

PROTECTION AND FULFILLMENT OF THE RIGHTS OF PERSONS WITH DISABILITIES IN BULELENG DISTRICT BASED ON REGIONAL REGULATION OF BULELENG REGENCY NUMBER 2 OF 2019

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ABSTRACT

Persons with disabilities are citizens who have the same dignity and position as ordinary citizens. However, their basic rights have long been ignored in public policy for various reasons, such as the minority in number and the absence of a budget to run empowerment programs. In Indonesia, estimates of the number of Persons with Disabilities are still mixed. One institution displays different numbers from other institutions. This is more due to the absence of agreement on the definition of disability itself so that it affects what is included in the category and is not included in the disability category. In Bali Province alone, according to the Bali Province Social Service in 2007 the number reached 29,910 people consisting of 14,712 people (49.19%) male and 15,198 people (50.81%) female. Particularly for Buleleng Regency, when viewed from a statistical aspect, Persons with Disabilities in Buleleng Regency are relatively low because in 2016 the number was recorded at 4,656 people or 0.57%. The purpose of this research is to find out with the existence of Buleleng Regency government regulation Number 2 of 2019 concerning the protection and fulfillment of the rights of persons with disabilities, whether Buleleng district has carried out its responsibilities by providing protection and fulfillment of these rights. The method used in this research is juridical normative with a literature study approach.

Key words: disability, protection and fulfillment of rights, Buleleng district.

INTRODUCTION

Persons with disabilities are citizens who have the same dignity and position as ordinary citizens (Livneh, H. 2000). However, their basic rights have long been sidelined in public policy for various reasons, for example, the number is a minority and the lack of a budget to run empowerment programs (WHO and World Bank 2011). Acute problems are still being experienced by Persons with Disabilities, including: access to education, health, employment, accessibility, legal protection to self-actualization.

This condition, of course, has not led to the aspiration to issue the United Nations Convention on the Rights of Persons with Disability (UN CRPD), which is an international convention to recognize the rights of Persons with Disabilities. Indonesia has also issued Law Number 8 of 2016 concerning Persons with Disabilities and in the context of Bali there is also Regional Regulation Number 9 of 2015 concerning Protection and Fulfillment of the Rights of Persons with Disabilities in Bali. Legal instruments from international, national to provincial levels will find it difficult to work effectively to improve the conditions of Persons with Disabilities if at the district / city level the same instruments do not have the same policies and concerns (Mangku, 2020).

In Indonesia, estimates of the number of Persons with Disabilities are still mixed (Heath, G. W., & Fentem, P. H.1997). One institution displays different numbers from other institutions. This is more due to the absence of agreement on the definition of disability itself so that it affects what is included in the category and is not included in the disability category. However, the Ministry of Social Affairs as quoted by the International Labor Organization (2013) states that the number is estimated at around 11.6 million people. Meanwhile, the World Health Organization (WHO) estimates that the number of Persons with Disabilities in Indonesia reaches 24 million people, or 10% percent of the total population (WHO and World Bank 2011).

Furthermore, in the WHO's World Report on Disability, there is a tendency that the number of Persons with Disabilities has increased from 10% to 15% of the total population (WHO and World Bank 2011). The causes of disability are diverse and have links to poverty problems, natural disasters due to climate change, traffic accidents and work accidents, chronic diseases, reproductive health problems to frequent malpractice cases (Mangku, 2019).

In Bali Province alone, according to the Bali Province Social Service in 2007 the number reached 29,910 people consisting of 14,712 people (49.19%) male and 15,198 people (50.81%) female. Especially for Buleleng Regency, when viewed from a statistical aspect, Persons with Disabilities in Buleleng Regency are relatively low because in 2016 the number was recorded at 4,656 people or 0.57% (Buleleng Statistics Office 2017). However, the quantity argument that Persons with Disabilities is a small number

(minority) can no longer be accepted as an excuse to continue to ignore their basic rights as human beings with dignity and citizens. Because at this time the problem of disability is no longer seen through a charity approach but uses a rights-based approach in which persons with disabilities are also citizens who have equal rights to ordinary citizens.

