



Reconstructing Legal Protection for Children with Special Needs through Non-Discriminatory Education: A Capability Approach

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Abstract

The fulfillment of the right to education for Children with Special Needs (CSN) constitutes part of the State's obligation to uphold human rights and the principle of non-discrimination. Although Indonesia has enacted various legal instruments governing inclusive education and the protection of the rights of persons with disabilities, their implementation continues to face significant challenges, including limited access to inclusive educational services, inadequate reasonable accommodation, and the lack of effective legal protection capable of ensuring equal educational opportunities for children with special needs. These conditions demonstrate a gap between normative legal protection and the substantive realization of the right to education. This study aims to analyze the weaknesses of the existing legal framework governing the protection of children with special needs in the provision of non-discriminatory education in Indonesia and to reconstruct a legal protection model based on the Capability Approach. The study employs a normative legal research method using statutory, conceptual, and philosophical approaches. Legal materials are analyzed qualitatively through a prescriptive analytical method. The findings indicate that the current legal protection framework remains primarily oriented toward the formal recognition of rights and has not fully ensured the actual capabilities of children with special needs to access, participate in, and benefit from education on an equal basis with others. From the perspective of the Capability Approach, legal protection should be reconstructed by placing the development of individual capabilities, the provision of reasonable accommodation, the strengthening of State responsibility, and the creation of an inclusive educational environment at the core of the legal framework. The novelty of this study lies in the development of a reconstructed model of legal protection that extends beyond the fulfillment of normative rights to emphasize the expansion of the actual capabilities of children with special needs to obtain equitable, inclusive, and non-discriminatory education.

Keywords: Capability Approach; Children with Special Needs; Inclusive Education; Legal Protection; Non-Discriminatory Education.

A. Introduction

Education is recognized as a fundamental human right of every child and is guaranteed under the 1945 Constitution of the Republic of Indonesia, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and various other national and international legal instruments (United Nations, 1989). In Indonesia, the right to education for children with special needs is legally guaranteed under Law No. 20 of 2003 on the National Education System, Law No. 8 of 2016 on Persons with Disabilities, Law No. 35 of 2014 on Child Protection, and Minister of National Education Regulation No. 70 of 2009 on Inclusive Education, all of which embody the principle of equality and non-discrimination in access to education. Normatively, Indonesia's legal framework—comprising Law No. 20 of 2003 on the National Education System, Law No. 8 of 2016 on

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Persons with Disabilities, Law No. 35 of 2014 on Child Protection, and Minister of National Education Regulation No. 70 of 2009 on Inclusive Education—reflects the State's recognition that ensuring access to education for children with special needs constitutes an essential element of protecting both children's rights and the rights of persons with disabilities, consistent with the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities (Diniati & Abdillah, 2025).

Nevertheless, numerous studies indicate that the realization of the right to education for children with special needs has yet to be effectively achieved in practice. The implementation of inclusive education continues to encounter significant challenges, including inadequate accessible facilities and infrastructure, a shortage of special education support teachers, insufficient provision of reasonable accommodation, and persistent social stigma toward students with disabilities (Karoso et al., 2025; Lestari & Wayan, 2023). These barriers substantially limit the genuine opportunities available to children with special needs to participate in education, engage in learning, and develop their full potential on an equal basis within Indonesia's national education system (Rahman & Awaludin, 2020).

Previous studies have predominantly examined the implementation of inclusive education policies, the effectiveness of the legal and policy framework, and the fulfillment of the right to education from the perspectives of human rights and positive law (Indriyany, 2017; Gusti, 2021). These approaches primarily emphasize the existence of legal norms and formal access to educational services as the principal indicators of effective legal protection (Anwar et al., 2025). Within this framework, the protection of the right to education is assessed mainly by examining the extent to which educational practices comply with the applicable legal framework, while insufficient attention has been given to children's actual capabilities to exercise and benefit from that right in practice (Nussbaum, 2011).

On the other hand, the Capability Approach, developed by Amartya Sen, offers a different perspective on understanding justice and the protection of rights. This approach conceives justice not merely in terms of equal rights or the distribution of resources but rather in terms of individuals' real capabilities to make choices, act, and lead lives they have reason to value (A. K. Sen, 2009; A. Sen, 2000). In the context of education, the Capability Approach emphasizes that the right to education should be translated into learners' substantive capabilities to learn, develop their potential, and participate meaningfully in social life (Nussbaum, 2011; Walker, 2011).

When applied to the education of Children with Special Needs (CSN), the effectiveness of legal protection should not be assessed solely on the basis of the normative recognition of the right to education or the mere availability of formal access to schools. Rather, it should be evaluated according to the extent to which children with special needs are genuinely able to learn, participate, and benefit from education on an equal basis with others (Walker & Unterhalter, 2007). From this perspective, a significant scholarly gap emerges between rights-based approaches to legal protection and approaches that emphasize the development of individuals' substantive capabilities (Terzi, 2008). Studies that systematically integrate the Capability Approach into the legal protection of the educational rights of children with special needs remain limited, particularly within the context of Indonesia's education system (Manalu, 2025).

