

## EDUCATIONAL LAW POLITICS IN THE PERSPECTIVE OF TRANSCENDENTAL LAW

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**ABSTRACT:** *Education in a general sense is a form of learning in which the knowledge, skills and habits of a group of people are transferred from one generation to the next through teaching, training, research or simply through self-taught. Our constitution has guaranteed the Right to Education which has been stated in the 1945 Constitution Article 31 as a result of the last amendment. The presence of a constitution that is nuanced in human rights will provide protection to citizens and give responsibility to the state in its fulfillment or implementation. Indonesia's education policy has been aligned with the transcendental context, namely making policies that are sourced from Revelation or the text of the Koran and then poured into the constitution and laws without having to use the language of Revelation. Even though the implementation level there are still many shortcomings. The realization of the fulfillment of the right to education in Indonesia in general can be categorized as minimal. Especially on the following four indicators: (i) Availability (availability), (ii) Accessibility (accessibility) (iii) Acceptability (acceptance or acceptable) and (iv) Adaptability (suitability).*

**Keywords:** education, transcendental, right to education,

### INTRODUCTION

Education in a general sense is a form of learning in which the knowledge, skills and habits of a group of people are transferred from one generation to the next through teaching, training, research or simply through self-taught. This generally occurs through the way people think, feel or act. Education is a means for everyone to increase knowledge and skills and habits. The process does not take place by itself, but through a form of teaching or training. This process is called schooling, both formal and non-formal channels.

Education is a process by which a nation prepares its young generation to live life and to fulfill life goals effectively and efficiently. According to Azyumardi Azra, education is more than just teaching. Education is a process by

which a nation or state fosters and develops self-awareness among individuals.<sup>1</sup> Thus, education really becomes a necessity that is not only needed by one individual or group, but becomes the need of everyone in terms of building and developing the morals and life of each individual in a nation or country.

Provisions related to education in the 1945 Constitution if calculated since its ratification have lasted more than 70 years. Meanwhile, if it is calculated since the fourth amendment in 2002, it means that it has been more or less 16 years. However, in the development of this nation's journey, it turns out that the fulfillment of the right to education (HAP) is generally felt to still face quite complicated and serious problems.<sup>2</sup> Problems faced by some communities, either directly or indirectly, include the difficulty of access to education both in urban and rural areas. These problems are partly because the quantity, quality, availability, and equity of education have not been achieved properly.

Difficulties in accessing education faced by some communities are, among others, caused by:<sup>3</sup> first, the unavailability of adequate educational facilities and infrastructure to accommodate all students; second, the expensive education costs still have to be paid by the parents of students; third, there are policies issued by the state, in this case the Central and Regional Governments, which allegedly have not fully opened up equal opportunities for all groups in obtaining education in an open, equitable and fair manner.

In connection with the above, the author is interested in studying how education policy in Indonesia is viewed from a transcendental perspective and at the same time wants to know the extent of the role of the State in providing education guarantees.

## **PROBLEMS**

1. How is the legal politics of education in a transcendental perspective?
2. What is the role of the State in providing the right to education?

## **DISCUSSION**

### **The Political Law of Education in a Transcendental Perspective**

Transcendental term from the word transcend (latin Transcendere: to climb on / to the top). It has several meanings including "abstract", "metaphysical" and "beyond". Currently, both literature, art, architecture, science and technology that are transcendental are needed because humanity can only be saved by faith. in conflict, violence and control of the production sectors.<sup>4</sup> In Kuntowijoyo's view, apart from the notion of transcendental coming from metaphysical and abstract meanings, he also means that transcendental means an epistemological work, for

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<sup>1</sup> Azyumardi Azra, *Paradigm of Building National Character Through Education*, Jakarta, Kompas, 2010, p.12

<sup>2</sup> Hernadi Affandi and Nursanti Kusumaastuti Affandi, *Research on the Fulfillment of the Right to Education for the Poor in Bandung City*, Bandung: Padjadjaran University Research Institute, 2013, p. 1.