The general public perception considers Persons with Disabilities as burdens in the family and society to the point that Persons with Disabilities are people who are subject to curses or disgrace. In the context of education, Persons with Disabilities are a group of people who mostly lack access to education which increases the incidence of illiteracy (Blanck, P.2005). The consequences of this condition also make it difficult for them to find work. This is also due to the still strong perception of the community and job providers who think that Persons with Disabilities do not have the same skills and abilities as the average person. This is actually the impact of the multilayer discrimination act. Starting from discrimination by family and society, the absence of access provided by the government to become independent individuals, difficulties in being able to go to school to getting a job have resulted in Persons with Disabilities having weak human resources and appalling economic conditions (Mégret, F. 2008).

This reality shows that efforts to protect and fulfill the rights of Persons with Disabilities are absolutely necessary and guaranteed by the state through laws and regulations (Fiala, D. R. C. 2013). Thus, a regional regulation on the protection and fulfillment of the rights of Persons with Disabilities is absolutely required by Buleleng Regency because it is in accordance with philosophical values, social conditions and juridical aspects to create equality, harmony of life among community members in Buleleng Regency, and to realize participation. society in order to achieve social welfare regardless of one's physical and mental condition.

LITERATURE REVIEW

Equality Before the Law Theory

The Republic of Indonesia is a country based on law. The 1945 Constitution stipulates that the Republic of Indonesia is a constitutional state (*rechtsstaat*) as evidenced by the provisions in the preamble, body and explanation of the 1945 Constitution (Melissa Walukow, 2013). In the Amendment to the 1945 Constitution, the theory of equality before the law is included in Article 27 paragraph (1) which states that: All citizens have the same position in law and government and are obliged to uphold the law and government without exception. This is the recognition and guarantee of the equal rights of all citizens in law and government (Jurkowski, J.2004).

The theory and concept of equality before the law as adopted by Article 27 paragraph (1) of the Amendment to the 1945 Constitution is the basis of protection for citizens to be treated equally before law and government. This means that all people are treated equally before the law. Equality before the law or equality before the law is one of the most important principles in modern law. This principle is one of the pillars of the Rule of Law doctrine which also spreads to developing countries such as Indonesia. If it can be stated that the principle of equality before the law is one of the manifestations of the rule of law (*rechtstaat*) so that there must be equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*) (Mulyadi, 2007). Thus, the inherent element implies equal justice under the law and obtaining equal justice before the law.

The principle of rule of law teaches that communication and social interaction consisting of various elements of the community interact and transact to achieve common goals and ideals. Whereas the order of life and communication between individuals in a community refers to the agreed rules of the game and is used as a reference and reference for the parties in conducting relationships and legal actions. On the basis of this concept, there is no arbitrariness that is carried out by law enforcers or justice seekers, thus giving birth to a civil society in which individuals as citizens or citizens have the same and equal position (equality before the law) (Correa-De-Araujo, R.2015).

The principle of equality before the law is a guarantee for achieving justice (law), without the absence of parties who can be separated when involved in the law enforcement process. Legal protection guarantees are implied in the principle of equality before the law, namely guarantees that not only get the same treatment but will also bring logical consequences that the law will not give privileges to other legal subjects. Because if this happens it will violate the principle of equality before the law and will encourage discrimination before the law (French, P.2008).

The concept of equality before the law has been introduced into the constitution, the highest recognition in the system of statutory regulations in the country, this principle means that the meaning of equality before the law is for the same case (criminal act). In reality, there is usually no equal treatment and that causes the rights of individuals to obtain justice (access to justice) being neglected. Different treatment in criminal acts of corruption, for example, causes the neglect of individual freedom. This means, legal certainty is neglected (Jones, G. E.1997).

The principle of equality before the law must always be upheld for the sake of the rule of law and the judicial system. Because it is an obligation of a constitutional state to guarantee human rights for its citizens. In this context, no one should immediately impose a sentence in order to enforce the law by violating this principle. Do not let anything happen to give punishment (judgment) outside the existing rules or systems.

Principles of Equality and Non-Discrimination

With the escalation of discrimination against groups of people with disabilities increasingly fierce, human beings are then made aware of the importance of recognizing that they are human beings who are the same as other human beings, equal in rights and free in making choices. Therefore, there are special rights for groups of people with disabilities (Fadhli, 2014). Special rights are not privileges, but these rights are given so that people with disabilities are able to maintain their identity, characteristics and

unique traditions. Special rights as well as non-discriminatory treatment are equally important to achieve equal treatment. Therefore, the principles of equality and non-discrimination are very important in human rights (Enny Soeprapto, 2012).

