

Legal Culture Perspective in Implementation of Inclusive Education in Indonesia

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Abstract—Children with disabilities have a role in advancing the nation, hence the government pays attention to education for them as a commitment to fulfil the right to education. Inclusive education is one of the government's efforts to improve education for them. This article aims to identify the legal aspects of inclusive education rights in Indonesia to ensure human rights. This research is a socio-legal research employing a qualitative method approach. The education as required by international law to support inclusive education are still inadequate in many aspects. Even, there is an effort to comply with the required standards, the condition is not conducive for maximum compliance. Legal culture is one of the impediments. The government and public need to understand the legal culture as a form of law enforcement to facilitate the implementation of rights. This article seeks to understand legal culture aspects in fulfilling the right to inclusive education.

Keywords—*Legal Culture; Inclusive Education; Indonesia*

I. INTRODUCTION

In the interest of the obligations to protect; to respect; and to fulfil of right to education of children with disabilities; government and society have to be proactive in identifying the impediments. In spite of the challenges for the implementation; government shall implement the right to education for children with disabilities progressively by the four features on the right to education (i.e.; availability; accessibility; acceptability; and adaptability) which stipulated in International Covenant on Economic, Social and Cultural Rights (ICECSR) General Comment number 13 and Convention on the Rights of Persons with Disabilities (CRPD) General Comment number 4 of Article 24. In reality; the impediments of the implementation are not only related to social aspects but also to legal aspects. This is caused; the social phenomenon of the implementation is inseparable from the existing legal system. Thus; there is a gap social phenomena and legal system that indirectly affect the implementation of inclusive education. Hence; some evoked question whether the legal system or regulations relating to inclusive education have been appropriate and in line with the needs of Indonesian society.

II. METHOD

This article is socio-legal research which is important for Indonesia since there are complexity factors of legal problems that occur and persist in Indonesia. The benefit of this approach is to understand the influence between social and legal implementation in inclusive education for children with disabilities to develop the study of human rights law that can address the problems that exist in social phenomena. The source data of research is interview to teachers at Primary School in SDN Gejayan; D. I. Yogyakarta as primary data; thus it is done by qualitative data collection. Meanwhile; the secondary data comes from as primary data from primary sources and secondary sources. Primary sources consist of law and provisions. Secondary sources consist of works that write about by obtaining from library research.

III. RESULT AND DISCUSSION

INCLUSIVE EDUCATION IN HUMAN RIGHTS

A. Right to Education

Education is the right of every individual as a form of human development. This is as mandated in Universal Declaration of Human Rights (UDHR) Article 26 paragraph (2). Enforcement of the right to education is further regulated in ICESCR Article 13 paragraph (1):

“Education shall be directed to the full development of the human personality and the sense of its dignity; and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society; promote understanding; tolerance and friendship among all nations and all racial; ethnic or religious groups; and further the activities of the United Nations for the maintenance of peace.”

Education must be enjoyed by all individuals without exception; therefore the right to education must be in line with human rights principles. In human rights principles; there are principles of universality; indivisible; and interdependent and non-discrimination. The principle of universality; indivisible; interdependent and interrelated are the core of international human rights law. Universality and indivisible validity of the right to education concerns once recognized; applies to each and every person; and inseparable. The right to education is an inherent right of any individual which is interdependent with other rights. Moreover; in Article 1 paragraph (a) of United Nations Educational; Scientific and Cultural Organization (UNESCO)'s Recommendation concerning Education for International Understanding; Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms of 1974 states that education implies; "the entire process of social life by means of which individuals and social groups learn to develop consciously within; and for the benefit of; the national and international communities; the whole of their personal capacities; attitudes; aptitudes and knowledge". States as the duty-bearer and individuals as holders of rights have a stake in the enforcement of the right to education. States are required to act positively to progressively respect the rights; protection and fulfillment of the right to education; whereas individuals are entitled to enjoy the rights granted by the state without exception.

The right to education is an inherent right of any individual which is interdependent with other rights. It is not enough to provide access and equal opportunities to education. It is in line with the statement of Sibonile Khoza that indeed education is a part of economic; social; and cultural rights; but education is important to fulfil the civil and political rights [1]. Bronagh and Laura explain that education as a tool of goals and an important stepping stone for the realisation of other rights [2]. Education has to be of the highest possible quality to help all children reach their potential. Quality in education can only be achieved through the development of child-friendly inclusive learning environments.

