

Integration Of The Right To Inclusive And Equitable Education In Higher Education

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Abstract

Based on the provisions of articles 28A to 28J of the 1945 Constitution, the state is obliged to fulfill, protect and respect the human rights of every citizen. This guarantee is not just written without reason or purpose, but this guarantee must protect every human being from the use of unlimited power or the actions of authorities who act arbitrarily. The research method uses library research, namely a research process carried out through collecting data and information from various related sources. The results of the research in this paper are that the right to education must be accessible to anyone regardless of the individual's background, so that everyone can receive education equally. Fulfillment of this right is implemented in the form of providing facilities, access or resources that enable the fulfillment of the right to education to all people, both those who have the ability to finance their education and those who do not have the ability to finance their education, or based on differences in ethnicity, religion, race, class, gender, different social backgrounds

I. Introduction

Human Rights (HAM) are the basic rights of every person as a rational being. This right is inherent in everyone regardless of who they are or what their background is. Human rights are basic rights that are universal and cannot be limited and/or taken away by anyone, because basically every human being wants to be treated equally with other humans. This is because historically every human being has been vulnerable to unfair treatment, rape, oppression, torture and so on, from other people or groups which can result in the accumulation of negative experiences for that person and/or group.¹

According to Franz Magnis Suseno, ²human rights are *"rights that humans have not because they are given to them by society, so they are not based on applicable positive law, but rather based on their dignity as human beings." Man has it because he is human."*

In Indonesia itself, human rights are guaranteed in the 1945 Constitution of the Republic of Indonesia (UUD NRI), regulated in CHAPTER XA, in articles 28A to 28J. This means that the state is obliged to fulfill, protect and respect the human rights of every citizen. This guarantee is not just written without reason or purpose, but this guarantee must protect every human being from the use of unlimited power or the actions of authorities who act arbitrarily.

If the desire for power possessed by the power holder is not limited, then he will be able to control life up to the private realm to the extreme. As Lord Acton stated that *"Power tends to corrupt, and absolute power corrupts absolutely"*. ³This indicates that there is a need to limit power so that abuse against fellow humans does not occur.

2. Research Method

Writing articles uses the library research method, namely a research process carried out through collecting data and information from various related sources. These sources are in the form of reference books, similar previous research, articles, notes and journals related to the issue being researched. The data obtained is then arranged based on rules and analysis in accordance with writing rules, making it easier to discuss existing problems

¹Alvin Sadeli, et al, *Handbook of the Institute for Democracy, Law and Human Rights*, Incersium, Makassar, 2021, p. 1.

²Muhammad Ashri, *Human Rights: Philosophy, Theory & Basic Instruments*, SIGn Publisher, Makassar, 2018, p. 12.

³Miriam Budiarjo, *Basics of Political Science*, PT Gramedia Pustaka Utama, Jakarta, 2017, p. 107.

3. Results and Discussion

1. Right to Education

Human rights are an important basis for upholding a national education system⁴. As part of human rights, the right to education is an important means of realizing other rights, because education is a very important prerequisite for access to employment, so education is a gateway to success.⁵ Education as a vehicle for the knowledge transformation process of students will make human resource capacity more advanced and developed.⁶ In terms of economic, social and cultural rights, every person should have the right to obtain education and develop themselves in order to maximize the potential of each individual.

Education is everyone's right and the state is of course obliged to fulfill this right to education. Fulfillment of the right to education is mandated in article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads:

"Everyone has the right to develop themselves by fulfilling their basic needs, has the right to receive education and benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of humanity."

This is also stated in article 28E:

"Every person has the right to embrace religion and worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return."

As stated in the 1945 Constitution of the Republic of Indonesia, everyone has the right to receive education and is free to choose education and teaching. The implementation of these rights and freedoms cannot be carried out properly if adequate facilities and infrastructure are not available for the implementation of education, both in terms of quantity, quality, availability and equity.

