



Dynamics Of Implementation Of The Right To Education From An Indonesian Legal Perspective

Abdul Hamid Tome¹*, Mohamad Hidayat Muhtar¹, Nirwan Junus¹,
Nurul Fazri Elfikri¹

¹ Faculty of Law, State University of Gorontalo, Gorontalo, Indonesia
hamidtome@ung.ac.id *

Abstract. This research aims to understand and analyze the dynamics of implementing the right to education in Indonesia in a legal context, focusing on increasing access and quality of education by Indonesian laws and regulations. This research uses normative legal methods, combining philosophical and analytical approaches. The analysis was conducted descriptively, examining existing regulations, court decisions, and law enforcement practices related to education. A philosophical approach explores the theoretical basis and concepts underlying educational policies, while an analytical approach focuses on the practical application of these policies. This research identifies various obstacles to implementing inclusive and equitable education policies, including the problem of non-uniform policy implementation at the regional level, as well as challenges in financing and resource management. Although there has been some progress in access to education, significant gaps still need to be addressed to achieve the goal of equitable and high-quality education.

Keywords: Right to Education, 1945 Constitution, Education Policy

1. Introduction

The implementation of the right to education in Indonesia, which is contained in Article 28C paragraph 1 of the 1945 Constitution of the Republic of Indonesia, is the foundation that confirms that every citizen has the right to education. This right is not just a normative statement but a state commitment to provide quality and affordable education for all levels of society.[1] In practice, the right to education in Indonesia has experienced various dynamics and challenges, ranging from equal distribution of access to education and increasing the quality of inclusive education to adapting to technological developments and social change. As the main organizer, the government strives to ensure that the educational policies and programs implemented can meet basic educational needs and support each individual's maximum potential. Thus, implementing the right to education aims to fulfil constitutional obligations and achieve the vision of a more advanced and just Indonesia.[2]

Article 28C paragraph 1 of the 1945 Constitution emphasizes the right of every citizen to develop their potential through education and other basic needs, which indirectly guides Indonesia towards more inclusive social and economic progress. The state plays a vital role in ensuring that access to quality and equitable education becomes a reality for all citizens, not limited to specific groups. This effort includes building adequate educational infrastructure, providing competent educational resources, and developing a curriculum relevant to the needs of the times and technological developments.

Furthermore, the implementation of this article also includes integrating science, technology, arts, and culture in education, thereby increasing intellectual capacity, social

© The Author(s) 2024

G. W. Pradana et al. (eds.), *Proceedings of the 4th International Conference on Social Sciences and Law (ICSSL 2024)*, Advances in Social Science, Education and Humanities Research 877,

https://doi.org/10.2991/978-2-38476-303-0_101

sensitivity, and broader cultural appreciation among citizens. This means that education in Indonesia is designed as a tool for achieving personal progress and as a medium for strengthening national identity and advancing general welfare.

However, challenges remain, especially in overcoming education gaps in remote and marginal areas. Many children still need help accessing quality education due to geographical, economic and social limitations. For this reason, affirmative policies and education subsidies are critical to ensure that every child, regardless of background, has the same opportunity to learn and develop.

The dynamics of implementing the right to education in Indonesia, as regulated in Article 28C paragraph 1 of the 1945 Constitution, reflects ongoing struggle and efforts to provide fair and equitable education. In terms of policy, the government has launched various programs and initiatives, such as the 12-year compulsory education program supported by School Operational Assistance (BOS), to reduce the burden of education costs for underprivileged families. Apart from that, the recent implementation of the Independent Curriculum also shows efforts to synchronize education with the competency needs of the 21st century and accommodate students' creativity and critical skills.[3]

In practice, geographic and economic constraints are often the main obstacles to equalizing the quality of education. For example, access to decent schools and qualified teaching staff in some remote areas needs improvement. This leads to disparities in educational outcomes between urban and rural areas. The government has tried to overcome this by building more educational infrastructure in isolated areas and placing teachers through programs such as Non-Permanent Employees (PTT) and frontline teachers.

On the other hand, digital transformation has become one of the government's strategies to increase access to education through online learning. This initiative has proven crucial, especially during the COVID-19 pandemic, when face-to-face learning was hampered. However, a new challenge has emerged in the digital divide, where not all students can access stable internet connectivity or adequate digital devices. This shows that while technology can be a tool of empowerment, it can also widen gaps if not managed wisely.