In terms of regulations, the principles of equality and non-discrimination are contained in several instruments, both at international and regional levels (which are designated for a particular region, namely Africa, America (North America, South America and the Caribbean), Asia, and Oceania (South Pacific) sub -regional (such as Southeast Asia) and national (limited to the country concerned). In the international context the provisions of equal rights and non-discrimination are contained in the UN Charter Article 1 paragraph (3), in which the United Nations organization and its members have the objective: "to establish international cooperation for solve international problems in the economic, social, cultural or humanitarian fields, as well as in efforts to promote and promote respect for human rights and basic freedoms of all human beings regardless of race, sex, language or religion."

In Article 55 letter c the UN Charter mandates that the United Nations promotes: "Respect for human rights throughout the universe as well as the realization and basic freedoms for all, without distinction of race, sex, language or religion."

In the classic document of the Universal Declaration of Human Rights (UDHR), Article 2: "Everyone has the right to all rights and freedoms contained in this declaration without any exceptions, such as differences in race, color, sex, language, religion, politics or views. other, origin or society, property rights, birth or other status. Furthermore, no distinction is allowed on the basis of political, legal or international position of the country or region from which a person comes, whether from an independent country, guardianship territories, colonies or from areas under other sovereign boundaries "and Article 6 emphasizes: "Everyone is equal before the law and has the right to the same protection of the law without discrimination. All are entitled to the same protection against any form of discrimination that is contrary to this declaration and against all incitement that leads to discrimination" (Nasution, 2006).

The principle of non-discrimination is also found in the International Covenant on Economic, Social and Cultural Rights. Article 2 paragraph (2) reads: "The states parties to this covenant promise to ensure that the rights contained in this covenant will be enforced without any distinction such as race, color, sex, language, religion, political opinion or other opinion, national or social origin, ownership, descent or other status. "

In addition, it is also found in International Covenant Civil and Political Rights (ICCPR) Article 2 paragraph 1. It states: "Every state party to this covenant promises to respect and guarantee the rights recognized in this covenant for all individuals residing in its territory and residing in under its jurisdiction, without distinction of any kind, such as race, color, sex, language, religion, political views or other views, national or social origin, property rights, birth status or other status. "

Meanwhile Article 26 states: "All people are equal before the law and have the right, without any discrimination to the same protection of the law. In this regard the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, color, sex, language, religion, politics or other opinion, national or social origin, property. objects, birth status or other status".

Whereas in the context of the national law of the country of Indonesia, apart from the ICCPR which has been ratified by Law Number 12 of 2005, the principle of non-discrimination is also contained in several laws and regulations, including the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights. (Article 3 paragraph (3)), Law Number 23 of 2002 concerning Child Protection (Article 2 letter a), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (Article 3 letter c), and Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

RESEARCH METHODS

Research is the main means of developing science, including technology. Research aims to reveal the truth systematically, methodologically, and consistently. Thus, the research was conducted through analysis and construction of existing data (Soekanto, Sri Mamudji, 2006). Research is an effort to explore an object that is unclear, obscure, or even without explanation for it. A logical and systematic study of the principles that guide scientific research (methodology) is intended as a basic principle and not as a method (method or design for conducting research) (Sumardjono, 1989).

Searching for new things through research in order to find, develop, and test the truth (Wignjosoebroto, 2013) of knowledge (Abdurrahman, 2009). The search through this research must of course meet scientific principles in order to find answers to a matter, problem, situation, fact or phenomenon faced by humans. This truth search requires a scientific method in order to find the truth based on logical considerations (Sumardjono, 2014).

Legal research based on the notion of a legal system as stated by Lawrence M. Friedman consists of three elements, first, legal substance which consists of norms, rules, legal principles, doctrine, and statutory regulations. , legal structure is the process of forming and implementing law, consisting of law making, legal bureaucracy, law enforcement, and judicial institutions, including the program, and third, legal culture which is a form of public appreciation of the law. with regard to where, when, and how people obey and deviate from the law based on their values.

