THEMATIC ANALYSIS ON THE RIGHTS OF DISABLED PEOPLE TO HIGHER EDUCATION

Muhamad Nadhir Abdul Nasir
Alfa Nur Aini Erman Efendi

ABSTRACT

In the present day, it is undeniable that having a diploma or a bachelor degree is a must for one to secure a good job. Tertiary education offers greater social mobilization in life, especially for marginalized groups such as disabled persons. Education is one of the basic universal human rights and everyone would agree to encourage others to achieve the highest level of education as possible. This paper presents the thematic analysis on the rights of disabled persons to higher education based on international conventions and disability-related legislation in selected Southeast Asian countries. For international conventions, we analyze five documents which are Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities. Meanwhile, we select disability-related legislation from five Southeast Asian countries which are Thailand, Cambodia, Vietnam, Indonesia, and the Philippines. From our analysis, we uncover a complex entanglement of ten keywords. Those keywords are merit, capacity, equality, equal access, policies and strategies, individuals' needs and capabilities, state funding, capacity building, reasonable accommodation, and educational support. This complex entanglement offers both opportunities and threats to the rights of disabled persons to higher education. We critically discuss each keyword and potential issues. We propose a 'disability emancipation climate framework' as an instrument in fulfilling the rights of disabled persons to gain higher education. Besides that, we discuss how activism, negotiation, and building alliance enable the establishment of a disability emancipation climate. We also address the limitations of this study.

Keywords: Disabled people, higher education, human rights, international conventions, disability-related law.

INTRODUCTION

Education either basic or higher level is a fundamental factor in achieving socio-economic development. However, participation by disabled students entering colleges and universities remain low in comparison to their non-disabled counterpart even with reasonable access to higher education (Stodden & Dowrick, 2001). Access to higher education for disabled people does not involve only with challenges of access constraints such as architectural access, library access and rigid repetitive procedures (Engelbrecht & de Beer, 2014), but also includes issues like transition (Baron, Phillips & Stalker, 1996; Botham & Nicholson, 2014; Sanderson, 2001), meritocracy, accessible registration system and so forth. In this paper, we are interested to study the rights of disabled people to higher education by analyzing relevant international human rights documents and disability-related laws in selected Southeast Asian countries.

Access is a term used by the governments to measure the entry of certain sector of the population into a certain level of education which simultaneously reflect government's policy in seeking or ensuring a certain amount of individuals enter different levels of education (Neubauer & Tanaka, 2011, p. 2). Within decades after the Second World War, there is a shift of notion from access to universal and compulsory basic education to higher education in order to meet the increasing industrial demands (Hawkins & Neubauer, 2011, p. 5). The linkages between access and human rights are obvious, however, the two concepts also interact with other variables, situating in different settings and contexts as Neubauer (2011, p. 32) argues:

> "… then, that prevailing ideas of access are always conditional, problematic, and part of complex processes of social and political negotiation …"

The Asia and the Pacific region is the first region to introduce and launch a comprehensive regional action plan regarding disabled people's rights, including in education sector, with the proclamation of the first Asian and Pacific Decade of Disabled Persons 1993-2002 (Price & Takamine, 2003). The commitment is continuously reflected in the following regional plan – the Biwako Millennium Framework and the Incheon Strategy to "Make the Right Real". It seems that emphasis is put on more on primary and secondary education for children with diverse impairment, and not so much on higher education. Of course, primary and secondary education are essential because without passing these two levels one cannot even think to enter higher learning institutions. Nevertheless, equal attention must be given to those who are already in the higher education system and those who are going to be enrolled into the system because this group also face different obstacles and have their own needs to be addressed.

The motivation behind the present study is to understand what constitutes 'rights to higher education' for disabled people's context, its features, and possible implications in real life. Coining out the phrase is much easier, but difficult to translate. Such operationalization is vital in order for us to truly identify the gap, exposing the dilemmas and finally proposing the way forward for policymakers and higher learning institutions. We begin this paper by reviewing past literature, centering on the keywords of human rights, justice, and access. Then, we theorize the disabled people's rights to higher education through a working model

which we name as 'disability emancipation climate framework'. Afterword, we elaborate on the methodological framework of this study. We dedicate the next two sections for analysis on international conventions and disability-related laws follow by a discussion on potentials and dilemmas arise from the research findings.

LITERATURE REVIEW

In Asia, despite the nations in this region are moving toward massification of higher education, but such a progress does not necessarily mean the broadening of access to higher education since the issue of access relates to equity or the ability to gain such access, particularly in financial aspect (Hawkins, 2011, p. 15). The issue of access is further complicated by the fact that a nation and society consist of individuals with demographical and social diversity. To combat discriminatory behaviors in schools and the society, Cole (2000, p. 3) stresses the importance to identify and apply equality issues to education. A book edited by Armstrong and Barton (1999) sparks and encourages critical examination, re-evaluation of thoughts and practices as well for further exploration on under-researched dilemma concerning the nexus of human rights, disability, and education.

One huge challenge in researching and theorizing the issues of human rights, disability and education is to link the macro setting (i.e. economic and political systems) to micro context (i.e. personal and social experience of individuals) (Barton & Armstrong, 1999, p. 1). Looking into historical development of education provision for disabled children and youngsters in the United Kingdom, Borsay (2011) argues policy changes have no effect in restoring the rights of these groups to have better and appropriate education, alongside over-reliance on typical assessment and medical intervention by professionals, and the outcomes can be seen from the disengagement of disabled people from their families, communities and decent work. The provision of education for disabled people, she adds, must be seen in a wider cultural and public policy contexts such as societal attitudes, lack of funding and appropriate human resources (Borsay, 2011, p. 18).

