

Conference Paper

Legal Model for Fulfilling Educational Rights for Persons with Disabilities in the Covid-19 Pandemic Era

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Abstract.

The state has provided guarantees in the education of all citizens. In addition, the 1945 Constitution has clearly stated that education is a human right. Of course, this includes people with disabilities as the nation's successors. The fulfillment of the rights of persons with disabilities in Indonesia has various problems in terms of the education pattern, which is still segregated due to lack of accessibility and supporting facilities to fulfill the educational rights of persons with disabilities. This is even more difficult with the policy of learning from home by using online learning facilities. As previously mentioned, the Covid-19 pandemic has forced all students, including persons with disabilities, to adapt to conditions by undergoing distance learning. Of course, various related policies and the distance learning processes must protect people with disabilities to continue receiving education, especially basic education, which must be followed by all Indonesian citizens. Article 4 paragraph (1) of the National Education System Law, which upholds human rights, religious values, cultural values, and national pluralism, implicitly affirms this principle. Therefore, it is necessary to build a mechanism and legal model to fulfill the educational rights of people with disabilities in the era of the Covid-19 pandemic. As for the formulation of the problem in this study, namely: How to ensure disabled people's right to education? What is the legal model for fulfilling the educational rights of Covid-19 Disabilities?

Keywords: persons with disabilities, education rights, Covid-19

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1. INTRODUCTION

While each country's philosophy will inform the specific laws that govern its national education system, there is a fundamental philosophy that can be applied across all nations; this philosophy entails a set of basic obligations for every nation. Every human being has the right and duty to participate in and contribute to the nation's educational system [1]. Article 4 paragraph 1 states: "Education is democratic, fair, and nondiscriminatory by upholding human rights, religious values, cultural values, and national inclusivity". That education must be given to every citizen without exception based on

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the values that grow and develop in Indonesia and the involvement of the community and the management authority and supporting institutions will be greater than the central government.

Education is a fundamental human right in Indonesia, Article 31 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Therefore, it is the responsibility of all levels of government to ensure that citizens, including those with disabilities, have equal access to educational opportunities. When considering the implications of the Disability Law for social justice, it is important to consider the question of how the law plays a role in the genesis, perpetuation, and eradication of discrimination against people with disabilities. People with disabilities continue to face significant barriers when attempting to exercise their right to an equal education due to stigmas surrounding those with disabilities. It holds that people with disabilities have physical and mental characteristics that set them apart from the average human in terms of their physical, sensory, cognitive, neurological, or emotional capabilities [2].

The Covid-19 pandemic poses a serious threat to the worldwide effort to ensure that all children, regardless of their ability to pay, have access to a quality education. The coronavirus disease 2019 (COVID-19) has now affected nearly every person on the planet, The fifth pandemic since 1918. Wuhan City, China, reported a cluster of new pneumonia cases in late December 2019. First symptoms appeared by December 1, 2019. The patient was diagnosed with viral pneumonia after presenting with fever, malaise, dry cough, and dyspnea [3].

The Covid-19 pandemic will hit Indonesia this year. Following the designation of a Health Emergency Society under Law 6 of 2018 on Health Quarantine, the Indonesian Central Government (Government) issued Government Regulation 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Coronavirus Disease 2019 (Covid-19) (Health Quarantine Law). Large-Scale Social Restrictions include mobility, crowds, and public activities (PSBB) that govern things like school and workplace holidays. The government has repeatedly renewed the PSBB policy, which was later renamed the Policy for Restricting Community Activities. (PPKM). Indonesia is one of the 19 co-affected countries that also has an impact on problems in various sectors of human life, starting from the economic, education, tourism, trade and other sectors. The COVID-19 virus attacks humans regardless of age, from the age of children to the elderly are capable to be the victims of this deadly virus. As a result of the COVID-19 pandemic, several policies have been implemented to break the chain of the COVID-19 spread in Indonesia [4]. The Covid-19 pandemic situation has prompted the Government to stop learning and teaching activities at educational institutions, from early childhood

to higher education level, to be replaced with online learning at home. In any condition, including in a disaster situation, the right to education must be prioritized and fulfilled by the state [5].

This is required by Law Number 8 of 2016 concerning Persons with Disabilities (Law on Persons with Disabilities), specifically Article 5 paragraph (1) letter e, which states that "Persons with disabilities have the right to education," becoming the basis for protecting and fulfilling this right. In the sixth section of the Law on Persons with Disabilities, it is specifically regulated regarding the "Right to Education" where Article 10 states the limitation of the right to education for PWDs, which includes:

1. Students with disabilities should have access to high-quality education at all types, pathways, and levels.
2. All types, pathways, and levels of education produce teachers and education;
3. become educators from all types, pathways, and levels of education;
4. receive appropriate accommodations as students.

