea and land with Neighbouring Country, Malaysia.

ANALYSIS AND DISCUSS

Legal Regulations concerning Persons with Disabilities in Indonesia

Human rights rules are contained in several laws Indonesia, firstly stipulated in the 1945 Constitution, up to specific regulations on human rights. Article 28I Paragraph (2) 1945 Indonesian Constitution stated that "Everyone has the right to be free from discriminatory treatment for any reason and has the right to protection from such discriminatory treatment". Furthermore, Article 3 Paragraph (1) Law No. 39 on 1999 affirmed that "Everyone is born equal in dignity and human rights, and is blessed with intelligence and reason to live with others in a spirit of brotherhood". These rules are the legal basis for non-discrimination principle in Indonesia.

Moreover, Indonesia is a state of some international human rights covenants. The commitment as a state party in promoting human rights should strive for the government as the representative body of the state.⁶ Legal and human rights experts interpret fundamental rights, especially Economic, Social and Culture Rights in ICESCR as positive rights because the state must have an active role to implement these rights.⁷ The main clause is Article 2 of ICESCR expressed that:

"Each State Party to the Covenant promises to take steps, individually and through international assistance and cooperation, especially economic and technical, to maximize available resources, to achieve progressively the full realization of the rights recognized in This Covenant in all appropriate ways, including in particular the adoption of legislative measures."

Thus, state parties have an obligation to take steps without considering their economic progress and ensure to respect human rights for all people in their region.⁸

⁶ Boer Mauna, *Hukum Internasional (Pengertian, Peranan, Dan Fungsi Dalam Dinamika Global)* (Bandung: Alumni, 2005).

⁷ DJ Haris, *Cases and Materials on International Law*, ed. by Sixth Edition (London: Sweet and Maxwell, 2004).

⁸ Johannes D Masenus Kasim, Ihdhal. Arus, *Hak EKonomi, Sosial Dan Budaya (Esai-Esai Pilihan)* (Jakarta: eLsam, 2001).

The existence of PwDs has started since the 1970s. The Indonesian government, to respect, protect and fulfil rights for PwDs has enacted various laws and regulations. Broadly speaking, several regulations relating to their rights as follows:

Ratification on the Convention on the Rights of Persons with Disabilities (CRPD)

Indonesia becomes a state party of its Convention since signed the Convention on March 30, 2007, in New York. That action shows Indonesia has seriousness to respect, protect, fulfil and promote the rights of PwDs. When signed the Convention, Indonesia signs without conditions, it means Indonesia accepted all of the requirements within the Convention. However, The Government has not signed the Optional Protocol of the Convention. Nonetheless, as a signatory country or state party, Indonesia is be obliged to implement whatsoever the provisions in that Convention.

The Convention ratified by Law No. 19 of 2011 on Ratification of the Convention on the Rights of Persons with Disabilities. Related to the right to education for PwDs, they are emphasized by the preamble of this Convention. In this part, the state must recognize the accessibility to the physical, social, economic and cultural environment importance, health and education and for information and communication as well, in enabling persons with disabilities to enjoy all of the human rights and fundamental freedoms. Additionally, this Convention also requires every state parties have an obligation to take steps in the legislative, administrative, social, educational, and all of the sectors to prevent PwDs from exploitation, abuse and ill-treatment, including gender-based aspects, both inside and outside of their home.⁹

Specifically pertaining the right to education for PwDs in the Convention on regulated in Article 24, generally was stated that as a state party of its Convention must provide recognition of the right to education to persons for PwDs. It is intended to implement fulfilment based on equal opportunity and without discrimination. Furthermore, States-parties must ensure that the whole education system fulfilled at all levels and lifelong learning are directed at: a) full development of human potential and based on the principle of respect for human dignity, and strengthening of respect for human rights, and diversity. b) the development for PwDs, their creativity, their mental and physical abilities, and their potential. c) provide opportunities for people with disabilities to participate effectively in the community.

