

REASONABLE ACCOMMODATION AND SUPPORT FOR INCLUSIVE EDUCATION IN ASIA

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ABSTRACT

Providing reasonable accommodation and support are one of the keys to implement inclusive education as mentioned in Article 24 Convention on the Right of Persons with Disabilities. Thus, this research aims to find out how far ASIA countries particularly Thailand, China and Indonesia have provided reasonable accommodation and support for the implementation of inclusive education. Thailand, China and Indonesia are chosen since they share similar background of social, economic and culture. There are two questions this research proposed to address. First, what are the efforts of Thailand, China and Indonesia have done in providing reasonable accommodation and support for the implementation of inclusive education. Second, what are the issues Thailand, China and Indonesia had to encounter in providing reasonable accommodation and support. This research used literature research method which analyze literatures, regulations and other documents about reasonable accommodation and support for inclusive education in Thailand, China and Indonesia. This research found out that Thailand, China and Indonesia had adopted educational law such as providing IEP, resource room, resource centers, universal design and accessible environment for disabled students in regular schools. However, the implementation has not been success due to several issues such as unclear regulation; the lack of support materials and accessible places; inadequate number of teachers and the absence of awareness regarding inclusive education from the teachers.

Keywords: Reasonable Accommodation, Support Measures, Inclusive Education

INTRODUCTION

The right to inclusive education has been regulated in the World Programme of Action Concerning Disabled Person, later UN Standard Rules on the Equalization of Opportunities for Person with Disabilities and the Salamanca Statement and Framework for Action on Special Needs Education improved the clausula of inclusive education, but these two instruments are not legally binding.¹ Later, The United Nations on the Rights of Persons with Disabilities (CRPD) was adopted in 2006 provided the legal basis for inclusive education.² CRPD provides a chance to address concern about the flexibility of inclusive education.³ States parties of CRPD are required by Article 24 to provide inclusive education system at all levels.⁴ Also, Article 24 of CRPD clearly stated regarding the right to education for people with disabilities without discrimination conform to the inclusive education principle and the duty to support reasonable accommodations for the individual's needs.⁵ In order to ensure the right to inclusive education, states are required to take action to ensure disabled people are not excluded from mainstream educational systems according to their impairments,⁶ ensure that disabled people can access free, inclusive and quality education, provide reasonable accommodations, and provide adequate support for disabled people and training for teachers.

The right to education is subjected to immediate obligation and progressive realization⁷. Progressive realization means that states shall take measures using the maximum available resources to progressively fulfil these rights.⁸ Where the realization of economic,

social and cultural rights is not possible to reach in a short time because of the state's economic circumstances, it does not mean that states can escape their obligations, rather states must continue to develop and fulfil their obligation to guarantee there is no backward action.⁹ The progressive realization obligation can be found in Article 4 (2) of the CRPD.¹⁰

Immediate obligation in this case means that states shall guarantee that disabled people do not experience discrimination in obtaining education, the overarching right to prohibition of discrimination is an immediate obligation and not part of progressive realization.¹¹ In this case, immediate obligation means that reasonable accommodation should be provided for disabled students, if states fail to provide reasonable accommodation, it is regarded as discrimination.¹²

Several countries, states and provinces have tried to implement their obligation to provide inclusive education such as Finland and New South Wales.¹³ Not only Western countries but also in Asian ones, such as Thailand, Indonesia and China have also attempted to implement inclusive education but there are several issues that have impeded their implementation¹⁴.

This paper focus on the implementation and issues in providing reasonable accommodation and support for inclusive education in Asian countries, since United Nations (UN) has stated that 98% of disabled children do not go to school in developing states¹⁵ and most countries in Asian are still classified as such.¹⁶ Furthermore, as noted in the first Asian-Pacific Decade of Person with Disability Report, there was still a disconcertingly small percentage of access to education for disabled children, 70% of non-disabled persons had enrolled in school, but fewer than 10% disabled children did so.¹⁷ This percentage is alarming, since the right to education is important for people with disabilities because it will increase their participation in society,¹⁸ helping them fulfil their civil and political rights, for example, freedom of speech and right to vote, as well as the rights to economic, social, and cultural rights for instance right to food and right to work.¹⁹ Furthermore, it implies Asian countries are basically still excluding disabled people from education, implying that Asian countries discriminate and violate disabled people's right to education.