B. Education for Children with Disabilities

The right of education for children with disabilities tend to be classified as a group of children who are disproportionately excluded from education [3]. Indeed; some says that children with disabilities tend to be systematically excluded from mainstream education efforts [4]. In fact; education is the right of all children. Education is important due to provides a direct influence on the enjoyment and fulfilment of other rights.

Children with disabilities have a tendency of limitations in enjoying their rights thus affirmative action is carried out without discriminating against it. To actualize the right to education for children with disabilities; United Nations

Children's Fund (UNICEF) notes key rights which must be respected [5]:

- a) Respect for identity by recognizing; such as the right of deaf and blind children to respect for their habit with their sign language.
- b) Respect for participation rights; such as involve in any matter in school.
- c) Respect for integrity; such as have the right at school; to be protected from all forms of violence; bullying or harassment; and to school discipline which is respectful of their dignity.

One of the educational programs for children with disabilities is inclusive education. Elements of human rights in inclusive education are equally rights and free from discrimination. Inclusive education is intended as an education for all; including for children with disabilities and it is intended to provide education without barrier; without discrimination. Inclusive education is often juxtaposed with education for children with disabilities because there are several methods; facilities; infrastructure; and teachers that must be adjusted. In inclusive education; when regular children and children with disabilities learn in mainstream school as inclusive school; it can realise the actualisation of education rights for children with disabilities. Their union in inclusive school with regular children is a form of fulfilment of the right to education without the existence of a barrier. Differences provide unification for them. Inclusive education would change mainstream schools because of their union with reform or restructuring of customized school management for these children. School management is able to use curriculum adaptation; adapted teaching methods; modified assessment techniques; and accessibility arrangements ([6]; [7]; [8]). Reform of school management must refer to four features of the fulfilment of the right to education contained in the Article 13 of ICESCR and Article 24 of CRPD.

LAW ENFORCEMENT

Human rights enforcement is part of law enforcement. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a tangible manner as a code of conduct in legal relations [9]. Law enforcement involves all legal subjects. According to Jimly; the subject can be broad in the sense that anyone who does something or does not do something based on the norms of the applicable law; or can be said to be someone who runs or enforces the rule of law. Whereas in the narrow sense; namely law enforcers; certain law enforcement apparatus to guarantee and ensure that a rule of law runs as it should. The definition of law enforcement can also be viewed from the point of view of the object. In this case; the meaning also includes broad and narrow meanings. In a broad sense; law enforcement includes the values of justice contained in the formal rules and values of justice that live in society. However; in a narrow sense; law enforcement only concerns formal and written regulations.

In analyzing law enforcement problems; the problem is inseparable from the operation of the three components of the legal system according to Lawrence M. Friedman; legal structure; legal substance; and legal culture.

A. *Legal System*

The purpose of the legal system is to create order and certainty. Define to maintain law and government; it can be explained by looking at the legal system to enforce the law. Lawrence Meir Friedman explains that the success or failure of law enforcement depends on: Legal Structure; Legal Substance; and Legal Culture. These three elements forming the legal system are related to each other; and the three elements are harmonized in the process of achieving the legal objectives themselves.

Structure is one of the basic elements of the legal system. 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. Thus; what is seen is institutional arrangements; performance of institutions; and how institutions should behave.

The legal substance is related to the process of making a legal product carried out by law makers. Values that have the potential to cause legal symptoms in the community are formulated in a law. It is undeniable that sometimes the making of a legislative product is influenced by the political atmosphere. Often the legal substance contained in a legislative product is influenced by the interests of certain groups. Product of laws must be in accordance with the aspirations and needs of the community; and not contrary to the state constitution. In making laws there must be justice; usability and legal certainty.

Legal culture is an element of social attitudes and values. Legal culture refers to general culture such as habits; people's opinions; and ways of thinking and acting. The point is social action that seems to be away from the law and in certain ways [10].

The legal structure; legal substance and legal culture must go hand in hand. The structure must be strong; credible; accountable and capable. The substance must be in harmony with the sense of justice of the society while the legal culture must support the upholding of the law if one of them is lame; for example the structure of the apparatus (law enforcement officer) is not accountable; credible and capable.

B. *Legal Culture*

According to Friedman; legal culture is a reflection of the legal system. Legal culture has an important role. Legal culture; in its most general sense; is one way of describing relatively stable patterns of legally oriented social behaviour and attitudes. Legal culture is a common attitudes or values that apply in the life of the society that is related or can affect the legal structure (the process of formation) and the legal substance. Legal culture focus on efforts to form the legal consciousness of society; shaping the understanding of a society. Thus it can construct a responsiveness; sense of

justice; and non-discrimination. By legal culture; it can reorganize the regulatory material against the law; and provide legal services to the society. Legal culture; in its most general sense; is one way to describe a relatively stable pattern of socially oriented behavior and attitudes. Legal culture is the general attitude or values that apply in people's lives that are related or can influence the legal structure and legal substance. Legal culture focuses on efforts to establish society legal awareness; shape people's understanding. Hence; it can build responsiveness; a sense of justice; and non-discrimination. With a legal culture; it can rearrange regulatory material to the law; and provide legal services to the public.

