

Analysis of the Paradigm Shift in the Right to Education during a Pandemic for Students from a Human Rights Perspective

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Abstract

The purpose of this study was to analyze access to the paradigm shift in the right to education during the pandemic for students from the perspective of human rights. This study uses a type of juridical-normative research. The primary legal sources used in this research are the 1945 Constitution of the Republic of Indonesia, Law No. 20 of 2003 concerning the National Education System, the 1948 Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights. The types of legal sources used in this study are primary and secondary sources of law. Based on the analysis of legal sources, it can be concluded that the implementation of education is a right to education protected by the 1945 Constitution of the Republic of Indonesia and confirmed by the Human Rights Act. Understanding the right to education is more broadly understood as obtaining educational services in various forms/methods of online learning. Learning to use internet media also confirms that the right to education is closely related to the completion of the right to information following Articles 13, 14 and 15 of the Covenant on Economic, Social and Cultural Rights.

Keywords

Analysis; right to education; human rights; pandemic covid-19



I. Introduction

The implementation of distance learning in elementary, junior high and senior high schools in 2020 has created new social problems in Indonesia related to the right to education. Along with technology development, Indonesia is also familiar with the distance learning system, regulated by in-laws and regulations (Sabon, 2020). This distance learning system is expected to be an alternative learning activity when teachers and students cannot meet face to face in the classroom. New problems have emerged since the Covid-19 outbreak hit Indonesia in March 2020, where the distance learning system, which was previously an alternative, turned into an obligation that must be carried out by educational institutions, following government policies to prevent the spread of the virus (Awule, 2020 & Gunawan, 2020).

Education is a significant factor in the development of a country and building a progressive human civilization. Education is a crucial factor that dramatically determines the direction of change of a government; in other words, education is a benchmark for the progress of a nation (Christianto, 2020). Education is one of the efforts to improve the ability of human intelligence, thus he is able to improve the quality of his life (Saleh and Mujahiddin, 2020). Education is a conscious effort made by adults for human maturity which is carried out in the process of teaching and learning activities, both formally and informally. Education is expected to be able to answer all the challenges of the times and be able to foster national generations, so that people become reliable and of high quality, with strong characteristics, clear identities and able to deal with current and future

problems (Azhar, 2018). The Indonesian constitution mandates education to be an essential thing. However, in practice, implementing the state is still quite challenging to realize because the burden of principal instalments and interest on the debt of the Indonesian State Budget is still substantial. In the context of human rights, education is also a human right for all citizens. Law Number 39 of 1999 concerning Human Rights emphasizes the importance of the right to education for citizens, and it also emphasizes the right of children to obtain an education.

In addition, the protection of children's rights has been stipulated in the 1979 Children's Declaration, which was later adopted by the United Nations into the Convention on the Rights of the Child (CRC) in 1989 in Geneva and has been ratified approved or signed by 192 countries. The issue of the Convention has resulted in a careful commitment to give top priority to children's rights, survival, protection and development (El Muhtaj et al., 2020; Sidiq et al., 2021). In Indonesia, the global movement towards attention and improvement of children's rights has been included in the 3rd amendment to the 1945 Constitution of the Republic of Indonesia. Several articles that form the constitutional basis for the need for attention and improvement of children's rights, as regulated in Article 34 paragraph (1), Article 4 of Law No. 6 of 1974, Articles 11.12 and 13 of Law No. 4 of 1979, Articles 55 -58 of Law No. 23 of 2002 and Government Regulation No. 2 of 1999 which provides eight (8) the authority to the Minister of Social Affairs of the Republic of Indonesia to carry out social welfare efforts for children. Some of these provisions clearly show how strong attention and improvement of children's rights are always to be fought for because they have become constitutional rights and movements of the international community (Haling et al., 2018).