One of the main problems is the need for uniformity in implementing education policies in various regions. This is often associated with policy changes that occur every time there is a change in leadership at the ministerial or local government level, often leading to different approaches to the same problems. This phenomenon of "changing ministers changing policies" creates instability in the education system and hampers efforts to improve the quality of education nationally.

The approach to the national final exam as a graduation determinant is another critical point. This system is considered to reduce the value of education to just a final assessment without paying attention to the holistic learning process and character development. Educational policies focusing on exam results often limit creativity and innovation in teaching and learning and ignore other important aspects, such as character education and life skills.

Furthermore, implementing free education up to the high school level, one of the hopes for realizing broad and equitable access to education still needs to be fully realized. Many schools, especially at the private level, still need to work on managing operational costs without imposing additional fees on students. This contradicts the principle of free education, which should be guaranteed by the state, and shows a significant gap between public and private schools regarding funding.[4]

Apart from that, the issue of transparency in the management of education funds is also in the spotlight. Ambiguity and inconsistency in the rules governing financial management

in schools often make reporting and budgeting difficult, which ultimately has the potential to reduce the efficiency and effectiveness of the use of education funds.

Indonesia faces challenges in ensuring consistent and effective implementation of its National Education System Law (UU Sisdiknas No. 20 Tahun 2003) across all government levels. This inconsistency creates hurdles in achieving a uniform national education system. To address this, the government can focus on strengthening communication and collaboration between national and regional education authorities. Additionally, establishing clear guidelines and benchmarks for policy implementation at local levels can promote consistency.

Furthermore, a significant educational gap exists between public and private schools, particularly in terms of funding and operational cost management. This disparity hinders the promise of truly equal and inclusive access to free education. To bridge this gap, the government can explore strategies such as needs-based funding allocation that prioritizes resource distribution towards underfunded public schools. Additionally, initiatives promoting best practices in financial management within the public school system can improve efficiency and potentially free up resources for enhancing educational quality. By addressing these issues, Indonesia can move closer to achieving a more equitable and effective national education system.

Facing these challenges, Indonesia needs to continue implementing policy improvements and adjustments that ensure the fulfilment of the right to education as a constitutional mandate and strengthen the foundations of an inclusive and sustainable education system. Policy consistency, improving teacher quality, responsive curriculum development, and transparent and accountable management of education funds are several essential steps that must continue to be fought for to ensure that every Indonesian citizen gets a decent and quality education by the mandate of the 1945. Constitution.

2. Methods

This research is categorized as normative legal research, which is based on the issues and themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational, critical analytical, and philosophical views and ends with a conclusion that aims to produce new findings to answer the main problem that has been determined.[5] It will also be analyzed using a descriptive-analytical method by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to this problem.[6]

The philosophical approach allows for deepening the theoretical principles and concepts underlying educational policy, exploring the philosophical foundations of existing problems. It involves critical thinking and in-depth analysis of the values and assumptions that shape current educational policy. This approach also focuses on broader interpretation and evaluation of the law's effectiveness in achieving larger social goals, such as equality and broad educational access.

The philosophical approach allows for deepening the theoretical principles and concepts underlying educational policy, exploring the philosophical foundations of existing problems. It involves critical thinking and in-depth analysis of the values and assumptions that shape current educational policy. This approach also focuses on broader interpretation and evaluation of the law's effectiveness in achieving larger social goals, such as equality and broad educational access.

3. Education policies at all levels of government to ensure uniform and effective implementation of the National Education System Law no. 20 of 2003

In facing significant challenges related to implementing uniform and effective education policies at all levels of government, National Education System Law No. 20 of 2003 (National et al. Law) offers a comprehensive framework. Still, it requires strong coordination between various government entities. This policy, intended to answer the need for quality and equitable national education, requires strong synergy between the central and regional governments in its implementation.[7] This coordination is critical in ensuring that any regulations and initiatives designed at the national level can be effectively translated into local practices that suit each region's specific context and needs.

One of the main aspects of this law is guaranteeing equal and free access to education for primary and secondary education, which must be realized through adequate budget allocation and efficient resource management by local governments.[8] However, differences in capacity between regions often become an obstacle to implementing this policy uniformly. Therefore, the central government needs to play a more significant role in providing financial and technical support to ensure that national education standards can be implemented consistently throughout Indonesia.

Effective implementation also requires transparency and accountability in the management of education funds. This means that any use of funds must be reported clearly and accessible to the general public, allowing for monitoring and active participation by the community in the education process. This public oversight can ensure that education funds are appropriately used and produce the desired outcomes.

