

Normative Gaps in the Protection of Education Rights of Persons with Intellectual Disabilities in the Inclusive Education System

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Abstract

People with intellectual disabilities face the greatest systemic risk of educational rights violations, largely due to social stigma and weak legal protection. Under international human rights law, states are obligated to respect, protect, and guarantee these rights as outlined in the Convention on the Rights of Persons with Disabilities (CRPD). However, Indonesia's domestic legislative framework does not adequately reflect these responsibilities. Research on the normative adequacy of legal protection in education for people with intellectual disabilities remains rare. This article addresses that gap through normative legal research and conceptual analysis, focusing on obligations of fulfillment and reasonable accommodation. The study examines Law No. 8 of 2016, Government Regulation No. 13 of 2020, Minister of Education and Culture Regulation No. 70 of 2009, and the CRPD. Findings highlight three concerns: the absence of specific protection norms, inconsistencies between international obligations and domestic regulations, and the lack of accessible repressive protection mechanisms. These shortcomings show Indonesia's obligations are implemented only formally, without substantive effect. Therefore, regulatory reform is essential to achieve substantive equality and ensure the educational rights of individuals with intellectual disabilities, not as social policy but as a binding legal obligation.

Keywords: Intellectual Disability; Legal Protection; Reasonable Accommodation; Inclusive Education; Human Rights;

A. INTRODUCTION

The right to education is a fundamental human right guaranteed in various international and national legal instruments (Ferreira & Lima, 2024). However, in practice, the fulfillment of this right still shows significant inequality, especially for persons with intellectual disabilities. Persons with intellectual disabilities constitute a systemic group that is highly vulnerable to violations of the right to education (Pratiwi, 2024). Based on the 2020 National Socio-Economic Survey (Susenas), only about 30% of these children (students with disabilities) in Indonesia have access to formal education. It is predicted that a smaller percentage of children with intellectual disabilities show up at schools because of social stigma and poor infrastructure.

From a theoretical perspective, this study is grounded in the theory of justice, particularly John Rawls' concept of distributive justice, which emphasizes fairness through the difference principle, where inequalities are justified only if they benefit the least advantaged groups. Persons with intellectual disabilities clearly fall within this disadvantaged category. Additionally, rights theory is employed to conceptualize education not merely as a policy objective but as a fundamental legal entitlement that imposes binding obligations upon the state. These theoretical frameworks are essential to evaluate whether Indonesian regulations have achieved substantive equality rather than merely formal equality.

From a global perspective, a United Nations Committee on the Rights of Persons with Disabilities (2022) report highlights that Indonesia is one of the countries that have not achieved the minimum requirement of an inclusive education system under Article 24 of the CRPD, including the role of special accompanying teachers, curriculum tailoring and physical accessibility. At the school level, a 2019 Ministry

of Education and Culture survey revealed that of about 31,000 schools recognized as inclusive schools, a minuscule proportion had certified special guidance teachers, and even fewer were able to offer the students with intellectual disabilities individual needs based services (Ediyanto et al., 2023). This vulnerability goes beyond barriers in the structural structure of the educational system, but is attributable to public perception which stigmatizes their competence and potential (Pratama & Sari, 2025).

It is a legal obligation of the state as a holder of international human rights to respect, protect and fulfill the rights of persons with disabilities. The above obligations are clearly written into law through the Convention on the Rights of

Persons with Disabilities (CRPD), which provides for the principle of substantive equality and the provision of reasonable accommodations to guarantee everyone the opportunity to attain an education, including individuals with intellectual disabilities (Dahlan & Anggoro, 2021). Even though Indonesia has adopted the CRPD in its

legislative body by means of Law Number 19 of 2011, as noted in many research papers, the application of these internationally recognized norms to the domestic legislation is still mired in many ambiguities and incomplete measures, particularly those with regard to the protection of persons with intellectual disability.

Based on the background described above, this study formulates the following legal issues: (1) How is the normative adequacy of Indonesian legal regulations in protecting the right to education for persons with intellectual disabilities when assessed against the obligation to fulfill framework under the CRPD? (2) To what extent do Indonesian education laws accommodate the principle of reasonable accommodation for persons with intellectual disabilities? (3) What normative

reconstruction is required to ensure substantive equality in the protection of education rights for persons with intellectual disabilities?

Legal instruments at national level, such as Law Number 8 of 2016 dealing with Persons with Disabilities, Government Regulation Number 13 of 2020, and Minister of National Education Regulation Number 70 of 2009 dealing with Inclusive Education, have provided the starting point to the recognition of the rights of persons with disabilities to education. However, the literature suggests that inclusive education still experiences the following problems: the shortage of special accompanying teachers, the inability of the regular teacher to modify the curriculum, and no initial assessment to determine the needs of intellectually disabled students (Fajriyah & Zaelani, 2022). This is why the regulatory measures have not translated into the substantive protections for this segment.

That fact prompts a fundamental question: How well have education policies in Indonesia been effective in safeguarding the educational right of individuals with intellectual disability? Such a state is mirrored in other research, which finds non-uniformity of regulation and a lack of effective implementation resulting from the lack of operational technical guidelines, monitoring and sanctions, where the rights of disabled children are commonly only expressed in words but are not empowered with persuasive force (Abrianto & Tinambunan, 2025).

