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**Despite Complicated Portraits
and Policy Orientation:**

Struggle to Articulate Right to
Education Based on the Indonesia
Constitutional Court Decisions

**Apesar dos retratos complicados
e da orientação política:** luta
para articular o direito à educação
com base nas decisões do tribunal
constitucional da Indonésia

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DIGITAL TRANSFORMATION OF MERCOSUR: INFLUENCE AND
COOPERATION WITH THE EUROPEAN UNION

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DESPITE COMPLICATED PORTRAITS AND POLICY ORIENTATION: STRUGGLE TO ARTICULATE RIGHT TO EDUCATION BASED ON THE INDONESIA CONSTITUTIONAL COURT DECISIONS 612

Made Subawa e Bagus Hermanto

Despite Complicated Portraits and Policy Orientation: Struggle to Articulate Right to Education Based on the Indonesia Constitutional Court Decisions*

Apesar dos retratos complicados e da orientação política: luta para articular o direito à educação com base nas decisões do tribunal constitucional da Indonésia

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Abstract

Education as a major part of life is a basic right for the development of human identity and dignity. This sector developed numerous problems in Indonesia due to the impact of the post-reform era. Therefore, this study aimed to provide citizens with the right to education based on the Constitutional Court Decisions in harmony with the constitution, human rights values, international consensus, and the development of global world civilization. This paper uses a normative legal research methodology, with a focus on legal systems based on micro-legal research. The paper uses legal and legal research approaches to analyse, examine and articulate the right of Indonesians to education. The right to education is examined through a review of several Constitutional Court decisions. This study aims at the dynamics of regulating education policy based on the discourse on the right in Indonesia. It also interprets the Constitutional Court Decisions which affirm human rights values, constitutional principles, upholds citizens' constitutional rights, and the orientation of the national education policy as a driving force of development in Indonesia. Indonesia's policy on the implementation of the right to education is based on philosophical, sociological and legal principles, which comprise four essential elements. Several decisions of the Constitutional Court confirm this approach, which ensures the enforcement and protection of the Constitution, particularly with regard to the promotion of the human right to education in Indonesia.

Keywords: Right to Education, Indonesia, Constitutional Court Decisions, Policy, Articulate

Resumo

A educação, como parte importante da vida, é um direito básico para o desenvolvimento da identidade e da dignidade humanas. Este sector desenvolveu numerosos problemas na Indonésia devido ao impacto da era pós-

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reforma. Portanto, este estudo teve como objetivo proporcionar aos cidadãos o direito à educação com base nas decisões do Tribunal Constitucional em harmonia com a constituição, os valores dos direitos humanos, o consenso internacional e o desenvolvimento da civilização mundial global. Foram utilizadas abordagens legais e jurisprudenciais para analisar, rever e articular o direito dos indonésios à educação. Este estudo visa a dinâmica de regulação da política educacional com base no discurso da direita na Indonésia. Também interpreta as decisões do Tribunal Constitucional que afirmam os valores dos direitos humanos, os princípios constitucionais, defendem os direitos constitucionais dos cidadãos e a orientação da política nacional de educação como uma força motriz do desenvolvimento na Indonésia.

Palavras chave: Direito internacional; Direito Constitucional; Direitos Humanos

1 Introduction

Education, which is universally recognized as human rights, has gained a foothold as a fundamental element in development. The presence and active action of the state is accommodated in several international conventions, including the 1948 UDHR, 1966 ICESCR, 1990 CRC, and other instruments as state obligations to ensure the fulfillment of the right to education for every citizen¹. Some of the active action includes state policies, the availability of facilities and infrastructure, the education system, learning patterns, and other directly or indirectly aspects. In this case, the arrangements cover the level of the constitution, legislation, and national regulations².

Gudmundur Alfredsson expressed skepticism about international human rights by stating that none of the instruments expressly defined the meaning of human rights. This perspective shows that none of the inter-

national human rights instruments provide satisfying definition³. This is undeniable and in accordance with the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and The International Covenant on Economic, Social, and Cultural Rights (ICESCR), proposed in 10 December 1948, 16 December 1966, and 16 December 1966, respectively. However, the existence of rights is understood as natural rights that exist in biological creatures such as humans who were created as a gift from God Almighty, not from the state, government, or based on law. Rights should be attached to humans to ensure they do not lose their humanity and nobility (dignity). The essence of human rights originates from the Preamble of the 1948 UDHR, as an obligatory to respect, fulfil, and protect humans⁴. The state cannot negate or abolish the existence of the right of human to education.

Recognition of the right to education by human is essentially an appreciation of their potential and dignity. Human rights do not only facilitate everyone to enjoy life naturally but also provide several obligations needed for perfection⁵. Therefore, the principles that animate international human rights, such as equality, non-discrimination, state obligations, and human rights, need to be applied to broader rights⁶. The fundamental principles of these rights are treating humans with respect and dignity, including providing access to education.

In Indonesia, education is constitutionally the right of every person and a basic need to develop and improve one's living standard⁷. Article 31 paragraph (4) of the 1945 Constitution stipulates that the government is obliged to finance education by ensuring it is at least

³ CARVER, Richard. A new answer to an old question: national human rights institutions and the domestication of international law. *Human Rights Law Review*, v. 10, n. 1, 1-32, 2010.

⁴ SUBAWA, Made, et.al. *Dinamika Filsafat Ilmu Hukum Pancasila: Ontologi dan Aksiologis Sumber dari Segala Sumber Hukum di Indonesia*, 1st Edition, Ponorogo: Uwais Inspirasi Indonesia, 2023.

⁵ ASPLUND, Knut D. Resistance to human rights in Indonesia: Asian values and beyond. *Asia-Pacific Journal on Human Rights and the Law*, v. 10, n. 1, 27-47, 2009.

⁶ CROSS, Frank B. The Relevance of Law in Human Rights Protection, *International Review of Law and Economics*, v. 19, n. 1, 87-98, 1999, DOI: 10.1016/S0144-8188(98)00028-3, pp. 89-91.

⁷ In particular, a study only discusses the segment of the Human Rights Law which still does not comprehensively reflect the values of Pancasila in: HADIPRAYITNO, Irene Istiningsih. Defensive Enforcement: Human Rights in Indonesia, *Human Rights Review*, v. 11, n. 3, 373-399, 2010, DOI: 10.1007/s12142-009-0143-1, pp. 379-383.

¹ MOLLOY, Sean. Why do states ratify human rights treaties in transitioning societies?, *The International Journal of Human Rights*, v. 25, n. 8, 1328-1355, 2021, DOI: 10.1080/13642987.2020.1823370, pp. 1329, 1334.

² BROBERG, Morten & SANO, Hans-Otto. Strengths and weaknesses in a human rights-based approach to international development – an analysis of a rights-based approach to development assistance based on practical experiences, *The International Journal of Human Rights*, v. 22, n. 5, 664-680, 2018, DOI: 10.1080/13642987.2017.1408591, pp. 667-670.

20% of the State and Regional Budget. However, the issue regarding the availability of access to education in Indonesia is still relatively low and very expensive to acquire. The school slowly turns into a place of luxury with education capitalist making large amounts of money, despite the decrease in the number of capital owners, which is smaller than those of the poor. Prosperity becomes clear when the national policy cannot anticipate the worst impacts of education capitalization⁸.