The outbreak of this virus has an impact of a nation and Globally (Ningrum *et al*, 2020). During the pandemic, many underprivileged students find it difficult to access education due to many factors. Not all schools in East Java implemented teaching and learning activities from home during the Covid-19 outbreak. Some areas that are constrained in the teaching and learning process include schools located in the Sumenep (Madura) area, schools located in the Pacitan mountain area, continuing to carry out the teaching and learning process commonly / face to face to the lack of accessible internet access. Through a circular letter from the East Java Provincial Government, the Governor still enforces home learning activities for high school/vocational high school students and Madrasah Aliyahse in East Java. Many of the students anticipate this by doing learning through the short message service/SMS service.

To support efforts to equal access to education as mandated in Law Number 20 of 2003 concerning the National Education System, article 11 paragraph 1 states that "The Government and Regional Governments are obliged to provide services and facilities, and ensure the implementation of quality education for every citizen without discrimination. ", it requires a commitment from every education provider, especially the government, teachers, and parents to improve the quality of services and ease of access to education for every citizen without discrimination (Machali, 2012). Discrimination in the scope of education does not only include discrimination of ethnicity, religion, race, or body anatomy. Critical issues in the field of education in Indonesia have the expansion and equitable distribution of access to education and efforts to overcome the gap in facilities and infrastructure between regions because the right to education is guaranteed by the constitution (Khakim, 2018; Poluakan et al., 2019).

The implementation of education needs support from the government and the community. Through the minister of education and culture, the government is responsible for the educational process in Indonesia. It makes Pancasila and the 1945 Constitution of

the Republic of Indonesia the basis for implementing national education concerning the values of religion and culture of the Indonesian nation. At the same time, the community becomes the object of education and implementers and supporters in every educational process set by the government. Education is expected to give birth to a quality generation and become the nation's successor (Dewantara et al., 2021). Therefore, there is a need for development in the health, labour, politics and education sectors with the hope of improving people's living standards.

The difficulty of accessing education for underprivileged students in East Java is reinforced by the statement of Dr Ir. Wahid Wahyudi, who revealed that there are about 11,000 data on poor students in the capital city of East Java city of Surabaya. The data is divided into 2, namely: 1) 5,600 students who are very unable to pay the School Building Fee; and 2) 4,290 students who ask for a reduction in the payment of School Building Fees (Communities in suburban areas (rural or hinterland of a city), tend not to get sufficient access to educational activities in a city. This is because city managers practically tend to concentrate their activities, including educational activities in the downtown area (Wannamakok et al., 2020). As a result, people living in suburban areas experience discrimination as a fundamental consequence of inequality in urban development. For this reason, the term social exclusion is then used to explain discriminatory events in the form of inequality in access to education for people on the outskirts of urban areas (Noyori et al., 2021). Conceptual, social exclusion is inequality felt by a particular group of people due to equitable development and economic policies. As a result, this group of people must be excluded from social programs that they should be able to get. Thus, the paradigm of the right to education during this pandemic has changed and developed more broadly.

II. Review of Literature

2.1 Human Rights and Education

Recently, the term Human Rights is being widely discussed in the community. In all areas of life, people talk about issues related to Human Rights (Human Rights). Even for fields that have never been touched by human rights before, the position and role of human rights are being discussed more and more (Isenstrom & Quennerstedt, 2020).

Issues regarding human rights today no longer revolve around the problem of recognizing and guaranteeing the protection of human rights because almost all countries, both in their constitutions and in-laws and regulations, have been given recognition and guarantees for the protection of human rights. There are several United Nations conventions on human rights. The problem is now focused on the issues of upholding and promoting human rights (Heriyah et al., 2021).

In Indonesia, issues around human rights for some people may still be considered taboo to talk about. The crux of the problem is that the central themes surrounding human rights have not been seriously studied, especially in education. In recent years, there has been a new stream of thought and need in education to give proportional attention to the affective dimensions of educational goals, together with aspects of knowledge and skills. So with this, educators have begun to develop educational theories that pay attention to the importance of disseminating human rights-based education.