Providing all aspects related to education is the responsibility of the state as confirmed in the 1945 Constitution of the Republic of Indonesia.⁷ The right to

⁴ Majda El Muhtaj, et al., *Human Rights Literacy in the Citizenship Education Curriculum in Higher Education*, Human Rights Journal, Vol. 11, no. 3, December 2020, p. 370.

⁵ Miriam Budiarjo, *Op.cit*, p. 1151.

⁶ A. Suardi, *Instilling Islamic Religiousness Oriented to Multicultural Education in Schools*, Journal of Islamic Religious Education, Vol. 6, no. 1, 2018, p. 34

⁷ Hernadi Affandi, *State Responsibility in Fulfilling the Right to Education According to the 1945 Constitution*, POSITUM Law Journal Vol. 1, No. 2, June 2017, p. 224.

education must be accessible to anyone regardless of the individual's background, so that everyone can receive education equally.

Moreover, the aspiration of the Indonesian state to make the nation's life more intelligent is clearly stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, in the fourth paragraph, which reads:

"...Then beyond that, to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation, and participate in implementing world order..."

The formulation of the right to education as a human right is clearly stated in article 26 of the Universal Declaration of Human Rights which states:

"Everyone has the right to education. Education should be free, at least at primary and lower levels. Basic education should be mandatory. Technical and professional education should be made generally available and higher education should be equally accessible to all based on ability."

The right to education is also formulated in articles 13 and 14 of the Economic, Social and Cultural Covenant which is the right for every citizen to obtain education and on the other hand is an obligation to fulfill it (state obligation).⁸ The formulation in article 13 act (1) reads:

"The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

Through the implementation and fulfillment of education, it is a way to fulfill the ideals of making the nation's life intelligent. Fulfillment of these rights is implemented progressively in accordance with the situation, conditions and capabilities of the country concerned.⁹ Therefore, the fulfillment of these rights is carried out in a planned and sustainable manner (Progressive Realization). Gradual fulfillment in this case is contained in article 14 of the Economic, Social

⁸ See *Implementation of Accessibility of Basic Education as Fulfillment of the Right to Education for Citizens (For Elementary School Education Units)*, Sub-commission for Studies and Research of the National Human Rights Commission, Komnas-HAM, Jakarta, 2008, p. 1.

⁹ *Ibid*, p. 233.

and Cultural Covenant which reads:

"Each state party to the present covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction mandatory primary education, free of charge, undertakes, within two years, to exercise and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

So that the fulfillment of education must be carried out by the state in stages until education can be accessed free of charge by everyone. By paying attention to the General Comment on article 13 paragraph (2), namely the right to enjoy education as follows:¹⁰

"Because the application of these conditions will depend on the conditions existing in a particular country, all forms of education and in all actions must pay attention to the following interrelated and important matters:

- a. Availability - various educational institutions and programs must be available in sufficient numbers within the country's jurisdiction. What they need to function depends on many factors, including the development context in which they operate.*
- b. Access - educational institutions and programs must be accessible to everyone, without discrimination, within the country's jurisdiction. This accessibility includes three generally characteristic dimensions:*
 - 1) Without discrimination, education must be accessible to everyone, especially the most vulnerable groups, legally and in fact;*
 - 2) Physical accessibility, education must be physically safe to reach, either by people in supportive geographic areas or through modern technology;*
 - 3) Economic accessibility, education costs must be affordable for everyone.*
- c. Acceptable - the form and substance of education, including the curriculum and teaching methods, must be acceptable (e.g. relevant, culturally appropriate and of good quality) by students and, in some cases, parents.*
- d. Adaptable - education must be so flexible that it can adapt to the needs of changing societies and communities, and respond to the needs of students in their diverse societies and cultural settings."*

¹⁰ See General Comment on the International Covenant on Civil and Political Rights Economic Social and Cultural Rights, National Human Rights Commission, 2009, p. 156-157.

It is a constitutional mandate that the state be responsible for the implementation and guarantee of human rights. This provision is contained in the 1945 NRI Constitution Article 28i paragraph (4) which reads:

"The government is obliged and responsible to respect, protect, uphold and promote human rights as regulated in this law, other statutory regulations and international law regarding human rights accepted by the Republic of Indonesia."

