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Legal Aspect of Inclusive Education for Persons with Disabilities in Indonesia

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Abstract

Education is at the forefront of global development. Meanwhile, persons with disabilities (PWD) play a prominent role in development. Based on the importance of the role of PWD in development, it is necessary to improve the rights, dignity, and welfare of persons with disabilities. One of the action that can be taken by providing equal, equitable and quality educational services according to their physiognomies. Thus, education can be provided through Special Schools and Inclusive Education. The implementation of inclusive education in Indonesia is influence by several social phenomena, but social phenomena often coexist with legal issues. This article aims to identify the legal barriers that hinder the Indonesian government from bringing the right to inclusive education for persons with disabilities in Indonesia. This article is a socio-legal article in which all the information gathered are analysed qualitatively. The analysis shows that, there are weaknesses in the legal substance. The weakness in legal substance strengthens the shortcoming in legal culture, which constitute the social phenomena in society. Therefore, the action that the Indonesian government will take need to take into account the weaknesses in legal substance and the shortcomings in the legal culture.

Keywords: Inclusive Education, Persons with Disabilities, Legal Culture, Indonesia

1. Introduction

The commitment to uphold the human rights of persons with disabilities will only be beneficial if it includes the discussion about the right to education for persons with disabilities. The right to education as an object of rights must be fulfilled, and persons with disabilities must be regarded as the legitimate subject holders of the right. At the same time, the discussion on human rights, will covers on the responsibilities of the government as the benefactor.

The basic rights of persons with disabilities must be given special attention since they are categorized as vulnerable or marginalized groups. Generally, the community conceives that the right to education for persons with

disabilities can be fulfilled by sending them to Special Schools. However, the data from the Ministry of Education stipulates that in 2017/2018, the total number of Special Schools in Indonesia is 2,157 (Center for Education and Culture Data and Statistics, Ministry of Education and Culture Republic of Indonesia, 2018). The distribution of Special Schools in several regions in Indonesia are at the same time uneven. Therefore, many remote areas in Indonesia do not have Special Schools. The number of regular schools are higher than the Special School, for example, Natuna Island, Riau Islands, has one Public Special School only. Moreover, according to the data from the National Ministry of Education of Indonesia in 2016/2017, there are only four Public Special Schools and one Private Special School in West Papua Province (Center for Education and Culture Data and Statistics, Ministry of Education and Culture Republic of Indonesia, 2017). In general, the condition of Special Schools is of a lower standard in comparison with regular schools.

In the 19th century, there was a debate related to education for persons with disabilities in Europe. There were pedagogical principles for schools and special classes in Germany and Norway. Norway divided students with disabilities into four categories: First, those who after two or three years of special study can be brought back to ordinary school; second, those who continue in these classes for confirmation; third, those whose are in ordinary classes are deemed insufficient will return to special schools; and fourth, those which really cannot be educated (Copeland, 1995). In Britain, Shuttleworth advocated the establishment of separate schools for the education of persons with disabilities, especially for persons with mental disabilities. As a consequences of Shuttleworth approach,, students segregation occurs, while the approach adopted by Norway that persons with disabilities, to either re-entering regular school when achieving comparable levels in special classes allows integration . As such, Shuttleworth limits education for persons with disabilities and implies restrictions on the social experience and potential of these students.

There are several mechanism of education services that can be used for persons with disabilities. The mechanisms as proposed by UNICEF are (UNICEF, 2012):

- a. Exclusion, where persons with disabilities are not given any access to get an education in any form, either directly or indirectly.
- b. Segregation is intended as education for people with disabilities by presenting a separate environment from regular students. Segregation is designed or used to respond to certain disorders from persons with disabilities. Segregation provides isolation space from regular students.
- c. Integration is an educational service that places students with disabilities in regular schools, as long as students with disabilities can adjust to the school's standard requirements (UNICEF, 2012).¹ In this service, students can remain in a different location from regular students.
- d. Inclusion or inclusive, involving students with disabilities along with regular students study in the same class, in the same school, in the same environment. The approach is taken to overcome barrier, providing all students with a fair and participatory learning experience and learning environment that best suits their requirements and preferences. Hence, in the mechanism of inclusive education services, there is a systemic reform process that requires changes and modifications in methods and strategies in education.

