

Revisiting Justice in Inclusive Education: A Case Study of Jombang

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Abstract

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Inclusive education has become a fundamental principle within the Indonesian education system as an effort to ensure equal rights for all children, including those with special needs. However, the implementation of inclusive education policies at the regional level, particularly in Jombang Regency, reveals a gap between normative discourse and the reality of practice on the ground. The Jombang Regent Regulation No. 39 of 2014 serves as the legal basis for the implementation of inclusive education; however, its application does not fully reflect the principle of substantive justice for children with special needs. This study aims to critique the policy using philosophical and normative approaches to analyze the role of the state as the organizer of inclusive education. The methodology employed is a qualitative approach with textual analysis of legislation and observation of policy implementation in inclusive schools in Jombang. The research findings indicate that although inclusive education policies are legally and formally regulated, many deficiencies persist in practice, such as the lack of support teachers, unprepared curricula, and insufficient funding. These findings reflect the state's failure to uphold the principles of social justice and human rights for children with special needs. Inclusive education should be understood as an integral part of the state's obligation to achieve substantive justice, rather than merely an administrative requirement.

1. Introduction

In the landscape of a modern rule of law state that upholds the principle of justice, education is not merely a social facility, but an inherent human right tied to human dignity. Within this paradigm, education should not operate under the logic of exclusion, but rather as a cultural space that affirms diversity, particularly for those in socially marginalized positions, including children with special needs¹. However, the reality of the national education system today often reflects the dominance of a hegemonic, exclusive system that is biased against the differentiated needs of students. The formal education system, in many respects, remains constructed within a framework of homogenization of competencies and uniform treatment, which, instead of fostering justice, produces covert discrimination.

Jombang Regency, through Regent Regulation No. 39 of 2014 on the Implementation of Inclusive Education, has taken a progressive step in recognizing the rights of children with special needs (CWSN) to attend school alongside other children in general education units. In the legal-formal realm, this regulation reflects the state's commitment to the principle of non-discrimination as enshrined in the constitution and international human rights law. However, substantively, its implementation demonstrates the dominance of an administrative approach

¹ Chris Forlin and Dianne Chambers, "Diversity and Inclusion and Special Education," in *Oxford Research Encyclopedia of Education* (Oxford University Press, 2020), <https://doi.org/10.1093/acrefore/9780190264093.013.1214>.

that neglects the specific needs of CWSN, such as the absence of support teachers, the lack of a differentiated curriculum, and the insufficient allocation of regional budget interventions. The presence of CWSN in regular classrooms without adequate accommodations perpetuates structural injustice². The illusory equality achieved through uniform treatment of students with different needs constitutes a form of covert discrimination that is incompatible with the principles of distributive justice and recognition justice. Therefore, a reinterpretation of the concept of justice in inclusive education policies is necessary, one that is more oriented toward equity, rather than merely equality.

The implementation of inclusive education in Jombang still reveals a disparity between the normative spirit embodied in the regulation and the practical reality on the ground. The absence of specialized support teachers, the lack of pedagogical training tailored to the needs of CWSN, and the standardized approach to learning demonstrate that the state, through regional government apparatus, is more present in an administrative capacity than as an entity actively advocating for substantive justice. In such a position, the rule of law risks moral degradation when the law remains limited to its declaratory function and fails to penetrate the realm of practice that touches the existential experience of vulnerable citizens.³

Criticism of inclusive education policies is not intended to reject the formal legality that has been established, but rather to dismantle the illusion of justice that is often concealed by legal texts. The point is that the law must not only exist in a normative form, but it is also required to manifest as an ethical praxis that ensures recognition, protection, and fair empowerment for minority groups, including CWSN. Inclusive education that is merely implemented without systemic and affirmative support will only prolong structural injustice in a more subtle form.

The novelty of this research lies in its philosophical and normative analysis of inclusive education policies in Indonesia, focusing on the gap between legal texts and the practical realities of policy implementation, particularly in Jombang Regency. While previous studies have addressed the challenges faced in implementing inclusive education⁴, such as inadequate facilities, poorly designed curricula, and insufficient teacher training⁵, this research offers a novel approach by examining inclusive education not only as an administrative program but also as a reflection of deeper social justice principles. This study critiques the neglect of the

² Achmad RW, "45 Sekolah Di Jombang Sediakan Layanan Pendidikan Inklusi Untuk ABK," *radarjombang.jawapos.com*, May 20, 2023, <https://radarjombang.jawapos.com/pendidikan/661029724/45-sekolah-di-jombang-sediakan-layanan-pendidikan-inklusi-untuk-abk>.