Thailand, Indonesia and China were particularly focussed on because they ratified the CRPD in 2008, 2011 and 2008, respectively,²⁰ and they also share very similar economic, social and cultural backgrounds. Currently, all of them are categorized as countries currently undergoing rapid economic growth, especially China,²¹ but they are still considered as middle-income countries or developing countries.²² Also, they have the same history of segregated education for disabled persons,²³ and Thailand and China's cultures both have been influenced by Buddhism with its conception that disabilities are the effect of bad karma that people have done in the previous life²⁴. Even if Buddhism is not the largest religion in Indonesia, the culture in Indonesia reflects a belief that persons with disabilities are an embarrassment, their disability is sin²⁵ and the result of karma.²⁶

Thus, this research aims to find out how far Thailand, China and Indonesia have provided reasonable accommodation and support for the implementation of inclusive education. In order to find the answers, there are two questions this research proposed to address. First: what is Thailand, China and Indonesia efforts to provide reasonable accommodation and support for the implementation of the right to inclusive education; and second: what are the issues that hamper their work to provide it. This research is designed to assist Asian countries to prepare programs or regulations that will make their current efforts more effective as well as prevent and tackle any active discrimination.

This paper is divided into four sections. In the first section, this section explains the legal obligations to provide reasonable accommodation and support for the right to inclusive education for disabled students, according to CRPD. The second section explains the efforts of Thailand, China and Indonesia to provide reasonable accommodation and support. The third section explains the issues that Thailand, China and Indonesia have experienced in order

to fully establish reasonable accommodation and support. The fourth section concludes the research.

METHODOLOGY

This research used qualitative method with normative approach which analyse the law²⁷, literatures and documents²⁸. In order to obtain related information about the research, the author used primary sources and secondary sources. Primary sources used in this research are international convention, law, regulations relevant to the research²⁹. Secondary sources used in this research are textbook, journal articles and relevant documents³⁰, such as United Nations documents or reports and Non-Governmental Organization reports³¹.

Legal Obligation

The obligation to provide reasonable accommodation of individual's needs for education are stipulated in Articles 24(2)(c) and 24(5) and also affirmed in Article 5(3) of the CRPD.³² Unlike inclusion, reasonable accommodation is defined in Article 2, as appropriate and necessary adjustments where it is needed for disabled people to enjoy their rights, and the accommodation is regarded as reasonable when the modifications are not an undue burden.³³ It indicates an estimation of financial cost of action that shall be estimated by contributions gained as compensations and profits contains of the benefits for actors other than disabled people.³⁴ However, in international law there is lack of consistent meaning of what is an undue burden, and jurisprudence regarding this has caused a minimalist meaning of how far accommodation is needed to accept disabled children in school.³⁵ Furthermore, the denial of reasonable accommodation is breaching CRPD³⁶ and considered as discrimination³⁷. However, if duty bearers denied it, they shall prove that the establishment of accommodation harm the duty bearers or the achievement of the main function of education.³⁸ In addition, the absence of resources cannot be used to justify the denial of reasonable accommodation.³⁹ Reasonable accommodation itself includes accessible classrooms, transportation to school,⁴⁰ modification of curriculum, culture and the school building to enhance the capacity of disabled children to participate in the learning process.⁴¹ This obligation is also explained in General Comment No 2 about Article 9 of CRPD.⁴² Several states in order to provide reasonable accommodation have established Individualized Education Plans (IEP) for disabled students.⁴³

Obligation to provide reasonable accommodation has a strong relation with the obligation to provide support in Article 24(2)(d) and (e), since support actions put the human rights aspect to the right to education for disabled people and supplement reasonable accommodation.⁴⁴ In several circumstances, support and reasonable accommodation overlap, which can be seen in the draft of the convention, where support measures were defined as training for teachers, psychologist and school counsellor and accessible environment for learning or other reasonable accommodation to guarantee the participation of disabled students.⁴⁵ It implies that the drafters did not distinguish strictly between reasonable accommodation and support measures but address the importance of both of them, thus CRPD acknowledges a guarantee of inclusive education, and schools shall change systematically to serve all disabled students, and at the same time concentrate on the requirements of individual students.⁴⁶ Consequently, reasonable accommodations will be more available the more support actions are performed.⁴⁷