The development of human rights requires inclusive mechanism to be used as in developing education services for people with disabilities. Inclusive education is not only meant education services for persons with disabilities, but also for all individual. The aim is to remove barriers to the limited participation of all students. Inclusive education respects the different needs of each student. Thus, it shall be expected that Education for All (EFA) will be achieved without discrimination.

Basically, inclusive education is an important educational service mechanism for marginalized students (including persons with disabilities) since the segregation education service mechanism provides marginalization within the community. Differentiating or divide education services for marginalized groups has an impact on the ability of persons within social life in society as discussed in. the case of *Brown v. Board of Education* (Gauthier, 2014).

This case is about education for persons with disabilities, but this case offers the basis to understanding what inclusive education is about, which is education without barriers and discrimination. This case began in 1954, when a student who was not accepted to go to a regular school due to colour file a legal suit. This student was a marginalized minority student. Then, the case was brought to the United States Supreme Court, and the judge's pronounced that educational facilities were for all individuals without exception and separate education was not permitted. Gauthier draws conclusions from the above case by reflecting inclusive education for persons with disabilities. He assumes that education is inherent to all marginalized individuals, vulnerable individuals, including persons with disabilities. A similar opinion is also held by Polat. He explains that the mechanism of educational services that are able to meet the needs of every learner without conditions is amount to inclusive education because this will promote inclusive society.(Polat, 2011).

In ASEAN countries, inclusive education was first declared in Thailand through the Jomtien Declaration in 1990 by UNICEF, UNESCO, and UNDP. The Jomtien Declaration is the beginning of the United Nations' commitment in achieving the EFA. The core of the Declaration is access to education equitably for all persons or all children, ensuring education access and improving the quality of education equitably for all persons both underprivileged children, child laborers, street children, children in remote areas or minority groups, persons with disabilities, child workers migrants, refugees, child victims of war, and other marginalized persons/children. They shall get the right to free education, at least at the level of basic education. To remove barriers and to permit access to education, inclusive education adjusts the conditions of the students.

Inclusive education then develops in line with the agreement of the international community in committing to EFA. This international commitment is also influenced by the World Conference on Special Needs Education in Salamanca Statement 1994. The Salamanca Statement seems clearer in explaining inclusive education for persons with disabilities. Inclusive education for persons with disabilities has a different method than inclusive education for other marginalized groups. The removal of educational barriers for persons with disabilities, as explained by Sulaimanov, is done by other methods. The methods adjust to the conditions of persons with disabilities through adapted teaching methods, adaptation of curriculum, modified assessment techniques, and accessibility arrangements (Sulaimanov, 2015). Therefore, it is necessary to look at Salamanca's statement in paragraph two regarding inclusive education for persons with disabilities (Salamanca Statement, 1994);

- a. every child has a fundamental right to education, and must be given the opportunity to achieve and maintain an acceptable level of learning
- b. every child has unique characteristics, interests, abilities and learning needs
- c. education systems should be designed and educational programmes implemented to take into account the wide diversity of these characteristics and needs
- d. those with special educational needs must have access to regular schools which should accommodate them within a child-centered pedagogy capable of meeting these needs
- e. regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.

From the understanding of inclusive education, it is tangible that Indonesia, which upholds human rights, to play a major role in the implementation of inclusive education to wipe out the barrier and ensure non-discrimination in education for persons with disabilities. Indonesia has explicitly regulated inclusive education in Article 32 of Law 20/2003 on the National Education System which stipulates that special education is provided for learners who have difficulties in following the learning process because of physical, emotional, mental, and social deficiencies, and also for those with proven intelligence and especially gifted. Furthermore, with special education services is provided for learners in the remote and less developed areas, isolated areas, and/or for learners who are victims of natural disasters, suffer from social deficiencies, and those who are economically disadvantaged. Based on the issued above, it is necessary to understand the rule of inclusive education to enhance the right to education for Indonesian disable persons. This understanding is necessary to recognize the impedements that exist at the implementation stage in Indonesia, especially in terms of the law involved.

