

Realising the Right to Inclusive Education in Indonesia: Legal Guarantees and Remedial Deficits

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Article History Received : 05-09-2026 Revised : 29-09-2026 Published : 05-10-2026 Keywords: <i>disability rights, educational remedy, inclusive education, reasonable accommodation, universal design</i>	Indonesia has constructed a comprehensive legal framework guaranteeing inclusive education while producing a persistent gap between entitlement and realisation, a gap usually attributed to resource constraints and teacher attitudes rather than to the structure of the framework itself. This study aims to examine how Indonesian instruments construct the right to inclusive education relative to the international standard, to identify the features of the domestic framework that account for weak realisation, and to formulate the legal and institutional reconstruction required. The research applies normative juridical method combining statutory, conceptual, and comparative approaches, analysing the Constitution, the National Education System Law, the ratifying law and the Convention on the Rights of Persons with Disabilities, the Disability Law, the regulation on reasonable accommodation, and the inclusive education regulation, read against the authoritative treaty interpretation and scholarship in disability studies, capability theory, and inclusive pedagogy. The findings show that the framework maintains a dual architecture in which segregated referral operates as the lower-burden institutional default; that reasonable accommodation is constructed as an institutional duty without a correlative individual right, a determination procedure, or a defined limit; and that the absence of an accessible remedy prevents both individual redress and the accumulation of guiding doctrine, shifting the cost of non-compliance onto families. The article

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	recommends anticipatory curricular design, a defined determination procedure with written reasons, an accessible district-level remedy, funding attached to learners, and reconstitution of special institutions as resource centres.

I. INTRODUCTION

Indonesia has constructed one of the more comprehensive legal frameworks for inclusive education in Southeast Asia, and has simultaneously produced one of the more persistent gaps between legal guarantee and educational reality. The country ratified the Convention on the Rights of Persons with Disabilities in 2011, enacted a comprehensive disability law in 2016, and issued implementing regulation on reasonable accommodation for learners with disabilities in 2020.¹ Yet participation rates for children with disabilities remain substantially below those of their peers, the distribution of inclusive schools is highly uneven, and the specialist support that the regulatory framework presupposes is absent in a large proportion of schools designated as inclusive.

This pattern strong entitlement, weak realisation is not adequately explained as a failure of political will or as a simple resource shortfall, although both play a part. The argument developed here is that the gap is produced in significant measure by the internal structure of the legal framework itself: by the persistence of a segregated institutional architecture alongside the inclusive mandate, by the construction of reasonable accommodation as an administrative provision rather than as an enforceable individual right, and by the absence of any effective mechanism through which a denial of access can be challenged and remedied.

The ideal condition is stated with unusual clarity in the international instrument. Article 24 of the Convention obliges states to ensure an inclusive education system at all levels, to guarantee that persons with disabilities are not excluded from the general education system on the basis of disability, and to provide reasonable accommodation and

¹ Undang-Undang Nomor 19 Tahun 2011 tentang Pengesahan Convention on the Rights of Persons with Disabilities; Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas, Pasal 10; Peraturan Pemerintah Nomor 13 Tahun 2020 tentang Akomodasi yang Layak untuk Peserta Didik Penyandang Disabilitas, Pasal 3–5.

individualised support within the general system.² The Committee's authoritative interpretation distinguishes inclusion from integration and from segregation, holding that placing students with disabilities in mainstream settings without altering the structure, culture, and practice of those settings is integration rather than inclusion, and does not discharge the obligation.³ Indonesian law reflects these commitments: the disability law guarantees the right to education without discrimination in all pathways and at all levels, and the education law establishes that citizens with physical, emotional, mental, intellectual, or social impairments are entitled to special education.⁴

The actual condition is more equivocal. Schools designated as inclusive frequently enrol students with disabilities without adjusting curriculum, assessment, or classroom practice, and without the specialist teacher that the governing regulation contemplates.⁵ Referral to special schools remains common and is frequently the default where a mainstream school judges itself unable to cope. Where accommodation is provided, it depends heavily on the disposition of individual principals and teachers rather than on enforceable entitlement. The result is a system in which the availability of inclusive education varies by locality and by institutional goodwill, which is precisely the condition that a rights framework is intended to displace.

