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Juridical Analysis of The Legal Protection of Children With Special Needs In Inclusive Education

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Abstract: Inclusive education is a strategic policy to ensure the right to education for all children, including those with special needs. However, despite Indonesia's strong normative framework supporting inclusive education, implementation remains uneven. This paper aims to examine the effectiveness of legal protection for children with special needs within the inclusive education system, using SMA Negeri 3 Pangkalpinang as a case study. The study employs an empirical juridical method, combining normative legal analysis with field observations and interviews involving educators, parents, and school administrators. The findings reveal a significant gap between the legal framework and the real conditions in schools. Key challenges include the absence of certified special assistant teachers, inadequate inclusive facilities, and limited awareness among stakeholders. The study concludes that while legal guarantees exist, systemic implementation barriers hinder their realization. Strengthening inclusive education requires harmonized policies, structural support, and a shift in legal culture within school communities.

Keyword: Legal Protection, Children With Special Needs, Inclusive Education

INTRODUCTION

Every child has the right to a decent education, without exception, including children *with special educational needs (SEN)* (Fadilah & Wijastuti, 2012). In the context of human rights and the principle of non-discrimination, inclusive education is a strategic approach that aims to ensure all children, regardless of their physical, intellectual, social, or emotional conditions, can access education in the same learning environment. This principle is affirmed in various national and international legal instruments, such as Law Number 20 of 2003 concerning the National Education System, Law Number 8 of 2016 concerning Persons with Disabilities, and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), all of which encourage states and educational institutions to create learning spaces that are inclusive, equitable, and support the development of each child according to their potential and needs.

However, the implementation of inclusive education in Indonesia has not entirely run in accordance with these normative expectations. In practice, there are still many schools that

have not been able to provide protection and fulfillment of educational rights for children with disabilities optimally. This can occur due to various factors, including limited human resources, unprepared infrastructure, and a lack of legal and social awareness among education stakeholders. (Kartika & Sirozi, 2024) This condition reflects the imbalance between the legal idealism contained in laws and regulations and the social reality that occurs in the field.

Likewise, SMA Negeri 3 Pangkalpinang, (Winata, n.d.) one of the public schools in Pangkalpinang City, has implemented an inclusive education system. This school is recorded to have five students who are classified as Children with Special Needs. They follow the same learning process as other students, but in reality face various obstacles and limitations. One of the main problems that arises is the absence of special supervisors who have competence and certification in the field of extraordinary education. As a result, the crew members in this school have to follow the learning process without pedagogical assistance that suits their individual needs. (Rahma et al., 2023)

Furthermore, difficulties also arise in terms of communication between the school and parents. There are still many parents who have not been open in informing in detail about their child's condition, both from medical, psychological, and social aspects. This closure is a separate obstacle for the school in preparing adaptive and supportive learning strategies. This unpreparedness then has an impact on the limited exposure of schools to the learning dynamics experienced by students with *SEN*, including in responding to mood swings, tantrum behavior, or learning needs that are specific and different from those of other students. (Fadillah & Wulandari, n.d.)

This condition is exacerbated by the unavailability of supporting facilities and infrastructure for *SEN* students in the school environment. SMA Negeri 3 Pangkalpinang, to date, lacks basic facilities that should be available in the inclusive education system, such as priority toilets for people with disabilities, special access points, priority seating, and special service rooms, including emotional recovery rooms, for students who experience stress or tantrums. The absence of these facilities not only hinders learning activities but also has the potential to cause more profound psychological and social impacts, such as feelings of isolation, decreased motivation to learn, and even disguised discrimination that is embedded in the surrounding environment. (Ainul Mardiyah et al., 2025)

This empirical reality reveals a gap between the ideals of the inclusive education system as outlined in the law and its implementation at the local level. In fact, normatively, every educational institution has a legal obligation to fulfill children's rights, including the right to equal education, without discrimination. This raises fundamental questions about the effectiveness of the legal protection provided to *SEN* in our education system. Has the law been an effective instrument in ensuring the fulfillment of the right to education for all citizens, (Assyifa et al., 2023) including vulnerable groups such as children with special needs?

In this context, it is essential to conduct an empirical juridical study to reveal the extent of the implementation of legal protection for *SEN* in inclusive schools, especially at SMA Negeri 3 Pangkalpinang. This research will not only examine the applicable legal norms, but also assess how these norms are implemented, translated, and understood by education actors at the local level. This approach becomes relevant considering that law does not stand in a space, but is influenced by the structure, culture, and behavior of the people who operate it. (Ramdhani & Hasanudin, n.d.)