The government does not only need to pay attention to the quality of education but also ensure it is easy and cheap for the majority of Indonesian people. As part of human rights, education is a condition sine qua non for the success of national development as outlined in Article 31 paragraph (1) of the 1945 Constitution⁹. In 2011, Indonesia experienced a success in its education section with the successful launch of a car developed by students in one of its Vocational High Schools. This shows that the government is making various efforts to improve the implementation and quality of education. Several policies have been formulated into legislation and regulations as ratification relevant to international human rights instruments. This is in addition to the very massive campaign on television, such as the popular program “Ayo sekolah”, the nine-year compulsory education system, and the launch of a school operational assistance fund.

In reality, changes have only occurred in the physical aspect, such as school facilities and infrastructure. Fulfillment of the right to education, specifically the formal type is hampered by various obstacles, including conditions of parents who prevent children from attending school due to poverty, inadequate facilities, and discrimination against those with disabilities.¹⁰ This is in addition to schools that have changed their status to International Standard School Pilot. Several studies also showed problems with the right to education experienced by children in rural areas, including a shortage of qualified teachers, poverty, distance, absence from

school, inability to complete a subject matter in one semester, and parents who cannot afford to send children outside the region¹¹. Moreover, there are also legal issues related to the fulfillment of the right to education for street children¹².

Other competency standards, specifically the quality of teachers and education personnel are still low¹³. Many teachers are not ready and trained to teach Information Technology (IT) related classes. The implementation of teacher certification is still problematic due to corruption, which permeates at all levels. The Constitutional Court Decisions have also proved the poor implementation of education¹⁴. Due to the problem of dropping out of school, children and adolescents roam all over the country, from cities to villages and vice versa¹⁵. Many of them become homeless, beggars, little buskers, hawkers, porters, pickpockets, drug dealers, housemaids, prostitutes, and some even marry at an early age¹⁶. Furthermore, a significant percentage are willing to engage in any type of work to help their family's economy¹⁷. The fate of children may change¹⁸ assuming the education management is carried out properly and correctly through the implementation of legal instruments. This is in addition to including community participation in the organization process, creating

⁸ PRATIWI, Cekli Setya. Bridging the Gap Between Cultural Relativism and Universality of Human Rights: Indonesia Attitudes. *JILS (Journal of Indonesian Legal Studies)*, v. 5, n. 2, 449-478, 2020.

⁹ HOSEN, Nadirsyah. Human Rights Provisions in the Second Amendment to the Indonesian Constitution from Shar'iah Perspective. *The Muslim World*, v. 97, n. 2, 200-224, 2007.

¹⁰ RUL/AAN (Saturday, 23 July 2011, 03:16 pm). “15 Kasus Diskriminasi Pendidikan terhadap Anak di Sumut?”. <http://news.detik.com/berita/1687827/15-kasus-diskriminasi-pendidikan-terhadap-anak-di-sumut>, p. 1.

¹¹ ADLIM, M., GUSTI, Helida, and ZULFADLI, Zulfadli. Permasalahan dan solusi pendidikan di daerah kepulauan: Studi kasus di SMA negeri 1 Pulau Aceh, Kabupaten Aceh Besar. *Jurnal Pencerahan* v. 10, n. 2, 2016, p. 49, 60.

¹² HALING, Syamsul, et.al. Perlindungan Hak Asasi Anak Jalanan dalam Bidang Pendidikan Menurut Hukum Nasional dan Konvensi Internasional. *Jurnal Hukum & Pembangunan*. v. 48, n. 2, 2018, p. 377.

¹³ EVANS, Carolyn. Religious education in public schools: An international human rights perspective. *Human Rights Law Review*, v. 8, n. 3, 449-473, 2008. DOI: <https://doi.org/10.1093/hrlr/ngn020>.

¹⁴ YUSA, I. Gede, et.al. No-spouse employment and the problem of the constitutional court of Indonesia. *Journal of Advanced Research in Law and Economics* v. 11, n. 1 (47), 2020, 214-226, DOI: [https://doi.org/10.14505/jarlev11.1\(47\).26](https://doi.org/10.14505/jarlev11.1(47).26).

¹⁵ WIDIANTORO, Wisnu. Article “12 Juta Anak Indonesia Putus Sekolah oleh Robert Manurung” in <http://ayomerdeka.wordpress.com/2009/03/22/>; Article “1500 Anak Putus Sekolah di Bali”.

¹⁶ GRIJNS, Mies, and HORII, Hoko. “Child marriage in a village in West Java (Indonesia): Compromises between legal obligations and religious concerns.” *Asian Journal of Law and Society* v. 5, n. 2, 2018, 453-466, doi:10.1017/als.2018.9.

¹⁷ PRIHATINAH, Tri Lisiani. “Legal Analysis on Interlink between International and National Instruments Towards Woman Rights in Indonesia.” *Indonesian Journal of International Law* v. 8, n. 4, 2021, 741-749.

¹⁸ Article “18 Ribu Anak Riau Putus Sekolah oleh Rudi Kurniawan-syah” in <http://www.mediaindonesia.com/read/2010/07/26>.

awareness to students, family, and providing the right parental knowledge.

Human rights are inseparable from the existence of institutions whose role is to protect and guarantee the values contained in a state's constitution through the existence of constitutional interpreter agencies¹⁹. An example is the citizen's constitutional rights, which have been implemented in the institutional journey of the Constitutional Court in Indonesia, with several decisions since its inception in 2003. The Constitutional Court has endeavored to seek substantive justice by interpreting several articles in the 1945 Constitution, particularly concerning human rights. In this case, it also emphasized the establishment of the Indonesian constitution, the principles of a rule of law, democracy, constitutionalism, and universally recognized values. The right to education is necessary, and it is the state's responsibility to ensure the availability, accessibility, acceptance, and adaptability of all system components.

This study is compiled in a different context than previous ones, which did not require the Constitutional Court Decisions to confirm the right to education related to the fundamental aspects. Preliminary studies focused on the relevance of implementing the right to education to improve human resources in Indonesia²⁰. Another study also highlighted the philosophical aspects and the spirit built through religion-based education²¹. One of the studies also focused on only the risks of implementing education which was also associated with the existence of abandoned children²².

This study specifically examined, assessed, analyzed, and provided solutions to the active role of the state in policies toward human rights over education in Indonesia. The study has a specific focus on the concepts of protection, fulfilment, guarantee and respect for human rights in the education sector. This pertains to the

examination, translation, and internalisation of several Constitutional Court Decisions concerning the right to education in Indonesia. The review leads to the identification of areas that require reform, and encompasses all aspects, including future arrangements in the field of education. Furthermore, it examined, assessed, discovered, connected, and argued on the Constitutional Court Decisions from 2003 to 2022, which reflected the dynamics of human rights to education in Indonesia by providing necessary arrangements for optimal solutions.

2 Theoretical Concept: Globalization and the Pendulum of Power for the Development of the Right to Education in the World

Globalization is often associated with free trade. Globalization and trade are likened to a coin with two sides, which are inseparable from one another. Trade activities in its current development cannot be separated from the influence of globalization. This means that studies related to the regulation of trade issues in a state are intertwined by the integration of trade arrangements between one state and another. This is caused by the influence of globalization where the world seems increasingly borderless²³. Pascal Lamy, the WTO Director-General in 2006, emphasized that the globalization era has had a positive effect on increasing market development. Globalization has made it possible for individuals and companies globally to conduct dialogues faster, more detailed, and cheaper to achieve significant benefits. It has also led to the opening of markets, the removal of numerous barriers, an increase in freedom, democracy, social innovation, support for educational progress, and cultural exchange while offering tremendous opportunities for dialogue and understanding. However, globalization also brings negative consequences, such as the increase in environmental damage, scarcity of energy resources, and a rise in illegal migration due to poverty²⁴.

