

# **The Fulfillment of Children with Disabilities Education Rights in West Kalimantan**

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## **Abstract**

Central and Local Government had a duty to give rights for children with disabilities. The purpose of the study to find both the factor and obstacle in the lack of education rights children with disabilities in West Kalimantan. Through socio legal research method and qualitative approach, the study found that there was no accurate children with disabilities data. However, Family Communication and Children with Disabilities Forum (Forum Komunikasi Keluarga dan Anak Cacat) noted there were totally 1.121 (28,02%) only children with disabilities who could access their education through Extraordinary School (Sekolah Luar Biasa) of the whole 4.001 children disabilities in 2010. The following factors affecting were the lack of including school facilities, infrastructures and high education cost for children with disabilities, so parents and family were not able yet to access the education for their children. The implication of the study show it needed concrete step such policy and Local Government commitment in providing free education access in school including for children with disabilities in every district/city regions.

**Keywords:** children, disabilities, education rights.

## **Introduction**

Mankind was a creature of God who had the same position on earth. Every human being had a dignity attached to his humanity. With confidence in the power of God as the Creator, the condition of disability experienced by some of the human children was a divine fact. This condition should not be the cause of the loss of the dignity of People with Disabilities (PwDs), or the reason for not aligning them with other citizens in all spheres of life, whether political, economic, social and cultural. But in reality, PwDs remain the most vulnerable and marginalized groups in every society. Although the international and national human rights and economic development movements were improving, generally the group was in the final line to enjoy it. Most of them were still dependent on the help and feelings of other people's mothers. They have not gained the right to get the opportunity and treatment to act, to move according to their condition.

The most decision-makers paradigm in various places and people's views on disability has not changed. PwDs were viewed more as "objects", rather than as "rights holders" for welfare or health, let alone education. This is reflected in the number of policies concerning disability (Maccioni, Macellari and Giansanti, 2007), but its contribution did not significantly changed PwDs conditions in the state. It was the reason why Convention on the Rights of PwDs (CRPD) ratified, it was the foundation for changing the situation of PwDs.

Judging by its purpose, this Convention were not only promoted, protected and guaranteed PwDs to enjoy human rights: (Borodkina, 2014) and fundamental freedoms that can also be enjoyed by non-disables, but furthermore they must be able to enjoy them fully and without discrimination based on disability (Niehues and Niehues, 2014). In addition, the Convention also aims to increase respect for human dignity and prestige attached to every human being indiscriminately. From these two objectives it is seen that this Convention wishes to reaffirm that PwDs have the fundamental and dignity that they should enjoy fully and without discrimination based on disability. However, if viewed from the essence, there are some things that need to be noted and understood because it has given significance for the protection of disability. In addition, the Convention also marks the entry of a new era for people with disabilities in relation to the relations between countries and citizens.

Furthermore, in accordance with a fair and civilized human life view of life, the condition of disability should be viewed as a reality that keeps its bearers from participating and engaging in activities in society in full and equal manner with others. There is no human being who desires himself as a person with disabilities. Disability conditions can happen to anyone, either because it was brought at birth or because of an accident, traffic accident, and natural disaster events, and so on. Therefore, in particular, this issue should be the responsibility of the state and society in general.

In fulfilling state and community responsibilities for PwDs, governments, especially local governments, should regulate policy (Pritchard, 2006) to seek the fulfillment of their rights. Government policy should be based on a new paradigm that is in line with the nation's view of life, recognizing the limitations of PwDs that can be addressed if physical and non-physical accessibility is sought, accommodating the principles of non-discrimination, equality and opportunity; and involves the participation of all components of society by taking into account local institutions, customs prevailing in society. Thus will realize the independence and welfare of PwDs so that they can participate fully in the life of nation and state.