Based on Friedman's view, legal research is a study of legal symptoms that is limited to research on norms, rules and principles as legal substances, law enforcement through the understanding of legal structures, and legal observations in their interactions in society as a legal culture. Normative legal research is research related to the substance of the law, and empirical research (sociology) is research related to the structure and culture of law (Achmad, 2010).

The legal research that the author conducted regarding Protection and Fulfillment of The Rights of Persons With Disabilities in Buleleng District Based on Regional Regulation of Buleleng Regency Number 2 of 2019 is a type of normative and prospective legal research. This research can qualify as normative legal research, because it examines the rules or norms contained in the law regarding the local government policies of Buleleng Regency regarding the fulfillment of the rights of persons with disabilities in Buleleng Regency, including the related laws and regulations, and that has some relevance to it.

This research can also qualify as a prospective legal research, because in this study it is expected to provide conceptual input about local government policies, especially Buleleng Regency in fulfilling the rights of persons with disabilities.

RESULT AND DISSCUSION

The Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia respects and upholds human dignity. Human rights as basic rights that are naturally inherent in humans, are universal and lasting, are also protected, respected and defended by the Republic of Indonesia, so that the protection and promotion of human rights, including for vulnerable groups, especially persons with disabilities, also need to be improved.

Human rights are basic rights that are inherently inherent in the nature and existence of humans as creatures of the One and Only God and are His gifts. Human rights must be respected, protected, fulfilled, upheld and promoted for the sake of human dignity. The implementation of respect, fulfillment, protection, upholding and advancement of human rights is basically an obligation and responsibility of the state, especially the government. This is as mandated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of Law Number 39 of 1999 concerning Human Rights.

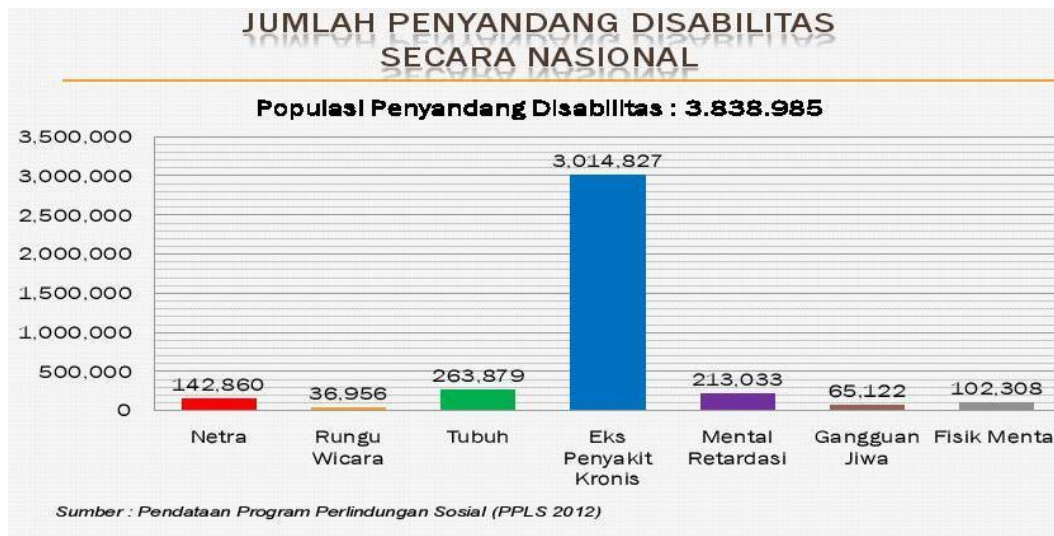
Indonesia as a member of the United Nations has the obligation to implement various international human rights instruments that have been accepted by Indonesia, including the Vienna Declaration of 1993 and the Convention on the Rights of Persons with Disabilities which was ratified by Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. This makes Indonesia part of a global society that is committed to making every effort to realize the elimination of all forms of discrimination and to ensure the participation of persons with disabilities in every aspect of life. The mandate of the Vienna Declaration and the Convention on the Rights of Persons with Disabilities emphasize that every country forms and implements a National Action Plan related to human rights.