The recognition must be followed by the effort of the state that every PwDs especially children in the compulsory age to school have access to attend in the inclusive school at levels of education, in addition, the state parties should provide reasonable accommodation for PwDs or their family in order to get this rights. However, it is not easy as what the provision express for developing countries to implement it, due to the economic aspect in developing countries. However, well known, that is a norm in the treaty law called *pacta sunt servanda* that every agreement is consent to be bound for every party. So, when Indonesia ratified this Convention, it means Indonesia is obliged in obeying that rules.

⁹ Arkadi Toritsyn and A. H. Monjurul Kabir, 'Promoting The Human Rights of Persons with Disabilities in Europe and the Commonwealth of Independent States: Guide PROMOTING THE HUMAN RIGHTS OF PERSONS WITH DISABILITIES IN EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES: GUIDE UNDP Regional Centre Fo', 2013.

Discussing the access in that Convention, the state parties also have to provide opportunities for PwDs to develop their skills in social life based on discrimination and equal principle. The state yo achieve that goals must take appropriate steps, for example providing Braille facilities, other scripts, alternative and augmentative modes, formats, and means of communication and mobility skills. The state is also facilitating sign language learning and promotion of the linguistic identity of the deaf. The facilitates provided in order to assure and assist PwDs, especially students with disability in the school so that they can enhance their potential, social communication, and academic skill. In this Convention also emphasize that the state should provide facilitator or teachers and academic staff that have appropriate qualify with every impairment of students in the school.

Law on Child Protection

In this Law, the right to education for PwDs, especially for children, is regulated in detail in Article 9 Paragraphs (1) and (2) were emphasized that:

“1) Every child is entitled to acquire education and teaching in the framework of developing his/her character and level of intelligence in line with his/her interest and talent; 2) Besides the child's rights as meant in verse (1), particularly for a disabled child, he/she is entitled to get special education, while a child who excels is also entitled to get special education.”

Regarding accessibility, child protection law also emphasized that children with disabilities have opportunities and access to inclusive education and/or special education. In fact, this provision is not fulfilled comprehensively, the vast majority of children with disability in developing countries, Indonesia is no exception. They are not attendant to school due to the lack of access to do that. Needless to talk about the inclusive school where the range of problem is great in order to meet their individual special needs, even in the special school, the problems not only about inadequate infrastructure but also related to the educators, teachers in the special schools often-times have little or no training approach when they are working with a student with a disability.¹⁰

Law on Persons with Disabilities

The Indonesian government is increasingly paying attention to the fulfilment of rights of PwDs. Law No. 8 of 2016 on Persons with Disabilities stipulated that "Persons with disabilities include those who have physical, mental, intellectual long-term or sensory impairments which in interaction with various obstacles can hinder their full and effective participation in a society based on equality with others". Furthermore, in Article 5 affirmed that one of their rights is right to education. Based on UNICEF data (2013) that children with disabilities are often denied their right to education, which reduces their rights to enjoy their citizenship rights, find work and take valuable roles in society. Survey data from 13 countries and middle-income groups explained that children with disabilities aged between 6-17 years are significantly less to put a school than the person who is not disabled.

Besides, the right to education for PwDs is also contained in Article 10, which includes getting quality education in education units in all types, lines and levels of education in an inclusive

¹⁰ D. J.K. Cornelius and Janaki Balakrishnan, 'Inclusive Education for Students with Intellectual Disability', *Asia Pacific Disability Rehabilitation Journal*, 23.2 (2012), 81–93 <<https://doi.org/10.5463/DCID.v23i2.111>>.

and specific manner, equal opportunities to become educators or education personnel in education units in all types, and pathways and levels of education. Equal opportunities as quality education providers in units education at all types, paths, and levels of education; and obtain proper accommodation as a student. Normatively, this article guarantee that every student with a disability has access quickly to enjoy all of their rights in education aspect, it means at the same time the duty of governments to ensure, respect and fulfil these rights both central and regional government. Unfortunately, in fact, all of those services sometimes be available without strong advocates; for example, there are depend heavily on support service; accommodation is not available for them. Hence, to get quality education will be gained if the Government agencies with authority to enforce disability legislation can be formidable advocates.¹¹