Thus, this study is expected to provide a comprehensive picture of legal protection for *SEN* in the realm of secondary education, as well as identify structural and cultural barriers that hinder the realization of effective inclusive education. In addition, the results of this research are also expected to contribute to the formulation of more inclusive, responsive, and fair education policies, particularly in the context of protecting and fulfilling children's rights. (Afandy & Desiandri, 2023)

METHOD

This research employs an empirical juridical approach, which is a legal perspective that views law not only as a written norm (law in the books), but also as a social reality that exists and evolves in society (law in action). This approach was chosen because the research focused on analyzing the implementation of legal protection for *SEN* in the context of the inclusion education system at SMA Negeri 3 Pangkalpinang, as well as the extent to which the applicable legal norms are implemented in real terms in the field.(Dea Mustika et al., 2023)

The data sources used in this study comprise both primary and secondary data. Primary data was obtained through in-depth interviews with key informants, namely school principals, subject teachers, homeroom teachers, and parents of children with special needs. Interviews were conducted in a semi-structured manner to explore perceptions, experiences, and practices related to the implementation of inclusive education and forms of protection provided to *SEN* students. In addition, field observations were conducted to assess firsthand the condition of infrastructure facilities and interactions within the school environment with the presence of *SEN*.(Romadhoni & Nugroho, 2023)

Meanwhile, secondary data was collected through documentation studies on various relevant laws and regulations, such as Law Number 8 of 2016 concerning Persons with Disabilities, Law Number 20 of 2003 concerning the National Education System, and Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 70 of 2009 concerning Inclusive Education for Students with Disabilities and Potential for Intelligence and/or Special Talents. School internal policy documents and administrative data related to the number and characteristics of *SEN* students were also analyzed as part of a simultaneous normative and empirical study.(Wiraguna, 2024)

The data analysis technique employed a qualitative, descriptive-analytical approach.(Sukmawan & Damayanti, n.d.) The data obtained from interviews and observations were analyzed to identify the main patterns, tendencies, and problems that arise in the practice of legal protection for children with special needs. Furthermore, this empirical data is linked to applicable legal norms to see the gap between regulation and reality, as well as formulate relevant juridical implications and normative recommendations. Through this approach, the research is expected to provide a comprehensive and reflective picture of inclusive education practices from the perspectives of law and children's human rights.(Hasan et al., 2023)

RESULTS AND DISCUSSION

Legal basis for Inclusive Education and the fulfillment of rights for *SEN*

The state has a constitutional responsibility to ensure that every citizen has the right to access quality education without discrimination. In this context, children classified as *SEN* are a group that requires special attention within the national education system. Legal protection of *SEN* in education is not solely a technical matter in education policy.(Natasya Lady Munaroh, 2024) Still, it is part of the state's efforts to fulfill and protect human rights, particularly the rights of children and persons with disabilities. Therefore, it is essential to examine normatively the forms of legal protection already available within Indonesia's national legal framework, as well as assess the extent to which these norms align with internationally recognized human rights principles.(Kansil & Putri, 2024)

Normatively, the legal basis for protecting *SEN* in the inclusive education system in Indonesia has been regulated in various regulations, ranging from the Constitution and laws to technical rules at the ministerial level. Systematically, the regulations that regulate inclusive education and the fulfillment of *SEN* are as follows:

Table 1 : Comparison of Principal and Relevance

No.	Regulation	Arrangement Tree	Relevance to Inclusive Education and <i>SEN</i>
1	Constitution of the Republic of Indonesia of 1945 (Article 31 and Articles 28C & 28I)	Right to education and protection for vulnerable groups	It is the constitutional basis for the right of every citizen, including <i>SEN</i> , to obtain education without discrimination
2	Law No. 20 of 2003 concerning the National Education System	National education system, principles of justice, and equal access	Affirm the principle of inclusion through education that is fair and equal for all
3	Law No. 8 of 2016 concerning Persons with Disabilities	The rights of persons with disabilities in all aspects of life, including education	Regulate in detail the rights of persons with disabilities, including <i>SEN</i> , to inclusive and accessible educational services
4	Government Regulation No. 13 of 2020 concerning Decent Accommodation for Students with Disabilities	Provision of facilities, infrastructure, and affirmative policies	Affirm the obligations of the state and educational units in providing adequate accommodation
5	Permendikbud No. 70 of 2009 concerning Inclusive Education	Implementation of inclusive education in public schools	Become a technical reference for the implementation of inclusive education, including requirements for special assistant teachers, needs assessments, and parental support
6	United Nations Convention on the Rights of Persons with Disabilities (CRPD) – ratified by Law No. 19 of 2011	Principles of non-discrimination, equality, and full participation	Legally binding to adapt all national policies to conform to international human rights standards