The legal culture element is people's attitudes toward law and the legal system - their beliefs; values; ideas; and expectations. According to Roscoe Pound; the law is not only a collection of norms or order but also a process of balancing interests and conflicting values. The new equilibrium process will make the society towards a new state that Roscoe Pound calls social change. Law is the process of developing society itself. Moreover; it can be a means of renewing society to create changes in society. Law can create social change in society or at least it can spur changes that take place in society. In other words; the law actually has a reciprocal relationship with the society; where the law is a tool to regulate the society and work within the society itself while the society can become an obstacle or become a social tool that allows the law to be implemented well. The legal substance in its form as a legislation has been accepted as an official instrument that has been developed in a oriented manner for dealing with contemporary social issues. The law is better known as the law as a tool of social engineering by Roscoe Pound [11].

According to Friedman; legal culture can be divided into two: internal legal culture and external legal culture. Internal legal culture is a legal culture of the ideas and practices of legal professionals who carry out legal duties specifically; such as police; prosecutors; judges; advocates. Whereas external legal culture is the legal culture of the society; such as attitudes and knowledge of the people regarding the legal provisions imposed on them [12].

An example of an external legal culture is when the lower class of society does not believe in the court; so the community prefers to settle cases outside the court rather than in court. Regarding inclusive education for children with disabilities; legal culture can be seen from how the society values them as legal subjects who need to be pitied or as legal subjects who have rights. For this reason; related to the public's perspective on them; [13] Kanter says that there needs to be an understanding of disability and their rights. Disability should have seen as a social; cultural; and political phenomenon; and against the notion of disability as an inherent; immutable trait it. Children with disabilities are not who should gain a charity but rather as human beings who exist as an important part of the social life. The law can emphasize society efforts to build awareness and has promoted inclusion; social cohesion; and social change. For

this reason; From Kanter opinion, there are three reasons why disability legal study is relevant to be understood in law:

- a. Disability is “us”. It is directly or indirectly affects most everyone; everywhere. According to; it may be said that we will soon be disabled at some point in our lives. the fact remains that anyone can become disabled at any time. more people may get impairments and become disabled in old age
- b. Disability Legal Studies perspective is that disability itself is inclusive. Disability crosses all lines of race; ethnicity; gender; sexuality; religion; nationality; and generations. Disability continues “to carry a negative social charge still supported by dominant cultural assumptions across the economic; political and intellectual spectrum. If in fact disability is the same as race; gender also needs to be a study.
- c. Disability informs about the legal system. Disability can explain the history and values of legal system. Many cases are regarding disability and it was not realised that have remained invisible throughout history. Disability Studies is able to explore the rights and responsibilities of citizens and the general role of the government in promoting and protecting the welfare of all citizens.

INDONESIAN SOCIETY’S VIEW ON INCLUSIVE EDUCATION

A. *Social Phenomena*

The implementation of inclusive education in several regions in Indonesia has several phenomena. In the literature several previous studies and findings through the results of interviews with one teacher from SDN in Gejayan; D. I. Yogyakarta as inclusive school. There was possible for regular schools to refuse children with disabilities in order children will get better served by other schools since not many regular schools have teachers who can provide education for children with disabilities. However; teacher of SDN Gejayan regreted if some schools (not in SDN Gejayan) avoid receiving children with disabilities by the reason that it will reduce the assessment of the school being a favourite school. This fact is not in accordance with the concept of inclusion where the essence of inclusion is school adapting the need for child rather than vice versa.

Parents hope their children with disabilities are able to enroll in regular school. It is not to pursue children's academic abilities but rather to socialize with regular friends and the environment. The results of the interview with one of the teachers at SDN Gejayan; that there was a tendency for parents to enrol their children with disabilities to regular schools rather than to Special School. But beyond expectations; the reasons are not only for socialization with the environment but also for avoiding public scorn. Some parents do not want their children with disabilities to attend Special School since the society have the negative stigma

regarding disabled person. Even some parents sometimes conceal their children's disability when enroll school. It seems that; as stated by Kanter; societies are still lacking in understanding disability. Whereas Law 8/2016 has attempted to regulate disability rights with more human rights perspective compared to the previous law; namely Law number 4 of 1997 (Law 4/1997) concerning Handicapped Persons. Content in Law 4/1997 is more charity based and the fulfilment of the rights of persons with disabilities is still considered as a social problem such as the policy tended in social security; social rehabilitation; social assistance; and increased social welfare. Disabled person should get the same opportunity in effort to develop themselves through independence as a dignified human being. This can be seen in the explanation of Law 8/2016.