Apart from that, the role of society and industry is also vital in strengthening the national education system. Collaboration between schools and local industry can be intensified to develop curricula that are not only theoretical but also applicable, preparing students with relevant skills for the local and global job market. Initiatives such as ISO certification for educational institutions, as explained previously, can also be a tool to improve the standards and quality of education provided.

More comprehensive and systematic steps are needed to implement the National Education System Law No. 20 of 2003 uniformly. As discussed previously, transparency and accountability in the management of education funds are crucial starting points. This ensures that every cent of education funds is invested wisely and by applicable regulations, and the results of these investments must be measurable through improvements in the quality of education and the availability of better educational facilities throughout Indonesia.[9]

Furthermore, to further improve the quality of implementation of this policy, local governments need to increase their capacity and ability to plan and manage education. The central government can provide training and resources for local governments to develop effective strategic plans in the education sector. This includes training in financial management, monitoring the quality of education, and the application of information technology in educational administration.

Furthermore, to further improve the quality of implementation of this policy, local governments need to increase their capacity and ability to plan and manage education. The central government can provide training and resources for local governments to develop effective strategic plans in the education sector. This includes training in financial management, monitoring the quality of education, and the application of information technology in educational administration.

Industry involvement is also critical. Industry can provide input on the skills needed in the job market, which can be used to develop curricula that are relevant and responsive to market needs. Collaboration between schools and companies can be improved through internship programs, industrial visits and sponsorship, which can help improve the quality of learning and give students real experience in the world of work.

Apart from that, the use of technology in education must be further optimized. Digital learning and online learning resources can be a solution to achieving equitable access to education, especially in remote and underserved areas. Investment in information and communication technology infrastructure in schools must continue to be increased to support effective and inclusive learning.

Article 5, paragraph (1) of the National Education System Law confirms that every citizen has the same right to obtain quality education. This reflects Indonesia's constitutional commitment to guarantee equality in access to education. However, in practice, the realization of this article needs to be improved by the inequality of educational infrastructure and resources between regions. For example, remote and less developed areas still need help providing adequate educational facilities and qualified teaching staff, which directly affects the quality of education students receive.

Meanwhile, Article 6 paragraph (1) stipulates the obligation for every citizen aged seven to fifteen years to attend primary education, reflecting the government's efforts to expand access to education as part of the compulsory education program. However, challenges arise in terms of education financing. Even though primary education should be free, many schools still charge unaffordable additional fees for most families in Indonesia, indicating a mismatch between policies mandated by law and the reality on the ground.[10]

These two articles are designed to strengthen the foundations of the education system in Indonesia by guaranteeing the right to education for all and compulsory education to expand basic literacy. Analysis of articles in the National Education System Law no. 20 of 2003 relating to guaranteeing equal and free access to education for primary to secondary education, as well as equality in access to education by Article 5 paragraph (1) and Article 6 paragraph (1), shows a solid legislative commitment in supporting the principles constitutional. However, the reality of implementation in the field often only partially matches this idealism. The inequality of educational infrastructure and resources in various regions and problems in financing education that should be free indicate a significant gap between policy and practice.

In this context, there are two main issues: first, the problem of unequal distribution of resources, where remote and less developed areas experience more significant difficulties in providing adequate educational facilities and qualified teaching staff. Second, financing constraints are manifested through the imposition of additional fees by schools, even though the law stipulates primary education as a service that must be provided free of charge. These issues not only hinder the achievement of educational equality but also deepen socio-economic disparities in society.

Solving this problem requires more comprehensive and systematic steps from the government. These include increasing the quality and quantity of investment in educational infrastructure in disadvantaged areas and stricter supervision over the implementation of free education policies to ensure that no hidden costs are being passed on to students. The central government must play a more active role in coordinating and supporting regional governments in this implementation and ensuring that the policies made can be implemented effectively throughout Indonesia.

Furthermore, transparency and accountability in managing education funds must be increased to ensure that educational resources are used efficiently and effectively, achieving

the expected results. Increasing community participation and collaboration with the industrial sector is also very important to ensure that the curriculum and educational programs are theoretical, applicable, relevant to job market needs, and can improve the quality of Indonesian education graduates.[11]

Therefore, while the National Education System Law No. 20 of 2003 has great potential in defining a framework for an inclusive and quality national education system, there is still much work to be done to overcome the challenges in its implementation. This requires a coordinated, participatory, and results-oriented approach involving all stakeholders in the educational process.