Based on previous studies in Indonesia, the legal protection against the rights of persons with disabilities and the position of disability are examined by the previous literatur(Yulianto & Hakim, 2024). Sodiqin (2021) describes that there is ambiguity in the disability regulatory framework in Indonesia, which means there is to be no consensus regarding distribution of the responsibilities from the state (Sodiqin, 2021).

However, these studies have not specifically examined the implications of this ambiguity for the fulfillment of the right to education for persons with intellectual disabilities in Indonesia, which creates uncertainty for the parties responsible for enforcing the rights of persons with disabilities, as well as overlapping rules without shared responsibility that reduce protection measures (Rakhmawaty & Vic, 2025).

These findings are closely related to the normative topics posed in this article. Santoso and Setiawan found that in inclusive education, the absence of operational service standards is a major barrier between policy and practice (Santoso & Setiawan, 2022), and this issue has risen since the problem is no longer merely a challenge of enforcement but the norm's shortcoming. Moreover, findings by Amir, Cahyani and Permana indicate, according to research in Garut Regency, students with intellectual disabilities in inclusive schools are not considered to be different from other special needs students despite striking differences between their cognitive and pedagogical requirements (Amir et al., 2023) and it appears a deficiency of regulations on intellectual disabilities.

On the aspect of international legal coherence, Nurlaily, Sihombing, & Shahrullah confirmed that most Indonesian laws regarding disability are not fully compatible with international legislations, particularly in the area of legally enforceable reasonable accommodation (Dewi & Angelia, 2025). However, Suwandoko and Rihardi maintain that legal reform according to the CRPD framework is a prerequisite for great realization regarding the human rights of the disabled.

According to a literature review carried out above, there exists a wide gap in the literature with no existing studies examining the degree to which the normative adequacy of protection of education rights of persons with intellectual disability

within obligation to fulfill and reasonable accommodation as a framework of instruments has been discussed in existing articles (Petri, 2022). This article tries to scrutinize the normative adequacy of legal protection rights for people with intellectual disabilities in Indonesian education regulations.

Three indicators demonstrate that there has been a failure to sufficiently apply international instruments in Indonesian national legislation, including as follows: 1) Ideals have been neglected in implementation of International obligations. Although Article 2 and Article 24 of the CRPD stipulate that any reasonable accommodation must be measured and implemented, at present there is no standard operational definition that can be applied to intellectual disabilities in any national education law. There is also a normative void regarding adaptive curriculum standards and assessments sensitive to the characteristics of intellectual disabilities (Luckasson, 2023), so education for people with intellectual disabilities is entirely contingent on the policies of educational institutions that lack a clear accountability framework. Third, there is a lack of method of monitoring and recovery for people with intellectual disabilities who are rejected and/or denied education (Pratiwi, 2024).

Collectively, these three normative gaps suggest that Indonesia's adherence to the CRPD remains a declarative commitment. Then this article raises the question: if the obligation under international human rights law to fulfill and provide reasonable accommodation to the people with intellectual disabilities is fulfilled by Indonesian education laws?

Unlike previous studies, this article goes beyond identifying regulatory deficiencies by proposing a normative reconstruction of the legal framework governing inclusive education for persons with intellectual disabilities.

B. RESEARCH METHOD

This study employs a normative legal research method aimed at examining the adequacy of legal norms governing the protection of the right to education for persons with intellectual disabilities. Normative legal research in this study is understood as a method that examines law as a system of norms (*das sollen*), focusing on coherence, consistency, and adequacy of legal rules. This approach is particularly relevant as the study aims to identify normative gaps rather than empirical implementation issues. Therefore, the research emphasizes doctrinal analysis and legal reasoning to assess whether existing regulations meet international human rights standards. The research adopts two main approaches. First, a statutory approach is applied by analyzing relevant national regulations, including Law Number 8 of 2016, Government Regulation Number 13 of 2020, and Minister of Education Regulation Number 70 of 2009, as well as international legal instruments, particularly the Convention on the Rights of Persons with Disabilities (CRPD). Second, a conceptual approach is used to examine key doctrines in international human rights law, especially the obligation to fulfill and the principle of reasonable accommodation. The statutory approach is used to analyze the hierarchy and consistency of legal norms, while the conceptual approach is applied to interpret key doctrines such as reasonable accommodation and obligation to fulfill as analytical frameworks. The legal materials in this study consist of primary legal materials, including legislation and international conventions, and secondary legal materials, such as scholarly journal articles, legal commentaries, and institutional reports. The analysis of legal materials is conducted qualitatively using a prescriptive approach. This analysis involves several stages: (1) identifying and inventorying relevant legal norms; (2) interpreting and assessing their coherence and

consistency with international human rights standards; and (3) applying deductive legal reasoning to identify normative gaps within the existing regulatory framework. Furthermore, this study employs methods of legal interpretation and normative evaluation to assess the extent to which national regulations align with the principles of substantive equality under the CRPD. The findings of this analysis are ultimately used to formulate normative recommendations aimed at strengthening the legal protection of education rights for persons with intellectual disabilities.

C. RESULT AND DISCUSSION

The right to education for all Indonesian citizens is constitutionally guaranteed under Article 31(1) of the 1945 Constitution. This provision reflects that there exists a fundamental right of education that the state must guarantee without discrimination, including for persons with intellectual disabilities. The state must not only expand educational access but also ensure the system accommodates learners with special needs.

