

## LEGAL PROTECTION AND PUBLIC SERVICES FOR ACCESSIBILITY OF PERSONS WITH DISABILITIES IN EDUCATION

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Received 29 Sep 2025 • Revised 31 Oct 2025 • Published 30 Nov 2025

### Abstract

Education plays a fundamental role in a human's life. As one of the state goals, education is stated in the preamble of the 1945 Constitution, Paragraph 4, namely to educate the nation's life. Everyone has the right to receive education, however its implementation is never easy, especially for the disabled people. Persons with disabilities have rights to proper accommodation, dignified public services without discrimination, assistance, translation, and free access to facilities in public service places. The constitutional right to education for disabled people is regulated in article 10 of Act Number 18 of 2016 concerning People with Disabilities, and Government Regulation Number 13 of 2020 concerning Reasonable Accommodation for Disabled learners. The current inclusive school policy is limited and not supported by adequate services and teachers. The inability of students to understand such conditions may cause bullying and create a wall of separation for people with disabilities to be able to get an equal education. Empirical juridical field research was conducted at the Association of People with Disabilities in Lumajang Regency to investigate the legal protection of disabled rights and accessibility to public services. The result shows that legal protection for disabled people is not optimally implemented since there have not been properly installed disabled-friendly public services. Thus, legal certainty, disabled-friendly public services, the availability of facilities, educators, and acceptance of disabilities are crucial for achieving equality in education without discrimination. To achieve difable equality in education without discrimination, it needs to establish regulations with legal certainty, provide disabled-friendly public services related to the availability of facilities and infrastructure, the availability of educators with special expertise in disabilities, and prepare the mental acceptance of other students with disabilities in their educational institutions.

**Keywords:** People with Dissabilities, Legal Protection, Public Services, Education

## INTRODUCTION

Education is part of Human Rights and can also be said to be the most important part of a nation. Education is highly correlated with efforts to alleviate poverty, enhance gender equality, and even serve as a means to maintain a nation's stability, peace, and improve public health. The connection of education to poverty alleviation efforts lies in the fact that education is one indicator of an individual obtaining employment. Adequate education also supports gender equality efforts within a nation, as through education, society's ability to be given equal opportunities to hold certain positions in the workplace becomes wider. Education can also support the maintenance of peace and stability in a nation; through education, there can be implications for a reduction in unemployment due to difficulties in obtaining jobs, thus achieving a peaceful and stable situation.

Persons with disabilities also have the right to education as regulated in Article 10 of Law Number 8 of 2016 of the Republic of Indonesia concerning Persons with Disabilities. They have the right to obtain quality education at every level of education, have equal opportunities as educators and education personnel, and also have equal opportunities as education providers, as well as obtaining reasonable accommodation in the field of education. Various rights of persons with disabilities related to education, based on the author's research, have not been implemented well. The first author of this article, besides being a lecturer, is also actively volunteering for the Association of Persons with Disabilities of Lumajang Regency and is a board member of the National Paralympic Committee Indonesia of Lumajang Regency, which is a disability organization in the field of sports.

Based on a report by the United Nations International Children's Emergency Fund (UNICEF) in January 2022, the number of children with disabilities is estimated to be close to 240 million worldwide, or one child for every ten children globally [UNICEF Data, 1922]. With such a large number, the issue of education for children with special needs becomes urgent. Currently, many policies worldwide are aimed at preparing special education for children with disabilities by establishing Special Schools or regular schools that also function as inclusive schools. However, many crucial problems arise and require solutions.