Scholarly debate has approached inclusive education from several directions. Normative disability scholarship, following the social model, locates disability in the interaction between impairment and disabling environments, and consequently treats the failure of a school to accommodate as the disabling factor rather than the student's impairment.⁶ Capability-based accounts, drawing on Sen and Nussbaum, ground educational entitlement in the substantive freedom to achieve valued functionings, and are particularly useful for explaining why formal access without adjustment fails to constitute a genuine opportunity.⁷ Educational scholarship on inclusion, developed most fully by

² Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, Article 24(1)–(2).

³ 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, paras. 11–13.

⁴ Undang-Undang Nomor 8 Tahun 2016, Pasal 10; Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional, Pasal 5 ayat (2).

⁵ Peraturan Menteri Pendidikan Nasional Nomor 70 Tahun 2009 tentang Pendidikan Inklusif bagi Peserta Didik yang Memiliki Kelainan dan Memiliki Potensi Kecerdasan dan/atau Bakat Istimewa, Pasal 10.

⁶ Michael Oliver, *The Politics of Disablement* (Basingstoke: Macmillan, 1990), 1–29; Tom Shakespeare, *Disability Rights and Wrongs Revisited*, 2nd ed. (London: Routledge, 2014), 11–28.

⁷ Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006), 96–154; Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 87–110.

Ainscow and colleagues, treats inclusion as a process of increasing participation and reducing exclusionary pressures across the whole school rather than as the placement of particular students.⁸ A critical strand, represented by Slee, cautions that inclusion has been absorbed into administrative vocabulary in ways that empty it of content.⁹

The research gap addressed here is the limited engagement of Indonesian scholarship with the internal architecture of the legal framework. Existing work has documented implementation barriers extensively teacher preparedness, facilities, attitudes, funding but has rarely asked whether the legal instruments themselves are constructed in a way that makes the guarantee enforceable. The novelty of this article lies in that analysis, and in its argument that the decisive weakness is remedial: Indonesian law creates an entitlement without creating a route by which an individual denied that entitlement can obtain redress, with the consequence that the guarantee operates as an exhortation to schools rather than as a right held by students.

Three research questions guide the analysis. First, how do Indonesian legal instruments construct the right to inclusive education, and how does that construction compare with the international standard? Second, what features of the domestic framework account for the gap between guarantee and realisation? Third, what legal and institutional reconstruction would make the guarantee effective?

II. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

The conceptual distinction on which this article relies is that between exclusion, segregation, integration, and inclusion. The Committee's formulation is precise: exclusion occurs where learners are directly or indirectly prevented from access; segregation where they are educated in separate environments designed to respond to particular impairments; integration where they are placed in mainstream institutions with the expectation that they will adjust to existing requirements; and inclusion where a systemic reform of content, method, structure, and strategy provides all learners with an equitable and participatory experience.¹⁰ The distinction between integration and inclusion carries the analytical weight of the present argument, because most Indonesian provision that is described as inclusive is, on this taxonomy, integrative.

⁸ Mel Ainscow, "Promoting Inclusion and Equity in Education: Lessons from International Experiences," *Nordic Journal of Studies in Educational Policy* 6, no. 1 (2020): 7–16; Tony Booth and Mel Ainscow, *Index for Inclusion: Developing Learning and Participation in Schools*, 3rd ed. (Bristol: Centre for Studies on Inclusive Education, 2011), 11–24.

⁹ Roger Slee, *Inclusive Education Isn't Dead, It Just Smells Funny* (London: Routledge, 2018), 1–18.

¹⁰ CRPD Committee, *General Comment No. 4*, para. 11.

