

Human Rights-Based Reconstruction of Inclusive Education Policy for Children with Special Needs in Magelang Regency

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Abstract

Indonesia has ratified the Convention on the Rights of Persons with Disabilities and adopted a national framework for inclusive education, yet regencies, which run most primary and junior secondary schools, decide whether children with special needs actually learn in regular schools. This article examines Magelang Regency, where about 490 children with special needs are recorded in education data and only a few schools are known to provide inclusive education. It asks whether the regency's inclusive education policy meets the principles of justice and how it should be reconstructed. The research is normative, using statutory and conceptual approaches to the Constitution, the Convention, the Disability Law, the implementing regulations and Magelang Regency Regulation No 1 of 2021, assessed against the 4-A scheme and Rawls's difference principle. The regency does have a binding regulation: it commits the regional government to inclusive education, facilitation of reasonable accommodation, annual monitoring and disability service units. But it defers the detail to national law and to regent's regulations, and no implementing instrument on inclusive education was identified, so teaching assistants, facilities and budget remain unspecified and justice stops at formal access. The article proposes a regent's regulation with targets, indicators, assigned roles and funding sources, published monitoring data and coordination with the province over special and senior secondary schools.

Keywords

Inclusion; Disability; Education; Accommodation; Regulation; Justice



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Introduction

Every citizen has a constitutional right to education, and the state must fund and organise a national education system.¹ For persons with disabilities that right has been reframed over the past decade. Law No 4 of 1997 treated disability largely as a matter of welfare and rehabilitation,² whereas Law No 8 of 2016, which repealed it, adopts a human rights model and obliges the central and regional governments to provide education for persons with disabilities at every level.³⁴ The operational rules followed: Government Regulation No 13 of 2020 on reasonable accommodation for students with disabilities,⁵ and Ministerial Regulation No 48 of 2023, which regulates reasonable accommodation and disability service units from early childhood to higher education.⁶ These instruments say what accommodation is and who must provide it, but they set no enrolment quota for students with disabilities, no minimum staffing standard for special assistant teachers (*guru pembimbing khusus*, GPK) and no affirmative funding mechanism, so their effect depends on what each region does with them.

The international framework is equally clear. Article 13 of the International Covenant on Economic, Social and Cultural Rights, ratified by Law No 11 of 2005,⁷ is read by its Committee through four interrelated features: education must be available, accessible, acceptable and adaptable,⁸ a scheme developed by the first Special Rapporteur on the right to education.⁹ Article 24 of the Convention on the Rights of Persons with Disabilities, ratified by Law No 19 of 2011,¹⁰ requires an inclusive education system at all levels,¹¹ and the Committee on the Rights of Persons with Disabilities distinguishes inclusion, in which the system changes to fit the learner, from integration, in which the learner is placed in a mainstream school and expected to adjust.¹² Nationally, Government Regulation No 70 of 2019 sets a

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [1945 Constitution of the Republic of Indonesia], art 31.

² Law No 4 of 1997 on Persons with Disabilities (Indonesia).

³⁴ Law No 8 of 2016 on Persons with Disabilities (Indonesia), art 40.

⁴ Fajri Nursyamsi et al, *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas* (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2015) at 10–11.

⁵ Government Regulation No 13 of 2020 on Reasonable Accommodation for Students with Disabilities (Indonesia).

⁶ Regulation of the Minister of Education, Culture, Research and Technology No 48 of 2023 on Reasonable Accommodation for Students with Disabilities in Formal Early Childhood Education, Primary Education, Secondary Education and Higher Education (Indonesia).

⁷ Law No 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights (Indonesia).

⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No 13: The Right to Education (Article 13 of the Covenant), UN Doc E/C.12/1999/10 (1999), para 6.

⁹ Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable* (Right to Education Primers No 3, 2001).

¹⁰ Law No 19 of 2011 on the Ratification of the Convention on the Rights of Persons with Disabilities (Indonesia).