Based on Law Number 13 of 2011 concerning Handling of the Poor, the poor are people who have absolutely no source of livelihood and have a source of livelihood but cannot meet basic needs that are adequate for his and his family's life. The form of handling the poor in education is to provide educational services to meet the basic needs of

the poor in obtaining education services that are free of cost, quality, and without gender discrimination (Indriyani, 2017 & Rina, 2017; Rubiana & Dadi, 2020).

Knowing these things, based on article 11 paragraph 1 of Law Number 20 of 2003 concerning the National Education System, it is mandated that education must be non-discriminatory. Education in this research is the implementation of activities with principles to improve the quality of students' reading, writing, and numeracy skills as mandated in Article 4 paragraph 5 of the National Education System Law. Education in Indonesia generally includes primary education, secondary education, and higher education.

Primary education is the initial stage for students to know the world of education and science more deeply. The implementation of education at the basic level of good education determines the characteristics of students at the next level. This is because, at this level of primary education, the essential characters of a learner are instilled to understand science. The implementation of good primary education is the key to the performance of education as a whole.

As one of the instruments of international associations, the United Nations General Assembly in 1959 adopted the Declaration of the Child's Rights to outline the guidelines for granting rights and essential treatment by adults to adolescent children (up to the age of 18 years). This arrangement includes health services, housing, social security, education, and protection against crime. The declaration was later developed in the Convention on the Child's Right in November 1989 and adopted by Indonesia through Presidential Decree no. 36/1990. This Convention regulates all the factors of human rights. It explains how they can be enforced so that children and young people are protected from the possibility of becoming victims of human rights violations by adults in the economic, civil, political, social and cultural fields (Trofimov et al., 2020).

2.2 The Right to Education in the Constitution

The understanding of children's rights to education should be returned to the fundamental understanding of human rights (Annamalai & Skutnabb, 2020). Barton (2020) states that the basic concept of the substance of children's rights as human rights is a slogan in achieving an essential understanding and understanding of children's rights themselves. As a process, the understanding and understanding of children's rights as part of human rights undergoes a substantive change based on the evolution and revolution of time from the concept of autonomy protection from the idea of mental and physical immaturity to personal maturity in determining one's attitude and destiny, as well as from the idea to justice. Itasari, 2019). This change will determine the pattern of recognition, fulfilment, protection, and law enforcement of children's rights in every country and what has happened in Indonesia, which is still taking a middle path between these changes.

In the body of the 1945 Constitution, there are several things that we need to underline. The first is the right to education itself. The right to education belongs to:

a. Everyone

The right to education for everyone can be seen in article 28. The rights listed there include the right to self-development and self-improvement. That is, the process of everyone to develop and advance themselves must be guaranteed and protected and respected by the state. In other words, these rights are fulfilled by those who have the request because the terms developed and promote here are aimed at citizens who do it. However, the state still has to protect and respect these rights.

Law Number 20 of 2003 concerning the National Education System is a legal regulation that regulates the entire implementation of education in Indonesia. The vision and mission of teaching, curriculum, and education governance adopted by Indonesia are based on this law. In the Preamble to the 1945 Constitution of the Republic of Indonesia, the fourth paragraph. That is the purpose of establishing the Republic of Indonesia, one of which is the intellectual life of the nation. The state's responsibility is so great in the field of education, namely ensuring that its citizens are intelligent and have access to education (Danoso & LaBrenz, 2021).

The purpose of educating the nation's life is not merely to facilitate the availability of educational facilities. But more than that, the state has a constitutional obligation to ensure that all Indonesian citizens become intelligent, one marked by creating an education system that all citizens can access without exception. The 1945 Constitution also recognizes that education is a citizen's right which is a human right. In particular, the 1945 Constitution regulates this issue of education in Articles 31 and 28. These provisions state that education is a citizen's right and the state's obligation to fulfil it.

b. Every Citizen

Meanwhile, the right to education for all citizens is stated in article 31. This article expressly says that every citizen has the right to education (article 31 paragraph 1), in contrast to the nature of the right to education for everyone. Because the right to education for all citizens is to get, the government must educate its citizens. Here we see that the right to education is ultimately the government's obligation. Still, in the same article, but in a different verse (Article 31 Paragraph (2)), we can see that education is a right for all citizens and an obligation for citizens, especially nine years of primary education. And it is expressly stated that the implementation of primary education is the government's responsibility in terms of financing.