¹⁹ HERMANTO, Bagus. Discover Future Prospect of Indonesia Criminal Law Reform: Questioning Adat Criminal Law existence, Material and Formal Legislation, and Constitutional Court Decision Frameworks. Paper was presented at International Seminar Udayana University and University of Melbourne. 17 June 2021, p. 1-20.

²⁰ KURNIAWATI, Sandra, et al. Education in Indonesia: A white elephant?. *Journal of Southeast Asian Economies*, v. 35, n.2, 2018, 185-199.

²¹ NILAN, Pam, The 'spirit of education' in Indonesian Pesantren, *British Journal of Sociology of Education*, 30, n. 2, 219-232, 2009, DOI: <https://doi.org/10.1080/01425690802700321>

²² Fitzsimons, Emla. The effects of risk on education in Indonesia. *Economic Development and Cultural Change*, v. 56, n. 1, 1-25, 2007.

²³ Hermanto, B., & Mas Aryani, N. (2021). Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey, and Serbia practice. *The Theory and Practice of Legislation*, 9(3), 425-450.

²⁴ LAMY, DG Pascal 2006, *Humanising Globalization*, WTO NEWS: SPEECHES-DG PASCAL LAMY, Santiago de Chile, https://www.wto.org/english/news_e/sppl_e/sppl16_e.htm, p.1.

Joseph Stiglitz, former head of the economics department of the World Bank and winner of the 2001 Nobel Prize in economics, also stated the positive and negative effects of globalization.²⁵ Globalization has accelerated economic integration across national borders and has been able to reduce costs in international trade. This phenomenon is caused by integration in several states, which have become increasingly open due to the ease and progress of technological transformation and innovation. Joseph Stiglitz (2006) stated that globalization has negatively affected terrorism with an unfair and unstable global financial system, thereby increasing debt. Money, which is meant to flow from the rich to the poor states, tend to move in the opposite direction²⁶.

Globalization which has both positive and negative impacts has always been an interesting topic²⁷. Debapriya Bhattacharya, Executive Director, Center for Policy Dialogue (CPD), Bangladesh, and one of the authors of the United Nations article entitled *Globalization and the State: Challenges for Economic Growth and Human Development*, stated that globalization is not a new phenomenon and has greatly accelerated over the past decades. Economic deregulation, financial liberalization, as well as the increased flow of goods and services, underpinned by the developments in information and communication technology, have distinguished the new phase of globalization. These new dimensions of globalization have increased both opportunities and risks for the nations to achieve sustainable development for their citizens.²⁸

Based on various concepts, perspectives, and debates, globalization is a multi-dimensional process characterized by the following:

- The global acceptance of a set of economic rules to maximize profits and productivity by equalizing markets and production. This process is carried out to gain state support to

make national economies more productive and competitive.

- Technological innovation and organizational change centered on flexibilization and adaptability.
- Expansion of specific forms of social organization based on information as the main source of productivity and power.
- Reduction of the welfare state, privatization of social services, flexibilization of labor relations, and weak trade unions.
- De facto transfers to transnational organizations for controlling national economic instruments, such as monetary, interest rates, and fiscal policies.
- The spread of common cultural values as well as the re-emergence of nationalism, cultural conflicts, and social movements.

The human rights dimension of education is also related to the dynamics of globalization. The interdependency between the right to education and other factors is also significant for a nation's development²⁹. Quality education creates progress and civilization in the nation. However, poor education has negative implications for the running of the government and the availability of intelligent public participation. The fulfillment of human rights is important in education, the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty. It also provides the means for people to participate fully in their communities, as specified in General Comment Number 13, "The Right to Education" (art. 13)³⁰. Universal recognition is spread across the ICESCR, the Convention on the Rights of the Child (CRC). This is in addition to five implemented policies, namely General Comment Number 11 of the Committee on Economic, Social and Cultural Rights E/C.12/1999/4 (1999) concerning Plans of action for primary education, General Comment Number 13 of the Committee on Economic, Social and Cultural Rights E/C.12/1999/10 (1999) on

²⁵ BOSSCHE, Peter Van Den. *The Law and Policy of the World Trade Organization*, Cambridge University Press, USA, 2008, p. 3, 13-14.

²⁶ O'CONNELL, Paul. On reconciling irreconcilables: Neo-liberal globalization and human rights. *Human Rights Law Review*, v. 7 n. 3, 483-509, 2007.

²⁷ Spano, Robert. Universality or diversity of human rights? Strasbourg in the age of subsidiarity. *Human Rights Law Review*, v. 14, n. 3, 487-502, 2014.

²⁸ United Nations 2004, *Globalization and the State: Challenges for Economic Growth and Human Development*, ST/ESA/PAD/SER.E/80, New York, 2004, p. 3.

²⁹ KHOZA, Sibonile (ed), *Socio Economic Rights in South Africa*, 2nd Edition, South Africa: The Socio-Economic Rights Project University of Western Cape, 2006, p. 412.

³⁰ JANČÍKOVÁ, Eva, and PASZTOROVA, Janka. Promoting eu values in international agreements. *Juridical Tribune Journal= Tribuna Juridica* v. 11, n. 2, 2021, 203-218.

the Right to Education and General Comment Number 1 of the Committee on Rights of the Child CRC/GC/2001/1 (2001) concerning the Aims of Education.

The international community views human rights to education as a top priority in strengthening existence. Article 26 of the 1948 UDHR confirmed that, **first**, everyone has the right to free education, at least at the primary and secondary levels. Primary education should be compulsory and widely accessed by everyone. **Second**, education aims to lead to personal development while strengthening respect for human rights, and guaranteeing basic freedoms. This is in addition to an orientation centered on building understanding, tolerance, and friendship regardless of tribe, race, ethnicity, and religion. **Third**, the parents' choice is the main right in determining the type of education suitable for their children.

M.H. Syed stated that the construction of this study makes the right to education a regime and a building block of the international human rights law system. The state is obliged to promote human rights values in the education curriculum in line with the universal human rights construct³¹. Furthermore, Rhona Smith reported that UDHR conformity in article 26 does promote free education as one of the few positive provisions that reflect the state's obligations³².

Article 13 paragraph (2) ICESCR affirmed the government's need to take smart steps in fulfilling the right and access to education at all levels. The first is the availability of primary education, which is mandatory and free for everyone. The second is access to the widest possible level of continuing education available based on an appropriate method and the provision of free education in stages. The third is the increase in higher education, which should be available to everyone equally. The fourth is to promote primary education to everyone, including dropouts. The fifth is the encouragement to develop the school system at all education levels, with the provision of scholarship and consistently improving the material aspects of teaching staff³³.

³¹ SYED, M.H. *Human Rights; the Global Perspective*, New Delhi: Reference Press, 2003, p. 308.

³² SMITH, Rhona K.M. *Textbook on International Human Rights*, Oxford: Oxford University Press, 2005, p. 311.