2. Literature Review

Persons with disabilities tend to be systematically excluded from mainstream education efforts. Special education students still lag behind their regular peers in the achievement of education, and they tend to be considered to have lower expectations, even though education is important for persons with disabilities (Aron & Loprest, 2012). Actually, in order to succeed in school, the disabled need responsive education with a good-quality (Croft, 2013). Meanwhile, the goal of inclusive education is not only merely for quality education but also education that lead to the social justice. Inclusive education provides an opportunity to make distinctions between 'moral' and 'mechanical' reforms. It is also revisiting the conceptions of the goal of schooling and education (Miles & Singal, 2009). For this reason, the joint commitment of the international community towards inclusive education for persons with disabilities needs to be appreciated.

Inclusive education for persons with disabilities in Indonesia is still weak since many impediments. It is still rare to find regular schools that can accept children with disabilities and there are still many regular schools that are reluctant to make these schools as inclusive schools. The findings of several previous studies concluded that problem of inclusive education in Indonesia is related to the culture, lack of understanding, ability, and experience of educators, and support from parents as well as the community (Ro'fah, 2011), (Amanda & Weny, 2015), (Satrio & Juhri, 2018) The phenomenon that occurred in previous studies shows problems from the aspects of education, social and policy. But these aspects are inseparable from the legal aspects. Legal aspects play a role in the implementation of a policy. Research findings in several countries link the sustainability of inclusive education with law enforcement. For example, the regulation regarding education in Rwanda focuses on segregation rather than on inclusion, even though there are Special Needs Education Policy in Rwanda, but the policy was not designed specifically for disabilities, it also covers other marginalized groups of vulnerable children (Vedaste, 2013). The inclusive education in Kenya are regulated in different, overlapping, and sometimes disjointed policies. In addition, there is no precise programmatic planning, thus makes it difficult to monitor the implementation (Murungi, 2013). Therefore it can be understood that law is the result of policy; law and public policy at the level of practice, cannot be separated and both are complementarity. Logically law without a policy will lose its meaning substantially, and a policy without legal sanction will be lacking in the operational dimension of the policy (Birkland, 2011).

2. Method

This article is a socio-legal research with qualitative data. Socio-legal is important as an interdisciplinary approach to analyze legal in the social phenomenon. Socio-legal research is not only relying on norms or text-based justice efforts, but also links social contexts that influence social justice. This is important for Indonesia's study since legal problem complexity that occurs and persists in Indonesia (Herlambang, 2008). This research analyzes the legal system in the implementation of national law related to inclusive education. This qualitative research selects the provincial-based on the percentage of the national gross enrolment rate of students with disabilities who enroll in an inclusive school. Those provinces are D.I. Yogyakarta and Central Kalimantan (Figure 1.). Data obtain an in-depth interview from inclusive schools; teachers, special guidance teachers (*Guru Pembimbing Khusus* - GPK), or principals from two Public Junior Secondary Schools (Sekolah Menengah Pertama Negeri – SMPN) in two provinces. Inclusive schools are taken randomly based on a large number of students with disabilities. Those inclusive schools are SMPN 2 Sewon in D.I. Yogyakarta, which has 666 students, consisting of 643 regular students and 23 students with disabilities. Meanwhile, the second inclusive school is SMPN 5 Palangkaraya with 308 regular students and 22 students with disabilities. The large number of students with disabilities is expected due to the better understanding of problems that occur in the implementation of inclusive education.

Figure 1. Scope of research

| | D.I. Yogyakarta | Central Kalimantan |
|--|---|---|
| Regulation | Governor Regulation on Implementation of Inclusive Education number 21 Year 2013. | Local Regulation of Central Kalimantan on Implementation of Education Number 10 Year 2012 |
| Students in regular school | 599,738 | 503,227 |
| Students with disabilities who enroll in inclusive school | 3,471 | 1,366 |
| % Students with disabilities who enroll in inclusive school from total students | 0.58% | 0.27% |
| National gross enrolment rate of students with disabilities who enroll in inclusive school | 0.34% | 0.34% |

Sources: Directorate of Special Education, Directorate General of Primary and Secondary Education, Ministry of Education and Culture Republic of Indonesia (2015/2016)

The enroll student with disabilities in inclusive school is determined 0,34% by the government. D. I. Yogyakarta has local regulation and has higher percentage of the national gross enrolment rate. Meanwhile, Central Kalimantan has almost reached the national gross enrolment rate, but it does not have specific provincial regulation regarding to inclusive education. This preliminary data indicates the diversity of social condition in Indonesia that may influence the fulfillment of inclusive education. Other data sources are come from; Directorate of Special Education, Directorate General of Primary and Secondary Education Ministry of Education and Culture, teachers/principal, and Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia - KPAI*). The primary data is followed by secondary data, which divided into primary sources and secondary sources. Primary sources consist of law, provisions, such as international conventions and national law. Secondary sources consist of books, journals, official statistics, research documents, published articles, reports of government or international bodies, and other library-based sources.