Source: processed from various sources (2025)

Based on the table above, it can be seen that the form of legal protection for *SEN* has a fairly normative foundation. Constitutionally, Article 31 of the 1945 Constitution guarantees every citizen the right to obtain education. This right is strengthened by Articles 28C and 28I, which affirm that everyone has the right to self-development and protection for vulnerable groups, including people with disabilities. The Constitution serves as a great umbrella, guaranteeing that the right to education should not be excluded simply because of a person's physical, mental, or intellectual condition.(Opi Andriani et al., 2023)

Furthermore, Law Number 20 of 2003 concerning the National Education System is a derivative regulation that articulates the right to education within the framework of the national system. In this law, it is emphasized that education must be conducted democratically, reasonably, and inclusively, upholding human rights as well as religious and cultural values. Article 5, paragraph (2) explicitly states that citizens who have physical, emotional, mental, intellectual, and/or social disorders have the right to receive special education. The phrase "entitled to special education" is a legal recognition of the existence of *SEN* in the national education system.(Halid, 2024)

More comprehensive protection is provided by Law Number 8 of 2016 concerning Persons with Disabilities, which is essentially the protection of disability rights in Indonesia. Under this law, persons with disabilities are recognized as legal subjects, entitled to full and equal rights. Articles 42 to 48 specifically regulate the rights of persons with disabilities in the field of education, including the right to inclusive education, adequate accommodation, and support services such as special assistant teachers. In addition, Article 5 affirms the responsibility of the state, local governments, and communities to ensure the fulfillment of these rights.

More specifically, Government Regulation Number 13 of 2020 regarding Decent Accommodation for Students with Disabilities requires each educational unit to provide facilities and infrastructure that cater to the needs of students with disabilities, including a welcoming environment, accessible physical spaces, and a flexible curriculum. This is concrete evidence of a form of legal protection that is not only declarative, but also operational.

Then, the Regulation of the Minister of Education and Culture Number 70 of 2009 concerning Inclusive Education became a key regulation in implementing inclusive education. (Winda Fionita & Ely Nurjannah, 2024) In this Permendikbud, it is explicitly stated that public schools can provide inclusive education on the condition that they have educators who understand the characteristics and needs of SEN. This Candy also emphasizes the importance of collaboration between parents, teachers, and companions. However, this regulation has not been significantly updated, resulting in a gap between the development of real needs in the field and the available normative instruments.

Internationally, Indonesia has shown a global commitment through the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) with Law Number 19 of 2011. This ratification legally binds Indonesia to harmonize all national policies, including education policies, with international human rights principles. Article 24 of the CRPD requires States Parties to develop inclusive education systems at all levels, as well as to provide the individualized support necessary for persons with disabilities to learn effectively.

From all the normative analyses above, it can be concluded that the form of legal protection for children with special needs in the context of inclusive education in Indonesia has a relatively complete and layered legal framework, ranging from the Constitution, organic laws, government regulations, to ministerial rules and international conventions. All of these legal tools provide a strong foundation for the state to create an educational environment that is inclusive, non-discriminatory, and respects the diverse needs of students.

Nevertheless, from a human rights perspective, the critical question that needs to be asked is: Does the presence of this legal instrument reflect the principles of human rights substantively? Upon closer examination, the majority of these regulations have indeed adopted the fundamental principles of human rights, including equality, non-discrimination, full participation, and respect for human dignity. This aligns with the rights-based approach in education, where education is viewed as a fundamental right that should not be denied due to a person's disability.

Thus, normatively, the form of legal protection for children with special needs within the inclusive education system in Indonesia aligns with human rights principles. Existing regulations not only acknowledge the existence of *SEN* in the national education system but also provide a legal basis for urging the state and educational institutions to be more responsive and adaptive to their needs. However, the effectiveness of these norms will depend mainly on how they are implemented, which will be discussed in the second research question.