³³ COLBRAN, Nicola. *Sense and Simplicity in Legal and Human Rights Co-Operation: A Case Study of Indonesia*. *Asian Journal of Law and Society* v. 2, n. 1, 195-206, 2015.

The right to education is important to fulfill human rights broadly. This affirmation is important to build collective awareness, closely intertwined with civil, political, economic, social, and cultural rights. Fons Coomans identified four core elements of The Right to Education, namely 1.) Everyone's right to gain access to existing public schools should be protected, 2.) Availability of compulsory and free primary education, 3.) Freedom to have education following religion and beliefs, and 4.) The right to obtain education in the language of one's choice without violation. This means that the state should not thwart efforts to teach students their mother tongue in institutions in accordance with the official system of general education³⁴. Therefore, the fulfillment of the right to education must be in accordance with human identity and dignity. Manfred Nowak reported that education is a precondition in fighting for human rights, hence, it is important for human rights³⁵.

3 Method

This study used micro-law research-based legal settlements, which Mathias Siems defined as a classification used to determine the originality of legal scientific works.³⁶ This was related to the use of coherence and consistency of legal material through interpretive theory, synthesis, and systemic³⁷ and historic approaches,³⁸ including various aspects that affect the applicable law. The regulations at the constitutional level, legislation, and certain organic regulations connected to the right to education in Indonesia were examined and observed in depth using a statutory method. Data were qualitatively collected to strengthen arguments.

³⁴ COOMANS, Fons. *The Core Content of the Right to Education*, In: BRAND dan RUSSEL (ed.), *Exploring the Core Content of Socio-Economic Rights: South African and International Perspectives*, Pretoria: Protea Book House, 2002, p. 160.

³⁵ NOWAK, Manfred. *The Right to Education* In: EIDE, Asbjørn et al., (ed.), *Economic, Social and Cultural Rights: A Textbook*, Boston: Martinus Nijhoff Publishers, 1995, pp. 189-190.

³⁶ WIBISANA, Andri Gunawan. *Menulis di Jurnal Hukum: Ide, Struktur, dan Gaya*. *Jurnal Hukum dan Pembangunan* v. 49, n. 3, 476-477, 2019, DOI: <http://dx.doi.org/10.21143/jhp.vol49.no2.2014>.

³⁷ SIEMS, Mathias M. "Legal Originality" *Oxford Journal of Legal Studies*, v. 28, no. 2 (2008): 148-152, 156-161, DOI: <https://doi.org/10.1098/ojls/gqm024>.

³⁸ SIEMS, Mathias M. "The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert" *Journal of Commonwealth Law and Legal Education* 7, Iss. 1 (2009): 6-8, DOI: <https://doi.org/10.1080/14760400903195090>.

4 Results and Discussions

4.1 Portrait of Education Legal Policy in Indonesia

The foundations of education are very important and necessary to provide a strong footing and a clear direction in the life of society, nation, and state. It is conceptual, which means it comprises a set of assumptions used as a starting point to foot basis, base, source, and guidelines for carrying out education activities. The foundations of education consist of religious, philosophical, psychological, historical, sociological and cultural, legal, economic, scientific, and technological foundations. Meanwhile, Amos Neolaka and Grace Amalia A. Neolaka stated that the foundations of practical-formal education are legal, philosophical, sociological, cultural, psychological, economic, historical, and humanitarian.³⁹ This study only presents philosophical, sociological, and juridical foundations⁴⁰. The philosophical attribute is the ideals realized through education. It shows two things, namely 1) the existence of ideas, which form the foundations of education, and 2) an affirmative for the existence of education goals. The ideals realized through education are listed in the Preamble of the 1945 Constitution, where one goal of the state is to educate the nation's life. This implies trying to make Indonesia a perfect nation with an ideal mind⁴¹. Therefore, every component of the nation should be realized through education⁴².

According to Article 31 paragraphs (1), (2), and (4) of the 1945 Constitution⁴³, every citizen is obliged to attend primary education, which the government finances. Article 31, paragraphs (1) and (5) of the 1945 Cons-

titution emphasized that the phrase “right to education” in paragraph (1) also includes the notion of freedom to select the required type. Paragraph (5) emphasized that to advance science and technology, religious values should be upheld. The fourth element, which is the right to obtain education in a language of one's choice, including mother tongue, is not explicitly specified in the 1945 Constitution. However, referring to Article 32 paragraph (2), “the state respects and maintains regional languages as national cultural assets,” which applies to the education sector. This is confirmed in Article 33, paragraph (2) of Law Number 20 of 2003, that regional languages can be used as the language of instruction in the early stages of education to convey certain knowledge and skills. Furthermore, Articles 28C and 28E of Chapter XA entitled Human Rights recognize human rights to education. This is reaffirmed in Articles 12, 16, 42, 48, 54, and 60 of Law Number 39 of 1999, stating that everyone has the right to receive education and educate themselves to have faith, become responsible with noble character, and be prosperous in accordance with human rights⁴⁴.

Article 2 of Law Number 20 of 2003 stipulates that the foundations of education are in accordance with Pancasila and the 1945 Constitution. Subsequently, the sociological foundation of education is the individual as a citizen of Indonesia, with the relevance dependent on the existence of the individual in social life. Education is developed with access given to each individual to make their social aspects grow and develop in society. The sociological foundation of education is usually coupled with cultural aspects⁴⁵ because it is important in social aspects. The material studied shows that the methods, activities, and forms of activity in education institutions are all cultural⁴⁶.

The juridical foundation is the legal basis for the implementation of education and the basis for legitimizing various activities. Actions for organizing education

³⁹ NEOLAKA, Amos, and NEOLAKA, Grace Amalia A. *Landasan Pendidikan Dasar Pengenalan Diri Sendiri Menuju Perubahan Hidup*, 1st Edition, Depok: Kencana, 2017, p. 2.

⁴⁰ ARIFIN, Ridwan. Translating the Meaning of Justice and Legal Protection: What exactly is justice?, *JILS (Journal of Indonesian Legal Studies)*, v. 7, n. 1, i-iv, 2022. <https://doi.org/10.15294/jils.v7i1.57881>.

⁴¹ YUSA, I. Gede et.al. *Hukum Tata Negara Pasca Perubahan UUD NRI 1945*, Malan: Setara Press, 2016.

⁴² HAFNER-BURTON, Emilie M., and TSUTSUI, Kiyoteru. “Human rights in a globalizing world: The paradox of empty promises.” *American journal of sociology*, v. 110, n. 5, 1373-1411, 2005.

⁴³ DIPROSE, Rachael, MCRAE, Dave, & HADIZ, Vedi R. Two decades of reform in Indonesia: its illiberal turn. *Journal of Contemporary Asia*, v. 49, n. 5, 691-712, 2019. DOI: <https://doi.org/10.1080/00472336.2019.1637922>.

⁴⁴ AFRIANTY, Dina. Agents for change: Local women's organizations and domestic violence in Indonesia. *Bijdragen tot de taal-, land-en volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia*, v. 174, n. 1, 24-46., 2018. DOI: <https://doi.org/10.1163/22134379-17401024>.

⁴⁵ DAVIES, Mathew. States of compliance?: Global human rights treaties and ASEAN member states. *Journal of Human Rights*, v. 13, n. 4, 414-433, 2014.