3. Results

In general, inclusive education is recognized by community as part of the educational service mechanism for persons with disabilities, although in fact, the meaning is much broader. In International Covenant on Economic, Social, and Cultural Rights (ICESCR), precisely in General Comment number 13 related to the right to education stipulates that there are four fulfillments of the right to education, and the member states of the covenant have obligations related to fulfilling the right to education as the commitment of human rights. The four obligations are available, accessible, acceptable and adaptable. According to Katarina Tomasevski, the four indicators of fulfilling the right to education are based on human rights. This is due to the state's obligation to fulfill the right to education, which is the responsibility of the government in upholding human rights (Tomasevski).

The availability of schools in the two provinces is quite adequate. The schools are located in the city of the surrounding population. Reasonable accommodation such as physical building accommodation for students with disabilities in SMPN 2 Sewon, D. I. Yogyakarta is better than in SMPN 5 Palangkaraya, Central Kalimantan, which is still not fully friendly to disable. The reason can be observed in road conditions and toilets. The physically reasonable accommodation is far from the ease of students with disabilities to use it. For instance, there are no

ramps and handles on the toilet. Likewise, the availability of teachers, especially GPK. Fortunately, SMPN 2 Sewon D. I. Yogyakarta has GPK from a special teacher who is a teacher in special schools. She comes to inclusive school once a week to aid the students with disabilities. Whereas, there is absolutely no GPK in SMPN 5 Palangkaraya, Central Kalimantan. Regular teachers often do not understand how to deal with the students with disabilities. However, schools are capable of accepting by modification of learning to adjust the students with disabilities conditions, and the ability of regular students to tolerate the students with disabilities. Hence, the school is able to provide adaptability. This needs to be understood when talking about inclusive education in inclusive schools is when schools can design and arrange materials, learning, and assignment that are tailored to the needs of students with disabilities in indicators of accessibility divided into three access. First, the principle of non-discrimination against physical access. Both schools can be reached by all major students with disabilities. The ability of special needs to attend school near their resident is one of the efforts in inclusive education, through the principle of non-barrier. Individual non-discrimination has been embedded in regular students, thus the threat of bullying is not felt in both schools. Economic access in two junior secondary schools are public schools that are free. Thus, those schools are friendly in economic access according to the law which stipulates that basic education (primary schools and junior secondary schools) is compulsory education and shall to be free.

However, overall obstacles can clearly be felt because reasonable accommodation as a step in realizing inclusive education for students with disabilities is still not fulfilling. It was said in the General Comment, that there were eight obstacles to the implementation of inclusive education (General Comment number 4 of Article 24 CRPD):

- a. the failure to understand or implement the human rights model of disability, in which barriers within the community and society, rather than personal impairments, exclude persons with disabilities;
- b. persistent discrimination against persons with disabilities, compounded by the isolation of those still living in long-term residential institutions, and low expectations about those in mainstream settings, allowing prejudices and fear to escalate and remain unchallenged;
- c. lack of knowledge about the nature and advantages of inclusive and quality education, and diversity, including regarding competitiveness, in learning for all; lack of outreach to all parents and lack of appropriate responses to support requirements, leading to misplaced fears, and stereotypes, that inclusion will cause a deterioration in the quality of education, or otherwise impact negatively on others;
- d. lack of disaggregated data and research, necessary for accountability and program development, impeding the development of effective policies and interventions to promote inclusive and quality education;
- e. lack of political will, technical knowledge, and capacity in implementing the right to inclusive education including insufficient education of all teaching staff;
- f. inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for the inclusion of students with disabilities, inter-ministerial coordination, support and sustainability;
- g. lack of legal remedies and mechanisms to claim redress for violations.