¹¹ Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3, art 24(1).

¹² UN Committee on the Rights of Persons with Disabilities, General Comment No 4 (2016) on the Right to Inclusive Education, UN Doc CRPD/C/GC/4 (25 November 2016), para 11.

Master Plan for Persons with Disabilities (RIPD), implemented through national and regional action plans,¹³ so that the duty to make education inclusive is carried down to the regions.¹⁴¹⁵

Magelang Regency, in Central Java, illustrates the gap between that framework and local practice. The regency has 21 sub-districts, and its education data record about 490 children with special needs; because such registers count only children already identified by schools, the true number is likely to be higher. Three providers of inclusive education are commonly identified in the regency: SD Negeri Ngablak, SD Negeri Bumirejo 2 and Antasena Magelang. They are not an official list of designated schools, and other schools, including madrasahs, have prepared to accept children with special needs;¹⁶ but the figure shows how thin provision is relative to the regency's population and area. Regular schools often lack disability-friendly buildings and equipment, teachers are seldom trained, and social stigma and limited budget attention add to the difficulty. Access is harder still at university level.¹⁷

Earlier studies of inclusive education in the regency have looked at schools and teachers. A study of a Muhammadiyah madrasah found that the school understood inclusive education as a right to equal service and would recruit inclusive teachers if government policy required it,¹⁸ which locates the decisive variable in policy rather than in school willingness. A study of Magelang Regency Regulation No 1 of 2021 in the tourism sector found that the regulation had not been implemented well, mainly because of limited funding for facilities and for staff training.¹⁹ National studies describe the legal framework for disability and the barriers to access,²⁰²¹ but none tests a regency's own inclusive education rules against the human rights standards and proposes a concrete local instrument. This article does so. It asks two questions: (1) why is inclusive education policy urgent, and does the policy applied in Magelang Regency meet the principles of justice; and (2) how should inclusive

¹³ Government Regulation No 70 of 2019 on the Planning, Implementation and Evaluation of the Respect, Protection and Fulfilment of the Rights of Persons with Disabilities (Indonesia).

¹⁴ Muh Yusuf, *Tanggung Jawab Negara terhadap Hak Pendidikan bagi Warga Negara Indonesia berdasarkan UUD 1945* (Doctoral dissertation, Universitas Hasanuddin, 2013) at 25.

¹⁵ Fajri Nursyamsi et al, *Kajian Disabilitas: Tinjauan Peningkatan Akses dan Taraf Hidup Penyandang Disabilitas Indonesia, Aspek Sosioekonomi dan Yuridis* (Jakarta: Kementerian PPN/Bappenas, 2021) at 51–52.

¹⁶ Ahwy Oktradiksa, "Analisis Persepsi Guru Madrasah tentang Konsep Sekolah Inklusi di MI Muhammadiyah Jagalan Kabupaten Magelang" (2016) 12:2 *Jurnal Pendidikan Khusus* 77, DOI: <10.21831/jpk.v12i2.16526>.

¹⁷ Muhammad Sulaeman & Hastin Trustisari, "Aksesibilitas Disabilitas untuk Mewujudkan Pendidikan yang Inklusif di Lingkungan Pendidikan Tinggi" (2024) 1:5 *Jurnal Ilmiah Nusantara* at 70–71, DOI: <10.61722/jinu.v1i5.2429>.

¹⁸ Oktradiksa, *supra* note 16.

¹⁹ Andy Lesmana, Suharso & Dyah Adriantini Shinta Dewi, "Impelementasi Peraturan Daerah Kabupaten Magelang Nomor 1 Tahun 2021 (Studi Kasus: Obyek Wisata Borobudur)" (2025) 4:2 *Borobudur Law and Society Journal* 167, DOI: <10.31603/11690>.

²⁰ Nursyamsi et al, *Kerangka Hukum*, *supra* note 4 at 10–11.