The social model of disability supplies the normative foundation for that distinction. If disability is constituted by the interaction between impairment and environment, then the relevant object of intervention is the environment, and an educational system that admits students without altering itself has relocated rather than removed the barrier.¹¹ Shakespeare's critical refinement, which cautions against denying the reality of impairment effects, is important for pedagogical design, since it preserves the case for specialist expertise and individualised support within inclusive settings rather than treating all difficulty as environmental.¹²

The capability approach addresses a question the social model leaves open: what is the content of the entitlement? Sen's distinction between resources and the freedom to convert resources into valued functionings explains why identical provision does not produce identical opportunity, and why equality of treatment can constitute inequality of opportunity.¹³ Nussbaum extends this to the specific situation of persons with cognitive and physical impairments, arguing that a theory of justice which cannot accommodate them at its foundation is defective rather than merely incomplete.¹⁴ Applied to education, the approach implies that the measure of a system is not enrolment but the range of valued functionings a student is genuinely able to achieve, which is an appreciably more demanding standard than access.

The pedagogical literature supplies the design response. Universal Design for Learning proposes that curricula be constructed from the outset with multiple means of engagement, representation, and action and expression, on the reasoning that variability is the norm rather than the exception and that retrofitted accommodation is both less effective and more stigmatising than anticipatory design.¹⁵ This framework has particular significance for the Indonesian context because it reduces dependence on individual accommodation decisions, which are precisely the decisions that the current framework leaves to institutional discretion.

The theoretical gap addressed here lies in the articulation between these accounts and the doctrinal analysis of remedial structure. Disability scholarship has extensively analysed the content of the right; capability theory has analysed its measure; educational scholarship has analysed its pedagogical realisation. Comparatively little work, and almost

¹¹ Oliver, *The Politics of Disablement*, 1–29.

¹² Shakespeare, *Disability Rights and Wrongs Revisited*, 11–28.

¹³ Sen, *Development as Freedom*, 87–110.

¹⁴ Nussbaum, *Frontiers of Justice*, 96–154.

¹⁵ Anne Meyer, David H. Rose, and David Gordon, *Universal Design for Learning: Theory and Practice* (Wakefield: CAST Professional Publishing, 2014), 1–20, 91–120.

none in Indonesia, has analysed the mechanisms through which the right may be enforced by the individual who holds it which is the question on which realisation ultimately turns.

III. RESEARCH METHOD

This study employs normative juridical research, which examines law as a system of norms and evaluates the internal coherence of that system and its adequacy to its purposes.¹⁶ The method is appropriate because the research questions concern the construction and enforceability of a legal entitlement rather than the distribution of educational outcomes.

Three approaches are combined. The statutory approach examines the legislation and subordinate regulation governing education and disability rights, with attention to the relationships between instruments of different rank. The conceptual approach examines the categories of inclusion, accommodation, and discrimination as they appear in domestic and international instruments, testing their consistency. The comparative approach examines the treaty standard and its authoritative interpretation, together with the enforcement mechanisms adopted in other jurisdictions, in order to identify transferable structural principles.

Legal materials are organised in three tiers. Primary materials comprise the 1945 Constitution; Law Number 20 of 2003 on the National Education System; Law Number 19 of 2011 ratifying the Convention on the Rights of Persons with Disabilities; Law Number 8 of 2016 on Persons with Disabilities; Government Regulation Number 13 of 2020 on Reasonable Accommodation for Learners with Disabilities; and Regulation of the Minister of National Education Number 70 of 2009 on Inclusive Education. Secondary materials comprise peer-reviewed scholarship in disability studies, education, and legal theory, together with authoritative monographs. Supporting materials comprise the Convention itself, the Committee's general comment on the right to inclusive education, the Salamanca Statement, and the UNESCO global monitoring report on inclusion.¹⁷

Analysis proceeds through prescriptive legal reasoning. Instruments are interpreted grammatically, systematically, and teleologically; the domestic framework is then compared against the treaty standard to identify divergences; the divergences are analysed for their causes, distinguishing gaps of substance from gaps of enforceability; and

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana Prenada Media, 2017), 133–142.

¹⁷ UNESCO, *The Salamanca Statement and Framework for Action on Special Needs Education* (Paris: UNESCO, 1994); UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education — All Means All* (Paris: UNESCO, 2020), 13–40.

proposals are constructed and tested for consistency with the constitutional and statutory framework. The analysis is qualitative and normative; no empirical claim is made about the prevalence of particular institutional practices, and statements about implementation reflect the analysis of documented regulatory design rather than primary field observation.