4. Steps that can be taken to overcome the education gap between public and private schools, especially in the context of financing and managing operational costs, so that access to free education can be realized more evenly and inclusively

The educational gap between public and private schools in Indonesia, especially in financing and managing operational costs, is a crucial issue that requires serious handling to realise access to free education more equally and inclusively. The significant differences in resources and financial support between these two types of schools often create disparities in the quality of education students receive. To achieve the vision of a fair and equitable national education, there needs to be a comprehensive strategy designed to address differences in funding and strengthen the education system as a whole. These steps should include policy reform, increased budget allocations, and effective monitoring mechanisms, which together can help reduce inequality and ensure that every child in Indonesia has an equal opportunity to receive a quality education.

A series of strategic steps must be taken to overcome the educational gap between public and private schools in Indonesia, especially in financing and managing operational costs. First, the government needs to evaluate and reform existing policies. This policy must include equal distribution of education funds, where private schools that meet specific criteria can receive subsidies from the government to support their operational costs. This will help private schools, especially those in disadvantaged areas, to continue providing quality education without charging students additional fees.

Furthermore, budget allocations for fairer and more equitable education need to increase. This budget must be directed to physical infrastructure, developing teacher capacity, and providing learning materials and educational technology. In this way, schools in less developed areas can improve their educational standards and compete with schools in more developed areas.

Apart from that, the government needs to strengthen monitoring and accountability mechanisms in managing education funds. This can be done through stricter audits and transparency in reporting the use of funds. By ensuring that every dollar of education funding is used effectively and efficiently, the government can reduce the possibility of misuse and ensure that these resources are used to improve the quality of education.

The next step is increasing public and private school collaboration through partnership programs. These programs may include teacher exchanges, learning resource sharing, and student collaborative projects. Initiatives like this help reduce educational disparities and enrich the learning experience for students from both types of schools.

In order to overcome the educational gap between public and private schools in Indonesia, the link with the National Education System Law No. 20 of 2003 has become very relevant. This law provides explicitly a legal framework that supports equal distribution of education and a strong mandate for the government to guarantee equal and quality access to education

for all citizens, as mandated in Article 5 paragraph (1), which states that every citizen has the same rights. To obtain a quality education. To fulfil this provision, the government needs to increase the quality and quantity of special budget allocations for education, mainly to ensure that private schools can also provide educational services equivalent to state schools.

Furthermore, Article 6, paragraph (1), confirms that primary education is mandatory education for a minimum of nine years for every Indonesian citizen and must be supported by adequate financing from the government to eliminate additional costs that often become a burden for students and families. This step is essential to realize genuinely free access to education. Therefore, budget allocations and education financing must be strengthened and expanded to cover all aspects of school operations, including in private schools, so that no student is denied access to education for economic reasons.

In the context of supervision, Article 49 of the National Education System Law stipulates that a minimum of 20% of the allocation of education funds from the APBN and APBD must be used for education, including the salaries of educators and lecturers and other education costs. Implementing an effective monitoring mechanism for these funds is essential to ensure transparency and accountability in budget use. Strong oversight can minimize the misappropriation of funds and ensure that these funds are used to improve the quality of education in all public and private schools.

Addressing the education gap between public and private schools requires more substantial and strategic action to ensure all Indonesian children have equal access to high-quality education. The articles related to the National Education System Law No. 20 of 2003 provide a solid legal basis for government intervention. However, this policy must be executed more deeply and firmly to ensure its effectiveness.

1. Increase in Budget Allocations

Article 49, which regulates the education budget allocation of at least 20% of the APBN and APBD, must be further emphasized and sharpened regarding its distribution. There needs to be a clear line that these funds also include support for private schools, especially those serving low-income communities, to reduce the operational cost burden often placed on parents. This increased allocation is not only for infrastructure but also for developing teacher capacity and purchasing educational equipment and technology that supports the teaching and learning process.

2. Policy and Regulatory Reform

The government must review existing policies and create new regulations supporting equal education access. This includes providing incentives for private schools to meet the government's specific educational standards. These policies can take the form of direct subsidies or financing schemes that allow private schools to offer students free or very low-cost education.

3. Strict Monitoring and Evaluations

Implementation of policies must be followed by strict monitoring and evaluation. The government must strengthen oversight mechanisms to ensure that education funds are used transparently and accountable. Regular audits and public reports should become the norm, with audit results accessible to the general public to strengthen public confidence in the education system.