Examination of the relevant legislation on education in Indonesia exposes three major normative gaps that have obstructed the realization of the right to education for individuals with intellectual disabilities. These three voids have led to a significant difference in compliance of Indonesia's obligations via the Convention on the Rights of Persons with Disabilities (CRPD) and current laws. The consequences and discourses of each of these gaps are provided below.

From a doctrinal perspective, the protection of education rights for persons with intellectual disabilities must be understood within the framework of substantive equality, which requires differential treatment to achieve equal outcomes. This doctrine has been consistently affirmed in international human rights law, particularly

under the CRPD, which shifts the paradigm from a medical model of disability to a social and rights-based model. Therefore, the absence of specific norms regulating intellectual disabilities reflects a failure to operationalize this doctrinal shift within national legal systems. This doctrinal failure becomes the analytical basis for identifying the three normative gaps discussed in the following sections.

1. Absence of Norms Related to Reasonable Accommodation for Individuals with Intellectual Disabilities

The key finding of this study is the lack of normative regulations defining and operationalizing the concept of reasonable accommodation for people with intellectual disabilities in Indonesian education. This concept is a key tenet of modern human rights law that states and public institutions must revise the process of making certain that people with disabilities are accessible (Wibowo & Susanti, 2023).

Legal ambiguity due to the unclear definition of what constitutes reasonable accommodation makes implementation of inclusive education more risky. In actual fact, education settings commonly see accommodation obligations as purely a matter of the physical access, or administrative acceptance, of students with disabilities. Changes to learning techniques are still not sufficiently developed. In reality, under international human rights law, reasonable accommodation involves adjustments to curricular content, pedagogics, and evaluation that take into account the cognitive profiles of learners. Such divergence in interpretation demonstrates that the lack of operational standards are impeding not only some regulatory elements but also the quality of inclusive education activities at the school level.

In the field of international law, this duty is specifically recognized in the Convention on the Rights of Persons with Disabilities (CRPD) (specifically in Articles 2 and 24), and in the context of the provision of reasonable accommodations by a state within the inclusive education systems. These are provisions that suggest that, while social policy should be adjusted, adjustments need to be legal obligations which should be undertaken by the state (Putri & Rahmawati, 2023). This idea insists that the state needs to assure actual transformations in the inclusive education system.

In the Indonesian context, while the right to education for persons with disabilities has been defined in Law Number 8 of 2016 on Persons with Disabilities and some derivative regulations regarding Education, there is no operational definition and implementation standard for reasonable accommodation applicable specifically to students with intellectual disabilities. Such unclear norms then render the appropriate level of accommodation depending on policies of each educational institution highly contingent to the context (Aspan & Hermanto, 2025). Article 42 provision of Law No. 8 of 2016 mentions accommodation in general, but not operationalization definition specific to type of intellectual disability that would generate a vertical conflict against the provisions of CRPD. This is reflected in Article 5 of Law No. 8 of 2016 which guarantees non-discrimination, and Article 42 which recognizes the right to reasonable accommodation. However, these provisions lack implementing regulations and technical standards, resulting in weak enforceability at the institutional level.

Due to such uncertainty of standards, the legal requirements on accommodation in educational organizations often take the idea of its implication as administrative acceptance or access in a purely physical sense only, without satisfactory pedagogical realization. As a result, many studies are finding that absence of normative standards for accommodation has made inclusive education formal and bureaucratic without practical cognitive assistance for the students with intellectual disabilities (Kusuma, 2024). This state situation underscores that normative recognition in national regulations remains declarative, and still fails to capture the substantive responsibilities of the state.

Instead, Egypt makes the concept of accommodation actionable, requiring the planning of an Individualized Education Program (IEP) for every learner with an intellectual disability, with functional targets like social independence assessed at certain intervals by a multidisciplinary team. Such extensive regulations have proven to significantly boost the enrollment rates of students with intellectual disabilities. A similar approach to Indonesia is to revise the Minister of Education and Culture Regulation through the inclusion of evidence-based guidelines as recommended in the 2022 WHO guidelines (WHO, 2022).

The budgetary implications of the lack of this norm are also apparent. There is no dedicated (earmarked) budget dedicated to this in the State Budget (APBN) up to now though if there are not clear standards of accommodation in the budget, the allocation tends to be misallocated and not on target. Without measurable parameters, therefore, parents and learners cannot argue

on the legal grounds for the validation of accommodation rights and, subsequently, lose their power over educational advocacy processes (Yulianto & Hakim, 2024). Therefore, it is necessary to establish binding technical regulations on reasonable accommodation.

2. Deficiencies in Adaptive Curriculum Standards and Assessment Systems for Students with Intellectual Disabilities

Findings from the second of this study find deficiencies in national-level education regulations regarding adaptive curriculum standards and assessment systems for students with intellectual disabilities (Xin et al., 2024). The Minister of National Education Regulation Number 70 of 2009 concerning Inclusive Education only gives guidelines for students with special needs, no particular educational curriculum standards related to the educational needs of children who are intellectually disabled. In a similar vein, the 2022 Merdeka Curriculum, whose provision for flexibility does not include modules or technical guidelines catering to the cognitive needs of intellectually disabled students (Anwar & Fauziah, 2023). Article 4 of Minister of National Education Regulation No. 70 of 2009 mandates inclusive education for students with special needs; however, it does not provide specific provisions regarding adaptive curriculum standards for students with intellectual disabilities.

Teleologically speaking, the lack of adaptive curriculum standards is not merely a technical oversight but represents a systemic failure to recognize the educational rights of the intellectually disabled and to place them at the nexus

of legal mandates to address meaningful implementation of practice not just official recognition.