⁴⁶ SIHOTANG, Amri Panahatan, et.al. Fulfillment of the right to equitable education for members of believers of mystical groups in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, v. 24, n. 5, 1-13, 2021.

should have a legal basis, hence, it can run legally and can be accepted by society and the state⁴⁷. Someone can become an educator by sharing their knowledge and technology with others after obtaining legality in the form of a decree of appointment from the authorities. The decree is the starting point for a teacher or lecturer in the learning process. Obligations to individuals, such as children, take nine years of compulsory education based on statutory regulations. Similarly, individuals or groups of people can educate the nation's life by establishing training institutions after legally obtaining permission from the authorities⁴⁸. The juridical foundation for administering education and the right is based on legal products in the form of regulations and decisions⁴⁹. However, not every activity for education is determined by legal products. Scientific autonomy possessed by educators is used to enhance students' potential through planning, implementing, and evaluating learning outcomes. Others include compiling a syllabus, making teaching preparations (RPP), semester learning plans (RPS), determining teaching methods, supervision, and evaluation. The existence of legitimacy is recognized normatively in Article 24 of Law Number 20 of 2003 and Article 8 of Law Number 12 of 2012⁵⁰.

The preamble of the 1945 Constitution mandated that Indonesia should educate the nation's life⁵¹. The aim is to develop human potential who believe in and fear God Almighty, possess a noble character, are healthy, knowledgeable, capable, intelligent, innovative, creative, independent, democratic, and responsible. The noble ideals of the founding fathers are the duty of the state, specifically the government, which are actualized in society and the nation. The Central and Regional Governments have established various policies, which are formulated into numerous forms of regulations and de-

crees to realize the state's goals. Moreover, the right of the population to obtain education has been constitutionally confirmed in central and regional areas⁵².

The 1945 Constitution regulates human rights in Chapter XA, which includes Articles 28A to 28J. Article 28C paragraph (1) stipulates that "everyone has the right to develop themselves by fulfilling their basic needs through education to benefit from science and technology, arts and culture, for better life quality". Everyone has the right to education, hence, it is determined as part of human rights⁵³. Furthermore, education is specifically regulated in Chapter XIII concerning Education and Culture. Article 31, paragraph (1) stipulates that education is a right for every citizen, while paragraph (2) determines the obligation for every citizen to attend primary education and the obligation of the government to finance this process. The following paragraphs stipulate that to educate the nation's life, the government seeks and organizes a national system to increase faith and piety to God Almighty while providing a noble character regulated by law⁵⁴. To fulfill the needs of implementing the education system, a budget of at least 20% is prioritized for the State and Regional Budget. Law Number 39 of 1999 concerning Human Rights is the implementation of Article 31 of the 1945 Constitution, as evidenced by the inclusion in the material foundations for the formation of Law Number 39 of 1999. Law Number 39 of 1999, comprising Articles 12, 42, 48, 54, and 60, determined the existence of the right to education as a human right. All men, women, children, and adults are entitled to education to improve their quality of life. This makes them faithful, pious, and responsible with a noble character. Women have the right to receive education and teaching at all types, levels, and paths⁵⁵. Similarly, every child has the right to education and teaching as an effort to develop a personality based on their interests, talents, and intelli-

⁴⁷ ARIFIN, Saru. Illiberal tendencies in Indonesian legislation: the case of the omnibus law on job creation. *The Theory and Practice of Legislation*, v. 9, n. 3, 386-403, 2021.

⁴⁸ JACKSON, Elisabeth, & BAHRISSALIM, Bahrissalim. Crafting a new democracy: Civic education in Indonesian Islamic universities. *Asia Pacific Journal of Education*, v. 27, n. 1, 41-54, 2007.

⁴⁹ SKORA, Agnieszka, SREBALOVÁ, Mária, and Papáčová, Ingrida. Administrative judiciary is looking for a balance in a crisis. *Juridical Tribune/Tribuna Juridica* v. 12, n. 1, 2022.

⁵⁰ MULYADI, Asal Wahyuni Erlin. Policy of Inclusive Education for Education for All in Indonesia. *Policy & Governance Review*, [S.l.], v. 1, n. 3, p. 201-212, sep. 2017. doi: <https://doi.org/10.30589/pgr.v1i3.57>.

⁵¹ KRISTIENSEN, Stein. Decentralising education in Indonesia. *International journal of educational development*, v. 26, n. 5, 513-531, 2006.

⁵² MUTTAQIN, Tatang. Determinants of Unequal Access to and Quality of Education in Indonesia. *Jurnal Perencanaan Pembangunan: The Indonesian Journal of Development Planning*, v. 2, n. 1, 1-23, 2018. DOI: <https://doi.org/10.36574/jpp.v2i1.27>.

⁵³ SUBAWA, I. Made. Hak Asasi Manusia Bidang Ekonomi Sosial Dan Budaya Menurut Perubahan UUD 1945. *Kertha Patrika* v. 33, n. 1, 1-7, 2008.

⁵⁴ INDRASTI, Maya and JALIL, Faridah. The Rule of Law for the Right to Inclusive Education in Indonesia. *Padjadjaran Journal of Law*, v. 6, n. 3, 594-618, 2019.

⁵⁵ MERCER, Joyce Ann. "We Teach Our Children to See a Human Being": Women Transforming Religious Conflict in Indonesia. *International Journal of Practical Theology*, v. 20, n. 2, 261-281, 2016.

gence. Moreover, every citizen, including children with physical and mental disabilities, is entitled to education, training, and special assistance at state expense.

Law Number 20 of 2003 concerning the National Education System accommodates the implementation of education as mandated by Article 31 paragraph (3) of the 1945 Constitution. This law stipulates the reform of the national education system through various strategies, such as the implementation of compulsory education for every citizen aged six years. The central and regional governments guarantee the implementation of compulsory education at the lowest level without charging fees because it is the state's responsibility. Law Number 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social, and Cultural Rights is a mandate of Article 28C of the 1945 Constitution⁵⁶. The right to education is fundamental and inherent in humans globally. Therefore, it should be protected, respected, and maintained, without being neglected, diminished, or seized by anyone⁵⁷. Primary education should be compulsory and free of charge for everyone, specifically those who have not received or completed this process⁵⁸. It is also necessary to provide adequate scholarships and continuous improvement of the material by teachers.

Government Regulation Number 47 of 2008 concerning Compulsory Education is the implementation of Article 34 paragraph (4) of Law Number 20 of 2003 stipulating that it is a minimum education program needed by Indonesian citizens. Compulsory education functions to seek the expansion and equity of opportunities to obtain the quality knowledge needed for citizens to live independently in society while preparing for higher education level⁵⁹. Compulsory education is carried out through formal paths, such as Elementary Schools, Madrasah Ibtidaiyah, Junior High Schools, Ma-

drasah Tsanawiyah, and other equivalent forms. These include non-formal and informal education paths that should be implemented by the central and regional governments, as well as the community.

Government Regulation Number 48 of 2008 concerning Education Funding stipulates that education funding is a shared responsibility between the central government, regional governments, and the community. Its costs include units, management, and student personal costs. Education costs, which are the responsibilities of the central and local governments, are allocated in the State and Regional Budgets.

Government Regulation Number 17 of 2010 concerning the Management and Implementation of Education stipulates that the minister manages the national education system. This is in addition to the formulation of national policies outlined in the long and medium-term development plans, national education strategic plan, government work, annual work plan, budget, and provisions of laws. The national education policy includes implementing the development strategy, including compulsory education.