The points from Barton and Armstrong (1999) as well from Borsay (2011) above are also very relevant when discussing the situation of disabled persons in the tertiary education sector. We need to understand the circumstances of each disabled individual, and critically investigate their positions and relations to their society, while at the same time situating within a wider cultural, political and economic setting. This is because issue concerning one's access to higher education overlaps between the different field of power such as cultural values, labor market, government policies, and political approach.

Struggling to get enrolled into higher learning institutions is only the first of many obstacles to come because disabled students also have to face challenges relating to access to building, learning materials and examination, making friends and developing social capital, and negotiating one's own identity as disabled person whether to disclose one's impairment during studies and bring it along when seeking internship or job (Riddell & Weedon, 2011, p. 131). This suggests that the rights of disabled people to higher education should not only concern with being able to enroll into a university or college, rather encompasses one's access and equity in all aspects of campus life and after studies. Thus, many scholars have come out with policy recommendation or systemic frameworks such as the work of Mutanga and Walker (2015) which adopt capability approach, and Beauchamp-Pryor (2007, 2013) who proposes a framework which builds on choice, control, and consultation.

Evans and her colleagues (2017) propose the adoption of the social justice approach, which opposes ableism in individuals, institutions, and systems toward addressing disability in higher education ecosystem. However, justice in form of legislation, though offers a tremendous benefits, can equally harm the rights of disabled persons to education when the act of fulfilling such rights becomes tokenistic gesture, product of negligence due to indifference, and as shield for relevant authorities from taking any meaningful action (Jaeger & Bowman, 2002, p. 14). As such, important actors in an educational setting, such as the educators, administrators, and institution leaders also have the duty to understand, practice, preserve and maintain the rights of disabled people (Ibid, p. 15). Therefore, Konur (2000) proposes the adoption of institutional theory to enforce the civil rights of disabled students in higher education through multilevel (i.e. institution, organization, individual) and multiparty (i.e. implementer and monitor) mechanism.

Turning now to developing region on the other side of the globe, access to education among disabled people in developing countries usually seems to be chimerical (Lamichhane, 2015, p. 190). Though his work only bases on South Asian communities, Miles (1999) shows us the importance of critically studying local historical and conceptual framework when discussing the process of developing services, or policy for that matter. His work aspires us to study local conceptualization towards the rights of disabled people to higher education in this region through the lens of each nation's legislation. Though there is an increase in research on education among disabled children and adolescents in developing countries such as in Afghanistan (Trani, Bakhshi & Nandipati, 2012), Cambodia (Siska & Suchanek, 2015), Malaysia (Adnan & Hafiz, 2001; Lay & Hui, 2014; Nasir & Efendi, 2016), Pakistan (Hammad & Singal, 2015) and many others, there is still a huge gap in research on disabled people's inclusion in higher education in Southeast Asian region.

THEORIZING DISABLED PEOPLE'S RIGHTS TO HIGHER EDUCATION

Hosking (2008) proposes a critical disability theory that consists of seven components; model of disabilities, valuing diversity, multidimensional, rights, voice, language, and transformative politics. In his theory, Hosking (2008, p. 7) argues that biopsychosocial model of disability should be the basis of policymaking which not only recognizes the barriers faced by disabled people in society and their environment but also recognizes challenges arise from living with their impairments. To improve the quality of higher education for disabled people, the educational establishment must provide reasonable accommodation for disabled people by providing services and facilities according to their categories of impairment. The identification of the category of one's impairment enables the establishment to identify the disabled student's needs. Thus, impairment should not be dismissed as a variable in disability management, in fact, impairment can be the reflection of one's disability risks and those risks will become real if services and facilities are not adjusted or improved accordingly.

Even though in his theory, Hosking (2008, p. 10) talks about multidimensionality in terms of one's identity, we argue that the same concept can be discussed in the higher education context. To produce an inclusive campus climate for disabled people, it covers dimensions such as policymaking, infrastructural improvement, service provision, professional development, and the human factor (i.e. different groups of stakeholders involved and leadership style) as well as the capital established within an institution (i.e. social capital, cultural capital, and financial). When we talk about the human factor, Hosking (2008, p. 11) reminds us about the diversity that exists within the disabled community and we must put effort to achieve equality within this diverse group. To put it in the higher education context, the campus community, especially the higher management, administrative personnel, and lecturers must aware about the complexity of disabled people and value them as part of the campus community. In fact, different actors which we speak of above (i.e. administrative staffs and lecturers) are also a part of campus diversity that needs to be engaged when developing a program or policy since they are the direct service providers to the students.

Here, Konur's (2000) suggestion to employ institutional theory is very relevant. To improve the quality of higher education for disabled students, Izzo and colleagues (2001) advocate the need to assess the campus climate to determine the past experiences and the needs of various groups of stakeholder such as the faculty members, disabled students, and the campus community as a whole. In their research, they find that most faculty members and disabled students face ineffective communication between them and this leads to lack of awareness, negative perceptions, and unidentified needs.

Hosking (2008, p. 12) recognizes human rights as an important tool to achieve equality and full participation among disabled people. In the higher education context, the inclusion and meaningful participation of the disabled community should always be seen as a human rights agenda. Rights can only be achieved if the voices of the disabled community are heard and take into account because only by listening to them that the non-disabled community can truly understand their experiences living with an impairment or chronic illness (Hosking, 2008, p. 13). The higher learning institutions must provide space and channel for the disabled community to voice out their needs, concerns, and solutions.

