

CHAPTER I

INTRODUCTION

A. BACKGROUND

Persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others. Disability summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature. (Standard Rules on the Equalization of Opportunities for Persons with Disabilities).¹

According to Law No. 4 of 1997 Article 1 on People with Disabilities in Indonesia, disability is any person who has a physical disorder or mental disorder that may interfere with or constitute obstacle and barriers for him to do it properly, which consists of:²

1. Persons with physical disability:
 - Physical disability (loose or lack of human body function)
 - Persons with visually disability

¹ PSDL, 2010, *Inklusi Pada Pendidikan Tinggi: Best Practices Pembelajaran dan Pelayanan Adaptif Bagi Mahasiswa Difabel Netra*, Yogyakarta, Center for Disability Studies and Services, UIN Sunan Kalijaga Yogyakarta. http://www.hrea.org/index.php?base_id=152 accessed on October 25, 2014 at 8.25 pm.

² Law No. 4 of 1997, Concerning Disabled People, Legal Bureau of Social Affairs Republic of Indonesia.

- Persons with hearing and speech disability
 - Example: A person with a chronicle disease
2. Persons with mental disability:
 - Persons with intellectual disability
 - Ex-psychotic
 3. Both physically and mentally impaired.

People with disabilities have the fundamental right to education. It is equal and inalienable and must be made accessible to all human beings, regardless of differences. This vision is supported by the United Nations which emphasizes that students with disabilities are not mere —objects of charity but participants who can advocate for their own right to receive academic training. In Indonesia, legislation guarantees appropriate educational services for each person with disabilities at all levels of the system. In reality, the focus is on young children.³

Hellen Keller International estimates that less than 4% of 1.5 million of Indonesian children with disabilities have access to basic education. There is no provision for students with disabilities within the higher education system where their number is even lower, due to environmental and attitudinal barriers.⁴

³ Marion Steff, *et. al*, 2010. *Equity and Access to Tertiary Education for Students with Disabilities in Indonesia*” Washington DC, World Bank. Undertaken by Researchers of Islamic State University Sunan Kalijaga Yogyakarta. p. 4.

⁴ <http://www.hki.org/blog/2014/03/continuing-helen-kellers-legacy-in-indonesia>. accessed on October 28, 2014 at 10.11 am.

Persons with disabilities are defined as those with physical, sensory, emotional, intellectual, learning, health or other disabilities that may be visible or invisible, stable or progressive, occurring at birth or during childhood.⁵

Social, economic, and political exclusion has long deprived people with disabilities of the possibility of leading meaningful and independent lives, and limiting their opportunities for choice, growth, and leadership. In education, many are still denied the basic right to literacy and numeracy with approximately 90% of children with disabilities not attending school in developing countries.⁶

During the past twenty years, the international community has enacted a number of declarations and conventions to change the fate of people with disabilities. For example, the Salamanca Statement 1994 United Nations Educational, Scientific and Cultural Organization (hereafter: UNESCO) declares not only to provide equal access to education for people with disabilities but also to educate everyone under the same roof, a clear statement supporting inclusive education.⁷

The Education for all movement is an international commitment to provide quality education for children, youth, and adults⁸ while the target two of

⁵ http://www.who.int/disabilities/world_report/2011/report.pdf, downloaded on October 28, 2014 at 10.46 am.

⁶ <http://awb-usf.org/en/wp-content/uploads/2009/07/Final-report-WB.pdf>, downloaded on October 28, 2014 at 10.55 am

⁷ <http://www.inclusion.com/artssalamanca.html>, accessed on October 25, 2014 at 8.35 pm.

⁸ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/the-efa-movement/>, accessed on October 25, 2014 at 9.05 pm.

the Millennium Goals⁹ aims for universal primary education. The Convention on the Rights of Persons with Disabilities¹⁰ asserts that all State Parties (a country that has ratified the Convention).

In Indonesia, people with disabilities are protected by the 1997 Law No. 4 that recognizes equal opportunities in all aspects of life. Article 6 (1) of that same law guarantees appropriate education services for all people with disabilities at every level of education. Indonesia has also signed the 2007 Convention on the Rights of Persons with Disabilities (CRPD) and Indonesia also has ratified the Convention on The Right of Person with Disabilities (CRPD) in 2011 became the Law No. 19 of 2011 regarding on the Enactment of CRPD.¹¹

The 2004 Bandung Declaration on Inclusive Education demonstrates the country's commitment to develop an inclusive educational environment for people with disabilities.¹²

Furthermore, The UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol were adopted on 13 December 2006 at the United Nations Headquarters in New York by general consensus. The Convention and its Optional Protocol were opened for signature on March 30, 2007, with 82 signatories to the Convention, 44 signatories to the Optional

⁹ <http://www.un.org/millenniumgoals/bkgd.shtml> accessed on October, 25 2014 at 9.40 pm.