³ Alani Golanski, "A Structuralist Concept of the Rule of Law," *British Journal of American Legal Studies* 10, no. 1 (April 1, 2021): 119–53, <https://doi.org/10.2478/bjals-2020-0013>.

⁴ Muhammad Rafii et al., "Inclusive Education: Education Policy in Ensuring the Right to Education Human," *Hijri* 10, no. 2 (December 5, 2021): 84, <https://doi.org/10.30821/hijri.v10i2.11406>; Justin Niaga Siman Juntak et al., "Mewujudkan Pendidikan Untuk Semua: Studi Implementasi Pendidikan Inklusif Di Indonesia," *Ministrate: Jurnal Birokrasi Dan Pemerintahan Daerah* 5, no. 2 (May 28, 2023): 205–14, <https://doi.org/10.15575/jbpd.v5i2.26904>.

⁵ Esty Zyadatul Khasanah, "Inclusive Education: In Concepts, Policies, and Implementation," *IJDS: Indonesian Journal of Disability Studies* 5, no. 2 (December 17, 2018): 166–69, <https://doi.org/10.21776/ub.IJDS.2018.005.02.3>; Mohammad Efendi, "The Implementation of Inclusive Education in Indonesia for Children with Special Needs: Expectation and Reality," *Journal of ICSAR* 2, no. 2 (July 15, 2018): 142–47, <https://doi.org/10.17977/um005v2i22018p142>.

specific needs of children with special needs (CWSN) in existing policies and calls for a paradigm shift from mere equality to a more substantive form of justice, namely distributive justice and recognition justice. This research introduces a new concept by emphasizing the importance of ethical practice that integrates law and inclusive education policy into lived experiences, rather than relying solely on legal formalism. By referring to the government's efforts to legitimize inclusive education through policies and regulations⁶, the study highlights the persistent gap between normative discourse and practical reality, which continues to result in covert discrimination. The primary focus of this research is to reveal how inclusive education should be designed with a more comprehensive approach, involving active participation from various stakeholders, in order to achieve substantive justice and fulfill the human rights of children with special needs in Indonesia. Thus, the unique contribution of this research is its effort to shift the understanding of inclusive education from merely a legally recognized policy to one that emphasizes the implementation of policies oriented towards justice and the genuine fulfillment of rights, demanding a transformative approach to children with special needs within the educational system.

This article aims to philosophically and normatively examine how inclusive education, as a public policy, is interpreted and operationalized within the Indonesian legal system. Through the lens of social justice, this paper seeks to highlight the tension between legality and legitimacy, between law as a text and law as a lived experience. In this regard, inclusive education is not merely positioned as an administrative program, but as a reflection of justice that measures the state's commitment to the weak and marginalized. Ultimately, the essence of the rule of law lies not in the existence of regulations, but in its capacity to realize justice that is both living and emancipatory.

2. Methods

This research is structured within the framework of normative-critical legal thought, combining philosophical reflection on the principle of justice with an analysis of the juridical construction of public policy in the field of education, specifically inclusive education policies for CWSN. The reasoning in this study is not solely based on the examination of positive norms or legislation as standalone texts, but aims to uncover the ideological, ethical, and practical dimensions of law embedded in the policy and the implementation practices of inclusive education in Jombang Regency.

3. Results and Discussion

3.1. Issues in Inclusive Education

Education is an instrument for the development of human resources and an integral part of the recognition and honoring of human dignity as an autonomous and rational legal subject.⁷ On an ontological level, education is a fundamental human right inherent to human existence, not a privilege granted by the state⁸, but rather a state obligation to facilitate it.

⁶ Efendi, "The Implementation of Inclusive Education in Indonesia for Children with Special Needs: Expectation and Reality."

⁷ Isabel Hogueane and Anselmo Orlando Pinto, "Education as a Way of Promoting Human Dignity," *International Journal of Education, Culture and Society*, June 9, 2023, <https://doi.org/10.11648/j.ijecs.20230803.19>.