Discussion about regional government authority in handling educational affairs in its region In Article 11 of Law No. 23 of 2014 concerning Regional Government it is stated that "(1) Concurrent administrative affairs as referred to in Article 9 paragraph (3) consisting of the authority of Regional Government Affairs. (2) Mandatory Government Affairs as referred to in paragraph (1) shall consist of Government Affairs relating to Basic Services and Government Affairs not related to Basic Services ". Furthermore, Article 12 paragraph (1) states that government affairs related to essential services must include: a. Education; b. Health; c. Public works and spatial planning; d. Housing and housing area; e. Peace, public order and community protection; and f. Social. Based on the description of Article 12 paragraph (1), it can be concluded that educational affairs are included in the compulsory governmental affairs related to essential services so that education is governmental affairs also be held by the Regional Government.

The Local Government Policies in Fulfilling Right to Education for Disabilities Persons

Nunukan was formed as an autonomous region by Law No. 7 of 2000 on Amendment to Law No. 47 of 1999 pertaining the District Formation of Nunukan, Malinau, West Kutai, West Kutai, East Kutai, and Bontang. The population in Nunukan is 140,556 persons. As mentioned in the introduction, there are several population in Nunukan categorized as PwDs, here the detail of that number which separates according to their impairments:

Tabel 1. Number of type of disability in Nunukan District

No	Type of Disability	Total
1	Physical Impairment	60 person
2	Sensory Impairment	29 person
3	Speech impairment	26 person
4	Mental impairment	28 person
5	Physical and mental impairment	19 person
6	Others	102 person
7	Total	264 person

¹¹ David Larson, 'Access to Justice for Persons with Disabilities: An Emerging Strategy', *Laws*, 3.2 (2014), 220–38 <<https://doi.org/10.3390/laws3020220>>.

According to the data in table 1, it has seen the number of others impairments has a high level, while physical and mental impairment is nineteen persons. There are no further data about the term of other impairment. The body has authority to release the data just classified these impairments, namely physical, sensory, speech, mental, physical and mental impairment, so that those people are not including of these impairments is categorized in others impairment.

In an effort to fulfil human rights, especially the right to education for PwDs, the Nunukan regional government has made several programs given authority to related institutions, namely the Nunukan Education Department. Also, the fulfilment of human rights was provided by the Nunukan Regional Representative Council (DPRD) through the Regional Legislation Program. Those programs are dissemination of human rights, regional legislation program, and special school.

Dissemination of Human Rights

Based on the interview result with Sherwin Evran SH, LL.M (Head of Documentation and Legal Aid) on February 23, 2017. The Nunukan local government implements this program. In 2017, this program specifically invited regional work units to develop the National Action Plan on Human Rights (RANHAM). This annual program is not optimal because some units do not understand the plan. The legal basis for implementing this program refers to Presidential Decree No. 75 of 2015 on the 2015-2019 National Human Rights Action Plan. The plan is a document that covers objectives, strategies and focuses on priority activities of Indonesia's national action plan for human rights and is used as a reference for ministries, institutions and local governments to implement respect, protection, compliance, enforcement and promotion of human rights in Indonesia (Article 1 Paragraph 2). Additionally, Article 6 stipulated that to implement the plan as referred to in Article 2, ministries, institutions, and regional governments must prepare Human Rights Measures determined every 1 (one) year. This mandate is carried out by the Nunukan government through annual meetings with all stakeholders, including the community. The government socializes when there are the latest human rights regulations, including when the Disability Act was issued, the government also reporting about the development of fulfilling the rights for PwDs. On this agenda, the government also hearing with the community about people with disabilities in their surrounding, eventually in this meeting had a recommendation for the government to provide policies in protecting and enjoying PwDs's rights in this region.