Against this background, this study aims to: (1) analyze the weaknesses in the regulation and implementation of legal protection for children with special needs in the provision of non-discriminatory education in Indonesia; and (2) reconstruct a legal protection model

based on the Capability Approach to promote the protection of the right to education that is grounded in substantive justice, inclusivity, and the development of every learner's capabilities.

Within the framework of educational decentralization in Indonesia, the roles of local governments and educational institutions are crucial to the successful implementation of inclusive education for Children with Special Needs (CSN). Although national policies have encouraged an increase in the number of inclusive schools, numerous studies indicate that the capacity of local governments to formulate implementing regulations, allocate adequate budgets, and establish cross-sectoral partnerships remains uneven across regions (World Bank, 2021). In some regions, inclusive education has progressed more rapidly due to the commitment of local leaders, community support, and collaborative initiatives involving non-governmental organizations. In contrast, other regions continue to rely primarily on special schools (*Sekolah Luar Biasa* or SLB) and have yet to systematically integrate children with special needs into mainstream schools.

The role of schools as the frontline institutions responsible for implementing inclusive education is likewise inseparable from their internal institutional capacity. Recent policy analyses indicate that although the number of schools officially designated as inclusive schools has increased substantially, only a limited proportion have teachers adequately trained in inclusive education, appropriate systems for assessing the needs of children with special needs, and school environments capable of accommodating learner diversity (World Bank, 2024). Many schools continue to interpret inclusive education merely as admitting children with special needs as students without making the necessary adjustments to curricula, teaching methods, and assessment practices. From the perspective of the Capability Approach, this situation demonstrates that policies aimed solely at increasing the number of inclusive schools do not automatically expand the capabilities of children with special needs unless they are accompanied by improvements in the quality of educational support and broader changes in school culture.

Faizah's, study on basic education in Indonesia, employing the Capability Approach, demonstrates that the success of government education policies does not necessarily correspond to improvements in students' capabilities (Faizah, 2016). Policies that prioritize macro-level indicators, such as school participation rates or standardized test scores, often fail to account for the diversity of children's circumstances and their differing support needs. This finding is particularly relevant to the context of children with special needs, where policy approaches that focus primarily on school enrollment rates without providing individualized support risk producing "statistical inclusion" rather than "substantive inclusion." From the perspective of the Capability Approach, such policies are subject to criticism because they fail to develop children's real capabilities to achieve meaningful educational functionings.

At the international level, a growing body of scholarship has employed the Capability Approach to reinterpret the right to inclusive education and educational justice for learners with disabilities. Broderick, for example, argues that the Convention on the Rights of Persons with Disabilities (CRPD) embodies a vision of educational justice that can be more fully understood through the lens of capabilities, particularly with respect to the right to receive quality education within an inclusive and non-discriminatory environment (Broderick, 2018). Similarly, Lorella Terzi contends that the discourse of "special needs" and "rights" should be complemented by a capability-based analysis to ensure that persons with disabilities are not only granted access to schools but are also afforded genuine opportunities to develop

educational functionings that are meaningful to their lives (Terzi, 2008). This perspective is consistent with the need to reconstruct the legal protection of the educational rights of Children with Special Needs (CSN) in Indonesia, where the orientation of educational policy should shift from the mere fulfillment of formal rights toward the creation of conditions that expand their substantive capabilities within the education system.

In light of developments in Indonesia's national education policy and the theoretical insights offered by the Capability Approach, the significance of this study becomes increasingly evident. First, a critical analysis of the existing legal and policy framework governing inclusive education is needed to determine the extent to which it takes into account the capabilities of children with special needs rather than focusing solely on their formal rights. Second, there is a need to develop a model of legal protection that explicitly incorporates the capability dimension as an indicator of substantive justice, thereby enabling the contributions of the State, local governments, and educational institutions to the expansion of the capabilities of children with special needs to be systematically assessed. Third, policy recommendations are required that extend beyond increasing the number of inclusive schools or revising existing regulations to promote the transformation of school culture, strengthen teachers' professional capacity, and reinforce support networks that advance the capabilities of children with special needs.

Within this framework, the present study contributes not only to academic discourse in the fields of education law and disability studies but also to Indonesia's public policy agenda aimed at realizing an inclusive and equitable education system for all. By adopting the Capability Approach as its analytical framework, this study seeks to ensure that the legal protection of the educational rights of children with special needs is understood and operationalized as the protection of their substantive capabilities to learn, develop, and participate meaningfully in society.