⁸ Emine Zendeli, "The Right to Education as a Fundamental Human Right," *Contemporary Educational Researches Journal* 7, no. 4 (December 5, 2017): 158–66, <https://doi.org/10.18844/cerj.v7i4.2718>; Colin

Articles 31, paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) affirm the constitutional guarantee of the right to education for all citizens, without exception. As guaranteed by the UUD NRI 1945, CWSN should not be positioned as objects of charity, but must be recognized as full legal subjects with equal rights.⁹

An examination of the legal system reveals that the spirit of inclusive education has indeed emerged in various regulations, from the constitution to regional regulations. Law No. 20 of 2003 on the National Education System opens the door for a model of education that is just, explicitly mandating educational services for students with physical, emotional, mental, social, or exceptional intellectual challenges. Similarly, Government Regulation No. 13 of 2020 on Adequate Accommodation for Students with Disabilities reinforces the protection of these rights within the regular education environment. At the regional government level, Regent Regulation No. 39 of 2014 of Jombang articulates this national mandate normatively, designating 45 schools as institutions for inclusive education¹⁰. However, within the epistemological horizon of law, what must continuously be examined is not merely the normative content of regulations, but how the law presents and functions in the complex social reality. This is where the law often transforms into a symbol that appears just in text but fails to deliver justice in practice. The disconnection between law as a norm and law as an experience is a classic symptom of legal formalism, where legality is treated as a singular standard without considering the ethical and political capacity of law to intervene in social inequalities.

The fact that inclusive schools are not equipped with professional educators specifically trained for children with CWSN indicates a serious issue in the implementation dimension.¹¹ This policy, despite being termed "inclusive," remains structurally assimilationist, meaning that CWSN are forced to adapt to a curriculum and teaching methods that are not designed to meet their needs. Teachers who lack pedagogical competence to address the diverse cognitive, affective, and motor conditions of CWSN will ultimately reproduce discrimination in a more subtle yet systemic form.¹² In other words, the state appears to have fulfilled its obligation administratively, but fails to address the essence of justice. The relationship between law and justice in this context becomes increasingly paradoxical. The law appears as a norm that declares equality of rights, yet simultaneously serves as a tool that allows inequality to persist in a 'legitimate' manner. Referring to Aristotelian distributive justice, justice is not identical with uniform treatment, but with proportional distribution based on the conditions and needs

Wringe, "The Human Right to Education," *Educational Philosophy and Theory* 18, no. 2 (January 9, 1986): 23-33, <https://doi.org/10.1111/j.1469-5812.1986.tb00415.x>.

⁹ Firasya Dhiwa Ghassani and Indrianti Amarini, "Legal Protection Against Discriminatory Treatment of Persons with Disabilities in Procurement of Recruitment for State Civil Servants," *JIHAD: Jurnal Ilmu Hukum Dan Administrasi* 6, no. 4 (December 31, 2024), <https://doi.org/10.58258/jihad.v6i4.8062>.

¹⁰ Achmad RW, "45 Sekolah Di Jombang Sediakan Layanan Pendidikan Inklusi Untuk ABK."

¹¹ Majalah Suara Pendidikan, "Disdikbud Kabupaten Jombang Tak Lepaskan Perhatian Terhadap Pendidikan Inklusif," www.majalahsuarapendidikan.com, September 6, 2023, <https://www.majalahsuarapendidikan.com/2023/09/disdikbud-kabupaten-jombang-tak.html>.

¹² Kevin Nizar, "'Pekan Berkasih', Pentas Pendidikan Inklusi Anak Berkebutuhan Khusus Yang Membawa Pesan Kesetaraan Di Jombang," kabarjombang.com, December 9, 2024, <https://kabarjombang.com/pesantren-pendidikan/pekan-berkasih-pentas-pendidikan-inklusi-anak-berkebutuhan-khusus-yang-membawa-pesan-kesetaraan-di-jombang/>.

of each individual.¹³ Therefore, in the practice of inclusive education, justice cannot be achieved merely by granting CWSN access to regular schools, but must be realized through affirmative policies: adequate accommodations, pedagogical adaptations, professional assistance, and institutional support tailored to the characteristics of each child. When the state neglects the specific needs of CWSN under the guise of equality, the law functions as an instrument of hidden exclusion. In Aristotelian logic, such injustice occurs not because of differences, but because those differences are not addressed proportionally in the distribution of resources and the state's attention.¹⁴

This situation demonstrates that legal norms, although formally reflecting the state's commitment to the principles of justice and human rights, often fail to serve as instruments of social transformation when not supported by adaptive institutional design and a progressive budgetary commitment. The absence of supporting infrastructure such as companion teachers, specialized training, and adequate funding allocation clearly shows that the law functions merely as a symbol of procedural compliance with national demands as stipulated in Law No. 20/2003 and Government Regulation No. 13/2020, rather than as an emancipatory tool that addresses the lived reality of CWSN. When the law operates solely within the realms of administration and regulation without addressing the practical dimensions of justice, it loses its ethical essence. Inclusive education, thus, is reduced to a legalistic jargon, becoming a tool for the state's pseudo-moral legitimization, and is no longer capable of ensuring the concrete distribution of justice for vulnerable groups who should be prioritized by a civilized rule-of-law state.