¹⁰ <http://www.un.org/disabilities/convention/conventionfull.shtml>. accessed on October 25, 2014 at 10 pm.

¹¹ PSLD, 2012. *Kompilasi Perundangan Terkait Hak-Hak Penyandang Disabilitas*, Yogyakarta. Center for Disability Studies and Services UIN Sunan Kalijaga Yogyakarta.

¹² Marion Steff, *et. al. Op.Cit.* p. 5

Protocol, and one ratification of the Convention, the highest number of opening-day signatories ever for a UN Convention. The Convention entered into force on May 3, 2008, and today¹³ there are 112 ratifications of the Convention and 64 ratifications of the Optional Protocol.

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) aims at empowering people with disabilities by granting them a number of civil and political, but also economic, social and cultural rights. This is a groundbreaking agreement for all persons with disabilities. But for those states who signed it, it also brings various governmental obligations. Implementing the Convention will clearly be challenging and also very expensive for all states, but even more so for poor ones.¹⁴

Therefore, questions might arise as to whether the requirements set in the Convention are actually justified. A justification can be given from various perspectives. For example, the CRPD might be justified from a legal perspective because of its correspondence with certain methods and regulations of international law and the focus will be on ethical justification. That is, if the rights laid down in the Convention claim moral authority, they are in need of an ethical

¹³ United Nation Enable, 2011. *Ratifications and Signatories of the Convention and Its Optional Protocol*, available at www.un.org/disabilities accessed on October 30, 2014 at 8.30 am.

¹⁴ Joel Anderson and Jos Philips, 2012. *Disability and Universal Human Rights: Legal, Ethical, and Conceptual Implications of the Convention on Rights of Persons with Disabilities*, Utrecht, Utrecht University. p. 24

argumentation. Various ethical theories could be candidates for a normative justification to support the Convention.¹⁵

B. RESEARCH QUESTION

1. How is the fulfillment of rights of students with disabilities in the universities in Yogyakarta according to Convention on the Rights of Persons with Disabilities?
2. How does the National Law regulate and protect the rights of students with disabilities in the universities?

C. OBJECTIVES OF RESEARCH

This research has objectives to learn more about the Rights of Student with disabilities in the universities in Yogyakarta. Besides that, it aims to prove whether the implementation of Convention on the Rights of Person with Disabilities which has been ratified by the Indonesia government is well implemented. The researcher also wants to know how the International Human Rights Law guarantees the rights of student with disabilities in Indonesia protected by Indonesia legislation.

D. THE BENEFIT OF THE RESEARCH

This research of would give benefit as follows:

¹⁵ *Ibid.* p. 25

1. Theoretically

This research will give benefits to know deeply about the Student with disabilities based on International Human Rights Law and Convention on the Rights of People with Disabilities (CRPD) and the reason why the Indonesia government has to implement the convention towards National Higher Educational System.

2. Practically

This research will develop the understanding on the need of Indonesia to implement the International Human Rights Law and Convention on the Rights of Persons with Disabilities (CRPD) in the whole universities in Indonesia. This research also will share and improve the knowledge regarding on the Rights of People with Disabilities in the universities and the management system with standard international universities itself.

E. OVERVIEW OF CHAPTERS

This research consists of five chapters, namely: Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV Discussion, Chapter V Conclusion and Suggestion.

Chapter I: Background

The researcher explains about the background the rights of Student with disabilities, the research problem, and the benefit of the research.

Chapter II: Literature Review

In Chapter II explains about Convention on the Rights of Persons with Disabilities (CRPD), people with disabilities in the higher education, the philosophy and principles of inclusive education and the reality of inclusion in higher education.

Chapter III: Research Method

Chapter III discusses about the research methods used in this study. This research method consists of type of research, research approach, data, and technique of collecting data, analysis and the overview of the chapter. The type of this research is an empirical legal research. The research approaches use statute approach and conceptual approach. This research uses various research materials taken from some literatures consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Then, the methods of collecting data in this research are conducted through library research and interview. The data are analyzed systematically through prescriptive and evaluative method.

Chapter IV: Analysis

Chapters IV display the data from library study and interviews. This chapter also elaborates the result of interview with experts as well as students with disabilities to describe the conditions in the environment based on the concept of inclusion in higher education. This chapter explains how is the fulfillment rights of students with disabilities in the universities in Yogyakarta according to Convention on the Rights of Persons with Disabilities and also Indonesia National Law.

Chapter V: Conclusion and Suggestion

Chapters V present the conclusion of this study. The author makes a summary of the research, and also reviews the analysis of the research to answer the research questions that have been elaborated in the previous chapters.