This presents profound legal problems which particularly concern the lack of an intellectual disability in the legal framework, specifically a lack of legal protection for families to require proper education. Without binding norms, families or individuals with intellectual disabilities neither have a legal basis or ability to request adequate educational services. Second, without national standards, there are large variations across regions in the quality of inclusive education services in general, which violates the principle of equal access as guaranteed under Article 24 of the CRPD (Santoso & Setiawan, 2022). Third, rules in place that do not embody adaptive curriculum standards implicitly leave students with intellectual disabilities to fill evaluation systems intended for students without disabilities, which in fact breeds structural discrimination (Arvidsson et al., 2023).

Educators who teach students with intellectual disabilities need their curriculum responsive to their unique level of intellectual ability. Learning focused on functional academics such as foundational arithmetic skills in everyday life should be especially emphasized for mild intellectual disabilities (IQ 50–70). While for severe intellectual disabilities (IQ below 35), these individuals must develop basic sensory and motor skills. The study by Amir, Cahyani, and Permana (2023) in Garut Regency concretely illustrates how students with intellectual disabilities in inclusive schools undergo the same curriculum and are evaluated with the same instruments as students without disabilities, even though their cognitive capacities are fundamentally

different. This condition not only hinders learning development but also contributes to the formation of academic stigmas that complicate social inclusion (Amir et al., 2023).

There is an underlying problem related to assessment as well. When we do not have adaptive assessment instruments, students with intellectual disability can be excluded from mainstream benchmarks, which only widens scholastic stigma. Alternatives are to take assessment methods like task analysis, project analysis and portfolio assessment as potential measures, that are able to encompass students' capability more holistically and in relation to those functional requirements.

Additionally, in Indonesia, there remains inadequate information for understanding the specific types of disabilities in the education sector, causing a challenge for evidence-based policy formulation, as pointed out by the UNESCO report published in 2024. A comparison with Egypt highlights that its 2020 guideline rules mandate a functional curriculum in independent living and vocational skills, along with adaptive portfolio assessments.

Numerous countries that systematically adopted IEPs have seen their teacher capacity expand significantly across the nation via university-based certification programs, while Indonesia by 2023 had around 4,695 special guidance teachers at national level (Kemendikbudristek, 2023), far from providing help across hundreds of thousands of students with intellectual disabilities across the archipelago. This skills gap emphasizes the comprehensive reform needed through the establishment of national adaptive curriculum guidelines for intellectual disabilities, the inclusion of functional

evaluations such as the Vineland Adaptive Behavior Scales, and broader teacher qualification programs through Educational Personnel Education Institutions LPTK (Educational Personnel Education Institutions).

3. Absence of Protection and Remedy Mechanisms for the Education Rights of Persons with Intellectual Disabilities

The third result of this study shows that national education legislations offered no protective & rights recovery channels adequate to service persons with intellectual disabilities and their families. According to human rights law, this is simply not enough: rights protection cannot stand alone in the context of norm-based recognition; it must also integrate effective systems for monitoring and remediation for the most vulnerable populations. In the absence of specific mechanisms of enforcement, norms guaranteed rights could lose their validity in practice (Zaskia et al., 2025).

Law Number 8 of 2016 has recognized the right to education with persons who have disabilities but there is no mechanism for complaints or dispute resolution that is open and ready-to-use/proceed for persons with intellectual disabilities and their families. Accordingly many instances of discrimination in the access to education are not known and not legally addressed (Kusuma, 2024). This scenario shows a disparity in legal constructs for the right to education and practical protection of the same in practice (Sodiqin, 2021). Although Article 9 of Law No. 8 of 2016 guarantees the right to education, and Article 145 provides general sanctions, there is no specific procedural mechanism governing complaints or dispute resolution in the education sector, particularly for persons with intellectual disabilities.

In Papua, it is discovered that many families of persons with disabilities have no sense of the complaint mechanism when discrimination in the process of accessing education emerges (Pugu et al., 2022). Komnas HAM reports indicate that the incidence of educational discrimination against persons with disabilities remains largely unreported. Only a small proportion related to the education sector. In some educational dispute cases, the case law on non-discrimination for the school reject a student with an intellectual disabilities, there are still significant factors preventing the enforcement of such policies in practice, even when the judges find that the rejection of the student has violated the principle of no discrimination.

In contrast, Egypt has established a separate institution for the rights of people with disabilities and has responded to nearly 5,000 complaints in all with the application of sanctions was pretty successful in 2024. Similarly, Egypt established a mobile legal clinic programme where communities requiring legal assistance in remote locations were reached by mobile clinics. Others countries have established jurisprudential precedents, such as that of Egypt, to reinforce the legal expectations of schools to provide reasonable accommodations and establish strong legal incentives to comply with this obligation, leading to high levels of incentives for compliance (Lattanzio, 2023).

However, in terms of regulation, the connection of Law No. 8 of 2016 and the technical education policy structure is still inadequate and sometimes the situation is often not optimal. Therefore, institutional fortifications need to be made through special dispute resolution mechanisms in disability education,

the development of law enforcement officials capacity for the principles of CRPD, the establishment of the national data-oriented monitoring system, and the development of accessible and inclusive legal aid pathways for people with intellectual disabilities (Habeahan et al., 2025).