Thus, the issue of inclusive education in Jombang Regency opens a reflective landscape to reconsider the relationship between law, justice, and humanity. A just law is not sufficient if it merely acknowledges rights within legal documents; it must actively work to dismantle inequalities, ensure equal participation, and elevate the dignity of citizens who have long been placed in marginalized positions. In inclusive education, justice can only be upheld if the law dares to side not with the majority, but with the weakest because therein lies the morality of a legal system.

3.2. Critique of Regional Policy Formulation: Between Legalism and Justice

Public policy in the form of regional head regulations is never value-neutral, as it is always the product of a configuration of power, ideology, and interests rooted in the local political space. Jombang Regent Regulation No. 39 of 2014 on the Implementation of Inclusive Education, when read critically, represents a tug-of-war between procedural legalism and aspirations for justice. On one hand, this regulation can be understood as a normative response to the constitutional obligation of the state to guarantee the right to education for all citizens. On the other hand, the substance of this regulation does not demonstrate a commitment to the

¹³ Manuel Andreas Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions," *ΠΗΓΗ/FONS* 1 (February 26, 2016): 57-97, <https://doi.org/10.20318/fons.2016.2529>; Eckart Schütrumpf, "What Is 'Just in Distribution' in Aristotle's Nicomachean Ethics and Politics – Too Much Justice, Too Little Right," in *New Perspectives on Distributive Justice* (De Gruyter, 2018), 151-70, <https://doi.org/10.1515/9783110537369-010>.

¹⁴ Yosef Keladu, "Kesamaan Proporsional Dan Ketidaksamaan Perlakuan Dalam Teori Keadilan Aristoteles," *Diskursus-Jurnal Filsafat Dan Teologi STF Driyarkara* 19, no. 1 (April 4, 2023): 54-78, <https://doi.org/10.36383/diskursus.v19i1.347>.

specific needs of CWSN, especially when it is not accompanied by resource allocation, strengthening of educators' capacities, and systemic adjustments within the local education ecosystem, particularly in Jombang Regency. The regulation appears more as a formal articulation of administrative compliance rather than a political manifestation of the state's responsibility to ensure distributive justice and recognition of diversity as an ethical principle of governance.

The core issue does not lie in the normative existence of the policy itself, but rather in the substantive values it embodies and to what extent it is capable of realizing a deeper principle of justice, recognition justice, as developed by Axel Honneth¹⁵. Justice is not merely guaranteed through formal equal access but must be realized through social recognition of the dignity and distinctiveness of legal subjects.¹⁶ When the policy focuses solely on the physical integration of CWSN into regular schools without preparing a supportive social environment, what occurs is not true inclusion, but rather a new form of covert neglect. The absence of emotional, cultural, and pedagogical support creates a situation in which CWSN remain positioned as "the other" within the normative structure of education. Therefore, recognition justice demands a paradigm shift: from assimilation to a relationship of mutual respect for diversity as an inherent value of justice itself. Instead of manifesting the spirit of recognition and the improvement of CWSN's social position as historically marginalized legal subjects, this policy instead displays a paternalistic character that obscures the power relations behind the language of inclusivity. By declaring that schools "must accept CWSN" yet failing to place CWSN at the center of the educational policy itself, the Local Government of Jombang Regency maintains a structure that demands CWSN's adjustment to the system, rather than the system adapting to them.

The absence of specialized teaching assistants and ongoing professional training for educators serves as a tangible indicator of a structural problem that is not merely administrative, but epistemological. A policy that is well-formulated in textual terms can become institutionalized failure if not supported by adequate resource allocation, control and evaluation mechanisms, and a collective awareness of the urgency of justice in education. When teachers handling CWSN lack specific competencies in differential pedagogy and developmental psychology, what occurs is not true inclusion, but rather a superficial integration that silently harbors discrimination. This situation is further exacerbated by the absence of progressive local budget interventions. The lack of a budgetary framework that supports specialized facilities, the provision of learning aids, or psychosocial support for CWSN indicates that inclusive education exists only on paper, not in policy practice. In John Rawls' theory of distributive justice, the difference principle asserts that inequalities are only justifiable if they benefit the least advantaged members of society.¹⁷ This is not merely a moral rhetoric, but a normative guide for the formulation of a fair social structure, including in the

¹⁵ Axel Honneth, "Recognition and Justice," *Acta Sociologica* 47, no. 4 (December 1, 2004): 351–64, <https://doi.org/10.1177/0001699304048668>.