B. Research Methodology

This study employs a normative legal research design incorporating conceptual, statutory, and limited socio-legal approaches. The normative approach is used to examine the legal framework governing the protection of Children with Special Needs (CSN) in the provision of non-discriminatory education through an analysis of the Constitution, statutes, government regulations, ministerial regulations, and inclusive education policies. The conceptual approach is employed to reconstruct a model of legal protection based on the Capability Approach by examining Amartya Sen's theoretical framework and its subsequent development within the fields of education and disability studies (A. K. Sen, 2009).

The statutory approach involves the systematic identification and examination of the legal norms governing the educational rights of children with special needs, including an assessment of the hierarchical relationships and consistency among relevant legal instruments. In addition, this study adopts a limited socio-legal approach by drawing upon empirical findings from previous research concerning the barriers to the implementation of inclusive education, including inadequate educational facilities and infrastructure, the shortage of special education support teachers, persistent social stigma, and insufficient provision of reasonable accommodation. These empirical findings serve as the factual context for the normative and conceptual analyses. Accordingly, this methodological framework enables the study to evaluate not only the coherence of the applicable legal norms but also the effectiveness of legal protection in practice.

A critical approach is further employed to assess the limitations of a rights-based approach to legal protection in addressing issues of substantive justice for children with special needs. Drawing upon the Capability Approach, the study critiques an overly formalistic conception of legal protection and proposes a reconstructed model that places primary emphasis on children's substantive capabilities to learn, develop, and participate on an equal basis with others.

The study relies exclusively on secondary data, comprising primary legal materials (legislation relating to education, disability, and child protection), secondary legal materials (books, journal articles, research reports, and policy documents on inclusive education and the Capability Approach), and tertiary legal materials (legal dictionaries, encyclopedias, and other supporting references). The data are analyzed qualitatively using content analysis, which involves: (1) the classification and systematization of relevant legal norms; (2) the interpretation of those norms from the perspectives of rights and capabilities; and (3) the reconstruction of a legal protection model based on the Capability Approach.

The findings of the analysis are used to identify the weaknesses in the regulation and implementation of legal protection for the educational rights of Children with Special Needs (CSN) and to formulate a reconstructed model of legal protection oriented toward substantive justice, inclusivity, and the development of every learner's capabilities. This methodological framework preserves the character of the article as a critical normative-conceptual legal study that challenges approaches centered solely on the formal recognition of rights while contributing to the advancement of legal scholarship in this field.

Furthermore, the study establishes a clearly defined scope of analysis to ensure that the discussion remains focused and aligned with the research objectives. Substantively, the analysis is limited to the legal protection of the educational rights of children with special needs within the context of formal education, particularly primary and secondary education under Indonesia's national education system. Non-formal and informal education are not examined in depth, except where they are discussed in the secondary literature concerning the development of the capabilities of marginalized children. Normatively, the analysis focuses on legislation that directly regulates the right to education, disability rights, child protection, and inclusive education, while other legal instruments with only indirect or sector-specific relevance are considered solely as supplementary contextual references.

With respect to its methodological limitations, this study does not collect primary data through interviews, field observations, or surveys. Instead, it relies on secondary data derived from empirical studies conducted by other researchers. This limitation is acknowledged as an inherent consequence of the normative-conceptual legal research design, which places greater emphasis on the analysis of legal texts and theoretical frameworks than on the direct collection of empirical evidence. Nevertheless, to minimize the risk of interpretive bias, the study draws upon a diverse range of empirical studies from different sources and geographical contexts. This approach provides a sufficiently robust factual foundation for the socio-legal analysis and avoids reliance on evidence drawn from a single case or locality.

With respect to data processing techniques, legal materials and the relevant literature were examined through repeated reading, thematic coding, and categorical classification. The researcher developed an analytical matrix mapping the relationships among legal norms, human rights principles, and capability concepts in order to identify areas of convergence and tension. For example, legal provisions requiring schools to admit Children with Special Needs (CSN) were mapped against the principle of non-discrimination and the capability of

access to education; provisions concerning reasonable accommodation were analyzed in relation to the capability to learn; and provisions on children's participation were examined in relation to social capabilities. This analytical matrix served as a tool for identifying aspects of the legal framework requiring reconstruction to better align with the principles of substantive justice.

In addition to qualitative content analysis, the study employs a limited comparative approach at the theoretical level. The Capability Approach is compared with both the rights-based approach and the needs-based approach, which are commonly applied in the fields of education and disability studies. This comparison is not intended to displace these alternative approaches but rather to demonstrate the comparative strengths of the Capability Approach in conceptualizing educational justice for children with special needs. Through this comparison, the study argues that although rights-based and needs-based approaches remain important, they tend to pay insufficient attention to the dimensions of substantive freedom and life choices that constitute the core of the Capability Approach. The findings of this comparative analysis are subsequently used to support the argument that the legal protection of the educational rights of children with special needs should incorporate a capability perspective in order to avoid a purely formalistic approach.