Of the eight weaknesses above, Indonesia is almost certain to experience all these weaknesses. In this study, cultural factors influence the weakness of the inclusive education implementation. These are the conclusion from interviews with teachers, GPK, and principals from both inclusive schools, SMPN 2 Sewon, D. I. Yogyakarta, and SMPN 5 Palangkaraya, Central Kalimantan. Some people tend to have different thoughts when talking about disability. Some people think the disabled persons need charity, disabled persons could be disturbing, or sometimes they feel shame if they have a disabled family member. When a regular school accepts students with disabilities, then it becomes an inclusive school, community and parents tend to judge the school unable to accept students with disabilities, or they feel worried for regular students disturbed by the behavior of students with disabilities. Conversely, there is a tendency for parents of children with special needs to choose to send their children to inclusive schools not for the child's progress but because of the shame factor when studying in Special Schools. Those skepticism of thought has been embedded into a culture. It provides a challenge in the application of inclusive education policies. Aside from the community, weakness is also felt by the local government's political will.

D.I. Yogyakarta already has rules D.I. Yogyakarta Governor Regulation 21/2013 on the Implementation of Inclusive Education stipulates that the district/municipality must guarantee the implementation of inclusive

education according to the needs of students and each education unit must accept students with disabilities. The district/municipality is obliged to guarantee the availability of teachers, including GPK, as well as infrastructures and facilities (Article 2 and Article 3 Governor Regulation of D. I. Yogyakarta 21/2013). Hence, Yogyakarta has a D. I. Yogyakarta Mayor Regulation Number 47/2008 concerning the Implementation of Inclusive Education. Even some regencies/cities in the province already have rules related to education for persons with disabilities, although not specifically inclusive education. It appears that the implementation of inclusive education in inclusive schools in D. I. Yogyakarta is better than schools in Central Kalimantan. The availability and accessibility of GPK sources are better even though for physically reasonable accommodation has not been fulfilled.

Central Kalimantan has Local Regulation 10/2012 concerning the Implementation of Education, but did not specifically regulate inclusive education. Hence, it was seen the deficiency in implementation. From the results of interviews in the field, it appears that there is no GPK available at the school and the lack of facilities available for students with disabilities. It can be concluded that local government regulations strongly support the process of implementing inclusive education in regions such as in D. I. Yogyakarta compared to Central Kalimantan.

Besides interviews with the school, interviews were conducted with the ministry of education and culture. The results of the interview can be concluded that there are still many local governments that have not implemented inclusive education policies by making regulations in their regions. Local government political will is still weak (MoEC, 2019). Likewise, the community has not yet fully brought the issue of violations related to inclusive education to the litigation path. They tend to bring into the process of deliberation (KPAI, 2019).

4. Discussion

Limited special schools in Indonesia should not decrease the access of the right to education for persons with disabilities. By inclusive education, students with disabilities are easy to study in an inclusive school. Therefore, various provisions are regulated to implement the policy as part of the enforcement of the right to education for persons with disabilities.

Talking about the provisions related to inclusive education for persons with disabilities means talking about the ICESCR, which regulates the right to education and the Convention on the Rights of Persons with Disabilities (CRPD), which regulates the rights of persons with disabilities. Education without barriers and non-discrimination in inclusive education puts forward the four indicators listed in ICESCR General Comment No. 13. Meanwhile, Article 24 of CRPD explains the right to education for persons with disabilities. The article states that CRPD members must ensure an inclusive education system at all levels and lifelong learning. In General Comment number 4 of Article 24 of CRPD clearly states that inclusive education requires transformation in policy, culture and practice. The reason is because of many obstacles found in the implementation of inclusive education.

The government has granted education rights to all citizens without exception in accordance with the mandate of the 1945 Constitution. Efforts are made by making regulations ranging from Law Number 20 of 2003 concerning the National Education System, Law Number 8 of 2016 concerning Persons with Disabilities, Minister of National Education Regulation Number 70 of 2009 concerning Inclusive Education For Students with Special Needs Has The Potential of Intelligence and or Students with Special Talents, and Minister of Research, Technology and Higher Education Regulation Number 46 of 2017 concerning Special Education and Special Education with Special Services.