Support measures in CRPD are divided into general (Article 24 para 2 (d)) and individualized support (Article 24 para 2 (e)). General support includes teachers in the classroom that are appointed to teach and their presence bring advantages for all students, while individualized support focuses on particular students, for instance assistance and assistive devices.⁴⁸ Several states have used the notion of Universal Design Learning (UDL)

in their inclusive regulations to emphasize individual and structural or general support⁴⁹. States also use IEP since through IEP disabled students can obtain many supports for instance assistive technology and special learning aids.^{50, 51}

Efforts in Providing Reasonable Accommodation and Support

Thailand

Regulation about reasonable accommodation is not explicitly stated in the Person with Disabilities Empowerment Act 2007, even if this regulation forbids discrimination that yield a loss of advantages of disabled people on the basis of their disabilities.⁵² However, as mentioned above regarding reasonable accommodation and support for disabled children in education, Thailand in its five-year plan on education for people with disabilities aims to provide IEP to aid learning process in the classroom and Students Support Service to supply assistive technology.⁵³ Furthermore, in response to IEP there are five models of development for inclusion management that have been established in Thailand: SEAT management, collaborative inclusion model, APACP Model, inclusion on need and suitability and multilevel inclusive education which aims to identify and provide the needs of disabled people cooperate with another stakeholders including parents, teacher and school staff to make disabled students can achieve their maximum skill in learning.⁵⁴ In addition, under the Third National Plan on Empowerment of Persons with Disabilities, Thailand has disclosed a strategy to provide universal design in educational institutions.⁵⁵

In providing support, in response to Ministry of Interior Regulations 2005 on clauses of facilities in adherence with the Legislation on Prescribing Types and Aspect of Buildings Requiring Installation of Facilities Usable by Disabled Persons,⁵⁶ environmental barriers have been removed, particularly for students who use wheelchairs.⁵⁷ However, overall there is evidence that the laws and practices about reasonable accommodation and support are not in line with national plan and CRPD, which impact to the inclusive classroom's quality of teaching.^{58, 59}

Indonesia

The law 8/2016 about persons with disability, Article 10(d), stipulates that disabled students has rights to reasonable accommodation and the definition of reasonable accommodation also mentioned in Article 1 para 9⁶⁰ which has the same meaning in the CRPD. Like another countries, Indonesia in order to provide reasonable accommodation to implement inclusive school uses IEPs with diverse curriculum and the establishment of flexible curriculum.⁶¹ Several good practices of using IEP can be found in Muhammadiyah elementary school in Gunung Kidul, which has accepted two children with mental disabilities, the teachers in the school are very kind to them and they teach mathematics and other academic subjects to them by using a modified curriculum.⁶² Meanwhile for other subjects, such as religion, sport and art, are the same curriculum, for the evaluation for academic performance, the teachers adapt it to the level of disabled children's ability.⁶³ The teacher said that the academic evaluation is not that important as long as the disabled children can adapt, enjoy and be happy in the school.⁶⁴

Furthermore, regulations from the Ministry of Education about inclusive education in Article 10 have obliged schools that practice inclusion to employ a minimum of one special teacher assistant who will help disabled students to develop their maximum potential.⁶⁵ In practice, special teacher assistants are rare due to lack of human resources and less respect towards that job.⁶⁶ In another way, to provide support for disabled students in inclusive schools⁶⁷, the government has a program to provide special classes, resource rooms⁶⁸, subsidy equipment and other supporting infrastructure for regular school to practice inclusion.⁶⁹ In

addition, to ease disabled students' commute to school and enjoy the building of the school without any barriers, the government of Indonesia has regulation Law No. 28/2002 on Building⁷⁰, Law No.16/1985 on Flats⁷¹ and Minister of Public Works Regulation No. 30/2006 on Technical Requirements for Building Accessibility⁷², these regulations have clauses to oblige all contractors for public facilities and infrastructure to establish accessible building for persons with physical impairments.⁷³ However, all of the laws and programs from government to support the implementation of inclusive education are still far from success.⁷⁴