4. State Obligations in the Obligation to Fulfill Framework

The international human rights law structure divides state obligations into three layers: an obligation to respect; an obligation to protect; and an obligation to fulfill. This doctrine based on Shue was later developed by UN Committees in various General Comments. These three state obligations serve as the primary analytical tools to evaluate Indonesia's compliance with the CRPD regarding the education rights of persons with intellectual disabilities. CRPD General Comment Number 4 of 2016 on The Right To Inclusive Education, specifically, confirms that these three layers of obligations are applicable to Article 24 of the CRPD for all schools and private schools and:

A. Obligation to Respect

At the bottom of a hierarchy is the obligation to respect, which obliges the state to refrain from taking action, or imposing regulation, which obstructs the realization of the education rights of persons with intellectual disabilities. Formally, Indonesia doesn't seem to have broken this layer, in that there are no guidelines expressly forbidding students with intellectual disabilities from attending schools. However, violations of the obligation to respect may occur in an implicit way through structurally biased regulatory architectures.

The explicit violation is best exemplified by the lack of any exceptions for students with intellectual disabilities and the conformity of uniform assessment standards prescribed in the National Education Standards. When laws mandate that all students face national exams or standardized tests and do not adjust the resources accordingly, the state implicitly erects normative barriers that prevent students with intellectual disabilities from being able to realize their educational rights. This is consistent with the perception of CRPD General Comment Number 6 (2018) that even regulatory non-neutrality is one of the indirect discrimination which contravenes substantive equality. Therefore, while Indonesia does not explicitly prohibit education for students with intellectual disabilities, regulatory policies not addressing their needs are a form of failure in this first set of duties. This is the beginning that I'd be wise to recognize prior to elaborating obligations at the higher level

B. Obligation to Protect

The second level, the obligation to protect, requires the state to prevent third parties, for example through public teaching institutions, community and other non-state actors from infringing upon the educational rights of an individual with an intellectual impairment. The state is responsible for introducing proper standards, monitoring mechanisms, and sanctions so that violations by third parties do not only avoid taking effect but also provide real remedies for such violations.

It is noticeable when confronted with rejection and discrimination against students with intellectual disabilities, such as this, in Indonesia,

where the lack of disciplinary instruments from both public and private schools is evident on this layer. Law Number 8 of 2016 does provide general prohibitions against discrimination, but it fails to provide for specific mechanisms to express complaints, authorised supervisory bodies, or clear and measurable sanctions (Nurhayati et al., 2025). Without this protection instrument, schools can refuse students who are intellectually disabled due to inadequate provision with little or no legal repercussions (Habeahan et al., 2025).

The results of Sodikin (2021) only further corroborate this finding and show that Indonesia's disability regulations lack clear specificity and definition in its divisions of responsibility among institutions, thus ensuring that the fulfillment of education rights is not a sole responsibility of one party to ensure compliance with education rights for citizens who have an intellectual disability. A structural and accountability-free loophole is enabled for such violations to go unaddressed by third parties.

C. Obligation to Fulfill

The third and most serious layer is what the obligation to fulfill means, requiring the state to take measures of legislative, administrative, judicial, budgetary and other positive action to make good the right to education for the most vulnerable groups. CRPD General Comment Number 4 broadens the obligation to the following three sub-obligations - the obligation to provide, the obligation to facilitate and the obligation to promote. These three sub-obligations act as very concrete operational standards to determine Indonesia's actions. Regarding the obligation to

provide, the state must proactively supply resources, qualified teachers, and sufficient infrastructure for inclusive education of individuals with intellectual disabilities.

These three sub-obligations act as very concrete operational standards to determine Indonesia's actions. Regarding the obligation to provide, the state must proactively supply resources, qualified teachers, and sufficient infrastructure for inclusive education of individuals with intellectual disabilities. Indonesia has only about 2,000 special guidance teachers nationally by 2025, a statistic much below the number of instructional materials required to serve hundreds of thousands of students with intellectual disabilities across the archipelago, data suggests. Also, there is no specific budget (earmarked budget) in place to provide reasonable accommodation for persons with intellectual disabilities in either the National or Regional Budgets (APBN or APBD); the allocation of the resources thus is unstructured and reliant on the particular goals of the respective region.

For the need to encourage, the state is required to establish the condition for individuals and their families to obtain education rights, including information, disability-friendly policies and procedures, and removal of red tape. In reality, Habeahan et al. (2025) reported that there are families with children and children with disabilities living in remote terrain who do not know about their rights or complaints processes. That points to the state not providing equal opportunity to people with rights outside the island of Java, at least.

Regarding the obligation to promote, the state is obligated to ensure and work towards altering social paradigms that deny the rights of persons with intellectual disabilities through programs that raise awareness, train teachers, and amend teacher education curricula. At present, a systematic training scheme on inclusive education toward students with intellectual disabilities is not yet normatively mandated in the LPTK curricula so most of the teachers have insufficient skill capacity support to students with intellectual disabilities (Putri & Rahmawati, 2023).

To conclude from studying the three layers of obligations discussed in the summary above, Indonesia has structural and institutional failures at each level, the latter being aggravated at every iteration. The failure in the obligation to respect is inherent through structurally discriminatory regimes; the failure in the obligation to protect is systemic when no control and sanction instruments are in place; and the failure in the obligation to fulfill is systemic, and includes provisions, facilitation and promotion. These trends of failure over time demonstrate that Indonesia's commitment to the CRPD is not in fulfilment at *de jure* (formal), but rather is not fully fulfilling (*de facto*; substantive), and it is a state-level impasse that has implications for persons with intellectual disabilities who are most in need of formal state involvement. More normative and practical insights.