1. Lack of special education teachers, which threatens the quality of education for children with disabilities (Huayun Yuan, 2023). This shortage of special education teachers is due to issues with teacher salaries, which should receive a better standard of pay for their hard work and patience in often tedious teaching. This teacher salary issue can reduce the morale of teachers to teach in special education for disabilities. Regarding the issue of teacher salaries, it certainly depends on the economic strength of each country, which will undoubtedly vary, so schools also allocate different budgets, in addition to needing a better learning environment (IDEA: NCLD; 2022).
2. Many persons with disabilities enter regular schools, but this also creates problems with teaching methods for students with disabilities differing from other normal students (National Coalition on Personnel Shortages in Special Education and Related Services; 2016). Based on the author's research, students with disabilities require different methods and will face difficulties if teaching methods for non-disabled students are applied to them. For example, deaf students, in addition to needing hearing aids, also require special treatment from the teacher, such as observing the teacher's mouth movements. Such a method is difficult for teachers to implement because they must treat all their students equally.
3. Physical differences of students with disabilities in regular (inclusive) schools are also vulnerable to bullying, especially at the primary school level (Huayu Yuan, 2023).

In this article, the identified problem is the low participation rate of persons with disabilities at the education level, especially in higher education, for which the author obtained data after conducting a survey at the Association of Persons with Disabilities of Lumajang Regency. This also implies a low opportunity to obtain decent employment and livelihood comparable to other members of society. The research objective is to contribute ideas related to the nature of legal protection for persons with disabilities in the field of education, using the analytical framework of legal ideals, namely the theory of the Welfare State, the theory of legal certainty, and the theory of utility, which have not been previously explored by researchers. Furthermore, this article aims to emphasize the need for adequate public services to respect the constitutional rights of persons with disabilities in obtaining equal opportunities and non-discrimination, particularly in the field of education.

## Literature Review

Education is a Human Right. In Indonesia, Human Rights are guaranteed in the 1945 Constitution of the Republic of Indonesia, specifically in Chapter XA, Articles 28A to 28J. Regarding education, it is

also one of the human rights guaranteed by the 1945 Constitution, regulated in Article 28E, which states the right of citizens to obtain education. In addition, Chapter XIII, which regulates Education and Culture, in Article 31 paragraph (1) states that every citizen has the right to education. Besides Chapter XI, other articles also regulate human rights, such as those regulated by Article 27 paragraph (3) concerning the right to work and a decent living for humanity.

This human right in the field of education belongs to all Indonesian citizens regardless of race, religion, ethnicity, socio-economic stratum, group, physical or mental condition. Similarly, children with disabilities, termed children with special needs, should be prioritized to obtain the right to education. Children with special needs are defined as children who have limitations such as difficulty walking, seeing, reading, or hearing. It is concluded that children who receive special education programs include children with superior IQs (Baglieri and Saphiro, 2017). With the guarantee of the right to education by the 1945 Constitution, it can be understood that the State has the responsibility to provide educational opportunities and facilities or infrastructure for these children with special needs.

"Penyandang disabilitas" originates from the words "penyandang" and "disabilitas." In the Great Dictionary of the Indonesian Language, "penyandang" means someone who bears or suffers something, and "disabilitas" means disability or inability. This causes persons with disabilities to often experience discrimination in obtaining their rights. In pursuing education, persons with disabilities still find it difficult. Currently, few schools can adequately serve students with disabilities. As in Lumajang Regency, only a few schools can provide good access to persons with disabilities. Special education for persons with disabilities, translated as inclusive education, is a development of the integrated education program launched in Indonesia around 1980 (Rusmono, 2020). Inclusive education was introduced by UNESCO, originating from the phrase "Education for All," which can be defined as friendly education for all. This inclusive education uses an educational approach that strives to reach everyone without exception. In inclusive education, all members receive equal treatment because they have equal rights as school citizens (Moriña Díez, 2017). The concept of inclusive education is the belief that, as far as possible, all students with special educational needs should be enrolled in local schools and provided with support services and education appropriate to their abilities and needs (Tri Wahyuni et.al, 2021).

Regarding the title of the article, it is necessary to understand the meaning of legal protection. Legal protection is divided into two types: internal and external legal protection. Internal legal protection is self-protection carried out by the parties themselves, while external legal protection involves state intervention to create regulations with the aim of providing protection for the interests of the weaker party (Isnaeni, 2016). The discussion in this article uses the analytical framework of the Welfare State concept, the theory of legal certainty, and the theory of utility.