China

According to the report of China to the Disability Committee, in order to provide reasonable accommodation and support for disabled students in education, China has established Regulations of the Educations of Persons with Disabilities (REPD) and Regulation on Barrier-Free Construction⁷⁵. REPD has provisions to build resource rooms in regular schools and resource centres in certain area to offer equipment, support and guidance to facilitate disabled children in the regular school and also offer assistance for disabled students.⁷⁶ While, Barrier-Free regulations stipulated to guarantee the participation of disabled people in society, although this regulation merely focus on general accessibility support.⁷⁷ Thus, as a result of the awareness of regulations and parents advocacy, in Guangzhou, the government created regulation that in the province there must be one inclusive school in every districts and the school must have IEP for every disabled students, assistance teacher and resource room.⁷⁸ Another good practice also comes from Shanghai, in which every students must obtained individualized training during school time for 30 minutes.⁷⁹

Furthermore, the accessibility of the environment has been a concern of China. As mentioned in LPPD, China has to establish barrier-free environment, thus in 2004, the Beijing local government has implemented a Regulation on the Construction and Management of Barrier-Free Facilities in the city of Beijing.⁸⁰ All the special schools in Beijing have implemented free barrier construction or modified the existing facilities into barrier-free.⁸¹ However, the implementation of reasonable accommodation and support for disabled students find difficulty due to the regulation that demands disabled students adapt to regular schools.⁸²

Issues in Providing Reasonable Accommodation and Support

'Unclear policies and Inadequate Practice of Providing Reasonable Accommodation and Support Led to the Rejection of Disabled Children'

Thailand

The Persons with Disabilities Empowerment Act of Thailand does not define the definition of reasonable accommodation and does not regard the denial of reasonable accommodation is a form of discrimination,⁸³ which makes it more difficult for disabled students to demand accommodation to assist their study in regular school. Furthermore, Thailand has regulated to provide IEP, and according to Vorapanya's research, which found several headmasters of the schools in Thailand have stated that IEP is a good thing to provide the needs of disabled children in the school, but that IEP was 'misused' just for obtaining subsidy from the government⁸⁴ not for as a tool to improve the awareness of teachers and parents about student needs.⁸⁵ Also, the level of understanding of IEP is still less of on how IEP can associated to the eight academic fields of the Thai national curriculum or to other optional assessments of achievement.⁸⁶ Besides this, there is a lack of knowledge of teachers about practicing IEP and what kind of support they should provide to assist disabled children's learning processes.⁸⁷ Also, schools cannot provide teacher assistants to help

disabled students as they cannot afford to pay them.⁸⁸ Furthermore, parents in Thailand are unlikely to participate to IEP development⁸⁹, while their role is really important to assist school identify the needs of their disabled children. Consequently, in practice IEP is not broadly being used in educational system for school in Thailand.⁹⁰

Besides the problem with IEP, Thailand also still struggles to provide support, since most schools are not equipped with materials and facilities to assist disabled students.⁹¹ The fact that implementation of universal design is far away from success, the lack of facilities to commute from home to school, and an inaccessible school environment dishearten disabled students to study in mainstream school.⁹² As the result, parents prefer to send their children into special boarding schools.⁹³

The inadequate skills, capacity and resources to establish IEP and support measure led several schools to reject disabled students.⁹⁴ Consequently, disabled children are only able to attend special schools that serve students with the same type of disabilities.⁹⁵

Indonesia

The implementation of reasonable accommodation and support for disabled students is still poor in Indonesia. Several schools in Nusa Tenggara Barat, for instance, explained that the support materials in class are not adjusted to satisfy the needs of disabled children⁹⁶, for instance the lack of talking-book and books in Braille for students with visual impairments.⁹⁷ Besides that, the inadequate number of special education teachers and teacher assistance also contribute to the insufficient practice of inclusion.⁹⁸ As a result, disabled students cannot study effectively and it affects to their examination results.⁹⁹ If they obtain bad result, they tend to drop out from school, and up to the present day, there is 16% drop out rate of disabled children.¹⁰⁰

The insufficiency of inclusion is also triggered by inadequate implementation of laws about accessible buildings and commuting options for disabled students. This is shown by the fact that schools in Indonesia have inaccessible toilets and placed libraries and laboratories on the second floor, which create difficulty for students in wheelchairs to move around especially without the existence of lift.¹⁰¹ Furthermore, the unbalanced availability of facilities and school (even if schools are available they are too far away) particularly in Eastern Indonesia, which is mostly rural areas, led to the absenteeism of disabled children and teachers in school, as the result there is a small enrolment percentage in these areas.¹⁰²

Several schools in Indonesia are reported only accepting disabled children to obtain extra funding from the province without providing any modification or support.¹⁰³ It indicates that school did not have willingness to practice inclusion, as the result students study nothing in class because they lack appropriate support.