¹⁶ Honneth.

¹⁷ Andrew D. Williams, "The Revisionist Difference Principle," *Canadian Journal of Philosophy* 25, no. 2 (June 1, 1995): 257–81, <https://doi.org/10.1080/00455091.1995.10717415>; J. E. J. Altham, "Rawls's Difference Principle," *Philosophy* 48, no. 183 (January 25, 1973): 75–78, <https://doi.org/10.1017/S0031819100060447>.

education sector. In the context of inclusive education, this principle obliges the state through its policies and budgetary provisions to provide special treatment and affirmative protection for children with special needs. When the state fails to allocate sufficient funds for the provision of teaching assistants, specialized training, and adaptive facilities, this failure can be interpreted as a violation of Rawlsian distributive justice.¹⁸ The state may appear present in the form of policy, but is substantively absent in ensuring true justice, thereby creating a form of structural violence that is invisible yet has tangible effects.

It can thus be stated that inclusive education in Jombang, as formulated in Regent Regulation No. 39 of 2014, more closely resembles a normative ornament, a legal decoration that fulfills procedural requirements but is devoid of any transformational commitment. Inclusion should not merely stop at the rhetoric of "CWSN being accepted," but must address a more radical issue: how the system is designed so that CWSN are not only present, but recognized, engaged, and treated as the center of educational change itself. Criticism of this policy formulation is, in essence, a criticism of the state's character, which continues to place justice within the framework of legalism that is detached from social realities. In a progressive legal approach¹⁹, law should not be understood merely as a valid command, but must be tested through its bias toward vulnerable groups. Inclusive education, constructed without a deep understanding of the unique needs of CWSN and the provision of adequate infrastructure, will instead create a new form of exclusion in a subtler guise. In this regard, the Jombang Regent Regulation is not legally deficient, but morally deficient.

Therefore, the greatest challenge is no longer how to formulate inclusive policies, but how to redesign local education governance to align with the principle of substantive equality. A just education does not standardize outcomes, but one that is able to celebrate differences as the foundation for policy design. And the law, if it is to remain relevant as a tool of liberation, must not stop at the level of normative representation, but must manifest as a practical structure that addresses the real needs of subjects who have long been excluded from the center of the development discourse.

3.3. The Dialectics of Justice: Between Equality and Differentiation in Education

The issue of justice in inclusive education cannot be adequately addressed by a formal equality approach. In the context of CWSN, the approach to justice must be grounded in differentiation as the basis for substantive justice. The conventional view of justice as equal treatment, treating all individuals the same, needs to be critically reassessed. In a social reality that is complex and rife with inequalities, equal treatment does not automatically equate to justice. On the contrary, applying equal treatment without considering the specific needs of CWSN can potentially legitimize systemic injustice in a more subtle and concealed form.

The principle of justice, according to John Rawls, particularly the difference principle²⁰, requires the state not only to be neutral toward all citizens but to actively ensure that social structures and public policies work to the benefit of those who are most vulnerable. This means

¹⁸ Altham, "Rawls's Difference Principle."

¹⁹ Siti Romlah, Salma Zavira, and Khansa Muafa, "Implementation of Progressive Legal Theory in Law Enforcement in Indonesia," *Journal La Sociale* 1, no. 6 (December 4, 2020): 24–30, <https://doi.org/10.37899/journal-la-sociale.v1i6.187>.

²⁰ Altham, "Rawls's Difference Principle."

that the state must not stop at formalistic guarantees of access but must design specific interventions that ensure meaningful participation for CWSN. In this context, affirmative differentiation is not a form of reverse discriminatory special treatment but rather an embodiment of justice itself, because justice is not identical to equal treatment, but to fulfilling different needs based on each individual's social position. A state that fails to recognize and respond to the distinct needs of CWSN, including through proportional resource allocation, is fundamentally violating the Rawlsian principle of justice, thereby undermining the ethical character of the rule of law itself.