The Welfare State theory is a theory consistent with the general explanation, namely a state whose government can guarantee the welfare of its people, consisting of 5 (five) pillars: democracy, human rights protection, social justice, law enforcement, and anti-discrimination. The definition of Welfare State according to Black's Law Dictionary states that a welfare state is a nation's government that implements various social insurance programs, such as pension insurance, unemployment compensation, financial assistance for families, food stamps, and assistance for the blind and deaf (Bryan A. Garner: 1997). The Theory of Legal Certainty requires a legal framework that pays great attention to consistency; if there is no consistent flow within legal regulations, it is difficult to expect legal certainty to emerge from those rules (Isnaeni, 1996). The Theory of Utility is also used as an analytical tool, stating that the most objective basis is to consider whether a policy or action brings benefit or actually brings harm to the parties involved (Sony Keraf, 1998).

## RESEARCH METHOD

The research method used in this research is empirical juridical legal research, which is a type of legal research concerning the implementation or enforcement in action of normative legal provisions in every legal event that occurs in society (Abdulkadir Muhammad, 2004). This research is field research, meaning it conducts research on primary data, namely by examining legal rules then combining them with data obtained directly from respondents, in this case, the Association of Persons with Disabilities of Lumajang Regency. As a scientific activity, this research is multidisciplinary, besides having a scope of legal study, it also involves other disciplines in the field of administration related to public services for persons with disabilities.

The research location is in Lumajang Regency with limited informants and population from the Association of Persons with Disabilities of Lumajang Regency, numbering approximately 50 people. The legal materials used are primary legal materials in the form of Law of the Republic of Indonesia

Number 8 of 2016 concerning Persons with Disabilities and Government Regulation Number 13 of 2020 concerning Reasonable Accommodation for Students with Disabilities. Secondary legal materials are various legal materials that provide explanation or guidance regarding primary legal materials, for example journals, books, research results or other works. Tertiary legal materials are legal materials that provide guidance or explanation for primary and secondary legal materials in the form of dictionaries or encyclopedias.

Data collection techniques are carried out in 2 ways, namely first by library research, which is the collection of secondary data, both in the form of applicable laws and regulations and documents related to the object researched, theories also related to legal principles related to the research material. Second, through field research, which is the collection of data from the Association of Persons with Disabilities of Lumajang Regency. Tools for collecting legal materials are done in 2 ways, namely by document study and interviews. Data analysis techniques are carried out by collecting all data, checking, processing, and arranging it systematically, describing it qualitatively with good and correct sentences. Thus, it is hoped that it will be able to answer the problems and produce conclusions on the problems and that the research objectives can be fulfilled.

## **RESULTS AND DISCUSSION**

### **A. Legal Protection and Public Services for Persons with Disabilities in Educational Institutions**

Concerning the human rights possessed by persons with disabilities, the United Nations General Assembly issued a Resolution on December 13, 2006, with Number A/61/106. This Resolution concerns the Convention on the Rights of Persons with Disabilities. Indonesia ratified this convention on March 30, 2007. And has issued Law No. 19 of 2011 concerning the Ratification of the Convention On The Rights Of Persons With Disabilities, commonly abbreviated as the CPRD Law. The purpose of this Law is inseparable from the state's efforts to protect and guarantee equal rights and freedoms, as well as respect the dignity of persons with disabilities.

Based on Law of the Republic of Indonesia Number 25 of 2009 concerning Public Services, the following definition is provided: "activities or a series of activities in the framework of fulfilling service needs in accordance with statutory regulations for every citizen and resident for goods, services, and/or administrative services provided by public service providers." In order for children with disabilities to obtain a friendly environment without discrimination, inclusive education is currently being widely discussed (Lundqvist et al., 2015). Children with special needs can currently obtain equal education in regular classes with their friends. Inclusive education is a form of educational equality without discrimination (Darma & Rusyidi (2016). Inclusive education is a term or word introduced by UNESCO, originating from the words "Education for All," which can be defined as friendly education for all. Education that strives to reach everyone without exception is an inclusive education approach. The inclusive education model requires the involvement of all students in the learning process (Muhibbin & Hendriani, 2021).