The efforts to implement inclusive education policies are part of the state obligations to fulfill economic, social and cultural rights. Inclusive education for persons with disabilities is accomplished progressively as regulated in Article 2 of the ICESCR. Article 2 of ICESCR stipulates that state undertakes to take steps depend on the availability of resources needed in the implementation of economic, social and cultural rights. The government is gradually taking actions, but quick action is expected. If resources are limited, state has an obligation to continue to ensure the fulfillment of the wide possible rights under these limited conditions, including the provision of reasonable accommodation for persons with disabilities.

Law enforcement can be reviewed from three components namely legal structure, legal substance, and legal culture. Legal Structure is institutionalization of law, such as law-making institutions, implementing institutions or legal bureaucracies, judiciary comprises the public courts, number of judges, and integrated justice systems. The legal substance is related to the process of making a legal product carried out by law makers. Legal culture is an element of social attitudes and values. Legal culture refers to general cultures such as habits, people's opinions, and ways of thinking and acting (Friedman, 1987). In terms of legal structure, many cases related to the rights of persons with disabilities are resolved by litigation. But according to KPAI, no cases related to inclusive education have been brought to the litigation path. Generally resolved through deliberations. This is caused by factors from the community that did not bring it to the legal route. If seen from the legal substance, Indonesia issued Law 8/2016 concerning Persons with Disabilities in lieu Law 4/1997 on Handicapped Persons, by changing the paradigm of thinking with no charity based. Article 40 of Law 8/2016 has formulated regarding inclusive education, but at an advanced stage, Indonesia is still designing specifically about reasonable accommodation, thus the real impediments have not yet resolved. However, the observation results of the study appear that the impediments lie in the legal culture, in policies that have not yet fully touched down to the regional level. The weakness of political will from the regional government due to the order of the existing legal rules provides an opportunity for the regional government not to implement the policy. Before Law 8/2016, rules related to inclusive education were in Ministerial Regulation 70/2009.

Ministerial regulations are made by the relevant minister. In accordance with the task of minister in Article 17 of the 1945 Constitution, thus the functions of the Ministerial Regulation are as follows (Maria, 2007):

- a. Organise general arrangements in the context of carrying out government power in their fields.
- b. Organise further arrangements in the Presidential Regulation.
- c. Organise further regulation of provisions in the Law that explicitly state it.
- d. Organise further regulation provisions in Government Regulations which explicitly state it.

Ministerial Regulation 70/2009 was formed by referring to Law Number 20/2003 concerning the National Education System; Government Regulation Number 19/2005 concerning National Education Standards; Government Regulation Number 38/2007 concerning the division of Government affairs between the Central Government, Provincial Governments and Regency / City Governments; Presidential Regulation Number 9/2005 concerning Position, Duties, Functions, Organizational Structure, and Work Procedures of the State Ministries of the Republic of Indonesia (as amended several times, the latest by Presidential Decree of the Republic of Indonesia Number 77 / P of 2007). Article 32 paragraph (3) of Law 20/2003 enumerates that implementation of provisions for special education and education with special services, shall be further stipulated by the Government Regulation. Hence, further rules related to special education should be regulated in a Government Regulation, but there are no rules related to special education until Minister Regulation 70/2009 appears. Although there are no rules above which explicitly mention it, this Ministerial Regulation still has legal binding as a statutory regulation.

The Law on the Formation of Regulations Number 10/2004 does not regulate the laws and regulations that are formed on the basis of authority, including in the case of ministerial regulations. Ministerial Regulation established without any delegation from the higher statutory regulations before Law Number 12/2011, known theoretically as policy regulations (*beleidregels*). That is a decision of a state administration official which is regulating and indirectly general binding, but not legislation (Bagir & Kuntana, 1997). The provisions of Article 8 paragraph (2) of Law Number 12/2011 stipulate that there is no difference between Ministerial Regulations which are statutory regulations and Ministerial Regulations which are policy rules. Thus, the position of Ministerial Regulations as policy regulations have been formed before the enactment of Law 12/2011 remains valid as long as it is not revoked or canceled. The difference between Ministerial Regulations which are statutory regulations and Ministerial Regulations which are policy rules is the authority of the Supreme Court to examine regulations. Ministerial Regulation which is a policy regulation, cannot be verified by the Supreme Court.