Furthermore, in Axel Honneth's theory of justice and recognition²¹, justice cannot be reduced merely to the distribution of resources; it lies in the experience of profound social recognition of the dignity of individuals as moral subjects. For CWSN, justice is not only about access or educational facilities, but also about recognition of their existence as whole individuals, with legitimate identities and needs. When the education system is based on majoritarian norms and forces CWSN to unilaterally conform, the relationship of recognition is disrupted, and they are alienated from the educational process itself. Referring to this theory, it is emphasized that fair education must create space for the reconstruction of institutional norms, so that dominant values do not become instruments of symbolic exclusion. The state's and educational institutions' unwillingness to transform discriminatory culture and structures constitutes a form of disrespect, which, both morally and philosophically, undermines the foundation of justice in a democratic shared life.

In both international and national legal frameworks, the concept of reasonable accommodation has become a universal principle that asserts the fulfillment of the rights of CWSN must be accompanied by system adjustments, not the other way around. The Convention on the Rights of Persons with Disabilities explicitly requires states to provide reasonable accommodations to ensure that the right to education is accessible without discriminatory barriers. This aligns with the spirit of Article 28 of Law No. 8 of 2016 on Persons with Disabilities in Indonesia, which states that every student with a disability is entitled to inclusive education with appropriate facilities, infrastructure, curriculum, and educators. Therefore, the provision of inclusive education without adequate accommodation constitutes a violation of both positive law and the state's constitutional duty to guarantee the full rights of its citizens. However, the irony lies in the fact that in practice, the education system in Jombang Regency tends to promote a unification of teaching models that overlooks the principle of equity. The standardization of the curriculum, minimum completeness criteria, and learning evaluation models reflect the systemic nature of the education law in Jombang Regency, which prioritizes structural efficiency over social justice. CWSN are forced to adapt to a system built without their involvement; as a result, what occurs is not inclusion but forced assimilation that disregards their personal needs and social-psychological conditions.

In such a situation, the law functions as a conservative instrument that maintains the status quo, rather than as a transformative agent. The education legal system, which should serve as a tool of liberation, instead becomes a mechanism for imposing dominant values, where children who are different are forced to conform to "normality" in order to be accepted. This constitutes a form of symbolic violence produced by a regime of legality that fails to

²¹ Honneth, "Recognition and Justice."

understand justice as a process of differentiation, rather than merely procedural equality. Therefore, true inclusive education does not treat everyone the same, but rather one that designs structures and teaching methodologies based on equity-based education. This means the system must actively identify disparities, intervene with pro-equity policies, and reform institutions so that they do not merely accommodate differences, but celebrate them and make them the moral foundation of the entire educational framework. In this regard, justice is no longer simply a legal norm, but an ethical and political duty of the state to uphold the dignity of every individual, without exception.

3.4. Constitutional Interpretation and State Responsibility

The Constitution, as the highest expression of a nation's collective will²², must not be understood merely as a compendium of positive legal norms, but rather as a moral institution demanding the realization of justice in the conduct of state affairs. In the context of Article 28C paragraph (1) and Article 28I paragraph (2) of the 1945 UUD NRI, the recognition of the right to personal development and the protection of vulnerable groups such as CWSN, from discrimination entails a substantive obligation on the part of the state to undertake concrete affirmative actions. These constitutional rights are inherent and do not depend upon state recognition; on the contrary, the state is normatively bound to ensure their fulfillment.²³ When the state fails to formulate and implement policies that are just, inclusive, and transformative for CWSN, this failure does not merely reflect a policy vacuum but constitutes a structural violation of the constitutional contract that binds the state to its citizens as a moral and political community.

The state's responsibility in providing inclusive education for CWSN must be interpreted within the framework of a justice-oriented rule of law²⁴, rather than being confined to formal legality. The shift from the rule of law to the rule of justice signifies the imperative for a normative approach that places justice at the core of legal legitimacy. In this sense, the supremacy of law is valid only insofar as the law reflects and operationalizes the principles of social justice. Inclusive education is not merely an educational policy instrument; it is a manifestation of the state's commitment to the fulfillment of fundamental human rights.²⁵ The state is thereby required not to remain neutral or function merely as an administrative entity, but to actively construct legal and policy frameworks that empower vulnerable groups. The state's failure to provide affirmative support for CWSN constitutes a repudiation of its constitutional mission and ultimately undermines the moral legitimacy of the rule of law itself.²⁶

²² Xiaodong Ding, "Reimagining Law and the Constitution: Carl Schmitt and American Constitutional Scholarship," *ICL Journal* 13, no. 4 (March 26, 2020): 403–27, <https://doi.org/10.1515/icl-2019-0023>.