Empirical conditions so far are still discriminated against the treatment of PwDs (Maher, 2018) in various aspects of the field of life, such as education, health, sports, civics, work and business and social interaction. On the other hand, the social life conditions of PwDs are at a pre-prosperous level. If this condition is not a concern for all elements of society, it will further exacerbate the situation to realize PwDs able to compete in community life and development activities. Therefore, legal alignment through local regulations should be a solution for PwDs to obtain a high quality and appropriate education.

### **Literature Review**

In the perspective of Human Rights: (Dembour, 2010), protection and fulfillment of the rights of PwDs is one of the responsibilities or obligations of the state in order to provide social and economic protection to the community. Thus its protection and fulfillment must be regulated in such a manner as to fulfill the fundamental rights of PwDs; (Fazio, Linton and Kahn, 2009), especially after the existence of regional autonomy, placing the local government as the main bearer of obligation in an effort to improve the social economic welfare of the society, without exception. In that context, in accordance with the duties, authorities, obligations and responsibilities of the regional government, on the authority of the higher legislation, local governments may establish regional policies, formulated in various local law products, such as: Regional Heads and other regional provisions related to the protection and fulfillment of PwDs.

Therefore, a comprehensive and integrated study is needed in order to design local legal products in the field of protection and fulfillment of the rights of PwDs that are responsive-progressive to human rights: (Sengupta, 2004), justice and legal certainty. Due to the presence of local regulations related to the protection and fulfillment of the rights of PwDs, the realization of the authority of regional autonomy based on the needs and interests of the regions. Thus human rights are the basic right inherent in every individual since being born on this earth and not being granted or created by man or country, and must be respected and protected by the state.

Human rights universally told those rights which are inherent in our nature and without which we cannot live as human being by the people of the world, its formulation and recognition have been fought for a very long time. Even to this day it is still going on, with the various dimensions of the problems that arise due to the various spectrum of interpretations involved in it. It starts with a UN charter that views the importance of human rights to promote social progress and better standards of life in large freedom the nations of the world through the UN have announced 1948 Universal Declaration of Human Rights

Human rights in Indonesia originated from the concept of freedom (freedom) which is appreciated into the term "independence" as stated in the first paragraph of the Preamble of the 1945 Constitution. Such freedom is based on the existence of human beings as God's creators who have no substance can be eliminated (non-derogable) just like that and by anyone because of the transcendental attributes attached to it. From that then everyone has the "right" as a gift of God to live on earth in the form of civil or political rights as well as economic, social and cultural rights.

Human Rights in this initial concept is not much different from what is contained in this initial concept is not much different from what is stated in the Magna Charta, The Declaration of Independence of America, or which arose in France, which then gave birth to UN universal agreement in the "Universal Declaration of Human Rights "(UDHR) in 1948. Based on the universality of the concept in paragraph 1, the concept of human rights in Indonesia falls into the category of human rights in the first generation marked by the International Covenant on Civil and Political Rights (ICCPR) which includes the right to life (Article 14), freedom of thought and religion (Art. 19), freedom of association (Article 21) and freedom of association (Article 22).

The independence captured from the colonization by the Indonesian nation is intended as a source to realize the justice of prosperity and prosperity of the nation. Based on the ideals of the nation as stipulated in the Preamble of the 1945 Constitution, it is not excessive that Indonesia in the perspective of Human Rights has the ideal to actualize that the people or "children of the nation" have the right to obtain a decent living in both economic, social and cultural aspects. With the basic assumption of universality it is also not excessive if such a concept also fulfills the meaning of human rights in the second generation which relies on the birth of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes the right to work (Article 6) Article 8), pension rights (Article 9), the right to an adequate standard of living for self and family (Art. 11), and the right to education (Article 13).