The Minister of Education and Culture Regulation Number 16 of 2018 concerning Amendments to the Minister of Education and Culture Regulation Number 47 of 2016 on Guidelines for Regional Apparatus Organizations determined the nomenclature, duties, and functions of regional apparatus organizations in the field of education and culture⁶⁰. There are provisions regarding matters handled by the central, provincial, and regency/city governments in matters of education management, curriculum, accreditation, educators, and staff on licensing, which play an important role in the implementation of human rights⁶¹. The main affairs that fall under the authority of the central government are education management, curriculum, accreditation, educators, education licensing, as well as language and literature⁶². Regional governments do not have authority over accreditation because it is the exclusive authority

⁵⁶ BUKHORI MUSLIM, Ahmad. Disadvantaged but more resilient: the educational experiences of indigenous Baduy children of Indonesia. *Diaspora, Indigenous, and Minority Education*, v. 15, n. 2, 99-112, 2021.

⁵⁷ NOMURA, Ko. A perspective on education for sustainable development: Historical development of environmental education in Indonesia. *International Journal of Educational Development*, v. 29, n. 6, 621-627, 2009.

⁵⁸ POHL, Florian. Islamic education and civil society: Reflections on the pesantren tradition in contemporary Indonesia. *Comparative Education Review*, v. 50, n. 3, 389-409, 2006.

⁵⁹ HERMANTO, Bagus, and YUSA, I. G. Children Rights and the Age Limit: The Ruling of The Indonesian Constitutional Court. *Kertha Patrika*, v. 40, n. 2, 61-70, 2018.

⁶⁰ SUARTHA, I Dewa Made Suartha, et.al. Between Mental Illness, Criminal Policy Reform, and Human Rights: Discourse on Reformulation of The Article 44 Indonesia Criminal Code. *International Journal of Criminal Justice Sciences*, v. 17, n. 1, 1-21, 2022.

⁶¹ Can be compared with: OOMEN, Barbara, and BAUMGÄRTEL. Moritz. Frontier cities: The rise of local authorities as an opportunity for international human rights law. *European Journal of International Law*, v. 29, n. 2, 607-630, 2018.

⁶² PARKER, Lyn. Religious education for peaceful coexistence in Indonesia?. *South East Asia Research*, 22(4), 487-504, 2014.

of the central government. The main affairs in the education sector that fall under the authority of the provincial and regency/city governments are six excluding accreditations. The scope of the main affairs in the education sector managed by the central government is different from the regional, provincial, and regency/city⁶³.

4.2 Fulfillment of the Right to Education and the Indonesian Constitutional Court in Affirming the Establishment of Citizens' Constitutional Rights to Education

Katarina Tomasevski stated that the right to education is fulfilled in accordance with four indicators, namely available, accessible, acceptable, and adaptable⁶⁴. These indicators are shown in Table 1.⁶⁵

Table 1. Indicators and Qualifications for the Fulfillment of the Right to Education

Indicators and Qualifications			
Availability	Accessibility	Acceptability	Adaptability
The obligation to guarantee free compulsory education for all school-age up to the minimum age allowed to work.	The obligation to abolish the exclusivity of education based on the prohibition against discrimination, such as ethnicity, skin color, gender, language, religion, opinion, origin, economic status, birth, and social status as well as indigenous people who are poor.	The obligation to set minimum education standards, including the language of instruction, materials, and teaching methods. This is in addition to their application in all educational institutions.	The obligation to plan and implement education for children who do not attend formal schools, such as refugees, those who have lost their freedom, and children workers.

⁶³ HERAWATI, Aloysia Vira, and ERMAKOV, Dmitry Sergeevich. "Human rights education in Indonesian higher education institutions: opinions of students and teachers." *Jurnal Cakrawala Pendidikan*, v. 41, n. 2 541-552, 2022.

⁶⁴ As a comparison, the existence of JLFPHR indicators in protecting human rights to education can be compared with: ROSSER, Andrew. *Law and the realisation of human rights: Insights from Indonesia's education sector*. *Asian Studies Review*, v. 39, n. 2, 194-212, 2015. <http://dx.doi.org/10.1080/10357823.2015.1025462>.

⁶⁵ TOMAŠEVSKI, Katarina. *Has the right to education a future within the United Nations? A behind-the-scenes account by the Special Rapporteur on the Right to Education 1998-2004*. *Human rights law review*, v. 5, n. 2, 205-237, 2005.

Indicators and Qualifications			
Availability	Accessibility	Acceptability	Adaptability
The obligation to respect the freedom of parents to select education for children.	The obligation to eliminate gender and racial discrimination by guaranteeing equal opportunities to fulfill human rights, rather than just formal prohibition.	The obligation is to improve education quality by ensuring that the entire education system is in line with human rights.	The obligation to adapt education to the best interests of every child, such as those with disabilities and the indigenous. The obligation to apply human rights as a whole and guide empowered through education, such as the right to marry and form a family and freedom from pressure to be employed.

Source: Processed from Katarina Tomasevski⁶⁶

First, it relates to the availability of education institutions and programs in sufficient numbers, with the regional government obligated to guarantee free access. This is in addition to compulsory education for all school-age children up to at least the minimum age and those who are allowed to work, with the obligation to respect the freedom of parents to select education for children. Second, accessibility means that regional governments should eliminate practices of gender and racial discrimination, not only as a formality but in real terms. The exclusivity of education should be abolished by prohibiting discriminatory practices ba-

⁶⁶ TOMAŠEVSKI, Katarina. *Pendidikan Berbasis Hak Asasi: Penyederhanaan Persyaratan Hak Asasi Manusia Global. Proyek Kerja Sama antara Pelapor Khusus Perserikatan Bangsa-Bangsa (PBB) tentang Hak atas Pendidikan dan Biro Pendidikan Wilayah Asia Pasifik UNESCO*. Bangkok: Biro Pendidikan Wilayah Asia Pasifik UNESCO, p. 8, 9.

sed on ethnicity, skin color, gender, language, religion, opinion, origin, birth, economic status, social status, minority or indigenous people status, while providing equal opportunities⁶⁷. Third, acceptability implies that education institutions and programs should be accessible to everyone, specifically the most vulnerable groups, legally and factually. This should be conducted by permitting the use of the mother tongue as the language of instruction and prohibiting the imposition of physical punishment on students who break the rules. Finally, adaptability implies that education institutions must be responsive to the needs of each student, those with special needs, minorities, and indigenous people.

These four parameters make this study examine the right to education in Indonesia which is reflected in several Constitutional Court Decisions from 2003 to 2022. Table 2 is a detailed description of the establishment of the Constitutional Court in defending and strengthening the right to education in Indonesia.

Table 2: The Constitutional Court Decisions and the Core Considerations or Directions for the Establishment of Human Rights Issues to Education in Indonesia

Constitutional Court Decisions and Related Articles	The Constitutional Court's substances/considerations related to the issue of the right to education
Constitutional Court Decision 011/PUU-III/2005 (Testing of Article 17 paragraphs 1-2 and explanation of Article 49 paragraph (1) of the National Education System Law) ⁶⁸	Affirmation of the direction of the national policy oriented toward the fulfillment of human rights to education in Indonesia. Affirmation of the implementation of <i>expressis verbis</i> constitutional provisions that cannot be postponed while upholding constitutional values and existing legal principles.