Inclusion means comprehensively uniting children with special needs with regular students, encompassing the entire curriculum, social interaction, and environment in schools (Yusuf, 2015). An important aspect of Inclusive Education is viewing the shortcomings of children with special needs not merely as deficiencies, but rather understanding that different physical conditions allow them to carry out activities in a different way or achieve different accomplishments (Isrowiyanti, 2013). Based on the foregoing, inclusive education broadly requires cooperation from all elements within educational institutions to accept the presence of students with disabilities with all their shortcomings. The acceptance of this learning environment is very important. Several respondents in this survey, when interviewed, stated that when they were initially accepted into general/regular schools, they felt there was equality in education. However, once they engaged in activities, the respondents felt isolated by their environment because not many friends understood their limitations, and they felt that students with disabilities were merely a burden, leading respondents to feel that special education was the best alternative school for them. If this is the case, then equality in obtaining education is not achieved. When viewed from the internal legal protection theory, the conditions as stated by respondents show that it cannot be applied, especially concerning the attitudes and mentalities of normal students who are less able to accept the physical differences inherent in persons with disabilities.

State intervention through the Disability Service Unit is a form of external legal protection. Several tasks that this Disability Service Unit must carry out are:

- a. Improving the competence of educators and education personnel in educational institutions.
- b. Providing assistance to students with disabilities to support the smooth learning process.

- c. Developing compensatory programs.
- d. Providing learning media and assistive devices needed by students with disabilities.
- e. Conducting early detection and intervention for students and prospective students with disabilities.
- f. Providing data and information about disabilities.
- g. Providing consultation services.

According to the author's survey results, the following data is shown:



**Figure 1.** Graph of Educational Institutions Accessible to Persons with Disabilities (Source: Author's Survey based on Survey on Fulfillment of Human Rights for Persons with Disabilities in the Field of Education in Lumajang Regency (Responses) - Google Spreadsheet)

Based on field observations and the results of distributed questionnaires, it shows that persons with disabilities desire to pursue higher education. However, there are still no higher education institutions in Lumajang Regency that can provide adequate accessibility for persons with disabilities. Looking at the second graph below, it can be seen that persons with disabilities actually hope for higher education institutions that can provide them access to education. With this, it is hoped that the government can fulfill accessibility in the field of education, especially for persons with disabilities. Accessibility is not limited to the existence of educational institutions; other access that can support the needs of persons with disabilities is also required. Such access can include special pathways for persons with disabilities, special toilets for persons with disabilities, and various other assistive facilities. However, in Lumajang Regency, not all educational institutions have facilities that can help persons with disabilities. These facilities are only available in inclusive schools/Special Schools.



**Figure 2.** Is Higher Education Needed for Persons with Disabilities?(Source: Author's Survey based on Survey on Fulfillment of Human Rights for Persons with Disabilities in the Field of Education in Lumajang Regency (Responses) - Google Spreadsheet)

Factors influencing inclusive education are teacher attitudes and knowledge, parental attitudes, and sources of information. The most common finding is broad support for the principle of inclusion, but very little agreement on how the principle should be applied and what its content is. Overall, it is clear that there is broad support for inclusive education, as indicated by UNESCO documents, but it is less clear what inclusive education means in practice in terms of what the education system should look like (Alzahrani, 2020). Justice opens opportunities for children with special needs to receive quality

education so that individuals can develop their potential and contribute to society. Therefore, there is no reason for children with special needs not to attend school and not be accepted into regular schools.