In principle, the state holds responsibility for fulfilling it as stated in the 1945 Constitution of the Republic of Indonesia, because the state has clearly guaranteed it. As a further regulation of the 1945 Constitution of the Republic of Indonesia, provisions regarding state responsibility are also included in article 8 of Law number 39 of 1999 concerning Human Rights which reads:

"The protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of the Government."

In International Human Rights Law, the state as the main *duty bearer* has 3 main obligations/responsibilities:¹¹

1. Honor; In this case, there is intervention from state action in fulfilling human rights.
2. Protect; The state must take action so that in the enjoyment of these rights there is no interference from other rights holders
3. Fulfil; States must take progressive steps to fulfill related rights.

The state is not only limited to providing education but protects everyone who carries out education, this is regulated in article 12 of Law no. 39 of 1999 which reads:

"Everyone has the right to protection for their personal development, to obtain education, to educate themselves, and to improve their quality of life in order to become a person who is faithful, devout, responsible, of noble character, happy and prosperous in accordance with human rights"

Indonesia as a party country after ratifying the International Economic, Social and Cultural Covenant (ICESCR) which was normatively promulgated in Law number 11 of 2005 concerning Ratification of the *International Covenant on Economic, Social and Cultural Rights* (International Covenant on Economic Rights

¹¹See Saufa Ata T., 3 Basic Obligations of the State in International Human Rights Law, <https://www.Hukumonline.com/klinik/a/3-kewajiban-pokok-negara-dalam-Hukum-ham-internasional-lt62611e31941a4>,

, Social, Cultural) then the Indonesian government complies with the provisions of the law and implements the provisions contained in the ratification covenant. Basic principles of international law recognized by the international community as norms that must not be violated ¹². Regarding the right to education, it is stated in articles 13 and 14 of the ICESCR and more specifically in national legal instruments, this right is regulated in Law Number 20 of 2003 concerning the National Education System, Law Number 14 of 2005 concerning Teachers and Lecturers, Law Number 12 of 2012 concerning Higher Education . The right to education is further explained in article 12 which reads:

(1) *Every student in every educational unit has the right to:*

- a) receive religious education in accordance with the religion they adhere to and taught by educators of the same religion;*
- b) receive educational services according to their talents, interests and abilities;*
- c) get scholarships for high achievers whose parents cannot afford their education;*
- d) get education costs for those whose parents cannot afford their education;*
- e) move to an educational program on another equivalent path and educational unit;*
- f) complete the educational program according to each individual's learning pace and do not deviate from the stipulated time limits.*

The existence of this law further strengthens the position of the right to education as a right that must be fulfilled or implemented by the state. This fulfillment takes the form of providing facilities, access or resources that enable the fulfillment of the right to education to all people, both those who have the ability to finance their education and those who do not have the ability to finance their education, or based on differences in ethnicity, religion, race, class, gender, background. different social backgrounds.

The President is the head of state and head of government ¹³as stated in article 4 paragraph (1) of the 1945 NRI Constitution which reads:

" The President of the Republic of Indonesia holds governmental powers according to the

¹² Vigayani Fattah, *Human Rights as Jus Cogens and Their Relation to the Right to Education*, Juridika, Vol. 32, no. 2, May 2017, p. 356.

¹³ The president is the head of state and head of government as a consequence of the country adopting a presidential system of government so that there is no distinction between the head of state and the head of government.

Constitution."

Based on these provisions, responsibility for running the government lies with the president because the president is the highest administrative head. The President is assisted by the Minister in running the government and the Minister is in charge of certain affairs in the government. Regarding the implementation of education, the ministry responsible for implementation in the education sector is the Ministry of Education, Culture, Research and Technology. So that education issues are the responsibility of the Minister and the Minister is responsible to the president because the Minister is responsible to the president as stated in article 17 of the 1945 NRI Constitution

2. Inclusive and Equitable Higher Education

The right to education, which is the state's responsibility to fulfill, is not only determined by system factors for fulfilling this right but also from social factors in society regarding education, social inequality and so on. Every citizen is guaranteed and has the same right to obtain quality education ¹⁴. This depends on the circumstances and conditions in society regarding how important education is regardless of gender, because education is an important thing for both men and women, because the purpose of education is to develop the potential that humans have both as humans. or as a whole society. The elimination of discrimination must be carried out by providing the widest possible opportunities for every citizen to receive education ¹⁵.