This is confirmed by the provisions in the following paragraphs that explicitly state the state's obligations, even saying the nominal per cent that must be allocated for education from the APBN, which is twenty per cent. This shows that the state must fulfil the right to education for its citizens. In addition, the body of this constitution also emphasizes the function of education in the context of educating the nation's life, which is the state's goal. Another exciting thing is that education is not solely aimed at the transfer of knowledge but must also contain the content of increasing faith and holiness and noble character.

III. Research Methods

This study uses a type of juridical-normative research. The approach method in this study uses the juridical-normative method. The research technique begins with conducting legal selection based on human rights enforcement in the national education environment. The primary legal sources used in this research are the 1945 Constitution of the Republic of Indonesia, Law No. 20 of 2003 concerning the National Education System, the 1948 Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Social Rights. Culture (Aubry & Adamson, 2021). The types of legal sources used in this study are primary and secondary sources of law. The method of taking legal authorities in this study uses the literature study method. The collected legal sources are then analyzed and presented using qualitative techniques that describe and interpret a general and comprehensive picture of the actual situation through conceptualization, categorization, relation, and explanation stages. The study results on the concept of the

right to education were then linked to the fulfilment of access to education both during regular times and during the pandemic, namely the right to information that practically involves all parties involved, either directly or indirectly.

IV. Results and Discussion

4.1 The Basics of Enforcement of Human Rights in the Educational Environment

Equal rights for every citizen to obtain an education are explained in the Universal Declaration of Human Rights, namely in article 26 paragraph (1) and paragraph (2), which states: (1) Everyone has the right to education. Education must be free, at least for primary and primary education levels. Basic education should be mandatory. Technical and vocational education should be publicly available, and higher teaching should be equitably accessible to all on an appropriate basis; and (2) Education must be directed towards the broadest possible personal development and strengthen the sense of respect for human rights and fundamental freedoms. Education should promote mutual understanding, tolerance and friendship among all nations, racial and religious groups, and should encourage the activities of the United Nations in maintaining peace.

In addition, the International Covenant on Economic, Social and Cultural Rights also guarantees that everyone has the same right to receive teaching/education. The agreement's contents are contained in article 13 paragraph (1), which states that the countries participating in the agreement recognize the right of everyone to education. They agreed that education should be directed to fully developing the human personality and understanding of its dignity and shall strengthen respect for human rights and fundamental freedoms. They further agreed that education would enable everyone to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and ethnic, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Enforcement of Human Rights in the educational environment is manifested in fulfilment rights to attend education. This right is owned by everyone so that the fulfilment of this right has vast implications. To fulfil these rights, it is necessary to have an equal distribution of educational facilities and infrastructure that meet the 4A scheme, namely: 1) Available; 2) Accessible; 3) Acceptable, and 4) Adaptable. Availability relates to the provision of good schools to accommodate all children who will attend school. The condition of such schools will be connected to the problems of the funds provided, the availability of teachers, and the maintenance of the quality of education.

Acceptance of education relates to the quality as well as the media and content of teaching. The quality of teaching is influenced by the curriculum applied and the quality of the teachers who teach. At the same time, the media and teaching content are related to how the teaching can be accepted and understood by students. People will more quickly receive quality education and according to their understanding. But on the other hand, education also needs to be protected from obstacles due to differences of opinion or political situations. Therefore, it is necessary to guarantee freedom of thought in education, which is called freedom of the academic pulpit.