Regular schools with an inclusive orientation are an effective way to combat discrimination, create open societies, build inclusive communities, and realize education for all. In addition, inclusive schools provide effective education to increase efficiency and reduce the cost of the entire education system (Kadir, 2015). The goal is to provide all students with the opportunity to optimize their potential and meet their learning needs through inclusive education programs. Therefore, it is an educational program that accommodates all students in one class according to their age and development (Schmidt & Venet, 2012).

## B. Discussion

Human Rights have been regulated in the 1945 Constitution, including equality in obtaining education for all Indonesian citizens. The protection and respect for the rights of persons with disabilities related to education are also regulated in Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities, especially in Article 10, and Government Regulation Number 13 of 2020 concerning Reasonable Accommodation for Students with Disabilities. However, these are not guarantees of perfect implementation without the support of regulations that can be implemented at the regional level, so that the protection and respect for the rights of persons with disabilities are just, legally certain, and beneficial. It is realized that achieving legal protection and public services for persons with disabilities requires significant funding and the role of all parties, including legislative, executive, all students, teaching staff, and all necessary components to educate the nation's children without discrimination against vulnerable groups, in this case, persons with disabilities. It requires the participation of the government and all society so that no more families hide family members with disabilities without giving them the opportunity to pursue education equally with others.

Government Regulation Number 13 of 2020 concerning Reasonable Accommodation for Students with Disabilities, Article 24, addresses the existence and duties of the Disability Service Unit. The benefits of this Disability Service Unit's duties will not be felt if they have not been implemented through Regional Regulations in an area, such as in Lumajang Regency. Several obstacles faced by persons with disabilities in Lumajang Regency as a result of the non-implementation of the Regional Regulation on Disability Protection in Lumajang Regency include: difficulties in accessibility in the field of education due to the lack of adequate Public Services for Persons with Disabilities, among others:

1. Not all schools are inclusive schools, thus the unavailability of teachers/educators in a school hinders persons with disabilities from being accepted into general schools;
2. The teaching methods provided are not yet disability-friendly. In certain conditions, this causes difficulties because general schools do not guarantee teaching methods that can adapt to the needs of persons with disabilities, as they operate on the principle of no priority for any student, all are equal. However, teaching methods that are not disability-friendly will certainly present unique difficulties. This case occurred during an interview with a deaf student who wished to be accepted into a favorite school in Lumajang Regency. In fact, this student was intelligent and had international achievements in drawing. The child decided not to continue education at that school because the teachers were unwilling to adapt to the prospective student's needs, specifically that the student would understand lessons if they could observe the teacher's mouth movements. There was no compensatory program that the prospective student could hope for at that school; the school's principle was not to be limited to teaching in front of the class but to move freely, reasoning that all students should receive the same priority. They suggested that the child always be accompanied by a personal translator throughout the learning activities, which was not feasible for the child to realize. Not to mention the requirement to buy hearing aids worth tens of millions of rupiah so that the child would not have difficulty receiving lessons. Thus, the desire of this deaf student with disabilities to enter the favorite school failed;
3. Early detection is carried out but is difficult to implement when confronted with various special needs for persons with disabilities;
4. The very limited availability of inclusive schools and the absence of higher education institutions in Lumajang Regency that have prepared all special services for persons with disabilities pose a particular obstacle because their physical conditions do not allow them to continue their studies outside the city;
5. Consultation services in the field of education will be difficult to realize if a region does not enforce their applicability for education providers, if such rules are not stipulated in Regional Regulations or Regent Regulations.

Various realities in the field confirm the difficulty of realizing the concept of a welfare state, welfare for all citizens without discrimination. If deepened through the analytical lens of the principles of justice, legal certainty, and utility, it can be elaborated as follows:

1. The absence of public services for persons with disabilities is a form of injustice for them, leading to difficulties for persons with disabilities in achieving their dreams of entering educational institutions according to their expectations to realize their aspirations.
2. Although Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities has been enacted, without the availability of Regional Regulations or Regent Regulations as implementing regulations, the contents of the articles of the Disability Law are merely rhetoric. When linked to the principle of legal certainty, then state intervention in regulating its citizens to provide legal protection for vulnerable groups such as persons with disabilities means that various rights in the said Law will not "sound" at the implementation level in the field. Such a situation does not guarantee the principles of legal certainty and utility for persons with disabilities.