To implement the Disability Law, the government issues Government Regulation Number 13 of 2020 concerning Adequate Accommodation for Students with Disabilities (PP 13/2020), which emphasizes the right to education for people with disabilities. In principle, this policy is an emergency that must be done during the Covid-19 pandemic to continue to meet the educational rights needs of students, including persons with disabilities. However, the problems encountered by people with disabilities are more severe when compared to normal students. Due to mobility and access issues, it's difficult for disabled people to adapt to home-based, distance education.

With regard to the implementation of distance learning, legal certainty for implementing information and communication technology-based education should not injure the rights to education, especially basic education which must be followed by all Indonesian citizens. Distance learning that is in accordance with efforts to fulfill the right to education in Indonesia during the Covid-19 period is learning that has focused on the nature of national education itself. This includes education that is based on the Pancasila ground-norm, the 1945 Constitution of the Republic of Indonesia, and the National Education System Law, which emphasizes that education must be implemented in a democratic, fair, and non-discriminatory manner and upholds human rights, religiosity, and cultural diversity. Distance learning that, and keeps abreast of developments in information technology, the implementation of which involves synergies between the government, educational institutions, and the community in the spirit of mutual cooperation [6].

Problems in the distance learning policy for people with disabilities to be difficult to accept lessons. Children with certain types of disabilities can acquire material while studying using WhatsApp with the help of their parents. Intellectually disabled children, even when accompanied by their parents, find it difficult to understand. The desire to learn more about how people with disabilities can realize their human right to an appropriate education motivates this research. And, in the event of a Covid-19 pandemic, what legal framework is in place to ensure that people with disabilities have access to appropriate educational opportunities.

2. METHODOLOGY/ MATERIALS

This study falls under the category of normative legal research because it seeks to establish a consensus on a set of predetermined questions. In order to find solutions to the most pressing issues, the researchers adopted an analytical and philosophical methodology [7]. It will be analyzed using a descriptive method, which entails detailing the relevant legal framework, theories, and protections in order to better understand the issue at hand [8].

3. RESULTS AND DISCUSSIONS

4. Fulfilment of Person with Disabilities Education Rights as Human Rights

The basic philosophical proposition upon which doctrine of human rights is founded is the existence of a rationally identifiable moral order, the legitimacy of which predates the social and historical conditions on which all humans rely and which applies to all humans at all relevant times. This view holds that moral principles and ideas can be independently verified on a global scale. Nowadays, human rights doctrine is just one of many universalist moral stances. Human rights are based on the idea that there is a rationally identifiable moral order whose legitimacy predates the social and historical conditions on which all humans depend. This moral order applies to all humans at all times and in all places [9].

Several pre-social domains provide the foundation for moral and just perspectives. To defend human rights, one must have a means of identifying and distinguishing between competing moral principles and beliefs. This includes the view that every rational individual has equal moral value and is the custodian of natural rights are

grounded in moral universalism and the idea that all humans belong to a single, interconnected global community. Truths that are universal across time and space can be identified rationally, which is a premise of moral universalism. Aristotle and the Stoics are considered to be the progenitors of moral universalism [10]. Therefore, Aristotle's *Nicomachean Ethics* provides a concise summary of the evidence for the existence of a natural moral order [11].

Thus, human rights have broadened to encompass other areas, such as the classroom. Since the right to education is guaranteed under international law and has been defined in a number of human rights instruments, it can be invoked against the government. A fundamental human right is access to education, as guaranteed by Article 26(1) of the UDHR. Education is a human right. International law protects parents' right to guide their children's religious and moral development (see Article 18 of the International Covenant on Civil and Political Rights and Article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Article 13 (1) of the International Covenant on Economic, Social, and Cultural Rights guarantees everyone the right to education (ICESCR).

The CRPD redefines disability as a social construct and "humanizes" disability issues" [12]. Included is the right to reasonable accommodation and the belief that disability results from the social environment failing to meet disabled people's needs and aspirations [13]. Human rights in the context of disability are highlighted, which lends the work its unique quality. It is important to note that the CRPD not only protects civil, political, economic, cultural, and social rights; outlaws disability discrimination. Article 24 of the CRPD guarantees disabled people's right to education. This clause has wide-ranging effects and shouldn't be separated. It should be understood in light of Article 3's overarching principles and other textual rights. Article 24 aims to give all students, regardless of background or ability, access to a high-quality education.

In the 2016 CRPD Committee b, paragraph 10, namely:

1. Learners have inherent rights as human beings. In particular, a child's parents or guardians do not have the right to decide what school a child attends. In this situation, the rights of the child dictate the parental obligation;
2. A guiding principle that places a premium on the success of each student, acknowledges their unique set of circumstances, and encourages them to actively participate in and improve society,;

3. Tools for achieving other basic human rights. This is the primary means by which people with disabilities can escape poverty, increase their level of community participation, and shield themselves from exploitation. Further, it is the most effective strategy for creating a more welcoming society.