To ensure the traceability of the analysis, each provisional conclusion is explicitly linked to the relevant legal materials and scholarly literature. References to legislation and theoretical scholarship are not presented merely for descriptive purposes; rather, they constitute the analytical foundation for reconstructing the legal protection framework. For instance, the conclusion that the existing legal protection framework remains predominantly formalistic is supported by an analysis of legal provisions that provide only limited regulation of concrete support measures for children with special needs, together with empirical findings demonstrating a gap between the formal recognition of educational rights and the actual educational experiences of these children. In this way, the research methodology serves not merely as a technical component of the study but also demonstrates that the process of legal reasoning has been conducted systematically, transparently, and in a manner that is capable of independent verification.

Finally, from the perspective of research ethics, although this study does not involve human participants directly, it nevertheless adheres to the principles of justice and respect for vulnerable groups. The decision to focus on Children with Special Needs (CSN)—a group that has often been underrepresented in legal scholarship on education—reflects an ethical commitment to advancing the discourse on substantive justice for these children. Throughout the study, care has been taken to employ terminology that respects the dignity of children with special needs, avoids stigmatizing or reductive language, and recognizes them as rights holders with capabilities rather than as passive objects of charity or sympathy. This ethical commitment is consistent with the principles of the Capability Approach, which emphasizes respect for every individual's freedom to choose and to pursue a life they have reason to value.

By providing this more detailed methodological explanation, the study seeks to enable readers and journal reviewers to clearly understand how the research was conducted, the limitations within which it was undertaken, and the analytical strengths it is intended to achieve. The normative-conceptual legal research design, integrated with statutory, socio-legal, and critical analyses grounded in the Capability Approach, provides a coherent methodological foundation for every section of the article, from the introduction and discussion to the conclusion and policy recommendations.

C. Results

Indonesia's legal framework governing education has, at the normative level, recognized the educational rights of Children with Special Needs (CSN) through provisions on inclusive education, specialized educational services, and the prohibition of discrimination. However, when examined through the lens of substantive justice, these legal norms do not always function as instruments that ensure children with special needs possess the actual capabilities to access, participate in, and benefit from the educational process. The theory of legal protection emphasizes that the role of law extends beyond the formal recognition of rights; it must also provide the mechanisms and conditions necessary to ensure that those rights can be effectively enjoyed by the individuals they are intended to protect.

In this context, the legal framework governing inclusive education should be evaluated not merely in terms of the existence of relevant policies but also according to the extent to which those policies are capable of addressing the structural, social, and cultural barriers encountered by children with special needs. Where such barriers continue to prevent these children from enrolling in school, participating meaningfully in learning activities, or completing their education with adequate competencies, legal protection cannot, from the perspective of legal theory, be regarded as having achieved substantive justice, notwithstanding its formal compliance with the requirements of rights recognition.

From a hierarchical perspective, Indonesia's educational legal framework demonstrates normative consistency between the constitutional guarantee of the right to education and the various statutes and implementing regulations governing inclusive education and the protection of persons with disabilities. Nevertheless, such normative consistency does not necessarily translate into consistency in implementation. Many legal provisions establish broad normative mandates without providing sufficiently detailed operational guidance for local governments and educational institutions in implementing inclusive education for children with special needs. Consequently, schools frequently treat the designation of "inclusive school" as little more than an administrative classification, while the practical implementation of the principles of non-discrimination and reasonable accommodation remains severely limited.

From the perspective of substantive justice, education law should not merely prescribe rights and obligations in the abstract but should also ensure that the legal structures and procedures it establishes are capable of eliminating the actual barriers encountered by Children with Special Needs (CSN). For example, the obligation to provide reasonable accommodation for learners with disabilities should not be confined to a single statutory provision. Rather, it requires further regulation establishing minimum standards for reasonable accommodation, procedures for requesting and providing such accommodation, and legal consequences for non-compliance. Without detailed regulatory provisions grounded in substantive justice, the prohibition of discrimination risks becoming little more than a moral declaration that is difficult to implement in practice.

Furthermore, the legal framework governing inclusive education should be considered in conjunction with the broader framework of educational financing and governance. From the standpoint of substantive justice, the recognition of the educational rights of children with special needs is insufficient unless accompanied by a proportionate allocation of resources to meet their specific needs. A disconnect between legal guarantees and budgetary support may prevent schools from providing accessible facilities, recruiting special education support teachers, or delivering professional training in inclusive education. In such

circumstances, although legal protection exists in a formal sense, the absence of adequate resources prevents the law from functioning as an effective mechanism for the redistribution of educational opportunities and capabilities for children with special needs.