5. Further Normative and Implementative Analysis

The gap in standards does not only show a gap between what is legal and normative but also shows deep structural problems in the constitution of

public policies which have not been founded on rights-based approaches. In that sense, the state cannot be considered just a passive and passive government actor, a passive-regler but rather an active participant in every educational policy design through which all policy is developed and all needs of the learners are considered.

Indonesia's approach to education policy are still focused on a uniformity paradigm that involves using the same standard curriculum and assessment system for all and overlooking the heterogeneous needs of its learners. This framework is diametrically opposed to differentiation in inclusive education, which says being equal, not just treating everyone the same, does not mean fair and equal treatment; it is about treating people differently. Inability to find norms of accommodation for reasonable accommodation implicitly serves to reproduce homogenization in education policies that discriminate against learners with intellectual disabilities.

Considering the aspects of distributive justice theory, it becomes evident that this distribution for educational resources has not been in line. If there are intellectual disabilities in a student, that student need some extra help, special guidance teachers, learning aids, curricular modifications, etc. But with no solid legal framework, distribution of these resources is haphazard and subject to local initiatives, resulting in regional disparity. Better fiscal and administrative capacities of regions enables them to provide more inclusive services than some other regions (Azizah et al., 2025).

A missing operating norms as well, has an impact on the low accountability of the educational institutions. Lack of clarity on what is

considered acceptable accommodation makes it difficult for us to ascertain whether a school to be held accountable. Without standards to provide a reference for them, evaluation and monitoring mechanisms also fail this further debilitating the standing of parents and students on their rights.

Another weakness of the inclusive education regulations present in Indonesia is low legal-pedagogical integration. Although the practice of inclusive education heavily depends on day-to-day teaching practices enacted by teachers, even on normative regulations, they are not followed by applicable technical guidelines in the classroom. Without clear protocols, regular teachers regularly struggle to adjust their lesson *modus operandi* for students with intellectual disabilities, such as turning abstract material into visual learning.

Examples of effective pedagogical approaches are experiential learning, structured repetition, or the use of concrete media, and scaffolding where teachers provide them progressively more or less assistance according to their expertise level. For example, the teacher education system in Indonesia in addition to inclusive education competencies has not fully integrated into the core system of LPTK. Hence, regulatory reform also needs to be accompanied by reform of the educational system and the certifications of educators, including the specific evidence-based training for accommodating students with intellectual disabilities.

Comparatively, Egypt demonstrates the reality that the successful application of inclusive education substantially depends on the clarity of

norms and consistency in policies. Table 1 identifies these normative differences that clarify.

Table 1.
Comparison of the Legal Framework for Inclusive Education for
Intellectual Disabilities: Indonesian and Egypt

No	Aspects	Indonesian	Egypt
1	Definition Accommodation	Not operational (Law 8/2016 Article 42)	Explicit with IEP (Law 10/2018)
2	Adaptive Curriculum	General guidelines without specific intellectual modules	National functional standards (independence, vocational)
3	Assessment System	Mainstream/uniform	Capacity-based adaptive portfolio
4	Complaint Mechanism	General through Komnas HAM	Special National Committee
5	Main Legal Basis	Law No. 8/2016, GR No. 13/2020, MoNE Reg No. 70/2009	Law No. 10/2018, 2014 Constitution Article 81

Source: Author's Analysis, (2026)

According to the data presented in Table 1, it's evident that Indonesia significantly still lags normatively and implementatively compared to Egypt in almost all the aspects of protecting education rights of intellectually disabled persons. Nonetheless, policy transfer is not feasible if it does not take into account the local conditions of Indonesia. Education decentralisation, cultural diversity and different capacities of institutions among different areas also should be emphasized. In Indonesia, in particular, education decentralization leaves many of its decision making in the hands of local governments; however, this in turn tends to exacerbate inequality in the

absence of strong national standards. Hence the need to find a balance between regional autonomy and well defined national standards.

International practice demonstrates the importance of the IEP as an essential tool for inclusive education, not only as an administrative document, but as a whole-of-student and whole-learners planning tool. Incorporating IEPs into the National Policies of Indonesia might take a step to increase the quality of the education for school children with intellectual disabilities. Aside from the legal and policy issues, the social and cultural aspects, also contributing to inclusion practice, must be closely addressed.

Stigma of individuals with intellectual disabilities is still in widespread existence over Indonesian society and has a negative impact not only on the social lives of the students but also upon the teachers and schools (Pratama & Sari, 2025). Low expectations of what students with intellectual disabilities can achieve can be a self-fulfilling prophecy you set low expectations, then you set low performance so reform of inclusive education must necessarily lead to social change

Involvement of family is also a key element in effective inclusion curriculum. In the absence of proper protocols for engaging parents with the education process, their participation in education becomes restricted. But regulations for parents' active involvement such as in development of individualized education plans and in the assessment of how pupils' learning is progressing will have to be more strictly enforced.

6. Strengthening Monitoring and Evaluation Mechanisms

Improved control and review mechanisms would be important to achieve successful policy delivery and implementation. The inclusive education monitoring system in Indonesia, as of now, is still general, and does not measure specific indicators of intellectual disabilities. The establishment of a national integrated data system is essential, as precise information on the number of students who have intellectual disability, their participation, and learning outcomes will greatly enhance evidence-based policy-making. Egypt has a national disability register, which makes it easier to develop policies, however Indonesia is still lacking in the specific data (UNESCO, 2024).