This Ministerial Regulation has become a polemic due to it reliance on good will of local government. Ministerial Regulation 70/2009 is a more technical regulation in implementing policies. As Bagir Manan and Kuntana Magnar opinion, Ministerial Regulations were formed without any delegation from higher legislation are policy regulations (*beleidregels*), which are indirectly binding on the public (Bagir & Kuntana, 1997). Ministerial Regulation 70/2009

was made by the Ministry of National Education as the central government. Meanwhile, the education sector is a concurrent government affair thus, the regional government has the authority to regulate education, vice versa the central government does not have authority. Hence, it seems that there is no need for local governments to obey the ministerial regulation. Moreover, the division of the authority of inclusive education in the regions (basic education in the district/city, while for secondary education is in the provincial level) provides local governments do the other priority policy as its concern. Each region has a priority scale in implementing policies, and there are still many provincial and district/city governments that do not yet see inclusive education as a priority scale. Ministerial Regulation 70/2009 regulates, but it is indirectly binding public, but not statutory regulations. Therefore, inclusive education in regions does not run optimally if there is no willingness from the local government.

From the hierarchy of legislation, government regulations are higher than ministerial regulations. On the other hand, the authority of the Ministry of Education and Culture as the central government and the Local Authority such as Bureau Offices (*Dinas*) at the local government are complementary to one another. The relationship lies in the vision, mission, goals, and functions of each. They serve the community fairly and evenly in various aspects of life. Thus, each has its own authority. Ministerial Regulation 70/2009 gives a mandate to local governments and cannot be implemented in the regions since local governments are not subject to regulation. Ministerial regulation does not have the power on the local government. In contrast to the government regulation issued by the president and certainly has more pressure on the local government.

Ministerial Regulation 70/2009 is specifically related to Inclusive Education for Students with Disabilities and Potential for Special Intelligence and / or Talent, while Law 8/2016 is concerning Persons with Disabilities. Certainly, Law 8/2016 does not explicitly regulate inclusive education. Therefore, Ministerial Regulation 70/2009 must be immediately revised to contain more comprehensive rules regarding reasonable accommodation for students with disabilities.

The latest rules related to inclusive education have been made, namely the Minister of Research, Technology and Higher Education Regulation No, 46 of 2017 concerning Special Education and Education with Special Services. The regulation regarding inclusive education for primary and secondary education levels does not yet regulate. The government is currently drafting a government regulation on reasonable accommodation for the education of persons with disabilities. This draft will strengthen the legal position of the implementation of inclusive education in the regions. A reasonable accommodation is important since reasonable accommodations ensure non-exclusion from education for persons with disabilities. Failure to provide reasonable accommodation constitutes discrimination on disability grounds. All legislation and policy must be reviewed to ensure that it is not discriminatory for persons with disabilities because it shall be in violation of Article 24 CRPD (General Comment Number 4 of Article 24 CRPD).

A commitment of local government related to inclusive education for persons with disabilities can be implemented by local regulations, specially regulated the availability of reasonable accommodation in the field of education. This effort may change the existing legal culture, and thus inclusive education can be enforced. In the field finding, legal culture results seem to be the impediments. Cultural skepticism that has been inherent in society can be modified by the existence of binding rules in the regions. Strategies for strengthening the legal substance can be through the formation of local regulations. But this strategy should be followed by strengthening the awareness of the local head in committing an emphasis on local regulation-making. However, the lack of public awareness of their basic rights in economic, social and cultural life needs to be changed through the campaign for building rights awareness. The role of advocacy needs to be in accordance with the legal doctrine (Soetandyo, 2007). Collaboration with other communities can provide outreach and advocacy.

5. Conclusion

The key to the problem of implementing inclusive education that cannot proceed smoothly is due to the legal substance and legal culture that exists in Indonesia. The rules regarding inclusive education have been well stated in Law 8/2016, but at the implementation level, it has not been fully properly regulated. It is expected that the draft

government regulation related to reasonable accommodation for the education of persons with disabilities will bring awareness from the local government to concern and commit to inclusive education for persons with disabilities. For this reason, the legal culture of the community needs to be changed. They need to understand on the importance of education for persons with disabilities, in the same manner that they perceived the importance of education for regular children. The role of the community is enormous in providing understanding and conducting advocacy to the community.

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