The legal framework should also incorporate oversight and enforcement mechanisms that are responsive to the position of children with special needs as a vulnerable group. Educational supervisory bodies, child protection institutions, and disability commissions should be integrated into the legal protection system governing education so that complaints and violations of the educational rights of children with special needs can be addressed in a comprehensive manner. In practice, many violations of these rights never proceed to formal enforcement because of the lack of accessible complaint mechanisms, limited awareness among parents and teachers, and a prevailing reluctance to challenge school policies. From the perspective of legal protection theory, these conditions demonstrate that the existing protection system remains insufficiently responsive and, consequently, has yet to achieve substantive justice despite the formal recognition of educational rights.

Another important dimension of the relationship between the legal framework and substantive justice is the recognition of the role of families and communities. An education law framework grounded in substantive justice should regard the families of Children with Special Needs (CSN) and their surrounding communities as active partners in the realization of inclusive education rather than merely as recipients of public policy. Legal provisions governing the participation of parents and local communities in the planning of inclusive education, local educational consultation forums, and mechanisms for dialogue between schools and the families of children with special needs should be strengthened within the legal framework. Without meaningful participation, educational policies are likely to remain predominantly top-down in nature and may fail to capture the actual needs and lived experiences of children with special needs within their social environments.

Accordingly, when Indonesia's educational legal framework is examined through the lens of substantive justice, it becomes evident that the principal challenge lies not merely in the formal recognition of rights within legislative texts but in the capacity of the law to shape institutional structures, regulatory mechanisms, and educational cultures that support the actual capabilities of children with special needs. It is at this point that the legal protection framework requires reconstruction—not merely to recognize children with special needs as holders of the right to education, but to strengthen their capabilities as individuals entitled to meaningful educational lives.

D. Discussion

D.1 The Capability Approach and the Educational Rights of Children with Special Needs

The Capability Approach conceptualizes justice in education not merely in terms of the distribution of resources—such as schools, teachers, and educational facilities—but in terms of learners' actual capabilities to use education as a means of leading lives they have reason to value. Within this framework, the educational rights of Children with Special Needs (CSN) must be translated into concrete capabilities: the capability to attend school without discrimination, to understand instructional materials through appropriate pedagogical methods, to engage meaningfully with teachers and peers, and to utilize the benefits of education to enhance their future life opportunities.

The theoretical analysis demonstrates that a legal protection framework focused exclusively on the formal recognition of rights risks overlooking the conversion factors that shape the actual capabilities of children with special needs, including their physical and psychological conditions, social environment, and institutional support. The Capability Approach highlights that two children who are legally entitled to the same educational rights may nevertheless possess markedly different capabilities if educational policies fail to take account of their specific needs and the barriers they encounter. Accordingly, legal protection for children with special needs should be understood as an effort to create a genuine capability set that enables them to make meaningful educational choices and to pursue educational opportunities that they have reason to value.

Numerous studies in Indonesia indicate that, despite the enactment of regulations promoting inclusive education, many educational institutions have yet to provide accessible facilities and infrastructure, special education support teachers, and reasonable accommodation for Children with Special Needs (CSN). From the perspective of the Capability Approach, this situation reflects a significant gap between the formal educational rights enjoyed by children with special needs and their actual capabilities to benefit from education. When schools fail to provide ramps, assistive devices, adaptive learning materials, or individualized support, the educational rights of children with special needs may remain legally recognized; however, education fails to fulfill its function as a means of expanding their capabilities.

The theoretical analysis further reveals that social stigma and exclusionary attitudes within school environments may diminish the social capabilities of children with special needs, including their ability to participate in classroom activities, student organizations, and everyday interactions with peers. A legal framework that merely regulates the admission of children with special needs into schools without addressing these social dimensions risks creating “illusory inclusion,” whereby children with special needs are physically present in the classroom but are not genuinely included in the learning process. From the perspective of substantive justice, this phenomenon demonstrates that the existing legal protection framework has not succeeded in removing the barriers that constrain the educational capabilities of children with special needs.

D.2 Reconstructing a Legal Protection Model Based on the Capability Approach

The foregoing analysis suggests that the legal protection of children with special needs in education should be reconstructed from a framework focused primarily on the formal fulfillment of rights toward one centered on the realization of substantive capabilities. From a theoretical perspective, this reconstruction requires a fundamental shift in the orientation of legal regulation and public policy—from asking “Have the rights been formally recognized?” to asking “Do educational policies and practices genuinely expand children’s capabilities?” Within this reconstructed framework, the State, local governments, and educational institutions should be recognized as the principal actors responsible for providing the infrastructure, reasonable accommodation, and social support necessary to ensure that children with special needs have genuine opportunities to learn and to participate in education on an equal basis with others.