²¹ Nursyamsi et al, *Kajian Disabilitas*, *supra* note 15 at 51–52.

education policy in the regency be reconstructed on the basis of justice? Its purpose is to identify where the regency's framework falls short of the 4-A standard and to set out an operational, testable instrument that the regency can adopt within its authority.

Research Method

This is normative legal research with an evaluative purpose. It uses a statutory approach to the 1945 Constitution, the ratified human rights treaties, Law No 8 of 2016, Law No 23 of 2014 on Regional Government, Government Regulations No 70 of 2019 and No 13 of 2020, Ministerial Regulations No 70 of 2009 and No 48 of 2023 and Magelang Regency Regulation No 1 of 2021; and a conceptual approach drawing on the 4-A scheme, Rawls's theory of justice and the distinction between formal and substantive equality. Primary legal materials are these instruments and the general comments of the UN treaty bodies; secondary materials are books and journal articles on human rights, disability law and inclusive education, including published studies of schools in the regency. Conditions in the regency are described from these materials and from the regency's education data on children with special needs, and conditions in schools are treated as reported rather than measured; the study did not collect interview data or personal data, and no child was observed or interviewed for it. Each regional provision was classified by the 4-A element it serves, compared with the corresponding national and international requirement and assessed for whether it states a duty, a target, a responsible body and a source of funds. The analysis is qualitative and prescriptive.

Results and Discussion

The Urgency of Inclusive Education and the Standard of Justice

Inclusive education is urgent because it is the means by which the constitutional right to education becomes real for children with special needs.²² Since Indonesia ratified the Convention, an inclusive system at every level, without discrimination and on the basis of equal opportunity, is a treaty obligation,²³ and Law No 8 of 2016 requires the regional governments to facilitate disability service units (Unit Layanan Disabilitas, ULD) to support inclusive primary and secondary education.²⁴ Inclusive education is therefore a legal duty, not a policy option. The prophetic tradition in

²² 1945 Constitution, *supra* note 1, art 31.

²³ CRPD, *supra* note 11, art 24(1).

²⁴ Law No 8 of 2016, *supra* note 3, art 42(1).

Indonesian legal thought, with its values of humanisation, liberation and transcendence, gives the same duty a philosophical base,²⁵ and justice requires that like cases be treated alike and different cases differently.²⁶ Formal equality, admitting a child with a disability to a regular school on the same terms as others, does not secure that child an equal education. Substantive justice requires proportionately different treatment, and on Rawls's difference principle inequalities in the distribution of resources are justified when they benefit the least advantaged.²⁷

The 4-A scheme turns that principle into a test. A system meets it when schools are available, when they are accessible physically, economically and without discrimination, when the content and teaching are acceptable, and when the system is adaptable to the needs of each learner.^{28,29} Adaptability is the core of inclusion, because it demands that the system adapt to the student rather than the reverse.³⁰ Rights of this kind belong to persons by virtue of their dignity and are not conferred by the state,^{31,32} and while the universality of human rights is qualified in practice by national and cultural contexts, the core obligations recognised in the treaties a state has ratified are not open to relativist reinterpretation.³³ For Magelang Regency the test is therefore concrete: whether the rules it applies assign the duties, staff and money that make inclusive schooling available, accessible, acceptable and adaptable.

The Regency's Regulatory Framework and Its Implementation

Contrary to the common assumption that the regency has no binding rule on the matter, Magelang Regency Regulation No 1 of 2021, enacted and promulgated on 21 June 2021, implements Law No 8 of 2016 at regency level and contains a part on education.³⁴ It requires the regional government to provide or facilitate education for persons with disabilities at every level within its authority, through the Education Office and within the national system of inclusive education, and to place

²⁵ Absori et al, *Pemikiran Hukum Profetik: Ragam Paradigma Menuju Hukum Berketuhanan* (Yogyakarta: Ruas Media, 2018) at 76–80.

²⁶ Yatimin Abdullah, *Pengantar Studi Etika* (Jakarta: RajaGrafindo Persada, 2006) at 537.