In addition, there should be quality evaluation, rather than quantity. We cannot simply measure so many people with disabilities enrolled in schools; we have to judge these families whether they receive educational services that they need. This needs to include clear and measurable quality indicators for inclusive education, such as whether artificial intelligence-based technology can serve as an early identification and management tool for disabilities as piloted in few countries.

Furthermore, the education sector alone is not a satisfactory solution to the problems of inclusive education. Because students with intellectual disabilities usually require multidisciplinary services such as psychological therapy, health services and social support, not to mention teachers need normative guidelines for appropriate collaboration with psychologists and other experts, cross-sectoral coordination including between the health and social sectors is required.

In Indonesia, inter-sectoral coordination continues to face challenges, such as overlap of responsibilities and poor inter-agency communication. In this respect, institutional reform is necessary to strengthen the integration of services. For example, this requires putting integrated services (one-stop services) for people with disabilities at regional level into effect. Therefore reforms such as this need to be brought into the national medium-term development plan of RPJMN 2025–2029 in line with the commitment for inclusive human development.

If these issues are not tackled, their effects will become more widespread in the short run. Intellectual disability students who have a low level of school will have a harder time taking part in employment and social life in society, which will lead to a higher reliance and dependence of these individuals and families upon their family and the state, as well as an increased social and economic burden.

On the other hand, quality inclusive education investment brings substantial long-term benefits, both to the individual and society. If individuals with intellectual disabilities are educated in a way that is suitable, they can live more independently than society's children who need to feed themselves. In other words, reform of inclusive education must be seen as one part strategy investment in the development of human beings, not as just a strain for the purse strings. The regulatory reform that is to be sought is one that involves change in legislation, not only the wording, but which requires a paradigm shift to define inclusive education as a legal obligation of the state.

In order to address these structural deficiencies, a normative reconstruction of the monitoring and evaluation framework is required. This includes the establishment of legally binding indicators for inclusive education specific to intellectual disabilities, the integration of a national disability data system regulated under statutory provisions, and the creation of inter-sectoral coordination mechanisms with clearly defined institutional responsibilities. Furthermore, monitoring and evaluation must be accompanied by enforceable accountability mechanisms, including administrative sanctions for non-compliance and accessible complaint procedures for affected individuals. Such reconstruction is essential to ensure that the implementation of inclusive education is not merely programmatic, but legally enforceable in line with the CRPD framework.

D. CONCLUSION

This study concludes that Indonesian education regulations fail to fully comply with state obligations under the CRPD to protect the education rights of persons with intellectual disabilities. The three interlinked normative gaps represent which demonstrate that Indonesian commitments to the CRPD are, indeed, not yet fully realised as they are largely a declaration of adherence to educational rights.

Three interlinked normative gaps demonstrate that Indonesia's commitment to the CRPD remains largely declaratory. The absence of clear standards for reasonable accommodation, adaptive curricula and assessment systems, and accessible complaint and rights recovery mechanisms weakens the practical enforcement of the right to education for persons with intellectual disabilities.

These findings call for urgent reforms to establish operational standards, adaptive education systems, and accessible enforcement mechanisms grounded in substantive equality. The right to education must be repositioned as a binding legal obligation rather than a discretionary policy to ensure inclusive, equal, and dignified education in Indonesia.

REFERENCES

- Abrianto, B. O., & Tinambunan, H. S. R. (2025). Challenging the “Half-Hearted” Fulfillment of the Rights of Workers with Disabilities. *Disable*, 1(1), 103–116.
- Amir, Y. S., Cahyani, N., & Permana, I. (2023). Implementasi program pendidikan inklusif bagi siswa tunagrahita di Sekolah Dasar Kabupaten Garut Jawa Barat. *Literal: Disability Studies Journal*, 1(02), 69–76.
- Anwar, S., & Fauziah, L. (2023). Tinjauan Hukum terhadap Standar Evaluasi Pembelajaran bagi Siswa Disabilitas di Sekolah Inklusif. *Al-Mizan (e-Journal)*, 19(2), 211–230.
- Arvidsson, P., Storfors, T., & Wilder, J. (2023). Identification of Possible Learning Problems in Children with Intellectual Disabilities. *The Routledge Handbook of Inclusive Education for Teacher Educators*, 256–265. <https://doi.org/10.4324/9781003266068-20>
- Aspan, H., & Hermanto, H. (2025). The Role of Regional Technical Implementation Units in Advancing Inclusive Education for Persons with Disabilities in Indonesia. *Journal of Innovation and Research in Primary Education*, 4(3), 1550–1560.
- Azizah, A. A. N., Putri, A. N., Hikmal, M., Khasanah, K., & Nugraha, D. Y. (2025). Inequality in Legal Protection for Persons with Disabilities in the Justice System: An Analysis of Implementation and Vague Norms. *Lex Favor Reo*, 1(1), 29–44.
- Dahlan, M., & Anggoro, S. A. (2021). Hak atas Pekerjaan bagi Penyandang Disabilitas di Sektor Publik. *Undang: Jurnal Hukum*, 4(1), 1–48. <https://doi.org/10.22437/ujh.4.1.1-48>
- Dewi, E. I. I., & Angelia, S. (2025). Alignment of Indonesian Manpower Regulations with ILO Standards. *West Science Law and Human Rights*, 3(03), 249–255. <https://doi.org/10.58812/wslhr.v3i03.1987>
- Ediyanto, E., Ramadhani, R. S., Fitrasari, B. D., Kenila, E., Sunandar, A., Hastuti, W. D., & Suhendri, S. (2023). The problems in the implementation of inclusive education in primary schools. *Journal of ICSAR*, 7, 1.
- Fajriyah, N., & Zaelani, A. Q. (2022). Pemenuhan Hak Atas Pendidikan Bagi Penyandang Disabilitas di Indonesia. *Jurnal HAM*, 13(1), 59–74.
- Ferreira, A. A., & Lima, F. W. C. (2024). *International legal framework of education for human rights*.
- Habeahan, M. A., Aulia, D. L., Rini, A. P., Anggraini, F. R., & Sjamsu, S. (2025). The Urgency of Formulating Clear Accessibility Norms for the Effectiveness of Fulfilling Disability Rights. *Disable: Law Review*, 1(1), 59–79.