A legal protection model grounded in the Capability Approach encompasses several key theoretical elements. First, the educational rights of Children with Special Needs (CSN) should be translated into a set of educational capabilities that must be guaranteed, including the capability to access educational facilities physically, the capability to engage in academic

learning, the capability to participate socially, and the capability to make successful transitions to subsequent levels of education. Second, the responsibilities of the State and educational institutions should be strengthened to ensure the provision of appropriate conversion factors, including reasonable accommodation, teacher training, individualized support, and the development of inclusive educational environments. Third, oversight and evaluation mechanisms should be developed to assess the effectiveness of legal protection not merely by reference to the number of children with special needs enrolled in schools, but by examining the actual capabilities they are able to achieve.

This reconstruction presupposes a fundamental shift in the way legal protection itself is understood. Legal protection should no longer be conceived merely as a normative safeguard that protects rights against violations; rather, it should be regarded as an institutional architecture that actively creates the conditions necessary to expand the capabilities of children with special needs. From the perspective of the Capability Approach, law and public policy constitute essential components of the conversion environment through which the right to education is transformed into genuine opportunities to learn and participate. Consequently, the design of legal and policy frameworks should explicitly consider how each legal provision will operate in schools, within classrooms, and through the everyday interactions among children with special needs, teachers, and their peers.

More operationally, the reconstruction of a legal protection model based on the Capability Approach may be implemented through several interrelated measures. First, measurable indicators of the educational capabilities of Children with Special Needs (CSN) should be developed to serve as benchmarks for policy planning and evaluation. These indicators should extend beyond academic achievement to encompass social, emotional, and participatory dimensions. For example, they may assess the extent to which children with special needs feel accepted within the school community, the frequency of their participation in extracurricular activities, or the degree to which they are able to express their views in decisions affecting their education. Such capability-based indicators should be incorporated into the educational monitoring system so that the effectiveness of legal protection can be evaluated from the perspective of the lived experiences of children with special needs rather than solely through aggregate school participation rates.

Second, the legal framework should strengthen the positive obligations of the State and educational institutions to provide the support necessary for the development of the capabilities of children with special needs. Within a reconstructed legal framework, the responsibilities of the State should not be limited to negative obligations—namely, the prohibition of discrimination—but should also encompass positive obligations requiring the provision of accessible facilities, support services, and reasonable accommodation. These positive obligations should be expressly articulated in legislation, accompanied by minimum service standards, and supported through sustainable funding mechanisms. Without robust positive obligations, legal protection risks remaining focused on preventing violations rather than on fostering the development of capabilities.

Third, mechanisms should be established to facilitate the meaningful participation of children with special needs and their families in the formulation and evaluation of inclusive education policies. The Capability Approach emphasizes the importance of individuals' voices and agency in determining what they have reason to value. In the context of children with special needs, this requires that they and their families be actively involved in discussions concerning the forms of support most relevant to their needs, the learning strategies best suited to their circumstances, and the criteria by which educational success should be

evaluated. Consultation forums, school-level inclusion committees, and local educational deliberative bodies may serve as appropriate institutional mechanisms for incorporating the perspectives of children with special needs and their families into the design of legal protection and educational policy.

Fourth, complaint and remedial mechanisms should be designed in a manner that is responsive to the position of children with special needs as a vulnerable group. A legal protection framework grounded in the Capability Approach should ensure that, whenever the capabilities of children with special needs are impaired—for example, through denial of school admission, violence, or the failure to provide reasonable accommodation—effective avenues are available for submitting complaints and obtaining appropriate remedies. Such mechanisms should be simple, accessible, and supported by institutions with expertise in disability rights and inclusive education. In this way, the law functions not merely as a declaration of rights but as an effective instrument through which children with special needs and their families can safeguard and advance their capabilities.

Finally, the capability perspective should be integrated into teacher education and school leadership development. School principals and teachers are the primary actors responsible for translating legal protection into educational practice. The reconstruction of legal protection cannot be effectively realized unless these actors understand the principles of the Capability Approach and possess the professional capacity to apply them in classroom instruction and school management. Accordingly, teacher education programs and professional development for school leaders should incorporate training on substantive justice, learners' capabilities, and inclusive pedagogical strategies. Through this approach, a legal protection model based on the Capability Approach extends beyond policy documents and becomes genuinely embedded in everyday educational practice.

Through this reconstruction, the legal protection of the educational rights of children with special needs is no longer conceived as a collection of isolated legal rules but rather as an integral component of an educational justice ecosystem oriented toward the development of capabilities. A legal protection model grounded in the Capability Approach establishes a coherent link between formal rights, operational policies, educational practice, and the lived experiences of children with special needs within the education system. In doing so, it addresses the limitations of approaches that focus exclusively on the formal recognition of rights while providing a more comprehensive framework for evaluating and advancing substantive justice for children with special needs.