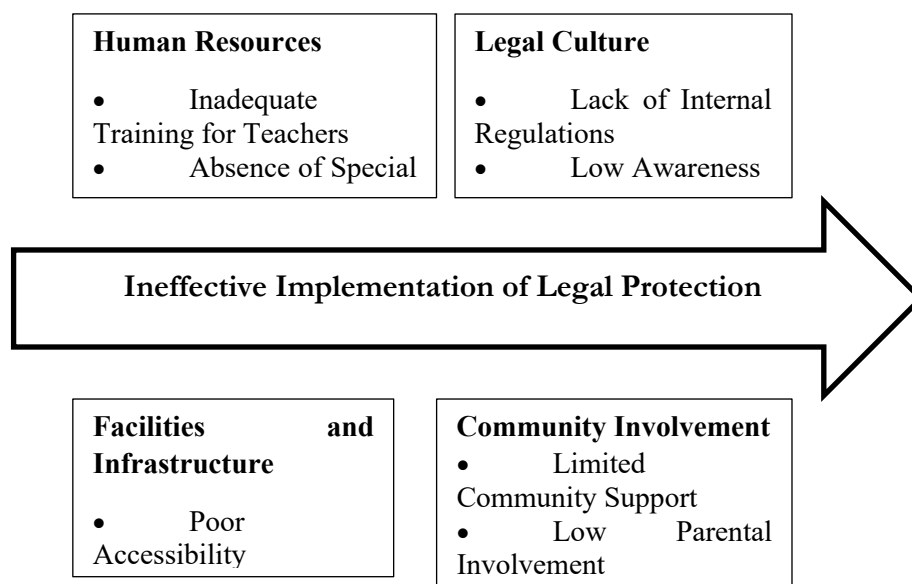
Implementation of Legal Protection for Children with Special Needs at SMA Negeri 3 Pangkalpinang: An Empirical and Socio-Legal Review

Although the national legal framework has provided strong legitimacy for the protection and fulfillment of educational rights for *SEN*, the implementation of these legal norms at the level of education units still faces various obstacles, as one of the public schools that provides inclusive education. SMA Negeri 3 Pangkalpinang is a real reflection of the complexity of implementing legal protection for crew members at the regional level.

Empirically, SMA Negeri 3 Pangkalpinang is reported to have five students with special needs who actively participate in the learning process alongside their regular peers. However, the process of implementing education for these crew members is still running with significant

limitations. Based on field observations, the obstacles to fulfillment can be described in the following figure:

Figure 1. Challenges in the Implementation of Legal Protection for Children with Special Needs



Source: processed from various sources (2025)

From this picture, it can be understood that the absence of special assistant teachers (GPK) who have competency certification in the field of exceptional education is one of the crucial problems. In fact, in accordance with the provisions of Permendikbud No. 70 of 2009 concerning Inclusive Education, the existence of accompanying teachers is an essential component in ensuring an effective teaching and learning process for SEN students. The absence of GPK results in a lack of personalized pedagogical approach, making it difficult for children with special needs to follow the subject matter presented by Maple teachers in general.

Additionally, the lack of openness from parents in informing the school about their child's condition in detail presents an additional obstacle to adjusting the curriculum and learning strategies. This has an impact on the process of identifying students' special needs, so that there is no individual education plan (IEP) that can accommodate the specific limitations or strengths of each child. In the socio-legal context, this shows the weak dialogue relationship between the school and the family, which should be the central pillar in inclusive education, as affirmed in Law No. 8 of 2016 and CRPD.

Unsupportive facilities and infrastructure are also indicators of weak regulatory implementation. Based on the results of observations and field data, SMA Negeri 3 Pangkalpinang currently lacks basic facilities, including priority toilets, priority road access (RAM), ergonomic seating chairs for children with disabilities, and special service rooms for children who experience tantrums or emotional disturbances. In fact, in accordance with the provisions in Government Regulation No. 13 of 2020 concerning Proper Accommodation, inclusion schools are required to provide physical facilities that support the comfort and safety of SEN students. The absence of these facilities reflects that affirmative policies have not been fully used as a reference in the management of the learning environment in this school.

In terms of internal school policies, there are no documents or regulations that explicitly regulate inclusive education management strategies, either in the form of school principal regulations, modified curriculum guidelines, or service SOPs for SEN. This indicates a gap between normative orders and structural awareness at the institutional level of education. From