We also share and hold dearly the same notion as Hosking (2008, p. 14) on transformative politics which give serious attention about the linkages between theory and practice. When a policy is developed, it should not stop there. In fact, it should initiate the development of action plans which translate into projects and programs to achieve the ultimate goal set in the policy. The equal focus should be given to both philosophy and praxis. In order to meaningfully translate the seven principles of the critical disability theory, we now turn to capability approach.

Amartya Sen introduces capability approach which can be seen as a thinking framework to identify individuals' capabilities and social arrangement that surrounds them as well as a formula for interpersonal comparisons for individuals' welfare and wellbeing (Robeyns, 2003, p. 8). Capability approach offers a very good starting point for us to create an inclusive campus climate. Everyone, either administrative staffs, lecturers, and students (both disabled and non-disabled) have their own capabilities to play their role effectively in the higher learning institution. Besides that, we must be critical about the structure, position, and relations exist between those groups. Only then, we can further identify the necessary means and ends for every stakeholder involved. The inclusion of disabled people in higher education is a complex issue and it involves diverse groups of stakeholder. Capability approach offers two forms of evaluation; (i) evaluation based on individuals' functioning and capabilities; and, (ii) personal and socio-environmental conversion which transform resources possessed by individuals and the community into capability resources (Ibid, p. 17). Such resources include knowledge, networking, funding, regulations and so forth.

Capability approach is a valuable tool to critically and practically materialize the seven principles set forth in the critical disability theory. The identification of everyone's functioning and capabilities (including other stakeholders such as the lecturers, administrators, and support staffs) enable us to develop an interpersonal connection and map out strategic actions toward achieving the inclusivity agenda in the higher education sector. This includes identifying disabling barriers and gaps within the physical, organizational and procedural aspects. This promotes the possibility to radically change the admission criteria into certain fields of studies especially in natural science, engineering, and technology, as well as equitable examination and evaluation process for persons with various types of impairment.

Through his communicative action theory, Jurgen Habermas argues that communicative action refers to social action in the community through an established communication medium to have an understanding of an issue. The ability to communicate is a tool possessed by individuals for questioning, evaluating and criticizing a conflict in the process of communication between involved parties guided by a theoretical framework as their argument (Sudersan, 1998, p. 263). The interacting parties must uphold the paradigm of unity and reciprocity (Scott, 2001, p. 6). For that, there must be a freedom to act and interact amongst parties in a rational way which eventually leads to a rational consensus within the community (Mitrovic, 1999, pp. 220-221) and then produce "communication rationale" to fuel communicative action (Sudersan, 1998, p. 263).

Open space for communication, negotiation, and discussion must be established for all parties involved to achieve an inclusive campus climate. Such a medium must be utilized to nurture and mutually own a clear aspiration for disability emancipation. We must also use the medium to identify every stakeholder's needs and challenges to come up with potential solutions. Taking up the solutions require will, motivation, and continuous efforts through synergistic coordination and active involvement of all stakeholders.

From the theoretical arguments presented above, we shall now propose a working model which based on a set of principles to produce disability emancipation climate. We name this model as the 'disability emancipation climate framework'. There are seven principles in this model:

- **Recognition**. All individuals in the higher learning sector, especially the policy makers, higher management, administrative staffs, lecturers and other support staffs must recognize that inclusion of disabled people, both students, and disabled employees as human rights issue that must be respected and achieved. The inclusion of disabled people should be given a high priority as other priorities in the institutional development. Thus, government and educational institutions must give full and continuous attention to the inclusion process of the disabled community. As a result, organizational strategies and budgeting must include the needs, interests and focused actions for that purpose.

- **Orientation**. Disability should be understood as social, structural, and environmental barriers which can multiply the negative effects on impairment or chronic illness possessed by disabled people. The government and higher learning institutions should frame this issue as human rights and equality issues. It will consciously reshape the focus to bring social, structural, and environmental change. The process of inclusion thereby must be in accordance with the needs and capabilities of all stakeholders. This must be a continuous attribute which will not disappear when an action or a project is finished.

- **Mutual accountability**. Every party in the higher learning institution, including the disabled community is mutually responsible to realize the agenda of the inclusion of the disabled community. Continuous sensitization on the rights, needs, and duties of every party must be organized systematically and effectively. Mutual accountability is a result of positive recognition and clear orientation of the disability emancipation.

- **Coordination**. Whether the government and higher learning institutions have a centralized or decentralized administration system on disabled people affairs, good and effective coordination between departments must be achieved. This cannot be realized if the principles of recognition, orientation, and mutual accountability are not clear in the first place.

- **Cooperation**. All parties must cooperate and support each other in realizing a disability emancipation climate. Cooperation can be in form of joined projects, full participation in the programs organized, referral service and so on.

- **Communication**. Government and higher learning administration must have active and open communication with the disabled community with respect to policies, guidelines, and initiatives. This calls for two ways of communication. All information or decisions made with regards to the disabled community's interests must be publically accessible to diverse categories of audience.

- **Participation**. Government and leaders of higher learning institutions must consult with the disabled community when they plan for a policy or initiative focusing on the particular group, or even when they develop general policy, guideline or program concerning the higher education sector. Government and leaders of higher learning institutions must actively engage the disabled community. Representatives of the disabled community should have space and power to voice their opinions and not attending the meetings merely as guests. Disabled community involvement should not only be restricted at the development and implementation stages, in fact, they too should be included in the monitoring and evaluation process.