²⁷ John Rawls, *A Theory of Justice*, rev ed (Cambridge, MA: Harvard University Press, 1999).

²⁸ Tomaševski, *supra* note 9.

²⁹ General Comment No 13, *supra* note 8, para 6.

³⁰ General Comment No 4, *supra* note 12, para 11.

³¹ Firdaus Arifin, *Hak Asasi Manusia: Teori, Perkembangan dan Pengaturan* (Yogyakarta: Thafa Media, 2019) at 1.

³² Muladi, *Hak Asasi Manusia: Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat* (Bandung: Refika Aditama, 2009) at 70.

³³ Jack Donnelly, "The Relative Universality of Human Rights" (2007) 29:2 *Human Rights Quarterly* 281, DOI: <10.1353/hrq.2007.0016>.

³⁴ Magelang Regency Regional Regulation No 1 of 2021 on the Implementation of the Respect, Protection and Fulfilment of the Rights of Persons with Disabilities (Regional Gazette of Magelang Regency 2021 No 1).

children in schools near their homes;³⁵ to facilitate reasonable accommodation through budget support, facilities, the preparation of educators and the curriculum, in stages and with priority for schools that already enrol students with disabilities;³⁶ to designate the schools to be facilitated by decree of the Regent, on the basis of reports from schools on their students with disabilities;³⁷ and to monitor and evaluate accommodation and the ULD at least once a year, with a report that lists the schools, the students with disabilities by type of disability and the number of ULD formed.³⁸ Schools that receive facilitation and fail to provide accommodation face administrative sanctions,³⁹ and the regional government must form ULD in its agencies, the detail being left to a regent's regulation.⁴⁰

The regulation is a sound frame, but it is a frame. Its provisions on inclusive education defer to national law for the content of the service,⁴¹ and those on facilitation make it subject to regional financial capacity and the development plans. It sets no number or ratio of special assistant teachers, no minimum facilities for an inclusive school, no budget line and no target date. No regent's regulation implementing its education provisions or establishing an education ULD could be identified in public regulation databases at the time of writing. In practice the schools therefore rely on Ministerial Regulation No 70 of 2009 as their operational reference,⁴² alongside the national statute and Government Regulation No 13 of 2020, which places on the central and regional governments the duty to facilitate reasonable accommodation.⁴³ The authority of the regency is also limited. Under Law No 23 of 2014 the regency manages early childhood, primary and junior secondary education, while senior secondary and special education, including special schools, are matters for the province.⁴⁴ A regency instrument can therefore govern inclusion in primary and junior secondary schools only; continuity into senior secondary school requires coordination with Central Java Province.

Measured against this frame, the conditions reported in the regency, which this study could not measure systematically, show where the gap lies. Most schools that admit children with special needs have no permanent special assistant teacher, so

³⁵ *Ibid*, art 14.

³⁶ *Ibid*, art 17.

³⁷ *Ibid*, art 18.

³⁸ *Ibid*, art 16.

³⁹ *Ibid*, art 20.

⁴⁰ *Ibid*, art 121.

⁴¹ *Ibid*, art 15(3).

⁴² Regulation of the Minister of National Education No 70 of 2009 on Inclusive Education for Students with Disabilities and Students with Potential Intelligence and/or Special Talents (Indonesia).

⁴³ Government Regulation No 13 of 2020, *supra* note 5.

⁴⁴ Law No 23 of 2014 on Regional Government (Indonesia), art 15 and Annex, letter A.

support depends on class teachers without specialised training; provision is concentrated in a few schools relative to the population and area; and many schools lack disability-friendly facilities and resource rooms, although the duty to facilitate reasonable accommodation has been in force since 2020. Schools are relatively available, but accessibility and adaptability are limited, and the burden of adjustment falls on the student. The data that would allow these conditions to be measured — the number of GPK, the facilities of each school and the budget lines for inclusive education — are precisely the content that the annual monitoring report under Article 16 must contain. This study had no access to such a report, and the absence of published monitoring data is itself a failure of the accountability that the regulation requires. Table 1 summarises the assessment.