IV. RESULTS AND DISCUSSION

A. Two Architectures in One Framework

The most consequential structural feature of the Indonesian framework is that it maintains two educational architectures simultaneously. The education law establishes special education for learners with impairments as a distinct pathway, while the disability law and the inclusive education regulation establish the entitlement to participate in general education.¹⁸ These provisions are not formally contradictory, and it is possible to read them as offering a genuine choice. In practice, however, the coexistence operates asymmetrically.

The asymmetry arises because the two pathways carry different institutional burdens. Referral to a special school is administratively simple, requires no adjustment of mainstream practice, and is supported by an existing institutional infrastructure with specialist staff. Inclusion in a mainstream school requires curricular adjustment, staff development, physical modification, and sustained attention, none of which is funded as an entitlement attached to the student. Where two lawful options exist and one is markedly less burdensome for the institution, institutional behaviour is predictable. The special school becomes the default not because law prefers it but because the framework makes it easier.

This has a doctrinal consequence that deserves precise statement. The treaty standard does not merely permit inclusion; it obliges states to ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and the Committee has held that segregated provision does not satisfy the obligation.¹⁹ A domestic framework that treats segregated and inclusive provision as equivalent lawful options is therefore not aligned with the standard the state has accepted through ratification. Indonesian scholarship has generally treated the dual structure as a

¹⁸ Undang-Undang Nomor 20 Tahun 2003, Pasal 32 ayat (1); Undang-Undang Nomor 8 Tahun 2016, Pasal 10; Permendiknas Nomor 70 Tahun 2009, Pasal 2–3.

¹⁹ CRPD, Article 24(2)(a); CRPD Committee, *General Comment No. 4*, paras. 11, 39–41.

transitional arrangement; the analysis here suggests that, absent an explicit sequence and a date, a transitional arrangement without a terminus is simply the arrangement.

B. Reasonable Accommodation: Administrative Provision or Individual Right?

Government Regulation Number 13 of 2020 establishes obligations to provide reasonable accommodation to learners with disabilities, specifying categories of accommodation across curriculum, assessment, facilities, and support.²⁰ This is a significant instrument, and its adoption placed Indonesia ahead of many states in the region in formal terms. Three features nonetheless limit its operative force.

The first concerns the construction of the obligation. The regulation addresses itself principally to institutions and authorities, specifying what they must provide. It does not clearly construct a corresponding individual right exercisable by the learner or their family that is, a right to request a specific accommodation, to receive a reasoned decision within a defined period, and to challenge a refusal. Where an obligation is framed as a duty of provision rather than as a correlative right, its realisation depends on supervision, and supervision of a duty owed to no identified claimant is characteristically weak.

The second concerns the absence of a determination procedure. An effective accommodation framework requires a defined process: how a need is identified and assessed, who participates in the decision, what the institution must consider, what documentation is produced, and how the arrangement is reviewed. Without such a process, the question whether a given accommodation is required collapses into an unstructured judgement by whoever happens to be responsible, and the student's entitlement varies with the institution's disposition.

The third concerns the undefined limit of the duty. Comparative accommodation law generally limits the obligation by reference to undue burden or disproportionate hardship, and the content of that limit is developed through adjudication. Indonesian instruments do not clearly specify the limit, which produces uncertainty in both directions: institutions cannot know what is required of them, and students cannot know what they may claim. Uncertainty of this kind systematically favours the party with the power to decide, which is the institution.

Table 1. Comparison of the Treaty Standard and the Domestic Framework

²⁰ Peraturan Pemerintah Nomor 13 Tahun 2020, Pasal 3, Pasal 5, dan Pasal 8.

Element	CRPD Standard and General Comment No. 4	Indonesian Framework	Consequence
System design	Single inclusive system; segregation does not satisfy the obligation	Dual architecture: special pathway and inclusive provision coexist	Segregated referral operates as the low-burden default
Reasonable accommodation	Individual entitlement; denial constitutes discrimination	Institutional duty of provision without clear correlative individual right	Realisation depends on institutional disposition
Determination process	Individualised assessment with participation of the learner and family	No defined procedure, timeline, or reasoned decision requirement	Unstructured discretion; unequal treatment across institutions
Remedy	Accessible complaint and redress mechanisms	No specific education-sector remedial route	Entitlement functions as exhortation rather than right
Support provision	Individualised support within general education	Specialist teacher contemplated by regulation but unevenly resourced	Integration without adjustment in designated inclusive schools

Source: Author's analysis of primary legal instruments, 2026.