We gravely realize the framework above is only the moderating part to bring about inclusion for disabled people in higher learning institutions. We need to be meticulous on how to achieve or to nurture the seven principles. We focus on three points of entry, which are activism, alliance, and negotiation. Activism, to simply put, refers to actions of voicing out one's needs to the authoritative individuals such as administrative staff, lecturers, residential manager, and higher management. Activism can be in form of verbal and non-verbal. Verbal activism includes direct communication such as one-to-one discussion, group meeting, and dialogue with the management. Non-verbal activism refers to written communication such as sending letter and memorandum. Activism can also combine verbal and non-verbal techniques such as organizing a rally. The activism must be relentless, persistent and intelligent in a way. The best activism is when both the disabled students and disabled staffs in those higher learning institutions are together. But, this is an ideal state. Usually, the activism starts by either of this group. There are two more components that we acknowledge for activism to happen, which are group consciousness and the group capacity, These components are a fundamental and critical resource.

Time after time, no individual or group can stand alone in their movement to make a change in society. This situation is not only true in disabled people's activism but also happens in the feminist movement and black movement. Having allies is important. In the higher learning context, the disabled community must form an alliance with the community within their higher learning institutions. Usually, the alliance can start with the officer that manages welfare affair. Here, continuous engagement and a good relationship are vital. Then, the alliance can expand to other departments and student groups. Alliance can also be formed with external parties such as disabled people's organizations and officers from related government agencies. This also requires the disabled group to reflect and build their 'networking resources'.

The final point is through negotiation. Negotiation can happen in direct form, which the disabled individuals discuss directly with the individuals or departments. In some cases or situations, negotiation can also happen indirectly. For instance, the officer in charge of disabled students' affairs discusses with the individuals or departments on behalf of the disabled group. Notwithstanding that negotiation is conducted to gain the best possible outcomes for all parties involved, we must aware of the politics of interests and power of difference which exist within the process. In addition, we must note that these instruments

should not be seen as an isolated method, rather these three methods are part of a cohesive strategy in nurturing disability emancipation climate within universities and colleges. Negotiation, alliance, and activism are some of the important pillars of advocacy and lobbying art. Thus, such skills must be developed among the disabled community.

METHODOLOGY

For the purpose of this paper, we employ secondary data analysis. We review two main categories of documents; international human rights documents and disability law in selected ASEAN countries. We analyze five main international human rights documents, namely Universal Declaration of Human Rights (United Nations, 1948), International Covenant on Economic, Social and Cultural Rights (United Nations, 1966), Convention on the Elimination of All Forms of Discrimination Against Women (United Nations, 1979), Convention on the Rights of the Child (United Nations, 1989) and Convention on the Rights of Persons with Disabilities (United Nations, 2006). We select these documents due to the fact these international treaties covers socio-economic rights, including one's rights to higher education. We extract specific clauses with regards to higher education.

As for disability laws, we analyze disability acts from Thailand, Cambodia, Vietnam, Indonesia, and the Philippines. We choose to use only disability acts and not other related acts in the higher education field in these five ASEAN countries because we want to examine whether the issue of access to higher education for disabled people is included in these legislative pieces. Although legislative statutes may not be able to reflect real situation on the grassroots, we argue that starting such discussion as this from a legal point of view is important to see the systemic gap in providing access to higher education amongst disabled people. We conduct the analysis on the translated version of legislation texts in English except for Indonesia due to our lingual limitation.

In both categories of documents, we look for keywords associated with the provision of access to higher education. From there, we construct a thematic discussion, inquiring the relationships exist between the keywords, and to access of disabled people to higher education.

RIGHTS OF DISABLED PEOPLE TO HIGHER EDUCATION IN GLOBAL HUMAN RIGHT DOCUMENTS

We must first note that there are different conceptions on access to higher education, starting after the second world war until today. Despite these differences, one's access to higher education remains an integral part of universal human rights in all human rights treaties. The Universal Declaration of Human Rights clearly states everyone's right to higher education in sub-article 1 under article 26 which specifies "… higher education shall be equally accessible to all on the basis of merit" (United Nations, 1948). Sub-article 2(c) of article 13 in the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966) addresses equal access to higher education for all. However, in contrast to Universal Declaration of Human Rights, instead of equal access for all on the basis of merit, this covenant states that "higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education". Besides that, sub-article 2(e) of the covenant also recognizes that development of every level of education system must be continuously pursued, ensuring sufficient fellowship and also continuous improvement of the material condition of teaching staffs.

On the basis of equality between men and women, article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women underlines the duty of each state parties to ensure equal condition and access to education on every level, from pre-school to higher technical education as well as equal education quality, opportunity to benefit from scholarship and research grants and the elimination of stereotypes of women's role in education (United Nations, 1979). While in the Convention on the Rights of the Child explicitly mentions access to higher education in sub-article 1(c) of article 28 which addresses state parties' duty to "make higher education equally accessible to all on the basis of capacity, by every appropriate means" with the principle of equal opportunity as its foundation (United Nations, 1989).