Constitutional Court Decisions and Related Articles	The Constitutional Court's substances/considerations related to the issue of the right to education
Constitutional Court Decision 026/PUU-III/2005 (Testing of Law 13/2005 concerning State Budget 2006) ⁶⁹	Approximately 20% of the State Budget is allocated to education. There needs to be an interpretation to realize human rights in education as part of nation-building. This is because the Constitutional Court is based on conformity by prioritizing development strategies based on human investment and policy aimed at promoting the state's ability to comply with constitutional provisions, including allocations for the welfare of teaching staff. Furthermore, the recognition of human rights is multi-faceted because it is from a civil and political perspective. These include economic, social, and cultural perspectives regarding fulfillment for the state. Any denial of the articles is a delegitimization of the constitution.
Constitutional Court Decision 026/PUU-IV/2006 (Testing of Law 18/2006 concerning State Budget 2007) ⁷⁰	
Constitutional Court Decision 24/PUU-V/2007 (Testing of Law 20/2003 concerning National Education System and Law 18/2006 concerning State Budget 2007) ⁷¹	
Constitutional Court Decision 13/PUU-VI/2008 (Law 16/2008 concerning Revised State Budget 2008) ⁷²	

⁶⁷ AZEVEDO, Hiran Catuninho. The role of sustainable learning policies on the fight against hunger in adult education. *Revista de Direito Internacional*, v. 14, n. 1, p. 80-97, 2017, DOI: 10.5102/rdi.v14i1.4357.

⁶⁸ INDONESIA, Constitutional Court Decision 011/PUU-III/2005, p. 100-102.

⁶⁹ INDONESIA, Constitutional Court Decision 026/PUU-III/2005, p. 80-85.

⁷⁰ INDONESIA, Constitutional Court Decision 026/PUU-IV/2006, p. 92-95.

⁷¹ INDONESIA, Constitutional Court Decision 24/PUU-V/2007, Paragraph 3.16.1, 3.16.5, and 3.16.9.

⁷² INDONESIA, Constitutional Court Decision 13/PUU-VI/2008, Paragraph 3.14. and 3.16.

Constitutional Court Decisions and Related Articles	The Constitutional Court's substances/considerations related to the issue of the right to education	Constitutional Court Decisions and Related Articles	The Constitutional Court's substances/considerations related to the issue of the right to education
<p>Constitutional Court Decision 11-14-21-126 and 136/PUU-VII/2009 (Article 6 paragraph (1)-(2), Article 7 paragraph (2), Article 9, Article 11 paragraph (2), Article 12 paragraph (1) letters c-d, Article 12 paragraph (2) letter b, Article 24 paragraph (3), Article 46 paragraph (1) the phrase "and the community" and an explanation of Article 46, Article 47 paragraph (2), Article 56 paragraphs (1)-(3) Law 20/2003 concerning National Education System; Law 9/2009 concerning Education Legal Entities)⁷³</p>	<p>The Constitutional Court emphasized the philosophical, academic, and juridical aspects regarding the government's duty to educate the nation's life.</p> <p>The issue of Education Legal Entities, in this case, can be conducted based on the Constitutional Court Decision Number 021/PUU-IV/2006. This includes basing state function aspects of educating the nation's life, philosophical, and regulatory aspects of not reducing the implementation of state responsibilities, as well as community aspiration and participation aspects.</p> <p>The national education system should provide space for existing potential in its implementation at the national level.</p> <p>The government's pretext for uniform supervision of the implementation of education has no justification for degrading human rights. This is generally obtained by setting aside the government's focus on the widest possible accessibility of education for citizens. Therefore, the Central and Regional Education Legal Entities focused on more important field of education.</p>	<p>Constitutional Court Decision 5/PUU-X/2012 (Law 20/2003 concerning National Education System)⁷⁵</p>	<p>The government's obligation is to organize and develop at least one education unit into an international standard education unit. An example is the International Standard School (ISS), which is still in the form of an International Standard School Pilot (ISSP). The Constitutional Court emphasized that the output of education, which should produce students with the ability to compete in a global world and foreign language skills, does not have to be labeled with an international standard. In addition to not having an international standard as a reference, the term "international" in ISS/ISSP can create national education output detached from the cultural roots of the Indonesian nation with a national awareness of their faith and noble character.</p> <p>The issue of differentiating ISS/ISSP from non-ISS/ISSP, both in terms of facilities, infrastructure, financing, and education output, will create different treatment between the two schools. According to the Court, this differential treatment is contrary to the constitutional principle that needs equal treatment to schools and students since they are owned by the government. The court understands that the government needs to provide room to obtain special treatment for those with more abilities and intelligence. Therefore, special treatment is also needed in education services by forming unfair differential treatment that is not in line with the constitutional principle.</p> <p>Besides the differential treatment associated with access to education, it also leads to commercialization which is contrary to its implementation and responsibility of the state. Moreover, primary education should be fully funded by the state.</p>
<p>Constitutional Court Decision 58/PUU-VIII/2010 (Article 55 paragraph (4) Law 20/2003 concerning National Education System)⁷⁴</p>	<p>Affirmation of the state's role in educating the nation's life, related to human rights to education, is the responsibility of the state.</p> <p>The central and regional governments are obligated to provide technical assistance, subsidies, and other resources fairly and equitably to all levels of community-based education institutions. However, this is not expressly stipulated in the 1945 Constitution, which interprets it as having to be realized for the primary education level. According to the state's financial capacity, the government has the discretion to finance all or part of the education costs of other levels.</p>		

Source: Processed from the website of the Constitutional Court (2003-2022)

⁷³ INDONESIA, Constitutional Court Decision 11-14-21-126 and 136/PUU-VII/2009, Paragraphs 3.33, 3.34, 3.35, 3.37, 3.41, and 3.44.

⁷⁴ INDONESIA, Constitutional Court Decision 58/PUU-VI-II/2010, Paragraphs 3.18, 3.19.

⁷⁵ INDONESIA, Constitutional Court Decision 5/PUU-X/2012, Paragraphs 3.17, 3.18, 3.19, and 3.20.

According to Frans Viljoen, the court decision – in this case – eight Constitutional Court Decisions concerning human rights to education in Indonesia with reference to the four indicators and qualifications – are inseparable and fundamental⁷⁶ towards the development of national laws⁷⁷. Efforts to prosecute the protection and fulfillment of human rights to education are also one of the things inherent in the respect and promotion of this process⁷⁸. This is inseparable from global developments in which the state,⁷⁹ as the main obligation stakeholder, can play itself optimally⁸⁰. The protection and fulfillment of human rights to education⁸¹ still shows an opaque portrait, and the opacity can be brightened by the certainty of an effective legal mechanism to demand justice for human rights violations⁸², as stated in Article 8 of the 1948 UDHR. It is understood that obligations undertaken by states, and the international community, under international instruments shall be implemented in good faith. The protection and fulfillment of human rights⁸³, including towards education characterize a state's political maturity in positioning itself as a regulator.⁸⁴ Moreover, protectors for the fulfillment of basic human needs primarily maximize all the capabilities of the state to achieve progressively the

rights, including the adoption of legal measures⁸⁵. The state plays a strategic role in formulating and strengthening a national legal framework⁸⁶ which synergizes steps in efforts to protect and fulfill human rights⁸⁷. The Constitutional Court decisions play a role in redirecting the state to the consistency desired for the justiciability of human rights, including education.