Table 1. Magelang Regency's framework assessed against the 4-A scheme

4-A element	What the standard requires	Regency Regulation No 1 of 2021	Gap
Availability	Enough inclusive schools and trained staff for the children who need them	Duty to provide or facilitate education at every level within regency authority (art 14)	No number of schools, no GPK ratio, no target date
Accessibility	Schools near home, barrier-free and without discrimination or cost barriers	Placement near home (art 14(4)); scholarships and costs for poor families (art 14(6)–(7))	No minimum facilities standard; facilitation subject to financial capacity
Acceptability	Teaching and content of adequate quality for each learner	Basic skills such as braille, orientation, sign language (art 15)	Content deferred to national law (art 15(3)); no teacher training duty
Adaptability	The system adapts to the learner through reasonable accommodation	Facilitation of accommodation in stages; Regent's designation of schools; sanctions (arts 17–20)	No implementing regent's regulation; no ULD for education identified
Accountability	Published data, monitoring and remedies	Annual monitoring report listing schools, students and ULD (art 16)	No published report; data not available to the public

Source: compiled from Magelang Regency Regulation No 1 of 2021, General Comment No 13 and Tomaševski's 4-A scheme.

The policy thus meets justice at the level of recognition and initial access: the right is stated, regular schools may admit children with special needs and the regional government is bound to facilitate them. It does not yet meet justice at the level of individual needs and equal outcomes, because the regulation does not convert its duties into staff, facilities and money. Inclusion in the regency remains largely symbolic and administrative, closer to integration than to inclusion in the Convention's sense.⁴⁵

Reconstruction of Inclusive Education Policy in Magelang Regency

Public policy is the government's choice in responding to society's needs,⁴⁶ and for children with disabilities it must remove barriers of access, environment and attitude. Reconstruction here does not mean new policy from nothing; it means

⁴⁵ General Comment No 4, *supra* note 12, para 11.

⁴⁶ Jawahir Thontowi, *Islam, Politik dan Hukum* (Yogyakarta: Madyan Press, 2002) at 184.

completing the existing framework so that it serves substantive justice. Because Regency Regulation No 1 of 2021 already states the duties and expressly delegates detail to the Regent, the appropriate instrument is a regent's regulation on inclusive education and reasonable accommodation in schools under regency authority. A regent's regulation can be adopted faster than an amendment of the regional regulation and stays within the delegation; an amendment would be needed only to create new obligations for third parties or new sanctions. The regulation should contain: general provisions and definitions; the designation of inclusive schools, with at least one primary and one junior secondary school in each sub-district; standards for GPK, including recruitment, ratio, incentives and continuing training; minimum facilities and accommodation for designated schools; an education ULD within the Education Office; budgeting; data, monitoring and publication of the annual report; coordination with the province, the Ministry and the community; and complaints and remedies.

Each element needs a target, an indicator, a responsible body and a source of funds, as Table 2 sets out. The targets are proposals for the regulation, not existing commitments; their values should be fixed after the baseline data required by Article 16 are compiled. Funding can be drawn from the regional budget, from school operational funds within their permitted uses and from national transfers, but the regulation should name a dedicated programme line so that spending on inclusion can be traced from year to year.⁴⁷

Table 2. Proposed elements of a regent's regulation on inclusive education

Element	Proposed target	Indicator	Responsible	Funding
Designated inclusive schools	At least one primary and one junior secondary school in each of the 21 sub-districts	Number of designated schools by sub-district and level	Regent; Education Office	Regional budget
Special assistant teachers (GPK)	A trained GPK in every designated school	Share of designated schools with a trained GPK; GPK per student with special needs	Education Office; schools	Regional budget; school operational funds
Facilities and accommodation	Minimum accessibility and a resource room in every designated school	Share of designated schools meeting the minimum standard	Education Office; schools	Regional budget; national transfers
Education ULD	One education ULD in the Education Office serving all schools	ULD formed; schools and students served per year	Regent; Education Office	Regional budget
Budget	A dedicated programme line for inclusive education	Amount and share of the education budget, published yearly	Regional planning agency; Education Office	Regional budget
Monitoring and participation	Annual public report; consultation of parents and organisations of persons with disabilities	Report published; consultations held	Regent; community	Regional budget

⁴⁷ Magelang Regency Regulation No 1 of 2021, *supra* note 34, art 17(2).