Inclusive or specialized higher education for persons with disabilities is also greatly needed at present. Based on the author's research, most persons with disabilities are only able to obtain education up to the high school level; very few continue to higher education. This is due to:

1. In non-inclusive higher education institutions, accessibility for persons with disabilities is definitely inadequate. This condition is prone to bringing particular difficulties for persons with disabilities, especially if the campus has multiple floors without access via lifts or escalators, or without special pathways for persons with disabilities.
2. In non-inclusive higher education institutions, teaching staff/lecturers are certainly not specially prepared for persons with disabilities. With teaching methods equivalent to non-disabled students, this is also an obstacle for persons with disabilities to understand the knowledge provided, for example, for visually impaired, hearing impaired, or speech impaired individuals.
3. Acceptance in social interaction is also highly desired by persons with disabilities. They want to be treated as equals and not be treated like strange creatures to be stared at. Fair and non-discriminatory treatment is certainly highly expected by persons with disabilities. However, what happens is that they are rarely included in activities, considered creatures who need pity, for example, when doing assignments, if there is a disabled person in a group, there is usually special treatment where they are not allowed to participate in doing the work, etc., which is intended to make it easier and not burden persons with disabilities. If this culture is always followed, persons with disabilities will actually have their creativity and abilities curtailed.

Related to the discussion presented above, the existence of special higher education for persons with disabilities becomes a necessity that must be realized for the sake of justice, legal certainty, and utility for persons with disabilities as a manifestation of the constitutional rights of persons with disabilities as regulated in laws and regulations.

## CONCLUSION

Persons with disabilities have equal rights to accessibility in education. Various elements need to be prepared to realize the implementation of equal rights for persons with disabilities in pursuing education, including the readiness of inclusive educational institutions, special teaching staff for disabilities, especially for the visually impaired, hearing impaired, and speech impaired, through disability-friendly compensatory programs. These programs facilitate children with visual, auditory, motor, cognitive, behavioral, and emotional impairments by shifting to other functions that are possible. The availability of learning media, including facilities and infrastructure that support persons with disabilities to be able to attend regular schools up to the university level, is crucial. For the realization of legal protection and public services for persons with disabilities in the field of education, regulations up to the regional level are needed. More inclusive schools and universities that can support disability education are required, so that they can become independent individuals and be ready to compete in the workforce for the achievement of poverty reduction in Indonesia.

Just legal protection for persons with disabilities can be realized if persons with disabilities have equal opportunities in pursuing education. Legal protection with legal certainty for disability education is possible if inclusive education regulations are enacted down to the regional level. Beneficial legal protection can be felt by persons with disabilities if, in pursuing education, their environment can accept their shortcomings without discrimination. The concept of the Welfare State, as enshrined as the Goal of the Indonesian State in the Preamble of the 1945 Constitution in the context of contributing to the intellectual development of the nation's children, should also reach persons with disabilities wherever

they may be. Special higher education for persons with disabilities in Lumajang city is also very much needed to provide equal opportunities for persons with disabilities in obtaining education, thereby realizing the principles of justice, legal certainty, and utility.

## ACKNOWLEDGMENTS

All praise be to Allah SWT, by His abundant grace, the writing of this article has been completed. Our deepest appreciation and gratitude go to the University of Lumajang, the Rector of the University of Lumajang, Dr. Sudjatmiko, S.H., M.H., and all levels of leadership, lecturers, students, and education staff who have provided both material and non-material support. Also, not forgotten is the Consortium of Higher Education and Nusantara Scholars who have provided the opportunity to contribute. Our highest thanks and appreciation also go to the Higher Education Service Institution Region VII East Java, which has greatly facilitated and motivated the realization of the Tri Dharma of Higher Education.

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