In addition, the government is also required to provide education that is widely accessible to people in need. In this case, poverty cannot be used as an excuse for a child not to continue their education. Therefore, the implementation of better access to education is very urgent for the sake of affordability and equity. Another thing related to affordability is the problem of the place and time of providing education. This means lest the child cannot reach the school because it is too far away and do not let the child's time to go to

school be hindered by other activities, such as when he is required to work while attending school. Affordability is also related to the issue of discrimination. Education should not be hindered by discrimination against race, ethnicity, religion, or minority groups.

Education also needs to be carried out to allow it to adapt to the situation in which it takes place. Such adaptation is, for example, in the form of accommodating the diversity in culture and daily customs in the community. Another thing related to this adaptation is the relevance of goals to the needs of the community. Educational institutions need to produce graduates who are ready to take part in society.

4.2 The paradigm of the Right to Education during the Covid-19 Pandemic

The 1945 Constitution of the Republic of Indonesia protects the right to education and obtaining information. The two rights are closely related when the right to obtain information is also seen as the right to receive education, just as the right to receive an education is also closely related to the right to obtain information. Although both are closely related to the right to self-development, the two human rights have several differences, especially about education during the Covid-19 pandemic. In general, human rights in this context can be described as follows:

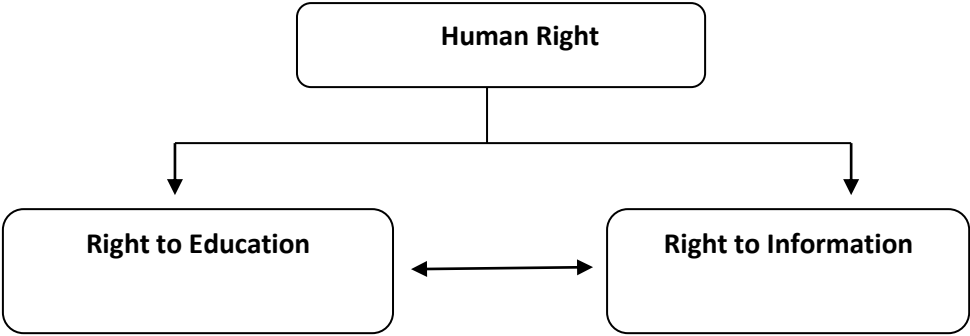


Figure 1. Relationship between Economic Rights and Education

The right to education as a human right to develop oneself is regulated in Article 28C of the Law of the Republic of Indonesia, which affirms two main parts, namely: First, the right to education is the right to develop oneself as a fulfilment of basic needs, to obtain education and to benefit from the knowledge, and technology, arts and culture. Or in other words, the completion of the right to education is closely related to efforts to fulfil basic needs, obtain education and benefit from science and technology, arts and culture. The critical point that is emphasized lies in education as a basic need as well as for self-development. Through the mastery and development of education, a person gets recognition and fulfils the basic needs of his life.

Second, the importance of education is also a determining factor to improve the quality of life and improve humanity's welfare. This second point further emphasizes that the right to education is not merely about acquiring measurable knowledge from obtaining a degree. The right to education is so broad because it involves efforts to improve the quality of life and human welfare. The right to education is multi-aspect related to one another, economic aspects, social aspects, cultural aspects and even other aspects. An understanding of article 26 of the Universal Declaration of Human Rights is presented in the following table:

Table 1. Article 13, 14 and 15 of the Covenant on Economic, Social and Cultural Rights