Based on several Constitutional Court Decisions, the conditions for fulfilling economic, social, and cultural human rights should be strengthened. This is based on the power of understanding and awareness of its existence, which promote and guarantee education under any circumstances. Fulfillment is also closely related to human dignity by affirming an appropriate legal policy mechanism and space, which is in line with the principles of the rule of law, democracy, and constitutionalism.

These issues tend to prioritize digitization without ensuring quality and sustainability of educational benefits for students. Despite promoting technology assimilation among students, teachers, and administrators, as well as for teaching and learning processes, access to educational literacy, and various documentation of educational implementation, there is still a need to ensure effectiveness and longevity of education. This is further complicated by the lack of specific regulations and guaranteed legal protection for the integration of hybrid learning and home-schooling models, and the fact that curriculum development has yet to address the necessary adjustments in competencies, particularly with regard to accelerating Indonesia's economic growth through macro-level human resource development based on educational improvements in the Indonesian sector.

Efforts at the level of positive law can be carried out (1) through a constitutional reference to international treaties that contain socio-economic rights; (2) as specific socio-economic rights included as justiciable guarantees in the Constitution Bill of Rights or Directive Principles of State Policy/RPJPN-RPJMN and RANHAM;

⁷⁶ RAPATSA, Mashele. South Africa's transformative Constitution: from civil and political rights doctrines to socio-economic rights promises. *Tribuna Juridică*, v. 5, i. 10, 2015, p. 208-219.

⁷⁷ Viljoen, Frans, National Legislation as a Source of Justiciable Socio-Economic Rights, *ESR Review*, v. 6, i. 3, 1-15, September 2005.

⁷⁸ LIMPO, I. Y., et al. Potret of Basic Education in Indonesia. *JL Pol'y & Globalization*, 69, 89, 2018.

⁷⁹ SUBAWA, Made. Implikasi Yuridis Pengalihan Kekuasaan Membentuk Undang-Undang Terhadap Sistem Ketatanegaraan Republik Indonesia Pasca Perubahan Undang-Undang Dasar 1945. *DISSERTATION UNIVERSITAS AIRLANGGA*, 2003.

⁸⁰ SUBAWA, Made, et al. The Arrangement on Preventive and Evaluative Mechanism towards Regulatory and Statutory Laws Quality Improvement in Indonesia, Paper was presented at the Conference on Socio-Legal and Humanities Research, 2022.

⁸¹ FAISAL, F., and MARTIN, S. N., Science education in Indonesia: past, present, and future. *Asia Pacific Science Education*, v. 5, n. 4, p. 1-29, 2019, DOI: <https://doi.org/10.1186/s41029-019-0032-0>.

⁸² AQIMUDDIN, Eka An, and LATIPULHAYAT, Atip. Legality and legitimacy of domestic court decision as a source of International Law-making. *Revista de Drepto Internacional*, v. 20, n. 1, p. 129-141, 2023, DOI: [10.5102/rdi.v20i1.9080](https://doi.org/10.5102/rdi.v20i1.9080).

⁸³ ROSSER, Andrew. Towards a political economy of human rights violations in post-New Order Indonesia. *Journal of Contemporary Asia*, v. 43, n. 2, p. 243-256, 2013, DOI: <https://doi.org/10.1080/00472336.2012.757436>.

⁸⁴ HERMANTO, Bagus. Deliberate legislative reforms to improve the legislation quality in developing countries: case of Indonesia. *The Theory and Practice of Legislation*, v. 11, n. 1, p. 1-31, 2023, DOI: <https://doi.org/10.1080/20508840.2022.2080392>.

⁸⁵ EIDE, Asbjørn. Economic, Social, and Cultural Rights as Human Rights In: EIDE, Asbjørn et al. (ed.), *Economic, Social and Cultural Rights: A Textbook* Boston: Martinus Nijhoff Publishers, 1995, p. 21, 35.

⁸⁶ ATMAJA, Gede Marhaendra Wija, et al. *Hukum Kebijakan Publik*. Denpasar: Swasta Nulus, 2022, p. 108-112.

⁸⁷ ULUM, Muhammad Bahrul, & WILDANA, D. T. Promoting the Right to Education through A Card: A Paradox of Indonesia's Educational Policy?. *Journal of Indonesian Legal Studies*, v. 4, i. 1, 143, 2019.

and (3) through domestic legislation based on the ideology that underlies the national economic, political, and legal order. Therefore, norms related to human rights in education do not become piles of thick paper that are neatly bound as reference material without action⁸⁸, thereby violating the essence of human rights. In this case, it will be related to, first, human resources and the Education Implementing Structure, namely recruitment issues,⁸⁹ technical assistance as well as the readiness of resources to support the continuing process⁹⁰. Second, the application and adaptation to the progress of the times do not diminish the state's responsibility for human rights to education, either by implementing the use of ICT in global developments or as a force in the flow of globalization and technological flows. Third, the need for consistency in policy, which is not based on differences in Directive Principles when there is a transfer of power from the previous government. This includes the need for a grand design/framework for the national education policy. Finally, with the interpretation of the Constitutional Court Decisions, an educational policy should be based on good faith, commitment, and a national policy orientation that makes education the driving force of a nation's development.

5 Conclusion

The Indonesian policy in the context of realizing the right to education is based on philosophical, sociological, and juridical considerations. This is achieved on four core elements, including 1.) Everyone's right to gain access to existing public schools should be protected, 2.) Availability of compulsory and free primary education, 3.) Freedom to have education in accordance with religion and beliefs, and 4.) The right to obtain education in the language of one's choice without violation at the national to regional policy levels.

⁸⁸ SUSANTI, D. Privatisation and marketisation of higher education in Indonesia: the challenge for equal access and academic values. *Higher Education*, v. 61, i. 2, 209-218, 2011. DOI: <https://doi.org/10.1007/s10734-010-9333-7>.

⁸⁹ ASHADI, Ashadi & RICE, Suzanne, High stakes testing and teacher access to professional opportunities: lessons from Indonesia, *Journal of Education Policy*, v. 31, i. 6, 727-741, 2016, DOI: <http://dx.doi.org/10.1080/02680939.2016.1193901>.

⁹⁰ BREWIS, E. Fair access to higher education and discourses of development: a policy analysis from Indonesia. *Compare: A Journal of Comparative and International Education*, v. 49, i. 3, 453-470, 2019. <http://dx.doi.org/10.1080/03057925.2018.1425132>.

This study also found eight Constitutional Court Decisions in the context of protecting and affirming the establishment of the Constitutional Court to uphold the constitution, specifically those on human rights to education. The decisions are related to budgeting politics, budget allocation, technical support, education policy, national orientation, supporting legal entities, the recruitment system, and the improvement of fundamental aspects. It is also related to international pilot schools that are not in line with the spirit of education in Indonesia by avoiding discrimination in the implementation process. Furthermore, human rights to education in Indonesia should be organized in terms of recruitment, systems, policy patterns, grand design, and use of qualified resources. Education should be able to adapt to global developments and current needs by upholding human rights. Further studies are needed to realize the fundamental elements of human rights to education in Indonesia in accordance with international consensus and legal requirements.

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