In addition, international documents on human rights can also be found in international documents, in the form of international treaties, standards, model agreements, guidelines and others coordinated by the UN. PwDs are a part of society who also holds equal positions of rights, duties and roles. The rights of PwDs have long been central to the attention of the United Nations (UN) and other international organizations. The most important outcome of the 1981 International Disabled Year is the World Program of Action on PwDs established by the UN General Assembly in its resolution Number 37 - 52. The Year of the International Disabled Persons and the

World Action Program is a powerful driving force for progress in this disability field. Secondly, it places emphasis on the right of PwDs to equal opportunity as other citizens, as well as the right to obtain equal parts in the improvement of living conditions as a result of social and economic development (UN Resolution 1993). The global meeting of experts to review the implementation of the world action program on PwDs by the middle of the UN Decade for PwDs was held in Stockholm in 1987. At the meeting it was suggested that a philosophy be developed that could be used as a guide to determine priorities for action in the year -the coming year. The basis of such philosophy should be the recognition of the rights of PwDs. In this regard, the meeting recommended that the General Assembly convene a special conference to draft an international convention on the abolition of all forms of discrimination against PwDs, subject to ratification by states before the end of the decade.

A draft convention outline was prepared by Italy and presented to the 42nd general assembly. Further presentation of the draft convention was undertaken by Sweden at the 44th session, however, in both sessions no consensus can be reached on a suitable convention. Many representatives have argued that existing human rights documents can guarantee PwDs to obtain the same rights as others.

The standard equality of opportunity rules for PwDs has been developed on the basis of experience gained during the UN Disability Decade (1983-1992). The International Charter of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Rights of the Child The Elimination of All Forms of Discrimination against Women, as well as the World Program of Action on PwDs, is the political and moral basis for this rule. Although this rule is not mandatory, it can be an international output rule if it is set by a large number of countries with the aim of respecting a rule in international law.

The regulation contains high moral values, and countries require a strong political commitment to be able to implement them in order to create equal opportunity. The essential principles of responsibility, acting and cooperating are contained therein. Areas of great importance to the quality of life and for the achievement of full participation and equality are included. This regulation can be used as an instrument for policy making and taking action for PwDs and their organizations. This regulation can also be used as a basis for technical and economic cooperation between countries, the United Nations (UN) and other international organizations.

The regulation aims to ensure that children with disabilities and adults, men or women, have the same rights and duties as other people as citizens. In all societies in the world there are still obstacles that cause people with disabilities cannot exercise their rights and freedoms so it is difficult for them to participate fully in activities in their communities. It is the responsibility of states to take appropriate action to eliminate these obstacles. PwDs (disabilities) and their organizations should play an active role as partners in the process of removing these barriers. The equality of opportunity for PwDs is a very important contribution to the effort to mobilize human resources in general and globally. Particular attention may need to be given to certain groups such as women, children, elderly, the poor, migrant workers, dual or multi disabled persons, isolated and ethnic minorities. In addition, there are also large numbers of displaced PwDs who have special needs requiring attention.

Where the purpose of the Convention is deeply philosophical, the importance of recognizing the equality of PwDs is recognized, as defined, among other things, that the objective of this Convention is to promote, protect and guarantee the enjoyment of all human rights and fundamental freedoms fully and equally by all PwDs, and to

promote respect for the inherent dignity of themselves. PwDs including those with long-term physical, mental, intellectual or sensory impairments who, in their interactions with various barriers, may obstruct their full and effective participation in society on the basis of equality.

The general principles contained in the Convention on the Rights of PwDs, as set forth in Article 3, via (a) respect for inherent dignity, individual authority including freedom to make choices, and independence of persons; (b) non-discrimination; (c) participation and full and effective involvement in society; (d) respect for the difference and acceptance of PwDs as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; and (h) respect for the growing capacities of children with disabilities and respect for the rights of children with disabilities to protect their identities.

In its legal construction, the Convention on the Rights of PwDs does not merely declare the rights of PwDs, but constitutes constitutive new rights (legislation). The rights of PwDs who, in the traditional-conventional view are not recognized, are formulated in the Convention on the Rights of PwDs. The Government and the state of Indonesia as a member country of the United Nations and the international community have ratified the Convention on the Rights of PwDs through Law Number 19 of 2011. The ratification of the Convention on the Rights of PwDs has resulted in Indonesia being a participating country and legally bound to implement the Convention.