²³ Evan Fox-Decent and Evan J. Criddle, "The Fiduciary Constitution of Human Rights," *Legal Theory* 15, no. 4 (December 29, 2009): 301–36, <https://doi.org/10.1017/S1352325210000017>.

²⁴ Trish McMenamin, "A Just State of Affairs: Philosophical Reflections on Justice, Inclusion and the Education of Disabled Children," *Cambridge Journal of Education* 48, no. 5 (September 3, 2018): 625–38, <https://doi.org/10.1080/0305764X.2017.1394981>.

²⁵ John-Stewart Gordon, "Is 'Inclusive' Education a Human Right?," *Journal of Law, Medicine & Ethics* 41, no. 4 (January 1, 2013): 754–67, <https://doi.org/10.1111/jlme.12087>.

²⁶ Gordon.

A philosophical examination of the principles of non-discrimination and affirmative action within the Indonesian legal system reveals a latent tension between normative commitments and the realities of implementation.²⁷ Theoretically, the principle of non-discrimination obliges the state not to treat citizens differently based on personal attributes. However, in a socially stratified context marked by exclusion, this principle becomes paradoxical if not accompanied by affirmative action as a structural corrective to entrenched inequalities. State neutrality, in such circumstances, is insufficient; the state must take active measures to create conditions of substantive equality. Accordingly, affirmative action policies should not be misconstrued as violations of the principle of equality, but rather as the highest expression of that principle embodied in a justice-oriented partiality toward the disadvantaged.

The state's failure to provide reasonable accommodation, to ensure the availability of qualified special education personnel, and to allocate proportional funding for inclusive education is not merely a matter of technical deficiency or limited administrative capacity. Rather, it constitutes a form of systemic neglect that directly violates the principles of non-discrimination and the right to education as guaranteed by the Constitution and international human rights instruments. From the perspective of social justice, such neglect represents a form of structural violence enacted through inaction, resulting in the CWSN. The state cannot invoke bureaucratic constraints or resource limitations as justifications, for constitutional obligations are imperative and unconditional. Consequently, the absence of affirmative measures must be recognized as a systematic violation of human rights, indicative of a profound lack of political will to fulfil both ethical and legal responsibilities in a comprehensive manner.

Furthermore, the role of the state within the constitutional framework must be interpreted progressively and reflectively. The state is not merely a bureaucratic entity that issues regulations, but a moral subject obligated to respond to the demands of social justice. The Indonesian Constitution, particularly through the spirit of Articles 28C and 28I of the UUD NRI 1945, provides a foundation for a progressive interpretation that mandates the state not only to guarantee rights formally but also to design strategic and policy frameworks that ensure the substantive realization of those rights. Thus, when the state limits its presence to mere issuance of local regulations or administrative discourse without structural follow-up, it fundamentally fails to fulfil its *raison d'être* as the guardian of the Constitution and guarantor of substantive justice. Accordingly, constitutional interpretation of the rights of CWSN in education cannot be confined to textual readings; rather, it must be philosophically grounded within the paradigm of social justice.²⁸ When the state fails to act affirmatively to realize justice through structural engineering and budgetary commitments, it is not merely negligent—it becomes a producer of a new, more subtle form of injustice: an injustice legitimized by the silence of power.

²⁷ McMenamin, "A Just State of Affairs: Philosophical Reflections on Justice, Inclusion and the Education of Disabled Children."

²⁸ Gordon, "Is 'Inclusive' Education a Human Right?"

3.5. Inclusive Education and the Future of the Rule of Law

Within the horizon of modern legal thought, education can no longer be reduced to a mere public service operating within an administrative framework. Rather, it must be recognized as an essential medium in the formation of legal subjects and the construction of civic consciousness. Education serves as a cultural instrument that not only transmits knowledge but also instills values, fosters moral autonomy, and affirms the human person as a subject endowed with will, freedom, and legal responsibility. Accordingly, education is not solely about access to classrooms; it directly concerns the articulation of individual existence within the legal and political order. In this sense, inclusive education becomes the principal arena in which the principles of equality and recognition are concretely tested and realized.

A state governed by the rule of law, understood within the framework of the *rechtsstaat*, cannot rest solely upon the foundations of legal formalism. The legitimacy of a constitutional state is not measured by the volume of regulations it produces, nor by the procedural efficiency of its bureaucracy, but rather by the extent to which law functions as an instrument of substantive justice, particularly for those most marginalized within the social structure²⁹. Inclusivity in education, within this context, becomes a critical indicator of the moral and ethical depth of the prevailing legal system. It reflects the extent to which the law is not reserved for the powerful, but actively protects the vulnerable; not merely neutral in its application, but just in its differentiation.