Lastly, the most relevant human rights document when discussing the access of disabled people to higher education, sub-article 5 of article 24 of Convention on the Rights of Persons with Disabilities explicitly underlines state parties' responsibilities to make sure disabled people "are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, State Parties shall ensure that reasonable accommodation is provided …" (United Nations, 2006). Under article 2 of the convention, reasonable accommodation can be defined as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

Analysis of the selected international human rights treaties above discover four keywords and those keywords are merit, capacity, equality, and reasonable accommodation. We will discuss further this "loosely and seemingly unfit matrix" in the later part of this paper.

THE LEGAL SITUATION IN FIVE ASEAN COUNTRIES

Even though ASEAN member states adopt the ASEAN Human Rights Declaration after 60 years of the introduction of Universal Declaration of Human Rights by United Nations in 1948, the rights of disabled people is clearly recognized as inalienable, integral and indivisible part of human rights and fundamental freedoms in ASEAN through article 4 in this declaration (ASEAN Secretariat, 2012). Furthermore, ASEAN member states affirm on everyone rights to education through article 31(1) and article 31(2) which emphasize that: "higher education shall be equally accessible to all on the basis of merit" (Ibid, 2012). It seems ASEAN member states adopt the same language as in the Universal Declaration of Human Rights. This captures how much people in this region values meritocracy, and this may lead to hurtles on disabled persons' access to higher education.

Let us now turn to whether the same tone also appears in ASEAN member states' legislation. For this section, we only analyze disability act from five ASEAN countries and those countries are Cambodia, Indonesia, Thailand, the Philippines, and Vietnam. We are interested to look whether the issue of access to higher education amongst disabled people is mentioned in each of these countries' disability law.

CAMBODIA
Issues on disabled people's education can be seen in chapter 6 in the Law on the Protection and the Promotion of Rights of Persons with Disabilities 2009. There are four articles that significantly relevant when discussing access of disabled people to higher education. Article 27 of the chapter states that all disabled people have rights to be enrolled in the public and private educational establishments at all levels and have rights to receive scholarships if there is no "contrary provision apply". Article 28 in the same chapter guarantees the state's duty to develop policies and national strategies to promote the inclusion of disabled people in inclusive education as well as to establish special class to fulfill the needs of disabled students. Besides that, article 29 specifies the responsibilities of Ministry of Education to develop programs for all educational establishments at all levels to provide accessible facilities for disabled students which includes accessible buildings and classrooms, sign language and braille, teaching technique suitable to the categories of impairment, accessible study materials and other equipment, and training for the educators to cater the needs of disabled students. Lastly, under article 30, disabled students from poor families and disabled military veterans are entitled to free education at public educational establishments at all levels, whereas the private educational establishments should give special discounts in terms of tuition fees, books and so forth. We can see that the act is quite extensive in outlining provisions to ensure the access of disabled people in the education sector.

INDONESIA
Under Item 10 of Law on Persons with Disabilities 2016, disabled Indonesians have rights to quality education at all levels, either inclusive or specific. Other than that, disabled students in Indonesia are entitled to reasonable accommodation.

THAILAND
Even though there is no specific section for education in Persons with Disabilities Empowerment Act B.E. 2550 as any other disability law in some of the ASEAN countries, section 20 of the act emphasizes the rights of disabled people in Thailand to access and utilize facilities and services provided by specific educational institutions, public educational institutions, traditional or non-formal education and the agencies related in this matter are obligated to provide facilities, media, services, and any other support for disabled people in education sector. The act also assures funding for disabled people empowerment in education through section 23 of this act.

THE PHILIPPINES
Paragraph 1 of section 12 in Magna Carta of Disabled Persons ensures disabled people's access to quality education and protects them from being denied to enter any course on the basis of their impairments by any educational institutions. The second paragraph of the same section underlines the state's duty to promote higher learning institutions to provide additional services to facilitate the learning process of disabled students. Section 13 clearly addresses the state's duty to provide monetary aid to disabled people enrolled in post-secondary or tertiary education either in form of scholarship, student loan and so forth. The paragraph 2 of section 17 states the government's responsibilities to provide necessary special facilities for visually impaired, hearing impaired, speech impaired and orthopedically impaired students at state universities and state colleges as well as necessary funds allocated for this purpose.

VIETNAM
The first paragraph under article 27 of the National Law on Persons with Disabilities 2010 ensures the rights of disabled people to education according to individuals' needs and capabilities. Furthermore, the third paragraph of the same article ensures that disabled students will be provided with appropriate educational tools and materials developed for them. Article 29 of the law also emphasizes compulsory training for teachers, lecturers, administrative officers and other educational support officers involved in the education for disabled people. Duties of educational institutions are clearly underlined under article 30 which dictates the establishments to provide reasonable accommodations and to upgrade their facilities to guarantee disabled students' access as well as prohibited these educational institutions to deny disabled students' entrance application. Lastly, article 31 of the law sanctions the establishment of Inclusive Education Support and Development Centres with functions such as providing consultation services, disabled-friendly materials production, training and so forth.

We uncover several keywords from the review of these legislative pieces. Those keywords are equal access, policies and strategies, individuals' needs and capabilities, state funding, reasonable accommodation, capacity building, and educational support. Combining the keywords from this section with the previous ones, we shall now discuss the potentials and threats of these keywords.