In regulating persons with disabilities, the State of Indonesia already has laws and regulations relating to this matter. In 1997, Indonesia issued Law Number 4 of 1997 concerning Persons with Disabilities. then in 2016 Indonesia again replaced the law relating to persons with disabilities with persons with disabilities through Law Number 8 of 2016. There was a shift in the meaning from persons with disabilities to persons with disabilities, in Law Number 4 of 1997 concerning Persons with Disabilities, in Article 1 paragraph (1) is called a disabled person is any person who has a physical and / or mental disability, which can disturb or constitute an obstacle and obstacle for him / her to do properly, which consists of: (a) physically disabled; (b) mentally disabled; and (c) physically and mentally disabled. In Article 1 paragraph (1) of Law Number 8 Year 2016, it is explained that persons with disabilities are everyone who experiences physical, intellectual, mental and / or sensory limitations for a long period of time who interacts with the environment may experience obstacles and difficulties to participate. fully and effectively with other citizens based on equal rights.

The passing of Law Number 19 Year 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities) on November 10, 2011 demonstrates the commitment and seriousness of the Indonesian Government to respect, protect and fulfill the rights of persons with disabilities in the end. is expected to improve the welfare of persons with disabilities. Thus, persons with disabilities have the right to be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and abuse, and the right to receive respect for their mental and physical integrity based on equality with others, including in it the right to get protection and social services in the context of independence, as well as in an emergency. Therefore, the Government is obliged to realize the rights contained in the convention, through adjustments to laws and regulations, including ensuring the fulfillment of the rights of persons with disabilities in all aspects of life such as education, health, work, politics and governance, culture and tourism, and the use of technology. information, and communication.

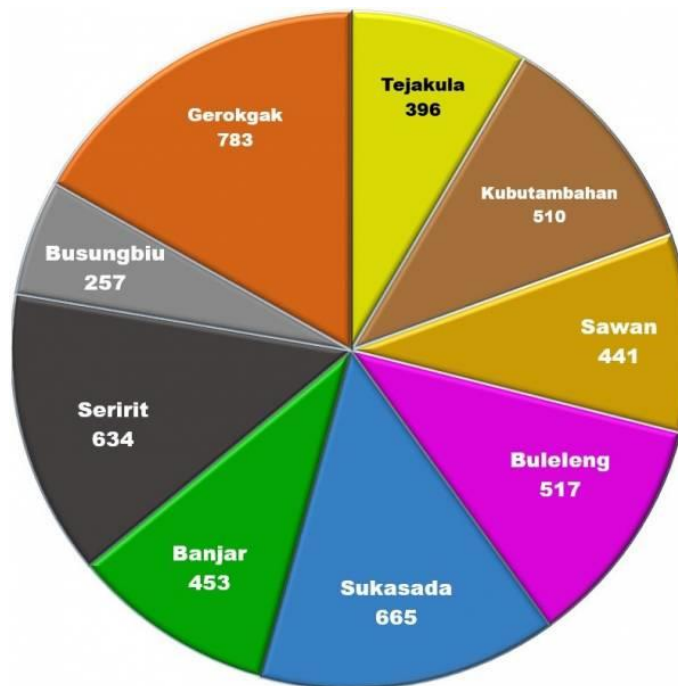
According to the World Report on Disability organized by the World Health Organization (WHO) the number of people with disabilities has increased from 10% to 15% of the total population in a country. The causes of disability are diverse and have links to poverty problems, natural disasters due to climate change, traffic accidents and work accidents, chronic diseases, reproductive health to frequent malpractice cases. This reality shows that efforts to protect and fulfill the rights of persons with disabilities are absolutely necessary and guaranteed by the state through laws and regulations that adopt the Human Rights Convention, including the Convention on the Rights of Persons with Disabilities, the Covenant on Economic, Socio-Cultural Rights and the Covenant. concerning Civil and Political Rights which have been ratified by the Indonesian State at the same time have become national legislation.