The result of a sustained and proactive effort to eliminate all obstacles to students' access to quality education, as well as adjustments to institutional culture, pedagogical approaches, and day-to-day operations to ensure that all students are treated fairly and have equal opportunity to succeed. Article 28C paragraph (1) Article 31 of Indonesia's 1945 Constitution and Articles 12, 42, 48, 54, and 60 of the Human Rights Law all guarantee disabled people an appropriate education. Article 28C paragraph (1) of the 1945 Indonesian Constitution explicitly affirms the right to education. First, the right to education is the right to fulfill basic needs through education, science, technology, arts, and culture. Both the economic and social benefits of personal growth and education were emphasized. Second, "to improve life and humanity" highlights how crucial it is. The right to education encompasses a wide range of activities that aim to enhance human well-being and prosperity. This means that the economic, social, cultural, and other dimensions are all interconnected with the right to education.

Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection (Child Protection Law), and the Law on Persons with Disabilities, among other regulations, all place special emphasis on protecting and realizing the right to education within the context of national law. For the purpose of enforcing rules. National Education System Law Article 4 (3), in principle, that education is regarded as a lifelong process of civilizing and empowering students. In addition, the National Education System Law requires that all sectors of society be involved in the planning, development, delivery, and evaluation of educational programs and services under Article 4, Paragraph 6.

5. In the Midst of the Covid-19 Pandemic, A Legal Model to Ensure the Education Rights of People with Disabilities

The actualization of the right to education for individuals with various types of disabilities is a human right that has been explicitly regulated in international and national law. The fulfillment of this right to education is a manifestation of the state to protect and serve persons with disabilities, including in the field of education, despite the Covid-19 pandemic, is not a reason to restrict or remove access to educational opportunities for individuals with disabilities. Organization for Educational, Scientific, and Cultural Activities of the United Nations (UNESCO) has responded to the negative impact of

distance learning, which in 2020, UNESCO identified 13 detrimental consequences of school closures due to the pandemic. One of them is the disruption of the learning process for people with disabilities as a result of lack of accessibility and technology to support distance learning for people with disabilities. Because people with disabilities need assistive devices to receive lessons, distance learning methods carried out from home will certainly hinder people with disabilities [14].

According to the definition of "distance education," this type of schooling takes place when "students are separated from educators and learning uses various learning resources through communication technology, information, and other media," is officially recognized by the National Education System Law as well. The concept of distance learning adopted in Indonesia during this pandemic was carried out based on an approach according to the availability and readiness of facilities, including online dominant, online/offline combination and dominant. In connection with the specificity of each individual with a disability, the use of online and offline learning strategies should be adapted to the variety of disabilities by taking into account the abilities, needs, achievements and comfort of each individual [15].

Based on this, the researcher formulated an education model for persons with disabilities during the COVID-19 pandemic, which is outlined in the table that is presented below:

Based on the table above, it can be said that there are three models in fulfilling disability education rights during the Covid-19 pandemic, namely a holistic, inclusive and affirmative approach. These three models must be synergized with the provisions of the legislation in order to have binding power and coercion to be implemented. At a minimum, it is regulated in a government regulation to minimize time and ratification if it is made in the form of a law. In addition, during the Covid-19 emergency, the laws and regulations made must be more progressive because the country is in a precarious situation facing Covid-19. Therefore, extraordinary efforts are needed to fulfill the education rights of persons with disabilities during the COVID-19 pandemic.

6. CONCLUSION AND RECOMMENDATION

The Right to education for persons with disabilities has been identified as a human dignity in many international instruments, including that of the Universal Declaration of Human Rights, the Convention on the Right of Persons with Disability, and national law, namely Law Number 39 of 1999 concerning Human Rights, Law No. National Education System No. 20 of 2003, and Law No. 8 Year 2016 concerning Persons with Disabilities,

TABLE 1: Recommendation of Formulated an Education Model for Persons Disabilities During the Covid-19.

No.	Problems	Model	Reccomendation
1.	Unclear distance learning approach	Holistic Approach	Each institution is responsible for determining the most effective method of implementing distance learning for its program, keeping in mind that this method may evolve over time. For instance, schools could provide short videos on physical education for all students, use virtual hangouts to help students socialize, and provide online counseling services.
2.	The problem of distance learning presents discrimination	Inclusive approach	An approach that recognizes that in the classroom students differ from one another in understanding, processing, and expressing things differently. Teaching and learning should utilize multiple methods to support all learners, including, but not limited to persons with disabilities.
3.	The current legal system does not adequately protect the rights of students with disabilities to receive an appropriate education, which is especially concerning in light of the ongoing COVID-19 pandemic..	Affirmative Legislation Approach	It is necessary to integrate laws and regulations at a minimum level of government regulations or higher regulations. To provide affirmative policies for all policies related to disability education rights by regulating disability-friendly distance learning mechanisms and giving educational institutions the obligation to implement them with administrative sanctions consequences if they violate.

and many other instruments that regulate both. A holistic, inclusive, and affirmative approach is needed to ensure disabled people’s right to education during the Covid-19 pandemic. The three models are needed to fulfill the educational rights of disabled people during the COVID-19 pandemic.

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