DISCUSSION
Equal access appears many times during the analysis process. This signals a good sign since this concept becomes a trend not only at the international level, in fact in ASEAN countries. On the flip side, the question is; equal access based on human rights, or based on merit requirements or should it be based on something else? The first obstacle faced by disabled people to be enrolled in higher education is meritocracy. Although a lot of disabled people successfully enter higher learning institutions through the current merit-based system, today's practice and paradigm of meritocracy are still disabling many people's opportunity including disabled people. This is because of today's meritocracy means "to find the best among the best". This disabling meritocracy starts from the primary and secondary education when the examination system is not designed to include disabled people with various categories of impairment. Taking the inspiration by McCowan's (2012) writing, we should

critically interrogate the universality of the notion of human rights to higher education for disabled persons across diverse functional, demographical, social, and geographical contexts.

On the other hand, the employment of affirmative actions such as special track or quota usually are viewed by society as undignified, unremarkable and can bring the opposite effects on the targeted group. However, should we reject the idea to use affirmative action altogether? Though merit can quantify one's performance, it may not necessarily portray one's potentials or growth. We argue that the current merit system fails to give balance importance to individuals' different needs, capabilities, the potential for growth and equity. We are still pondering upon the possibility whether merit system can be reformulated to incorporate individual's needs, capabilities, potentials, and growth. Thus, educationists, policymakers, and governments must reflect on the definition of meritocracy and re-operationalize for it to be fair, equitable and accessible for all, including disabled persons. This also calls for re-adjusting and re-appropriating evaluation procedures and indicators. All these questions relate to the access and equity of disabled individuals to be enrolled in the different field of studies, especially in science, technology, engineering and mathematics (STEM).

Access to higher education as Neubauer and Tanaka (2011) argue is closely related to equity and capacity. As we problematize the question of equal access as part of a matrix of rights to higher education among disabled people, it is important to also discuss its relations to disabled people's equity (including their families' economic ability) and capacity (resources possessed by the government and higher learning institutions). The question of disabled people's equity in education urges us to revisit the foundational philosophy of education provision as abundantly emphasized in all of the international human rights treaties. One's equity in education also relates to the broader socio-structural ecosystem that enables the person to go to school and continue to tertiary education such as mobility (accessible public transportation services and connectivity), finance (including the existence of appropriate social safety net), accessible buildings and pathways to the buildings, attitudes among family members and society.

Here, capacity does not only refer to financial and human resource capacities. In fact, capacity for both government and higher learning institutions are also reflected in term of: (a) the capabilities to collect, collate and utilize data for institutional improvement; (b) the capabilities to utilize, improve and innovate technological usage to ensure and increase the quality and effectiveness; and, (c) the capabilities to enact change or adapt to changes especially with regards to institutional system, structure and procedures to meet complex and ever-changing needs and unforeseen conflicts. To achieve the first, governments and leaders of higher learning institutions must recognize the importance and benefits of disability-related research to improving higher education sector and establish a supportive environment to nurture such endeavor.

For the second and third, both government and leaders of higher learning institutions must embrace the positive recognition and accurate orientation towards disability issues in the higher learning environment. Furthermore, the policymakers and leaders of higher learning institutions must have the will to set the motion and keep the momentum. In our opinion, there is a possibility to create sharing resource, not only between local higher learning institutions but also include a network which involves disabled people's organizations, regional and international bodies as well as other groups of experts.

We set forth the issue of capacity because it influences the second main theme which is reasonable accommodation. It is essential to put a specific clause that ensures disabled students' rights to receive reasonable accommodation when they are accepted into higher learning institutions. However, such clause even though protects the disabled students' rights, it may not necessarily give clear and effective tools or guidelines to the educational providers on what form of and how to achieve reasonable accommodation for each category of impairment. The process can be messy and pedantic. Hence, multidisciplinary cooperation from all experts and professionals including disabled individuals is greatly needed. This also relates to institutions' capacity.

There must be sufficient human resource to ensure the quality and effectiveness of services provided to different individuals with impairment. Here, we would like to argue two things: (a) the needs for government and higher learning institutions to allocate sufficient funding to develop human capital relevant for inclusivity agenda in the higher learning environment; and, (b) the need to establish a structure of governance to manage, coordinate and monitor the agenda. Realistically speaking, it is difficult for a higher learning institution to fully accommodate disabled students' needs when they do not have human resources, expertise and system in place. Frankly, infrastructural improvement and service provision need quite a huge expenditure. Plus, hiring personnel also requires funding.

Few of the selected ASEAN countries mention government funding with regards to providing necessary educational support for disabled students including in the higher education sector. It is the duty of the government to ensure continuous support for higher learning institutions in order to push these institutions to provide accessible facilities, services, and equipment for disabled students as well to train their staffs. One of the support is funding, even for institutions that have been given autonomy with regards to the monetary aspect. Government funding should not only focus on providing sufficient funding for the institutions to improve their facilities and services for disabled students, but government funding must also cover the provision of scholarship or any form of financial assistance to disabled students throughout their studies.

Pointing to the government as the sole contributor to higher education funding may put enormous pressure on the government. Though it is the duty of the government to ensure sustainable investment in education, so do the other parties. Inclusive budgeting must be an integral part of the budgetary process by the government and higher learning institutions. Beyond that, we see there is a possibility to expand our approach to funding inclusive higher education system by promoting the roles of the private sector as well as collaborating with regional and international entities, non-governmental organizations, other funding bodies, and individuals.

National policies and strategies are instrumental in ensuring the process to achieve inclusive higher education for disabled people. With national policies and strategies, we can identify our goal, targets, and necessary actions. Nonetheless, several questions remain; do leaders from higher learning institutions clearly understand the aspiration? To what extent the government can enforce such policies and push higher learning institutions to take actions? The government then must practice active engagement with all stakeholders, especially disabled people, and to conduct continuous monitoring. There must be space and opportunity for disabled people to play their role as check and balance.