C. The Remedial Gap

The analysis identifies the absence of an effective remedy as the decisive structural weakness. A right without a route to enforcement has, in practical terms, the character of a policy aspiration. Three observations support this conclusion.

First, general administrative and human rights mechanisms exist but are poorly matched to the problem. A family whose child has been refused enrolment or denied

adjustment requires a fast, low-cost, and locally accessible route to a reasoned decision. General mechanisms are slow, formal, geographically distant, and typically require representation. A remedy that is theoretically available but practically inaccessible does not constrain institutional behaviour, and institutional behaviour is what the right exists to constrain.

Second, the absence of remedy prevents the development of doctrine. In systems where accommodation disputes are adjudicated, a body of reasoning accumulates about what accommodations are required in what circumstances, and that reasoning guides institutions prospectively. Where no disputes are adjudicated, no guidance accumulates, and every institution decides every question afresh. The Indonesian framework's uncertainty about the limits of the duty is therefore self-perpetuating: the mechanism that would resolve it does not operate.

Third, the absence of remedy shifts the cost of the system's failure onto families. Where a school refuses adjustment, the family's realistic options are to accept the refusal, to seek another school, or to accept referral to a special school. Each transfers the burden of the institution's non-compliance to the person the law was enacted to protect, and each is unevenly available: families with resources, information, and social standing negotiate successfully, while others do not. The distributional effect of a remedial gap is therefore regressive, which is a significant consideration for an entitlement justified on equality grounds.

D. Design Response: Anticipatory Design and Enforceable Process

Two reconstructions follow from the analysis, and they operate at different levels.

The first is pedagogical and anticipatory. Universal Design for Learning proposes that variability among learners be treated as the design assumption rather than as an exception requiring individual response.²¹ A curriculum that already offers multiple means of representation and of expression requires fewer individual accommodations, because the adjustments that would otherwise have to be requested are built in. This matters in the Indonesian context for a specific reason: it reduces the number of decisions that must pass through the discretionary process identified above as the weak point. Anticipatory design is, in effect, a way of achieving accommodation without depending on the mechanism that does not work.

²¹ Meyer, Rose, and Gordon, *Universal Design for Learning*, 91–120.

The second is legal and procedural. Four elements would materially strengthen the framework. A defined determination procedure should specify how needs are assessed, who participates, what period applies, and that refusals must be reasoned in writing a requirement whose value lies less in the reasoning produced than in the discipline that giving reasons imposes. An accessible first-instance remedy should be established at district level, capable of reviewing refusals quickly and without representation. Funding should follow the student rather than the institution type, so that inclusive placement does not impose an unfunded burden that segregated placement avoids. And the dual architecture should be addressed explicitly, with a stated sequence by which special institutions are reconstituted as resource centres supporting mainstream provision a transition several systems have undertaken and whose principal lesson is that it fails when specialist expertise is dispersed rather than redeployed.

E. Teachers, Attitudes, and the Conditions of Inclusive Practice

Legal and design reform will not succeed without attention to the conditions under which teachers work, and it is worth stating plainly that the most common explanation offered for implementation failure teacher attitudes is largely an effect rather than a cause. A teacher responsible for forty students, without specialist support, without adjusted materials, and without preparation in differentiated practice, who is then assigned a student with substantial support needs, will predictably experience the assignment as an imposition. The attitude follows from the conditions.

Three implications follow. First, specialist support must be genuinely available rather than nominally contemplated, which in resource-constrained settings argues for itinerant specialists serving clusters of schools rather than an unattainable ambition of one specialist per school. Second, initial teacher education should treat inclusive pedagogy as a core component of preparing every teacher rather than as a specialisation, since the mainstream teacher is the person on whom realisation depends. Third, the practices that inclusion requires diagnostic assessment, flexible grouping, multiple means of expression are the same practices that benefit all learners, and framing them as disability provision both understates their value and reinforces the perception that inclusion is a burden undertaken for the sake of a few.