Meanwhile; impediments occur when the school does not know the condition of the child at the beginning of enrol. School will realize that some students are children with disabilities when the learning is on the process. If from the beginning there had been an assessment of students are children with disabilities; thus school will aid special treatments for children with disabilities such as teaching methods and curriculum. Special Tutor from SDN Gejayan stated that public did know well since the socialization was still weak. There was still a lack of publication of children with disabilities learning rights and lack of public understanding of children with disabilities and inclusive education. These unintentional attitudinal barriers can be overcome if deeper socialization is carried out.

Physical accessibility still needs to be considered related to the availability of facilities. Availability of laboratories; sanitation; and the availability of Special Tutors are still lacking. Some schools do not have laboratory facilities. Students have no problems with the availability of learning support facilities and the accessibility of physical buildings. Hence; schools are less confident in moving towards becoming inclusive schools. The school is worried that it cannot provide the right service to the children with disabilities. Hence; the school will be less than optimal in handling children with disabilities.

B. *Identify the Legal Phenomena*

From a legal standpoint; the society believes and understands the value of universality where children with disabilities can be accepted in the regular school environment; thus there is no rejection in the implementation of inclusive education for children with disabilities. The Government's policy on inclusive education has been outlined in the Person with Disabilities Law number 8 of 2016 (Law 8/2016) which has reflected an understanding of the place of disability within society not on the individual. This is important because the law is not only a collection of norms or order but also a process to strike a balance between existing interests and values. Interest in this case is the prioritisation of commitment in upholding human rights; especially for children with disabilities in inclusive education. Whereas value is in the community itself.

If the government understands disability as "us"; and disability is inclusive; it will facilitate enforcement of human rights law related to inclusive education for children with disabilities since the legal system between structure; substance; and legal culture can be implemented well. However; from field finding; there are still weaknesses in awareness from the society. The society does not fully understand disability itself. The existence of schools that reject the existence of children with disabilities and parents who enrol their disabled children in inclusive schools on the grounds of embarrassment when entering their disabled children in the Special School indicates that awareness and cultural values embedded in the society through the assessment of disability rights are still weak so there needs to be a balance process towards social change.

Indeed; in the cultural dimension stored a value system that forms the basis of policy formulation and is then followed by law making as juridical signs and code of conduct in people's daily lives. The law must be competent and also fair; the law should be able to recognise the wishes of the public and be committed to achieving substantive justice [14]. But the law as a social control must be able to see the values that already exist in these societies and need to be balanced with the right understanding so that when the rules have been established; it is possible to do the social change.

Law has a role if the society needs its arrangement. This has been done with amandement to the legal rules related to disability from Law 4/1997 to Law 8/2016. Education for children with disabilities through inclusive education has also been compiled in Law 8/2016. Occasionally; people do not fully understand a policy or even the rules. This is an external legal culture; the legal culture of the society; such as attitudes and knowledge of the people regarding the legal provisions imposed on them. The legal culture of society; such the law can create social change in society or at least it can spur changes that take place in society as Roscoe Pound stated that law as a tool of social engineering.

The law is used to deal with problems of implementation; thus it is expected to be able to answer future legal problems that are expected to emerge. By social change; it will make easier to make legal rules at the technical level. The legal issue is addressed by carefully planning or preparing for example the regulations below; namely government regulations; ministerial regulations; and regional regulations. policy formulation; legal culture strategies and efforts to develop legal culture. The strategy of legal culture is not only to the society but also to the local government. In decentralization system; the authority is in the local government; thus it is from the local government that can provide legal culture to the local society. The commitment of the local government towards the implementation of inclusive education policies needs to be a deep concern; especially in regional regulations. That shall be an important to concern from local government to facilitate the availability and accessibility of inclusive education. The strengthening of this legal culture is certainly inseparable from the basic

norms or values agreed upon as a nation and state; namely the Pancasila and the 1945 Constitution of the Republic of Indonesia. (see figure 1)