Next, an effective and efficient educational support mechanism must be established for the higher education sector to ensure disabled people's access to higher learning institutions. Such a mechanism must involve relevant ministries, higher learning institutions, experts from the disabled and non-disabled community and other support centers. Once again, continuous engagement is imperative. Before developing national policy, strategy, and educational support mechanism, there must be a medium to nurture consensus and mutual accountability. Having this medium is essential to align different definitions, dispel disempowering perceptions and address different gaps. Appropriate language usage is very important at this stage, both in framing the issue verbally or transforming it into policy, strategy, and guidelines.

We come back to our proposal of the disability emancipation climate framework. We argue this framework provides a sufficient foundation to navigate the complex maze presented above. The disability emancipation climate framework supplies answers for both philosophical (the principle of recognition, orientation, and mutual accountability) and practical (the principle of coordination, cooperation, communication, and participation). The principle of recognition and orientation challenge the notion of merit and support the individuals' needs and capabilities. The remaining principles are useful in facilitating the translation of reasonable accommodation, developing and implementing national policies and strategies, ensuring appropriate funding, strengthening human resource, and establishing educational support mechanism.

CONCLUSION

From the analysis, it is abundantly clear that disabled people's rights to higher education is ensured and protected in all selected ASEAN countries. We conclude that disability-related legislation in these countries share two commonalities; equal access and reasonable accommodation. Hence, the laws are in line with the article set forth in the Convention on the Rights of Persons with Disabilities. This can be interpreted as a good sign of localization of the convention in those countries, at the very least in their legislative documents.

Nevertheless, equal access and reasonable accommodation are further complicated by other keywords arise from the analysis. There exist a complex entanglement of different themes when it comes to translating the fulfillment of disabled people's rights to higher education. Those keywords are merit, capacity, policies and strategies, individuals' needs and capabilities, state funding, capacity building, and educational support. This complex entanglement presents both opportunities and threats. Agreeing to what Lamichhane (2015) proposes in his book, the inclusion of disabled persons in education must be viewed as an investment instead of just satisfying moral code.

We also suggest a framework which we call the disability emancipation climate framework in addressing the operationalization and practical steps to ensure the disabled people's rights to higher education. We lay out seven principles, which are recognition, orientation, mutual accountability, coordination, communication, cooperation, and participation. We too problematize the ways to achieve those principles with several key issues such as group consciousness, group capacity, continuous engagement, good relationships, networking resources, politics of interests, and power of difference. In this framework, we locate the disabled community as the main thrust and vehicle towards inclusion. However, further research is needed to test the applicability of this framework within the local context and interrogate the above-mentioned issues.

At the same time, we are aware of the limitations of this study. This paper only analyzes written documents and it may not reflect the real situation on the ground. The legislation is only a part of the mechanism and structure, and it needs cross-checking and thorough investigation from other sources of data (i.e. the lived experience of the disabled, the institutional and administrative process of inclusion and wider sociocultural setting). Nevertheless, the issues we put forth in this paper give us opportunity to take meaningful actions as well for further investigation on this topic. We cannot stress enough that issue of rights and access of disabled persons to higher education should not be a goodwill gesture, selective development and disengage from the real obstacles on the ground.

REFERENCES

Adnan, A.H., & Hafiz, I.A. (2001). A disabling education: The case of disabled learners in Malaysia. *Disability & Society, 16* (5), 655-669.

Armstrong, F., & Barton, L. (eds.). (1999). *Disability, human rights and education: Cross-cultural perspectives.* Buckingham: Open University Press.

ASEAN Secretariat. (2012). *ASEAN Human Rights Declaration.* Jakarta: ASEAN Secretariat.

Barton, L., & Armstrong, F. (1999). Introduction. In Armstrong, F., & Barton, L. (eds.), *Disability, human rights and education: Cross-cultural perspectives* (pp. 1-6). Buckingham: Open University Press.

Baron, S., Phillips, R., & Stalker, K. (1996). Barriers to training for disabled social work students. *Disability & Society, 11*(3), 361-378.

Beauchamp-Pryor, K. (2007). *A framework for the equality and inclusion of disabled students in higher education.* (doctoral thesis). University of Wales.

Beauchamp-Pryor, K. (2013). *Disabled students in Welsh higher education: A framework for equality and inclusion.* Rotterdam: Sense Publishers.

Borsay, A. (2011). Disability and education in historical perspective. In Haines, S., & Ruebain, D. (eds.), *Education, disability and social policy* (pp. 7-22). Bristol: Policy Press.

Botham, K.A., & Nicholson, J. (2014). Supporting the transition of disabled students from university to practice placement. *Disability & Society, 29*(3), 460-476.

Cole, M. (2000). Introduction – Human rights, education and equality. In Cole, M. (ed), *Education, equality and human rights: Issues of gender, 'race', sexuality, special needs and social class* (pp. 1-5). London & New York: Routledge.

Engelbrecht, L., & de Beer, J.J. (2014). Access constraints experienced by physically disabled students at a South African higher education institution. *Africa Education Review, 11*(4), 544-562.

Evans, N.J., Broido, E.M., Brown, K.R., & Wilke, A.K. (2017). *Disability in higher education: A social justice approach.* San Francisco: John Wiley & Sons, Inc.