- Kusuma, W. A. (2024). Kesenjangan Normatif dalam Implementasi Peraturan Pemerintah Nomor 13 Tahun 2020 tentang Akomodasi yang Layak. *Nomos: Jurnal Penelitian Ilmu Hukum*, 4(1), 55–70.
- Lattanzio, R. (2023). Implementing Policy and Law from a Rights Perspective. *Handbook of Disability*, 1–3. https://doi.org/10.1007/978-981-16-1278-7_90-1
- Luckasson, R. (2023). Intellectual disability. *Encyclopedia of Mental Health*, 259–264. <https://doi.org/10.1016/B978-0-323-91497-0.00214-9>
- Nurhayati, S. P., Badriyah, F. N., Firdaningrum, A., Maulida, N. A., Mumtazah, E. F., Harmako, V. G., & Pamungkas, A. A. (2025). Protection of Disability in the World of Work Through Law Number 8 of 2016. *Disable: Law Review*, 1(1), 1–14.
- Petri, G. (2022). Intellectual disability in Switzerland. *Tizard Learning Disability Review*, 27(1), 40–45. <https://doi.org/10.1108/TLDR-11-2021-0036>
- Pratama, R. A., & Sari, N. M. (2025). Diskriminasi Struktural dan Kewajiban Pemenuhan Hak Atas Pendidikan Bagi Kelompok Rentan. *Mimbar Hukum*, 37(1), 45–62.
- Pratiwi, A. D. C. (2024). Kerentanan Perempuan Penyandang Disabilitas. *Themis: Jurnal Ilmu Hukum*, 2(1), 7–12. <https://doi.org/10.70437/themis.v2i1.561>
- Pugu, M. R., Lumentut, D. T., & Pelamonia, Y. G. (2022). Perempuan Pedesaan dan Disabilitas di Provinsi Papua dan Papua Barat (Suatu Analisa Hubungan Internasional dalam Pelaksanaan Otsus Papua). *Syntax Lit. J. Ilm. Indones*, 7, 3464–3482.
- Putri, S. A., & Rahmawati, D. (2023). Perlindungan Hukum Hak Asasi Manusia Terhadap Penyandang Disabilitas dalam Mengakses Pendidikan Dasar. *Jurnal HAM*, 14(2), 189–204.
- Rakhmawaty, P., & Vic, B. J. (2025). The Gap Between Regulation and Implementation. *Greenation International Journal of Law and Social Sciences*, 3(2), 182–190. <https://doi.org/10.38035/gijlss.v3i2.412>
- Santoso, B., & Setiawan, I. (2022). Sinkronisasi Regulasi Pendidikan Inklusif di Daerah terhadap Konvensi Hak Penyandang Disabilitas (CRPD). *Jurnal Legislasi Indonesia*, 19(3), 275–290.
- Sodiqin, A. (2021). Ambiguitas perlindungan hukum penyandang disabilitas dalam perundang-undangan di Indonesia. *Jurnal Legislasi Indonesia*, 18(1), 31–44.
- UNESCO. (2024). *Global Education Monitoring Report 2024: Technology in education — A tool on whose terms?* UNESCO Publishing.
- WHO. (2022). *World report on disability: Education for persons with disabilities*. World Health Organization.
- Wibowo, A. P., & Susanti, R. (2023). Urgensi Pengaturan Akomodasi yang Layak bagi Penyandang Disabilitas Intelektual dalam Sistem Pendidikan Nasional. *Jurnal Hukum Ius Quia Iustum*, 30(2), 245–265.
- Xin, W., Li, L., & Ruppard, A. L. (2024). Curricular Philosophies in Chinese Special School Curriculum. *International Journal of Disability, Development and Education*, 71(5), 721–737. <https://doi.org/10.1080/1034912X.2022.2154325>
- Yulianto, A., & Hakim, M. A. (2024). Analisis Yuridis Pemenuhan Hak Pendidikan Inklusif Berdasarkan Undang-Undang Nomor 8 Tahun 2016. *Jurnal Konstitusi*, 21(1), 112–130.
- Zaskia, A. H., Maulidina, C. A., Azalia, V., Fadilah, A., & Harum, T. M. (2025). Pengaruh Stigma Sosial Terhadap Anak Dengan Hambatan Intelektual. *Jurnal UNIK: Pendidikan Luar Biasa*, 9(2), 111. <https://doi.org/10.30870/unik.v9i2.30536>