Continuity to senior secondary	Agreed referral and accommodation arrangements with the province	Agreement in force; transition rate of students with special needs	Regency and Central Java Province	Provincial and regency budgets
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Source: proposed by the authors on the basis of Magelang Regency Regulation No 1 of 2021, Law No 8 of 2016 and Ministerial Regulation No 48 of 2023.

The ULD is the hinge of the design. National law places it as the instrument of reasonable accommodation in schools, with functions that include training regular teachers, providing learning support and assistive devices, early identification and data services,⁴⁸⁴⁹ and the regency regulation already requires one to be formed.⁵⁰ Participation is the second safeguard: the draft should be discussed with parents, teachers, organisations of persons with disabilities and academics before adoption, both to test its targets and to avoid a top-down policy. This is the validation step the reconstruction still requires. On Rawls's difference principle, the differential treatment it provides — assistants, accommodation and accessible facilities for some students — is not a privilege but the fair distribution of resources to the least advantaged.⁵¹

Comparison with Earlier Research

The findings agree with earlier work and extend it. The study of a madrasah in the regency found the school ready to recruit inclusive teachers if policy required it;⁵² this article shows that the policy does not yet require it, because the regency regulation sets no staffing standard. The finding that Regency Regulation No 1 of 2021 is poorly implemented for want of funds and trained staff in tourism⁵³ is mirrored in education, which suggests that the problem lies in the regulation's design — duties without targets or budget lines — rather than in a single sector. National studies of the disability legal framework identify the gap between the statute and regional implementation;⁵⁴ the contribution here is to trace that gap provision by provision in one regency and to propose an instrument that the regency can adopt within the authority it has.

Conclusion

⁴⁸ Law No 8 of 2016, *supra* note 3, art 42(2).

⁴⁹ Ministerial Regulation No 48 of 2023, *supra* note 6.

⁵⁰ Magelang Regency Regulation No 1 of 2021, *supra* note 34, art 121.

⁵¹ Rawls, *supra* note 27.

⁵² Oktradiksa, *supra* note 16.

⁵³ Lesmana, Suharso & Dewi, *supra* note 19.

⁵⁴ Nursyamsi et al, Kerangka Hukum, *supra* note 4 at 10–11.

Inclusive education is urgent because it is the only means by which children with special needs can enjoy the constitutional and treaty right to education on equal terms, which formal equality cannot secure. Magelang Regency's policy meets justice only at the level of recognition and initial access. Regency Regulation No 1 of 2021 binds the regional government to inclusive education, reasonable accommodation, annual monitoring and disability service units, but it sets no staffing, facilities or budget standards, defers the content to national law and depends on implementing regulations that have not been identified; provision remains concentrated in a few schools, with few special assistant teachers and weak accommodation. The regency should adopt a regent's regulation that designates inclusive schools in every sub-district, sets standards for special assistant teachers and facilities, establishes an education ULD, creates a dedicated budget line, publishes the annual monitoring report and agrees continuity arrangements with Central Java Province; its draft should be validated with parents and organisations of persons with disabilities. These are recommendations; the findings are limited to the analysis of legal materials and published sources on one regency, without systematic field data on schools, staff or budgets. Further research should measure the baseline indicators proposed here and compare regencies that have adopted implementing regulations with those that have not.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. The legal materials and published sources used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

Funding and Conflicts of Interest

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