As stated in the 1945 Constitution of the Republic of Indonesia, everyone has the right to receive education and is free to choose education and teaching. The implementation of these rights and freedoms cannot be carried out properly if adequate facilities and infrastructure are not available for the implementation of education, both in terms of quantity, quality, availability and equity. Providing all aspects related to education is the responsibility of the state as confirmed in the 1945 Constitution of the Republic of Indonesia.

In addition, taking into account the General Comment *on* article 13 paragraph (2), that "Because the application of these conditions will depend on the conditions existing in a particular country, all forms of education and all actions must pay

¹⁴ Mila Faila Shofa, *Implementation of Inclusive Education Management in Inclusive Preschool Saymara Kartasura*, Journal of Islamic Educational Studies, Vol. 3, no. 2, 2018, p. 108.

¹⁵ Endah Rantau Itasari, *Education Rights in Border Areas from a Human Rights Perspective*, Cakrawala Hukum, Vol. 21, Issue 2, September 2019, p. 80.

attention to the following interrelated and important matters.”¹⁶

1. *Availability - various educational institutions and programs must be available in sufficient numbers within the country's jurisdiction. What they need to function depends on many factors, including the development context in which they operate.*
2. *Access – educational institutions and programs must be accessible to everyone, without discrimination, within the country's jurisdiction. This accessibility includes three generally characteristic dimensions:*
 - a) *Without discrimination, education must be accessible to everyone, especially the most vulnerable groups, legally and in fact;*
 - b) *Physical accessibility, education must be physically safe to reach, either by people in supportive geographic areas or through modern technology;*
 - c) *Economic accessibility, education costs must be affordable for everyone.*
3. *Acceptable - the form and substance of education, including the curriculum and teaching methods, must be acceptable (e.g. relevant, culturally appropriate and of good quality) by students and, in some cases, parents.*
4. *Adaptable - education must be so flexible that it can adapt to the needs of changing societies and communities, and respond to the needs of students in their diverse societies and cultural settings.*

This means that the right to education must be accessible to anyone regardless of the individual's background, so that everyone can receive education equally. Fulfillment of this right is implemented in the form of providing facilities, access or resources that enable the fulfillment of the right to education to all people, both those who have the ability to finance their education and those who do not have the ability to finance their education, or based on differences in ethnicity, religion, race, class, gender, different social backgrounds.

Then, in line with Indonesia's involvement in the agreement related to *Sustainable Development Goals* (SDGs), which is more specifically in the field of education, it has been formulated by UNESCO through the *Education for Sustainable Development* (ESD) policy, which is an educational tool to encourage changes in knowledge, skills, values and attitudes to enabling a more sustainable and equitable society for all.

¹⁶ *Op. cit.* General Comment on the International Covenant on Civil and Political Rights, Economic, Social and Cultural Rights, National Human Rights Commission, p. 156-157.

In addition, with the seriousness of the Indonesian government which has issued Ministry of Education and Culture Regulation Number 46 of 2014, as part of efforts to realize inclusive and equitable higher education, it is time for higher education institutions under the Ministry of Education, Culture and Research and Technology.

4. Conclusion

Based on the mandate of the 1945 Constitution of the Republic of Indonesia, everyone has the right to receive education. The implementation of these rights and freedoms cannot be carried out properly if adequate facilities and infrastructure are not available for the implementation of education, both in terms of quantity, quality, availability and equity. The right to education must be accessible to anyone regardless of the individual's background, so that everyone can get education equally. Fulfillment of this right is implemented in the form of providing facilities, access or resources that enable the fulfillment of the right to education to all people, both those who have the ability to finance their education and those who do not have the ability to finance their education, or based on differences in ethnicity, religion, race, class, gender, different social backgrounds.

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