Chapter		Arranged material
Article 13 of the Covenant on Economic, Social and Cultural Rights	Number 1	Recognition of the right to education
		The direction of education is to develop the whole human personality and high awareness as part of human rights and fundamental human freedoms.
		Participate effectively and freely
		Mutual understanding, friendship, and tolerance without discrimination towards peace
	Number 2	Compulsory and free primary education
		Further education is available and open to anyone.
		Higher education is available equally according to ability with all appropriate means.
		Encouraging the fulfilment of basic education for people who have not received such primary education
	Number 3	School system development with continuous teaching improvement
		Respect the freedom of parents/legal guardians to choose a school for their children following the country's minimum educational standards
Article 14 of the Covenant on Economic, Social and Cultural Rights	Number 4	Freedom to establish educational institutions to carry out the mandate in numbers 1 to 3
	Number 1	Countries that have not been able to carry out compulsory primary education must carry out an action plan.
Article 15 of the Covenant on Economic, Social and Cultural Rights	Number 1	The right to take part in cultural life
	Number 2	The state's obligation to determine steps for the preservation, development, and dissemination of knowledge
	Number 3	State obligation to respect freedom for scientific research and creative activity
	Number 4	The obligation to recognize the various benefits for the development of international relations and cooperation in the fields of science and culture

Source: Covenant on Economic, Social and Cultural Rights

Based on the three legal provisions in the table above, the Covenant on Economic, Social and Cultural Rights emphasizes four main points, namely: 1) recognition of the right to education and its benefits, 2) participation in education, 3) direction and substance of education and; and 4) obligations of parties related to education. The first difference is the right to education Article 26 of the Universal Declaration of Human Rights. The regulation of the Covenant on Economic, Social and Cultural Rights is broader, focusing on the right to education and the right to education. This is understandable considering the importance of the right to education as the key to fulfilling one's economic, social and political rights

in society. Similar but not the same, the Covenant on Economic, Social and Cultural Rights emphasizes that the right to education is not merely the right to access education but also the right to benefit and contribute from science and technology (Article 15 Point 1 of the Covenant on Economic, Social and Social Rights). And culture). The second thing about educational participation is also emphasized new stuff besides the participation of all parties effectively (Article 13 Number 4 of the Covenant on Economic, Social and Cultural Rights) and freedom, it also emphasizes the freedom to establish educational institutions and guarantees for primary education by the State (Article 14 of the Covenant on Economic Rights, Social, and Cultural). The direction and substance of education also have the same emphasis as Article 26 of the Universal Declaration of Human Rights. The fourth thing is new regarding the obligations of parties related to education, the state, education providers, educators and parents.

Therefore, primary education must be a priority that is prioritized by the state, not only in the rule of law but in practice. Then, the education system regulated in the law must be following the grundnorm that has been agreed upon by the founders of the state, namely Pancasila, which has been proclaimed in the Preamble to the 1945 Constitution. Compliance with the law with the grundnorm is a must, as a consequence because grundnorm exists because of the hierarchy. Legal norms end at the highest level of standards, and the highest criteria are the basis for the validity of the legal examples below.

Based on these understandings, it is not stated that learning based on communication and information technology requires the use of specific software or face-to-face learning obligations online or using certain platforms; Law Number 20 of 2003 and Regulation of the Minister of Education and Culture Number 119 the Year 2014 provides the freedom to use various learning resources, according to the conditions of each educational institution and students. Thus, electronic textbooks, modules, television broadcasts and radio broadcasts can be used as choices for students and schools for distance learning. The fulfilment of the right to education during the Covid-19 pandemic in Indonesia is different from normal conditions because education is not carried out entirely in schools or the classroom but by other methods. In the Joint Decree (SKB) Learning Guide for the New Academic Year during the Covid-19 Pandemic, it is stated that the health and safety of students, educators, education staff, families, and the community is a top priority in setting learning policies.

V. Conclusion

Based on the study of legal sources, it can be concluded that the implementation of education is a right to an education that is protected by the 1945 Constitution of the Republic of Indonesia and confirmed by the Human Rights Act. The construction of the right to education has also changed during the Covid-19 pandemic. The right to education was initially understood as the right to receive instruction in face-to-face education programs. Understanding the right to education is more broadly understood as obtaining educational services in various forms/methods of online learning. Learning to use internet media also confirms that the right to education is closely related to the completion of the right to information following Articles 13, 14 and 15 of the Covenant on Economic, Social and Cultural Rights.

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