Table 1: Number of Persons with Disabilities Nationally



(Source: Social Protection Program Data Collection (PPLS 2012) Ministry of Social Affairs Republic of Indonesia)

From the 2012 data released by the Ministry of Social Affairs of the Republic of Indonesia through the Social Protection Program Data Collection (PPLS), it is stated that in Indonesia there are 3,838,985 people with disabilities consisting of the blind, deaf, body, ex. chronic illness, mental retardation, mental and physical mental disorders. On another occasion, based on data obtained from the Buleleng Regency Social Service, it can be seen that the number of people with disabilities in Buleleng Regency in 2017, sub-district, is as follows :



(Source : <https://www.bulelengkab.go.id/detail/artikel/statistik-penyandang-disabilitas-di-kabupaten-buleleng-37>)

Table 2:
 Data on Persons with Disabilities in Buleleng Regency, 2017
 Office of Social Population and Civil Registration of Buleleng Regency, Bali

No.	Regency / City	Total
1.	Tejakula Regency	396
2.	Kubutambahan Regency	510
3.	Sawan Regency	441
4.	Buleleng Regency	517
5.	Sukasada Regency	665
6.	Banjar Regency	453
7.	Seririt Regency	634
8.	Busungbiu Regency	257
9.	Gerokgak Regency	783
	Total	4.656

The total number of people with disabilities in Buleleng Regency based on 2017 data, is 4,656 people.

The facts show that Buleleng Regency has quite a large number of people with disabilities according to the data from the Buleleng Regency Social Service. The number is increasing progressively from year to year according to the WHO report. Meanwhile, obstacles in terms of socio-cultural as well as physical and non-physical accessibility are still experienced by people with disabilities in Buleleng Regency. The large number of people with disabilities come from economically weak families. This causes persons with disabilities to have less access to basic services, namely education and health. In terms of education, there are still many schools that do not want to accept people with disabilities to go to school there due to health reasons and lack of infrastructure. This causes persons with disabilities to be less able to achieve higher education, which in turn has an impact on the level of welfare and involvement in public decision making. Access to health services is also an obstacle that people with disabilities have often encountered.

In terms of social and political rights, problems often experienced by persons with disabilities in Buleleng Regency are related to public services, the right to participate in social life. Population administration, for example KTP, or other population certificates, although generally it can be obtained by persons with disabilities, however, people with disabilities often have to depend on their family management due to lack of access to public service buildings. Persons with disabilities in Buleleng district feel neglected and discriminated against by the local government, especially in access to education and employment (Unger, D. D.2002).

In the regional regulation of Buleleng Regency Number 2 of 2019 concerning Protection and Fulfillment of the Rights of Persons with Disabilities in Article 3 it is stated that the protection and fulfillment of the rights of Persons with Disabilities aims to: ensure the implementation of efforts to respect, promote, protect and fulfill the rights of Persons with Disabilities to develop themselves and utilize all abilities according to their talents and interests and to enjoy, participate and contribute optimally, safely, freely and with dignity in all aspects of the life of the nation, state and society; realizing full and equal respect, promotion, protection and fulfillment of human rights and basic freedoms of Persons with Disabilities; ensure efforts to respect, promote, protect and fulfill the rights inherent in the dignity of Persons with Disabilities; realizing a higher quality, fairer, physically and mentally prosperous, independent and dignified standard of life for Persons with Disabilities; and protect Persons with Disabilities from neglect and exploitation, harassment and all acts of discrimination, as well as human rights violations (Marge, M.1988).

This Regional Regulation of Buleleng Regency will become a legal umbrella for persons with disabilities in Buleleng, especially regarding their rights, especially regarding education. The birth of this regional regulation needs to be appreciated and supported. Where equality and justice must be prioritized in the education provided to children in Buleleng district. Although this regional regulation has been passed and enforced, there are still obstacles and challenges being faced by the Buleleng district government, including the school buildings and existing public facilities that do not yet provide access for persons with disabilities. Of course, this needs to be immediately followed up to provide the rights of children with disabilities to receive education like other children.

CONCLUSION

Persons with disabilities, especially in Buleleng district, have not been maximally fulfilled due to inadequate facilities and infrastructure, even though in terms of regional regulations it has been regulated to always provide legal protection, especially in the field of education for children with disabilities. Therefore, the fulfillment of the rights of children with disabilities is gradually necessary to be fulfilled, this is aimed at realizing respect and providing protection to all of them. This has been regulated in the prevailing laws and regulations, that children with disabilities are legally obliged to have equal and equal opportunities to actively participate in any activity, so that the state and regions do not neglect this and the state is able to carry out its mandate. law and are able to provide legal protection to all citizens without exception.

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