D.3 The Role of Local Governments and Educational Institutions in Expanding the Capabilities of Children with Special Needs

The reconstruction of a legal protection model based on the Capability Approach positions local governments and educational institutions as key actors in expanding the capabilities of Children with Special Needs (CSN). Although the central government is responsible for establishing national policies and the overarching regulatory framework, Indonesia's decentralized education system places many decisions that directly shape the educational experiences of children with special needs at the local government and school levels. Decisions concerning the allocation of funding for accessible facilities, the deployment of special education support teachers, the provision of professional development in inclusive education, and the establishment of collaborative networks with disability service providers are frequently made under the authority of local governments and school principals.

From the perspective of the Capability Approach, every administrative decision made at the local and school levels has the potential either to expand or to constrain the capabilities of children with special needs. When local governments allocate funding to renovate schools to improve accessibility, provide professional training in inclusive education for teachers, and establish specialized support teams for children with special needs, these measures can enhance their physical, cognitive, and social capabilities to access and benefit from education. Conversely, when local policies fail to prioritize children with special needs, or when inclusive education is regarded merely as a supplementary program dependent upon residual budget allocations, the capabilities of these children remain constrained despite the formal recognition of their educational rights in the legal framework.

Educational institutions, as the primary settings in which learning takes place, likewise play a central role in expanding the capabilities of Children with Special Needs (CSN). School principals and teachers are the key actors who determine whether inclusive education policies are translated into everyday educational practice or remain confined to policy documents. Within the Capability Approach, teachers are viewed not merely as implementers of the curriculum but as agents of change with the capacity to create learning environments that foster the capabilities of children with special needs. Teachers who understand the principles of inclusive education and the Capability Approach are better equipped to respond to the individual needs of these learners, adapt their teaching methods, and develop differentiated instructional strategies that enable all students, including children with special needs, to participate actively in the learning process.

In addition, school culture constitutes a critical element in the expansion of the capabilities of children with special needs. Schools that cultivate an inclusive culture—for example, through anti-bullying initiatives, the promotion of respect for diversity, and the active engagement of the entire school community in supporting children with special needs—create a social environment in which these children’s social capabilities can flourish. Conversely, schools that perpetuate negative stereotypes, isolate children with special needs within the classroom, or fail to address discriminatory behavior diminish their social and psychological capabilities, even if these children are formally permitted to attend school. At this point, any evaluation of the legal protection of the educational rights of children with special needs cannot be separated from an examination of the institutional culture and educational practices within schools.

Accordingly, reconstructing legal protection through the Capability Approach requires a transformation in the roles of local governments and educational institutions. Rather than serving merely as technical implementers of central government policies, they should be recognized as normative actors that consciously promote the expansion of the capabilities of children with special needs. This objective may be pursued through the development of local action plans for inclusive education, the integration of capability-based indicators into educational monitoring systems, and the strengthening of the capacities of school principals and teachers as instructional leaders committed to the realization of substantive justice.

D.4 Theoretical and Practical Implications of Reconstructing Legal Protection Based on the Capability Approach

The reconstruction of legal protection for the educational rights of Children with Special Needs (CSN) based on the Capability Approach carries significant theoretical and practical implications. From a theoretical perspective, this approach broadens the discourse on education law by shifting its focus from the formal recognition of rights and regulatory

compliance toward the actual capabilities of legal subjects—in this case, children with special needs. The right to education is therefore understood not merely as a normative entitlement requiring legal recognition but as the foundation for the development of capabilities, thereby necessitating a close relationship among legal norms, public policy, and the concrete conditions in which education is delivered.

The first theoretical implication is the need to redefine the criteria for evaluating the effectiveness of legal protection in the educational context. Within the Capability Approach, the effectiveness of legal protection should not be measured solely by the number of legal instruments safeguarding the rights of children with special needs or by the number of schools officially designated as inclusive. Rather, it should be assessed according to the extent to which these children possess and are able to exercise educational capabilities that are meaningful to their lives and development. Indicators such as improvements in literacy and numeracy, increased social participation within the school community, reduced school dropout rates, and higher rates of transition to subsequent levels of education or employment should therefore form part of the criteria for evaluating legal protection. In this way, legal protection theory, which has traditionally emphasized the formal recognition of rights, can be enriched by incorporating the capability dimension as a measure of substantive justice.

The second theoretical implication is the need to integrate the rights-based approach with the capability-based approach in the study of education law. While the rights-based approach remains essential for establishing normative standards and ensuring mechanisms of accountability, it should be complemented by the capability-based approach, which emphasizes the quality of opportunities and individuals' substantive freedoms. Such integration enables a more comprehensive analytical framework in which the right to education remains the normative point of departure, while the effectiveness of legal protection is assessed according to the capabilities it enables individuals to achieve. In this way, the law retains its function as an instrument for the recognition of rights while simultaneously expanding its role as an instrument for the development of human capabilities.