Hammad, T., & Singal, N. (2015). Education of women with disabilities in Pakistan: Enhanced agency, unfulfilled aspirations. *International Journal of Inclusive Education,* 1-21.

Hawkins, J.N. (2011). Variations on equity and access in higher education in Asia. In Neubauer, D., & Tanaka, Y. (eds), *Access, equity, and capacity in Asia-Pacific Higher Education* (pp. 15-30). New York: Palgrave Macmillan.

Hawkins, J.N., & Neubauer, D. (2011). Access, equity, capacity – Initiating some distinctions. In Neubauer, D., & Tanaka, Y. (eds), *Access, equity, and capacity in Asia-Pacific Higher Education* (pp. 5-14). New York: Palgrave Macmillan.

Hosking, D.L. (2008). *Critical disability theory.* a paper presented at Biennial Disability Studies Conference, at Lancaster University United Kingdom, 2-4 September 2008.

Izzo, M.V., Hertzfeld, J., Simmons-Reed, E., & Aaron, J. (2001). Promising practices: Improving the quality of higher education for students with disabilities. *Disability Studies Quarterly, 21*(1).

Jaeger, P.T., & Bowman, S.A. (2002). *Disability matters: Legal and pedagogical issues of disability in education.* Connecticut: Bergin & Garvey.

Konur, O. (2000). Creating enforceable civil rights for disabled students in higher education: An institutional theory perspective. *Disability & Society, 15*(7), 1041-1063.

Lamichhane, K. (2015). *Disability, education and employment in developing countries: From charity to investment.* Delhi: Cambridge House.

Lay, W.L., & Hui, M.L. (2014). The evolution of special education in Malaysia. *British Journal of Special Education, 41* (1), 42-58

McCowan, T. (2012). Is there a universal right to higher education. *British Journal of Educational Studies, 60*(2), 111-128.

Miles, M. (1999). Can formal disability services be developed with South Asian historical and conceptual foundations?. In Stone, E. (ed.), *Disability and development: Learning from action and research on disability in the majority world* (pp. 228-256). Leeds: The Disability Press.

Mitrovic, L. (1999). New social paradigm: Habermas's theory of communicative action. *The Scientific Journal FACTA UNIVERSITATIS Series: Philosophy & Sociology, 2*(6), 217-223.

Mutanga, O., & Walker, M. (2015). Towards a disability-inclusive higher education policy through the capabilities approach. *Journal of Human Development and Capabilities,* 1-17.

Nasir, M.N.A. & Efendi, A.N.A.E. (2016). Special education for children with disabilities in Malaysia: Progress and obstacles. *Geografia: Malaysian Journal Society & Space, 12*(10), 78-87.

Neubauer, D. (2011). Defining and measuring capacity in Asia-Pacific higher education. In Neubauer, D., & Tanaka, Y. (eds), *Access, equity, and capacity in Asia-Pacific Higher Education* (pp. 31-48). New York: Palgrave Macmillan.

Neubauer, D., & Tanaka, Y. (2011). Introduction – Access, equity and capacity. In Neubauer, D., & Tanaka, Y. (eds), *Access, equity, and capacity in Asia-Pacific Higher Education* (pp. 1-4). New York: Palgrave Macmillan.

Price, P., & Takamine, U. (2003). The Asian and Pacific Decade of Disabled Persons 1993-2002: What have we learned?. *Asia Pacific Disability Rehabilitation Journal, 14*(2), 115-127.

Riddell, S., & Weedon, E. (2011). Access to higher education for disabled students: A policy success story?. In Haines, S., & Ruebain, D. (eds.), *Education, disability and social policy* (pp. 131-146). Bristol: Policy Press.

Robeyns, I. (2003). *The capability approach: An interdisciplinary introduction.*

Sanderson, A. (2001). Disabled students in transition: A tale of two sectors' failure to communicate. *Journal of Further and Higher Education, 25*(2), 227-240.

Scott, J.P. (2001). Critical social theory: An introduction and critic. *British Journal of Sociology, 29*(21).

Siska, J., & Suchanek, O. (2015). Access to education for learners with disabilities in Cambodia as post-conflict country. *Development, Environment and Foresight, 1*(2), 77-91.

Stodden, R.A., & Dowrick, P.W. (2001). Introduction to Symposium on Supporting Students with Disabilities in Postsecondary Education. *Disability Studies Quarterly, 21*(1).

Sudersan, P. (1998). Habermas and critical social theory. *Indian Philosophical Quarterly, 25*(2).

Trani, J,, Bakhshi, P., & Nandipati, A. (2012). 'Delivering' education; maintaining inequality: The case of children with disabilities in Afghanistan. *Cambridge Journal of Education, 42* (3), 345-365.

United Nations. (2006). *Convention on the Rights of Persons with Disabilities. Geneva.*

United Nations. (1989). *Convention on the Rights of the Child. Geneva.*

United Nations. (1979). *Convention on the Elimination of All Forms of Discrimination Against Women. Geneva.*

United Nations. (1966). *International Covenant on Economic, Social & Cultural Rights. Geneva.*

United Nations. (1948). *Universal Declaration of Human Rights. Geneva.*

Muhamad Nadhir Abdul Nasir
Faculty of Arts & Social Sciences
University of Malaya, 50603 Kuala Lumpur, Malaysia
E-mail: anndh91@gmail.com

Alfa Nur Aini Erman Efendi
Faculty of Arts & Social Sciences
University of Malaya, 50603 Kuala Lumpur, Malaysia
E-mail: alfa.e.efendi@gmail.com