Following the ratification of the Convention on the Rights of PwDs by the Government of Indonesia with Law No. 19 of 2011, it shall legally obligate States Parties to implement the rights of PwDs. To implement the Convention on the Rights of PwDs, the formation of laws or legislation on the rights of PwDs of obligations of State, Government and Local Government is set forth in the form of regulatory policy rules.

States Parties recognize the right of PwDs to education. In order to realize this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and long-term learning aimed at: (1) The development of the full potential of human beings and the feeling of dignity and dignity, and the strengthening of respect for human rights, fundamental freedoms, and human diversity; (2) The development of personalities, talents, and creativity, as well as the mental and physical abilities of PwDs to the extent that their potential allows; (3) Enabling PwDs to participate effectively in a free society;

In realizing this right, States Parties shall ensure that PwDs should be included in the general education system on the basis of disability, and that CwDs should be able to attend compulsory primary education, or secondary education on the basis of disability; CwDs can access free and quality secondary education and quality secondary education and are inclusive on an equal basis with others in the communities in which they live; appropriate accommodations needed by individuals are available; PwDs receive the necessary support, in the public education system, to facilitate their education effectively; effective individual support facilities are available in environments that maximize academic and social development, consistent with full objectives and inclusion. States Parties shall enable PwDs to learn about life and social development skills to facilitate their full and equal participation in education and as members of the public.

### **Research Method**

This study used socio-legal research with a qualitative approach. Socio legal research approach intended to study and examine mutual relationships between law and other social institutions. Here, the law is not conceived as an autonomous normative phenomenon, but as a social institution that is associated in real terms with other

social variables. The law that empirically is a symptom of society, on the one hand can be studied as a variable cause (independent variable) that cause the effects on various aspects of social life.

### Results and Discussion

Efforts to increase the role of PwDs in development have been implicit in the five basic philosophies of Indonesia, namely Pancasila, and the 1945 Constitution, Pancasila as the Indonesian way of life and philosophy, which states that every citizen has status, rights and obligations, the same in family and society. But empirical facts still indicate a negative stigma associated with disability in people's lives, including in West Kalimantan who interpret disabilities as identical to sick or weak conditions. A person with a disability is seen as a person who has no ability that will only burden the people around them.

Policies and legislation are dominated by and based on a charity/compassionate approach, which means that in legislation disability is generally regarded as an aspect of regulation in the field of social security and welfare, health, or ability. This approach is also reflected in the organization most responsible for disability-related issues, the Ministry of Social Affairs. The medical model for disability is also evident in various laws and policies, which view disability as a form of deficiency or deviation from the existing, individual, irreparable norms.

**Table 1.** Number of Disabled People by Regencies/Cities in West Kalimantan

Regencies/ Cities	Body Defects	Deaf	Speech Impaired	Blind	Ex Leprosy	Multiple Defects	Others	Total
Sambas	598	118	256	327	517	183	302	2301
Bengkayang	597	177	117	262	352	81	112	1698
Landak	740	182	190	313	190	184	269	2068
Pontianak Reg	257	37	88	98	340	65	98	983
Sanggau	505	80	163	197	215	52	284	1496
Ketapang	545	171	184	285	229	131	278	1823
Sintang	499	15	174	141	135	103	83	1150
Kapuas Hulu	815	345	286	287	520	150	20	2423
Sekadau	640	221	262	150	178	85	75	1611
Melawi	272	84	83	83	142	130	87	881
Kayong Utara	299	86	68	109	112	70	105	849
Kubu Raya	588	168	207	107	231	31	68	1400
Pontianak City	248	21	70	36	77	80	43	575
Singkawang	431	89	85	64	93	78	106	946
Jumlah	7034	1794	223	2459	3331	1423	1930	20204