From a practical perspective, reconstructing legal protection on the basis of the Capability Approach requires corresponding adjustments to the design of inclusive education policies. First, inclusive education policies should explicitly articulate the objective of developing the capabilities of Children with Special Needs (CSN) rather than focusing solely on increasing educational access or participation rates. Policy documents may therefore specify a set of educational capabilities to be promoted, including the capability for independent learning, the capability for effective communication, and the capability to participate in collective activities. These capability objectives should subsequently be translated into concrete programs and measurable performance indicators.

Second, educational policies should strengthen conversion support, encompassing all forms of assistance that transform formal rights and available resources into actual capabilities. This includes the development of reasonable accommodation programs, continuous professional development for teachers and educational personnel on inclusive education and disability, the provision of psychosocial counseling services, and the establishment of cross-sectoral service networks involving, for example, health-care and social welfare agencies. Within the legal framework, the obligation to provide such conversion support should be expressly formulated as a positive obligation incumbent upon both the State and educational institutions.

Third, monitoring and evaluation systems should be oriented toward the assessment of capabilities rather than mere formal compliance. Reports on the implementation of inclusive education should therefore include data on the learning experiences of Children with Special Needs (CSN), their educational outcomes, their participation in school activities, and the quality of their social relationships within the school environment. Such an approach has the potential to transform stakeholders' perspectives by shifting the perception of children with special needs from passive recipients of charity to rights holders whose capabilities should be actively supported and developed.

Finally, this reconstruction also has important implications for legal education and teacher education. Future legal and education professionals should be introduced to the Capability Approach and its relevance to educational justice and the protection of the rights of children with disabilities. Doing so will enable them to become agents of substantive justice in professional practice rather than remaining confined to a formalistic understanding of legal norms. Legal education that incorporates modules on capabilities and disability can reshape how future policymakers and legal practitioners understand the State's obligations toward children with special needs. Likewise, teacher education programs that integrate the Capability Approach can shift the pedagogical focus from merely delivering the curriculum to developing learners' capabilities.

In light of these theoretical and practical implications, it becomes evident that reconstructing the legal protection of the educational rights of children with special needs through the Capability Approach is not merely a conceptual exercise but a transformative agenda that extends across the domains of legislation, public policy, educational practice, and institutional culture. This approach underscores that educational justice for children with special needs can be achieved only when formal rights and substantive capabilities are advanced in tandem, with the law serving as the bridge that connects the two.

From a theoretical standpoint, this reconstruction bridges the gap between the rights-based approach and the capability-based approach. While the right to education remains the essential normative foundation, it is translated into policies and practices that promote substantive justice and the expansion of the capabilities of children with special needs. Accordingly, the analysis moves beyond a descriptive account of legal regulations to offer an analytical framework and theoretical model that can be employed to evaluate and strengthen the legal protection of the educational rights of children with special needs in Indonesia, while also providing both theoretical and practical contributions to the development of inclusive education policy.

E. Conclusion

First, the legal protection of Children with Special Needs (CSN) in the provision of education in Indonesia has been normatively recognized through various legislative instruments that affirm the principles of non-discrimination and inclusive education. Nevertheless, this legal framework has not yet fully ensured substantive justice, as the implementation of inclusive education continues to face significant challenges, including inadequate facilities and infrastructure, a shortage of special education support teachers, insufficient provision of reasonable accommodation, and persistent social stigma. Consequently, the actual capabilities of children with special needs to learn, develop, and participate meaningfully in education remain constrained.

Second, the analysis based on the Capability Approach demonstrates that a legal protection framework founded solely on a rights-based approach remains overly formalistic and is insufficient to secure the substantive capabilities of children with special needs within the educational system. The right to education should therefore be understood as imposing a positive obligation on the State and educational institutions to provide the conditions, support, and conversion factors necessary to enable children with special needs to access education, participate meaningfully in the learning process, and use the benefits of education to pursue lives they have reason to value.

Third, this study proposes the reconstruction of a legal protection model for the educational rights of children with special needs based on the Capability Approach, shifting its orientation from the mere fulfillment of formal rights toward the realization of substantive capabilities. Under this model, the State, local governments, and educational institutions are positioned as active agents responsible for creating inclusive educational environments, providing reasonable accommodation, strengthening the capacities of teachers and educational personnel, and developing monitoring mechanisms that evaluate the effectiveness of legal protection on the basis of the actual capabilities achieved by children with special needs. Through this reconstruction, the legal protection of the right to education is expected to promote not only normative justice but also substantive justice, inclusivity, and a genuine commitment to the development of every learner's capabilities.

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