A final consideration concerns the voice of learners with disabilities and their families. The treaty framework is grounded in the participation of persons with disabilities in decisions affecting them, and the determination procedure proposed above should be constructed accordingly. Beyond individual decisions, institutional and district-level governance of inclusive provision would benefit from the structured involvement of

disabled people's organisations, which possess knowledge of what accommodation actually enables that no administrative process generates on its own.

F. Comparative Experience and the Question of Transition

The structural difficulty identified here a dual architecture in which inclusive placement carries higher institutional cost than segregated placement is not unique to Indonesia, and comparative experience indicates several conditions under which transitions have succeeded or stalled.

Systems that have moved substantially toward inclusion have generally done three things together. They have attached funding to the learner rather than to the institutional category, removing the perverse incentive by which a mainstream school absorbs an unfunded burden that a special school is resourced to carry. They have reconstituted special schools as resource centres providing itinerant specialist support to mainstream schools, redeploying rather than dispersing expertise. And they have invested in the preparation of all teachers rather than in the expansion of specialists, on the understanding that the mainstream teacher is the person on whom realisation depends.²²

Systems in which transition has stalled exhibit a recognisable pattern. Inclusive policy is announced; a designation scheme identifies inclusive schools; enrolment of students with disabilities rises; but classroom practice is unchanged, support is nominal, and outcomes do not improve. Within a few years, the resulting difficulties are cited as evidence that inclusion does not work, and referral to segregated provision resumes. The analytical point is that this sequence is not evidence about inclusion; it is evidence about integration without adjustment, which the treaty framework expressly distinguishes from inclusion and which no one has ever claimed produces good outcomes.²³

The pedagogical literature identifies what adjustment actually requires, and it is instructive that the practices involved are not exotic. Inclusive pedagogy has been characterised as extending what is ordinarily available to all learners rather than providing something additional for some, a formulation that avoids both the stigma of differentiated provision and the neglect of genuine difference.²⁴ This characterisation aligns closely with

²² Peter Mittler, *Working towards Inclusive Education: Social Contexts* (London: David Fulton Publishers, 2000), 133–152; Tim Loreman, "Seven Pillars of Support for Inclusive Education," *International Journal of Whole Schooling* 3, no. 2 (2007): 22–38.

²³ Committee on the Rights of Persons with Disabilities, *General Comment No. 4*, paras. 11–13; Roger Slee, *Inclusive Education Isn't Dead, It Just Smells Funny* (London: Routledge, 2018), 1–18.

²⁴ Lani Florian and Kristine Black-Hawkins, "Exploring Inclusive Pedagogy," *British Educational Research Journal* 37, no. 5 (2011): 813–828.

anticipatory curricular design, and it carries a practical advantage for resource-constrained systems: it does not require a parallel provision to be constructed, only the existing provision to be widened.

A further comparative observation concerns ableism in institutional practice, which operates below the level of formal policy. Where a school's implicit standard of a successful student is one who requires no adjustment, accommodation will be experienced by staff as concession and by students as marker, regardless of what the policy says.²⁵ Addressing this is institutional work the language used about students, the visibility of disabled adults in the institution, whether accessibility is treated as maintenance or as afterthought and it is the element least likely to be reached by legal reform. This is not an argument against legal reform but a statement of its limits: the framework can guarantee access and remedy denial, and it cannot by itself produce a school in which a student with a disability is expected.

Finally, transition requires an honest account of sequence and time. Reconstituting special institutions, preparing the teaching workforce, and establishing remedial mechanisms are multi-year undertakings, and a policy that announces inclusion without funding the transition will produce designation without substance. The more defensible course is to state a sequence, fund its first stage, and report against it an approach that is less rhetorically satisfying than declaring an inclusive system and considerably more likely to produce one.

G. Financing, Data, and Accountability

Three enabling conditions deserve separate treatment because they determine whether the reforms proposed above can operate at all.