4. Increased Cooperation between Public and Private Schools

Facilitating collaboration between public and private schools can increase sharing of resources and best practices. Programs such as teacher exchanges and curriculum sharing can help equalize educational standards between schools. In addition, collaborative programs between public and private schools in

extracurricular activities and research can strengthen relationships and improve the overall quality of education.

5. Use of Technology in Education

Technology integration in education must be accelerated in public and private schools. Technology can provide access to a broader range of learning resources and reduce inequality in educational resources. Investments in online learning platforms and digital content development should be a priority, especially for underserved areas.

By implementing these more substantial and comprehensive steps, it is hoped that not only can the educational gap between public and private schools be reduced, but also the quality of education in Indonesia, in general, will improve, creating a more empowered and potential future generation.

5. Conclusion

This research shows that implementing the right to education in Indonesia, as regulated in Article 28C paragraph 1 of the 1945 Constitution and the National Education System Law, still faces significant challenges requiring severe attention from all relevant parties. Despite ongoing efforts to expand access and improve the quality of education, lack of uniformity in policies at the regional level and funding constraints continue to hinder the achievement of inclusive and equitable education. To overcome this problem, strategic steps are needed, including more coherent and integrated policy reform, increasing adequate education budget allocations, and strict monitoring and evaluation to ensure the effectiveness of resource use. The government must play a more significant role in supporting local governments and ensuring that the policies implemented can achieve the desired results. Collaboration between public and private schools must also be improved to ensure that all students, regardless of their background, have access to quality education.

The use of technology in education must also be increased to reach underserved areas and overcome resource disparities. Investments in educational technology will help improve the accessibility and quality of learning materials, providing better opportunities for all students to learn and develop. This research concludes that to realize its vision of fair and equitable education, Indonesia must continue to strengthen its education policy framework, increase investment in educational resources, and utilize technology to expand access and improve the quality of education across the country.

REFERENCES

1. A. Nanggala and D. Risda, "telah liberalisasi pendidikan tinggi indonesia dan pemenuhan hak-hak mahasiswa dalam perspektif hukum," *Bhineka Tunggal Ika: Kajian Teori dan Praktik Pendidikan PKn*, vol. 9, no. 2, pp. 188–199, 2022.
2. D. Dede, "Perbandingan Hak Pendidikan dalam Konstitusi Negara Indonesia dengan Konstitusi Beberapa Negara di Asia Tenggara," *Jurnal Nalar Pendidikan*, vol. 8, no. 1, pp. 55–62, 2020.
3. B. D. Anggono, "Konstitusionalitas dan Model Pendidikan Karakter Bangsa Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi*, vol. 11, no. 3, pp. 492–514, 2014.
4. E. Sujatmoko, "Hak warga negara dalam memperoleh pendidikan," *Jurnal konstitusi*, vol. 7, no. 1, pp. 181–212, 2010.
5. I. Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*. Alfabeta, 2017.
6. M. P. Mahmud, "Penelitian Hukum edisi revisi," *Jakarta: Kencana Prenada Media Group*, 2017.
7. A. Riyanto, "Notifikasi Hukum Konstitusi Melalui Pendidikan," *Jurnal Hukum dan Pembangunan Tahun ke-38 No. 1*, vol. 1, 2017, Accessed: Jun. 26, 2024. [Online]. Available: <https://scholar.archive.org/work/zfqegbly3vfwrkxafb5wzlr6gq/access/wayback/http://jhp.ui.ac.id/index.php/home/article/download/163/101>

8. D. H. Nasution, "Pemenuhan Hak-Hak Atas Pendidikan," *Jurnal Hak Asasi Manusia*, vol. 8, no. 8, pp. 69–94, 2012.
9. E. Suryana and B. Anggara, "Pemenuhan Hak-Hak Pendidikan Keagamaan Islam Anak Binaan Di Lembaga Pemasarakatan Pakjo Palembang," *Tadrib*, vol. 3, no. 1, pp. 162–186, 2017.
10. D. Dewantoro and D. E. Andriani, "Permasalahan-permasalahan Pendidikan yang Dihadapi Sekolah di Tahun Pertama Pandemi Covid-19," *Jurnal Manajemen Pendidikan: Jurnal Ilmiah Administrasi, Manajemen dan Kepemimpinan Pendidikan*, vol. 4, no. 1, pp. 97–113, 2022.
11. A. Pradjasto, "Membela hak-hak asasi ekonomi dan sosial," *Jurnal Hak Asasi Manusia*, vol. 1, no. 1, pp. 1–16, 2003.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