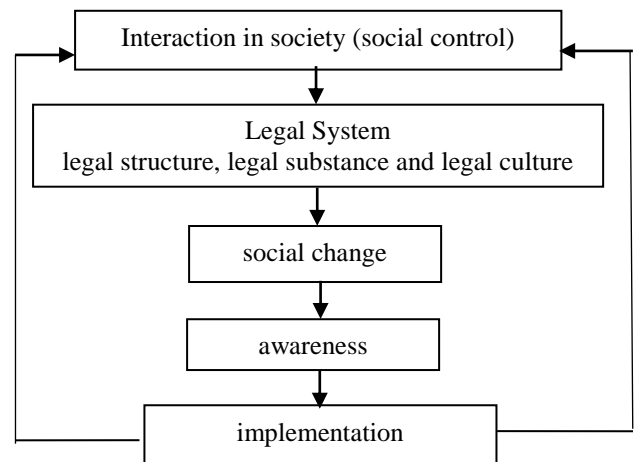


Fig 1. Social change in legal culture

Social change is carried out with law socialization and law education; through awareness; knowledge and understanding to the society. The social change is important; because if there is no social change; it will be very difficult for a legal norm to be applied upright and obeyed. The law was determined by the legal culture in the form of values; views and attitudes of the people concerned. If the legal culture is ignored; then it can be ascertained that there will be a failure of the modern legal system characterized by the emergence of various symptoms such as: misinformation about the contents of the regulations to be conveyed to the public; the difference between what is desired by the law and society [15].

IV. CONCLUSION

Indonesia commit in upholding human rights; especially the rights to education for children with disabilities. To enforce the right to inclusive education; it necessary to be explored not only in terms of social implementation but also the legal system. In the legal system; the legal structure is likened to a machine that produces something; the legal substance is likened to a product produced by a machine; and legal culture is anything or anyone who decides to run the machine. If it is not able to run the engine then the engine will be useless; even though the machine is useful for survival. Therefore; it is necessary to develop a legal culture through targeted and measurable development strategies.

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REFERENCES

- [1] M. El-Muhtaj; *Dimensi-dimensi HAM: Mengurai hak ekonomi; sosial; dan budaya*. Rajawali Press; RajaGrafindo Persada; 2008.
- [2] C. J. Russo; *The Legal Rights of Students with Disabilities: International Perspectives*. ERIC; 2011.
- [3] N. P. MITTLER; "The global context of inclusive education: the role of the United;" in *Contextualizing inclusive education*; Routledge; 2005; pp. 38–52.
- [4] R. Rieser; "The Global Alliance for Inclusive Education. In Enabling Education;" *Manchester: EENET*; no. 9; p. 17; 2015.
- [5] Unicef; "The right of children with disabilities to education: A rights-based approach to inclusive education;" *Geneva UNICEF Reg. Off. Cent. East. Eur. Commonw. Indep. States*; 2012.
- [6] G. De Beco; "The right to inclusive education according to Article 24 of the UN Convention on the rights of persons with disabilities: background; requirements and (remaining) questions;" *Netherlands Q. Hum. Rights*; vol. 32; no. 3; pp. 263–287; 2014.
- [7] F. Polat; "Inclusion in education: A step towards social justice;" *Int. J. Educ. Dev.*; vol. 31; no. 1; pp. 50–58; 2011.
- [8] F. Suleymanov; "Issues of inclusive education: Some aspects to be considered;" *Electron. J. Incl. Educ.*; vol. 3; no. 4; p. 8; 2015.
- [9] J. Asshiddiqie; "Penegakan Hukum;" *diakses dari http/www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf pada tanggal*; vol. 3; 2013.
- [10] L. M. Friedman; *The legal system: A social science perspective*. Russell Sage Foundation; 1975.
- [11] S. Vago and A. Nelson; "Law and society: Second Canadian edition." Toronto: Pearson Prentice Hall; 2008.
- [12] D. Nelken; "Using the concept of legal culture;" *Austl. J. Leg. Phil.*; vol. 29; p. 1; 2004.
- [13] A. S. Kanter; "The law: What's disability studies got to do with it or an introduction to disability legal studies;" *Colum. Hum. Rts. L. Rev.*; vol. 42; p. 403; 2010.
- [14] P. N. Selznick; "Hukum Responsif Pilihan di Masa Transisi;" *Perkumpulan Untuk Pembaharuan Huk. Berbas. Masy. dan Ekol. (Hu Ma)*; Jakarta; 2013.
- [15] I. P. Purba; "Penguatan budaya hukum masyarakat untuk menghasilkan kewarganegaraan transformatif;" *J. Civ. Media Kaji. Kewarganegaraan*; vol. 14; no. 2; pp. 146–153; 2017.