The first is financing architecture. Where funding is allocated to institutions by category, the marginal cost of admitting a learner with substantial support needs falls entirely on the receiving mainstream school, while the corresponding resource remains attached to the special institution. This is the mechanism through which a legally equal choice becomes a practically unequal one. Attaching a supplementary allocation to the learner, portable across settings and calibrated to assessed support needs, converts inclusive placement from an unfunded obligation into a resourced one. The design is not without risk: allocation calibrated to assessed need creates an incentive to over-identify, and systems adopting such models have generally had to pair them with independent

²⁵ Thomas Hehir, "Eliminating Ableism in Education," *Harvard Educational Review* 72, no. 1 (2002): 1–32.

assessment and periodic audit. These are manageable problems, and they are considerably smaller than the problem the current arrangement produces.

The second is data. Indonesia cannot presently report with confidence how many children with disabilities are out of school, where they are, what support they receive, or what they achieve, because identification practices vary and administrative data systems capture disability inconsistently. This is not a technical footnote. Without reliable disaggregated data, entitlement cannot be monitored, resources cannot be targeted, and claims about progress cannot be tested.²⁶ Improving identification carries its own hazards, since categorisation can stigmatise and can become a route to exclusion rather than support; the safeguard is to collect data on support provided and outcomes achieved rather than on diagnostic labels alone.

The third is accountability. Inclusive provision currently enters institutional accountability primarily through designation whether a school is classified as inclusive which measures a status rather than a practice. An accountability regime that instead examined whether learners with disabilities are present, progressing, and participating, and that required schools to account for exclusionary outcomes, would direct attention to the thing that matters. The design difficulty is well known: measures that hold schools accountable for the outcomes of learners with disabilities can create an incentive to avoid admitting them, unless the measure is constructed to reward progress and participation rather than attainment thresholds. This is a solvable design problem, and it deserves explicit attention in any revision of the quality assurance framework.

Taken together, these three conditions explain why legal reform alone would be insufficient even if enacted in full. A right that is enforceable, a pedagogy that is anticipatory, and an institution that is funded and held to account for participation are complementary components; each compensates for the characteristic weakness of the others, and none is sufficient alone.

V. CONCLUSION

This article has examined why Indonesia's comprehensive legal guarantee of inclusive education has produced limited realisation, and has located the explanation in the structure of the framework rather than in resource constraints alone.

²⁶ UNESCO, *Global Education Monitoring Report 2020: Inclusion and Education — All Means All* (Paris: UNESCO, 2020), 13–40.

In response to the first research question, Indonesian instruments construct the right to inclusive education as an institutional duty of provision operating alongside a preserved segregated pathway, whereas the treaty standard obliges a single inclusive system in which segregated provision does not discharge the obligation. In response to the second, the gap between guarantee and realisation is produced by three features: a dual architecture in which segregated referral is the lower-burden option for institutions; an accommodation duty constructed without a correlative individual right, a determination procedure, or a defined limit; and the absence of an accessible remedy, which prevents both individual redress and the accumulation of guiding doctrine. In response to the third, reconstruction requires anticipatory curricular design that reduces dependence on discretionary accommodation, a defined determination procedure with written reasons, an accessible district-level remedy, funding that follows the learner, and an explicit sequence for reconstituting special institutions as resource centres.

The theoretical implication is that analyses of implementation failure in rights-based education policy should attend to remedial structure as a primary variable. Where no accessible remedy exists, a guarantee operates as an exhortation, and its realisation will vary with institutional disposition in exactly the manner that rights frameworks are designed to prevent. The practical implications are addressed to legislators and regulators, who should construct accommodation as an individually enforceable entitlement with procedure and remedy; to education authorities, who should redeploy rather than disperse specialist expertise and attach funding to learners; and to teacher educators, who should treat inclusive pedagogy as universal preparation.

Further research should pursue three directions: empirical study of how enrolment and referral decisions are actually made at school level; comparative analysis of first-instance education remedies in jurisdictions that have established them, with attention to accessibility and cost; and evaluation of anticipatory curricular design in Indonesian conditions, particularly in schools without specialist support.

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