When inclusive education exists only as a normative discourse without adequate structural support, without trained teachers, sufficient funding, or adaptive curricula, the state is, in effect, enforcing the law with an empty face. A legal system that fails to reach marginalized groups is one that is substantively deficient and ethically barren. Furthermore, a rule of law state that cannot protect minorities and vulnerable groups, such as children with special needs, is ethically impaired, for it fails to uphold its most fundamental *raison d'être*³⁰: the realization of justice for all, not merely for the majority or those in power. Inclusive education is not merely a sectoral policy within the domain of education; it constitutes a reflection of the ethical design of the constitution and the state's commitment to social justice. When the state allows children with special needs to be excluded from an educational system that shapes legal subjects and citizens, it is, in essence, engaging in a silent exclusion of these individuals from the very legal order itself. The absence of the state in guaranteeing inclusivity is a tangible manifestation of the failure of the rule of law to incorporate all its citizens into an equal framework of rights and obligations.

From the perspective of a *rechtsstaat*, justice is not merely a supplementary or additional value in the law, but rather an essential substance that determines the legitimacy of a legal norm³¹. A law that fails to stand with the most vulnerable groups, including CWSN, forfeits its moral legitimacy, even if it remains procedurally valid. This implies that the presence of

²⁹ Kate Vredenburg, "Bureaucratic Discretion, Legitimacy, and Substantive Justice," *Critical Review of International Social and Political Philosophy* 26, no. 2 (February 23, 2023): 251–59, <https://doi.org/10.1080/13698230.2022.2133829>.

³⁰ Mander Kristian Siahaan, "Education For Children With Special Needs," *The Explora* 8, no. 2 (August 30, 2022): 14–27, <https://doi.org/10.51622/explora.v8i2.642>.

³¹ Wilfried Hinsch, "Justice, Legitimacy, and Constitutional Rights," *Critical Review of International Social and Political Philosophy* 13, no. 1 (March 25, 2010): 39–54, <https://doi.org/10.1080/13698230903326240>.

the rule of law must be assessed not by its ability to formulate normative provisions, but by its capacity to deliver substantive justice in real life. CWSN represents a symbolic embodiment of those systematically overlooked by prevailing policies and institutional practices. Accordingly, the implementation of inclusive education must be understood as an ethical and constitutional commitment, one that is non-negotiable.

A state governed by the rule of law must not only respect the law but must also employ the law as a medium to reinforce social solidarity and institutional empathy. Inclusive education cannot be reduced to a technocratic responsibility of the Department of Education alone, but must be recognized as a collective obligation of the state to ensure that every citizen, without exception, is afforded equal rights and opportunities for development. The fulfillment of the rights of CWSN represents a concrete manifestation of a rule-of-law state that prioritizes justice and humanity. In other words, the future of the rule of law in Indonesia will be defined by the extent to which the state is capable of formulating policies that are not only administratively rational but also morally just and sensitive to vulnerability and difference.

4. Conclusions

Inclusive education, as ideally envisioned within the national and local normative framework, should be a concrete manifestation of the principles of social justice and human rights guaranteed by the constitution. However, a philosophical and legal analysis of the implementation of inclusive education in Jombang Regency reveals that policies that appear formally progressive, such as the Regent Regulation No. 39 of 2014, in fact contain serious practical paradoxes. When the state only enacts regulations without accompanying them with structural interventions, such as teacher training, dedicated budget allocations, and strengthening institutional support, the state is essentially obscuring justice with a misleading legal-formal façade. CWSN cannot be treated equally in an arithmetical sense; they must be treated equitably in an ethical sense: by providing differentiated treatment to achieve equal outcomes. The standardization of the learning system, the lack of support for teachers, and the absence of reasonable accommodation mechanisms constitute a form of covert discrimination that contradicts the principle of differential justice and the recognition of the dignity of marginalized individuals. A true rule-of-law state stands with the most vulnerable. Inclusive education is not merely a sectoral policy but a moral test of the state's commitment to fundamental constitutional values. Therefore, the failure of the state to guarantee dignified educational access for children with special needs is an ethical failure in fulfilling the mandate of substantive justice. The state must not only function as an administrator but must be an active agent of justice, one that not only produces laws but enforces them with humane commitment.

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