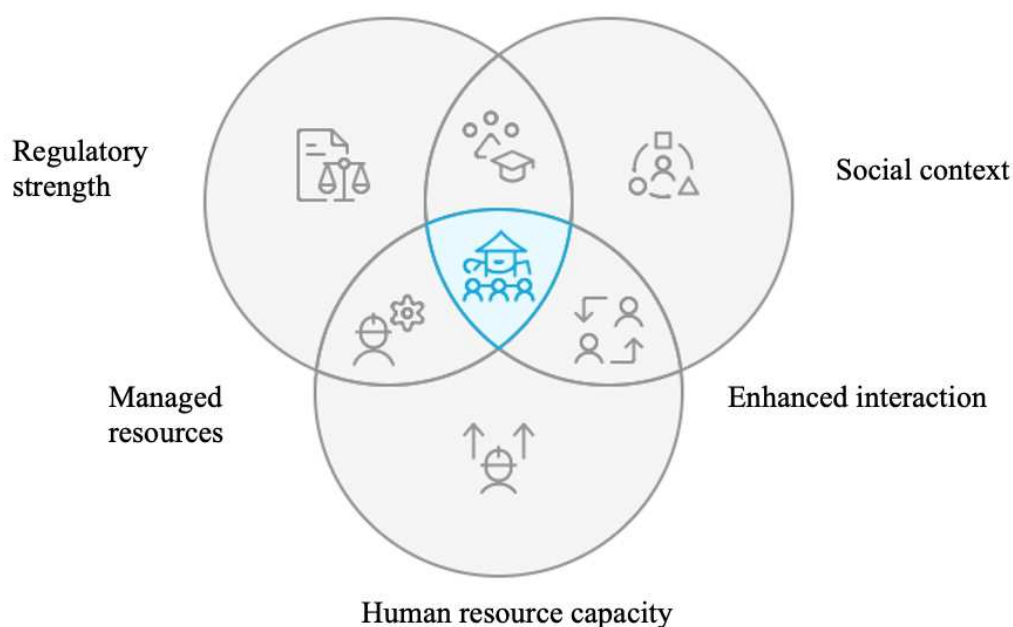
a socio-legal perspective, the legal structure in schools remains passive and tends to follow the mainstream without the initiative to adapt to the real needs of students. It also confirms that the legal culture in the school environment has not yet developed within the framework of protecting and respecting the rights of individuals with disabilities.

In terms of social interaction and legal culture, SEN students at SMA Negeri 3 Pangkalpinang continue to experience a form of symbolic marginalization. Teachers and other students generally have empathy, but limited knowledge and understanding of inclusive education often cause the approach to be 'charity-based' rather than rights-based. SEN students are usually not actively involved in class activities or school organizations because they are considered "unable to keep up" with the same rhythm as other students. This indicates that an inclusive culture has not yet been firmly established in the school community. In Lawrence Friedman's perspective, it can be said that the legal culture component at SMA Negeri 3 Pangkalpinang has not fully supported the implementation of an inclusive legal substance.

However, several efforts from the school deserve appreciation. For example, the principal has demonstrated a moral commitment to accept and support SEN, even without assistance from the local government. Some teachers also make informal adjustments to learning methods, such as giving extra time during exams or simplifying instructions. Although not documented in official policies, this kind of adaptation suggests the existence of an embryonic form of inclusive consciousness which, if further developed, can become a foothold for educational transformation in the school.

Furthermore, an empirical analysis of the implementation in SMA Negeri 3 reveals that the implementation of legal protection for SEN not only depends on the power of regulations but is also greatly influenced by the social context, human resource capacity, and patterns of relationships between actors within the school environment. The interaction of these several aspects can be described as follows:

Figure 2: Interaction of several aspects in the Implementation of Legal Protection
Supportive school environment



CONCLUSION

As described and analyzed earlier, two critical points conclude this study, namely. First, the form of legal protection for Children with Special Needs (SEN) in inclusive education in Indonesia has been guaranteed in various national and international regulations that the state has ratified. The 1945 Constitution of the Republic of Indonesia, Law Number 20 of 2003 concerning the National Education System, Law Number 8 of 2016 concerning Persons with Disabilities, as well as its derivative regulations, such as Permendikbud Number 70 of 2009 and Government Regulation Number 13 of 2020, have explicitly regulated the right of SEN to decent, equitable, and non-discriminatory education. Within the framework of the statute approach, these regulations reflect the state's commitment to human rights principles, especially in the context of fulfilling the right to education. However, the existence of these legal norms still needs to be strengthened through harmonization between rules, socialization, and implementation in the form of technical policies at the school and local government levels.

Second, the implementation of legal protection for crew members at SMA Negeri 3 Pangkalpinang still faces various obstacles, including those related to human resources, facilities, and infrastructure, as well as the legal culture within the school environment. The absence of special assistant teachers, the lack of supporting facilities, the absence of internal regulations governing inclusive services, and the low understanding and active involvement of parents and the community are factors that hinder the optimization of inclusive education. Based on empirical facts, it was found that the implementation challenges are more structural and cultural than normative. This means that the main problem does not lie in the absence of the law, but in the lack of awareness, capacity, and commitment in translating legal norms into practices that favor the rights of SEN.

It is necessary to strengthen the synergy between regulation and implementation through systemic and collaborative approaches, so that legal protection for SEN does not only stop as a juridical discourse, but becomes a reality that is felt in their daily educational process. Schools, as social institutions, have a moral and legal responsibility to provide a safe and fair space for all children, including those with special needs.

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