Source: 2010 West Kalimantan Province Social Agency

**Table 2.** Disabled Children by Regencies/Cities in West Kalimantan

Regencies/Cities	Male	Female	Total	%
Sambas	303	265	568	14,20
Bengkayang*	-	-	-	-
Landak*	-	-	-	-
Pontianak Reg	189	167	356	8,90
Sanggau	176	135	311	7,77
Ketapang	331	322	653	16,32
Sintang	253	230	483	12,07
Kapuas Hulu	227	159	386	9,65
Sekadau*	-	-	-	-
Melawi*	-	-	-	-
Kayong Utara	106	108	214	5,35
Kubu Raya	247	202	449	11,22
Pontianak City	198	134	332	8,30
Singkawang	126	123	249	6,22
Jumlah	2156	1845	4001	100

Source: 2010 FKKDAC West Kalimantan Province  
\*) Data was not done

In the data mentioned above, it was revealed that not all Children with Disabilities who are also termed with Children with Special Needs are recorded accurately, but FKKDAC West Kalimantan Province has sought to record children with disabilities, where from 14 districts/cities in West Kalimantan, 10 district/city recently recorded and there are a number 4.001 children with disabilities, and when compared with the number of children aged up to 2010 i.e. a number 1.769.272 in West Kalimantan, then there is 0.23% children with disabilities.

Furthermore, it can be disclosed that accurately the children with disability to date have not been fully registered in the districts/cities of West Kalimantan, and have not been classified explicitly who belong to Children with Disabilities, where access to their education is placed in the Special School program for children with disabilities based on the type of catabus and Inclusion School.

In reality from 4001 children with disabilities recorded by the FKKDAC (Communication Forum for Families with Disabled Children) of West Kalimantan Province, not all accessible right to the right to education, health, social and economic, because the field survey showed that of 4001 children with disabilities are partly still belonging to poor families or families with income levels are still economically middle-low, so they do not have the ability to access education or health for their children. Previous research obtained data, that of the 4001 children with disabilities who are recorded only, not all can access education, as revealed in the following data:

**Table 3.** CwDs attending Education Program according to Education and Gender in West Kalimantan

Regency/City	Education Program										Total
	TK-LB		SD-LB		SMP-LB		SMA-LB		Total		
	L	P	L	P	L	P	L	P	L	P	
Pontianak City	2	16	136	79	32	20	12	1	208	127	335
	8							2			
Pontianak Reg	-	-	20	15	-	-	-	-	20	15	35
Singkawang City	3	3	81	46	20	18	14	7	118	74	192
Sambas Reg	-	-	13	11	-	1	-	-	13	12	25
Sanggau Reg	-	-	27	19	-	-	-	-	27	19	46
Sintang Reg	-	-	10	8	-	-	-	-	10	6	18
Kapuas Hulu Reg	-	-	17	8	2	-	-	-	19	8	27
Ketapang Reg	-	-	19	20	-	-	-	-	19	20	39
Sekadau Reg	-	-	6	4	-	-	-	-	6	4	10
Landak Reg	-	-	4	4	-	-	-	-	4	4	8
Kubu Raya Reg	-	-	7	11	-	-	-	-	7	11	18
Melawi Reg	-	-	28	27	-	-	-	-	28	27	55
Total	3	19	368	252	54	39	26	1	479	329	808
	1							9			

Source: 2010 West Kalimantan Provincial Education Office

TK-LB Superb Kindergarten; SD-LB Extraordinary Primary School; SMP-LB Extraordinary Junior High School; SMA-LB Extraordinary High School

**Table 4.** Data on CwDs Attending Education Program at the Program State Elementary School Inclusion by Type of Disability and Sex In West Kalimantan