China

Although China has regulated the establishment of resource rooms and resource centres, which bring a good impact, but it can be hindered by the reality that regulation of China does not obviously oblige schools to provide reasonable accommodation as stated in CRPD,¹⁰⁴ as this was excluded in the LPDP.¹⁰⁵ Furthermore, the REPD provides no clear definition concerning reasonable accommodation or examples regarding support that schools are required to provide.¹⁰⁶ Thus, China did not acknowledge the refusal of reasonable accommodation as a form of discrimination.¹⁰⁷ Furthermore, Ministry of Education and China Disabled People's Federation did not actively pay attention to discrimination or ensure that regular schools provide reasonable accommodation for disabled students¹⁰⁸.

Unclear regulations then led to inadequate support and accommodation for disabled students in all level of education,¹⁰⁹ for instance, the inaccessible toilets, school's material not provided in Braille form¹¹⁰ and inadequate transportation.¹¹¹ Also, the lack of understanding

of teacher to establish IEP¹¹² and funding become the barriers for schools to provide adequate support and reasonable accommodations for disabled students.¹¹³

Insufficient support, accommodation and unclear regulation then led schools to order disabled children in the regular school to adjust themselves into the school system not the school adjust to them¹¹⁴. This is not conforming with CRPD as the committee explained that the education system shall offer IEP to response their needs, instead of expecting students to adapt to the system.¹¹⁵

The realization of inclusion is also hampered by vague regulations that permit schools to reject the application of disabled children, which is not in line with CRPD Article 24(2)(a), which is supposed to ensure that all disabled people are not excluded from general education system.¹¹⁶ Even if schools accept them, they only accept students with mild disabilities,¹¹⁷ because the support equipment does not cost as much as for severe disabilities.¹¹⁸ Consequently, because the lack of supporting equipment, they cannot adapt with the system¹¹⁹ and finally persons with severe disabilities are encouraged to transfer to special school or drop out.¹²⁰

The main issues for China, Thailand and Indonesia for providing support measures and reasonable accommodation are unclear regulations and poor practices. Unclear regulation for support and reasonable accommodation are sometimes misused by schools to obtain money and reject admission of disabled children. Thus, it is important for China, Thailand and Indonesia to understand that rejection of disabled students in regular school does not conform to Article 24 of the CRPD. No-rejection clauses as stipulated on Article 24(a) as an anti-discrimination action and has an immediate impact, and is strengthened by reasonable accommodation.¹²¹ Thus, states shall explicitly mention no-rejection provisions in their legislation, which prohibit the rejection of admission into regular school and ensure continuity in education for disabled people.¹²²

These three states should also assure or adopt that their educational laws will conform to the provision of reasonable accommodation and support for disabled students. Besides that, government should oblige schools to conduct child assessments together with the help from teachers and parents, so that all stakeholders are involved and aware of the type of support and accommodation need by disabled students and what should be provided to create inclusion.

CONCLUSION

Thailand, China and Indonesia responses to the legal obligation to provide reasonable accommodation and support measures, as stated in CRPD Article 24 para 2(c),(d),(e), Article 24(5) and Article 5 are adopting educational law such as providing IEP, resource rooms, resource centres, universal design and accessible environments for disabled students in regular schools. Good practices can be seen for instance in Shanghai, China and Gunung Kidul, Indonesia, while Thailand is the only country among three of them who have established a universal design program.

Unfortunately, there are several issues that those countries encountered in the realization of reasonable accommodation and support¹² for instance unclear regulation, which led to the inadequate support and accommodation, in¹² accessible buildings and the absence of IEP due to the lack of understanding from teachers. Due the lack of preparation to practice inclusion, often school reject disabled children or even if they accept them, they do so only to obtain extra funding. Further, they may only accept students with mild disabilities, because their cost is cheaper compared to students with severe disabilities. Consequently, such students are forced to leave or drop out from school.

If this situation still exists, then it will be led to discrimination which violates the Convention. It implies, that China, Thailand and Indonesia have not fully complied with their obligations under Article 24 (2) (c), 24 (5) and 5 (3) of CRPD to provide reasonable

accommodation and support for disabled students in educational setting. Thus, these states need to modify and enforce their regulations to conform to the CRPD, which mentions explicitly an obligation to provide reasonable accommodation, support and no-rejection clauses.

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