Regional Legislation Program

This program is the legislative authority to formulate regional regulations. According to interview result with the head of the Public Relations Division at the Assembly Secretariat in the District of Nunukan on February 23, 2017, to date in Nunukan, regional regulation on PwDs has not been available in the local legislation program. It caused many significant programs must be regulated by the regional government, bearing in mind that this region is a new administrative region in the latest province. Hence, the main focus of regional legislation is related to vital infrastructures, like the availability of official offices which of course requires a hefty fee as well. Nevertheless, provisions of PwDs have been regulated in Nunukan Regional Regulation No. 05 of 2012 on Management and Implementation of Education. This regulation specifically issued

clauses for special education programs. Article 48 paragraph (1) stated that: “Special education is education for students who have difficulty in following the learning process because of physical, emotional, mental, social, and/or have special intelligence and talent.”

Special education is the right for all citizen who has physical, mental, emotional, and social barriers, as regulated in Article 66. Based on the mandate, local governments must designate elementary schools, junior high schools, senior high schools, or equivalent schools to facilitate students with special needs. Concerning the education fund stipulated in this regulation, the regional government is required to provide an education budget at least twenty per cent excluding salaries for teachers, educators and continuous education training. Besides, according to Article 53 paragraph (4) stated that the funded component includes activities related to the welfare of teachers, staff and the provision of education, infrastructure, teaching and learning, supervision, coaching, and monitoring.

Special School

Currently, Nunukan government has a Special School for PwDs is located in the village of Binusan, Nunukan. The school starts from elementary with 51 students, junior with 15 students, and high school with 15 students, also has the educators are nine teachers. Based on the interview results on February 24, 2017, with Mr Jet Simon, SP.d as the Headmaster, as yet the local government is trying to fulfil the right to education for PwDs, such as provide the school bus and child nutrition is taken three times a week. However, there are plenty of obstacles faced by the local government in the school, for example, the ratio between students and teachers is not ideal—the location of the school in Binusan village which is the last village in Nunukan. The school is quite far from the city, so it makes it difficult for parents to drop off and pick up their children to school. Based on the direct observation in the location, Facilities/infrastructure such as school buildings and learning tools to support vocational education for students with disabilities are inadequate. There is no official data for children of school age in Nunukan District also become a problem that is occurring in this district. Thus, currently, students in this school are only children who come from Nunukan. Instead, Nunukan District has other regions, namely Sebatik, Sebuku, and Krayan. In sum, currently, students in the school did not come from all regions in Nunukan District.

Major Problem

As a result of research primarily through direct observation, the authors see that the main problem that causes some policies taken by local governments have not been maximized is due to the absence of legal regulations intended explicitly for protection and fulfilment of the rights for PwDs. Finally, the vacuum of Law has implications for the unavailability of adequate data related to the number of persons with disabilities based on compulsory school age, based on gender age, and data on the types of disabilities experienced by persons with disabilities in Nunukan district. Under these conditions, it is unfortunate, concerning the right to education for PwDs in Nunukan District, what is seen is that this right gained only supported by desires from their parents, the state is not fully present to realize these things. Moreover, the legal vacuum is due to the consideration that there is not enough budget to provide all the facilities that if regulated in a re-

gional regulation. Whereas, the right to education is a fundamental right recognized in the Constitution that must be enjoyed by all Indonesian citizens based on the principle of non-discrimination and equality.

CONCLUSION

Nunukan Regency is one of the regions in the Republic of Indonesia. Where one of the regional tasks in the decentralized system is to carry out part of the regional affairs that are given authority over it, one of them is education. Education in the Indonesian Constitution is a fundamental right that must be enjoyed by everyone, including those classified as persons with disabilities. Fulfilment is the responsibility of the state which is regulated in many national regulations in Indonesia to the regional level. However, in the district of Nunukan, the regulation was not yet available due to limitations of the regional budget, so the regional legislation program was directed at fulfilling infrastructures that were considered as the main one. Moreover, the district government of Nunukan is pursuing various policies based on several relevant regional regulations such as the local regulation on education. In the end, the absence of that special rules implements those policies are not optimal.

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