Regency/City	Type of Disability														Total				
	A		B		C		C1		D		E		F		G		L	P	Total
	L	P	L	P	L	P	L	P	L	P	L	P	L	P					
Pontianak Reg	-	-	1	-	46	26	1	-	2	-	5	2	-	-	-	-	55	28	83
Singkawang City	-	-	-	-	35	14	-	-	-	-	-	-	-	-	-	-	35	14	49
Sanggau Reg	-	-	-	-	-	-	40	25	-	-	-	-	-	-	-	-	40	25	65
Sintang Reg	2	-	3	1	19	13	-	-	-	-	-	-	-	-	-	-	24	14	38

Landak Reg	-	-	1	8	-	1	-	-	-	-	-	1	-	40	15	54	24	78	
Total	2	-	3	9	100	54	41	25	2	-	5	2	1	-	40	15	208	105	313

Source: 2010 West Kalimantan Provincial Education Office

A Blind; B Deaf; C Mentally Disabled; C1 Feeble Minded; D Heward; E Bad Attitude; F Autism; G Multi Detect

Based on data on Table 3 and Table 4 above and associated with the data in the previous table, it can be revealed the conditions of children with disabilities on the fulfillment of access to education in West Kalimantan as follows:

1. On Table 3 indicates that of a number 808 children with disabilities, tend to be more numerous who follow the education program Extraordinary Primary School, via any number 620 (76,73%). While at the level of education Extraordinary Junior High School there are a number 93 (11,51%), and there are only a limited number 45 (5,57%) who follow the education Extraordinary High School program, and on the Superb Kindergarten level also there are only a number 50 (6,19%) children.
2. In addition, the quantitative presence of children with disabilities in West Kalimantan has not fully followed the education program, both in the extraordinary school education program at the level Kindergarten education up to Senior High School, as well as in inclusive education programs. Data on table 3 show there are a number 808 children, consisting of 479 boys and 329 girls who follow the education program. While on table 4 there are a number 313 children, consisting of 208 boys and 105 girls attending an inclusive classroom education program. Thus only recorded a number 1121 children belonging to children with disabilities are accessible to education programs, both programs extraordinary school as well as inclusive education programs. Compared with disabled child data that can be denaturalized from 10 district/city in West Kalimantan by Family Communication With Disabled Children Forum (Forum Komunikasi Keluarga Dengan Anak Cacat/FKKDAC) West Kalimantan as stated in table 3, i.e. a number 4001 children, then it can be revealed there are only a number 1121 (28,02%) children accessible to educational programs. The data is not yet comparable with children with disabilities who have not been identified well by West Kalimantan FKKDAC as well as by the relevant institutions or agencies.
3. Besides there is only data 28.02% children with disabilities who are accessible to educational programs, well through Extraordinary School as well as on educational programs at inclusive classroom schools, so there is more than less 71, 98% children with disabilities under the guidance and supervision of parents and families, it is also possible that few children with disabilities are accessible either to the fulfillment of their health rights or to their socioeconomic conditions.

Empirical facts mentioned above, when reviewed with the fulfillment of the rights of PwDs that the disturbance does not limit the rights of children with disabilities to study and attend school, both in special schools and in public schools, the fact that there are children with disabilities have not attended school of course necessary policy from the Government to encourage the fulfillment of the right to education, particularly the application of inclusive education in the school system (Agung *et al.*, 2016).

## Conclusions

There was no accurate children with disabilities data. However, Family Communication and Children with Disabilities Forum (Forum Komunikasi Keluarga dan Anak Cacat) noted there were totally 1.121 (28,02%) only children with disabilities who could access their education through Extraordinary School (Sekolah Luar Biasa) of the whole 4.001 children disabilities in 2010. The following factors affecting were the lack of including school facilities, infrastructures and high education cost for children with disabilities, so parents and family were not able yet to access the education for their children. The implication of the study show it needed concrete step such policy and



Local Government commitment in providing free education access in school including for children with disabilities in every district/city regions.

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