<sup>3</sup> Ibid, page 1

<sup>4</sup> Kuntowijoyo, *Islam as a Science: Epistemology, Methodology and Ethics*, Advanced PT. Mizan Publica, South Jakarta, 2004, p. 39

how to apply the knowledge system as understood by Michel Foucault as episteme at a time, a social condition that was born fifteen centuries ago in the present. and here. Transcendental here means a way to answer problems, apply Islam and bridge the historical, geographical, and social gap between Islam in the past and in Indonesia today. The embedding of the word transcendental thus means, something that transcends boundaries and objects.<sup>5</sup>

Transcendental thinking can be seen in religious, spiritual, ethical, and moral values which are full of dynamics and struggles of thought that were born in a long history. Modern science which has been in the corridor of modernist-positivistic hegemony with empirical, objectivist, and rational doctrines has begun to be sued by transcendental thinkers who put more emphasis on the value and meaning behind it, so that the building of science becomes more open. and intact in responding to the problems of life and living. In this case, transcendental thinking begins to raise things that are irrational and metaphysical (emotions, feelings, intuitions, values, personal experiences, speculations), morals, and spirituality as an integral part in understanding science.<sup>6</sup>

Transcendental law as a paradigm of Indonesian law can be placed within the framework of maintaining public trust and expectations so that they remain in their beliefs about the integrity of Indonesia. Reasoning rationality and inner connectivity that humans have requires a rhythm of awareness of the truth of science. In this case, the law is not only regulating and determined by the state authorities, but also involves the law that lives and develops from the behavior of the people who are full of values.<sup>7</sup> Besides that, there is a need for morals in law based on a transcendental paradigm which is based on divine values.<sup>8</sup>

Meanwhile, according to Absori, Kelik Wardiono and Saepul Rochman, the theoretical construction to interpret the Qur'an contextually can be done using the transcendental structuralism method which is pursued in the following ways: First, departing from the internalization of revelation, which in this case is sorted according to its type, either as concepts, history and parables; Second, interpreting in accordance with established interpretations to obtain a connection of meaning with the past; Third, carry out a transcendental interpretation (subjective takwil) of the text to obtain contextual meaning by releasing the meaning obtained from its historical burden, by basing it on metaphysical assumptions (worldview) or prophetic ideals: historicity, humanization, liberation and transcendence; Fourth, apply the interpretation results obtained from each of these prophetic ideals. Fifth, perform externalization among Muslims intersubjectively based on the mazhab

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<sup>5</sup>Kuntowijoyo, Op. Cit, p. 40.

<sup>6</sup> Absori, Transcendental Legal Thought in the Context of the Development of Indonesian Legal Studies, Proceedings of the National Seminar on Prospects of Legal Transcendence and Its Implementation, Genta Publishing, Yogyakarta, 2017, page 15

<sup>7</sup> Absori and Achmadi, Transplanting Moral Values in Culture to Towards a Just Law (*Charles Samford's Systematic to Non-Systematic Legal Perspectives*), Sixth National Conference of the Graduate Association of Muhammadiyah Higher Education, Pare Pare, South Sulawesi, 2017, p.1

<sup>8</sup> K. Dimyati, Absori, Kelik Wardiono and F. Hamdani,, Morality and Law Critics Upon HLA Hart's Moral Paradigm Epistemology Basis Based on Prophetic Paradigm in Indonesia, Jurnal Dinamika Hukum, Vol 17, No 1, p.23

adopted to obtain objectivity that is internally agreed upon by the ummah, and can be forwarded to a wider scope until it is accepted by each other ummah as a mutually agreed (interobjective) law after being integrated. with the results of an objective interpretation of the holy book.<sup>9</sup>

The concrete manifestation of the fourth step above is to make policies that are sourced from Revelation or the text of the Koran and then set out in the constitution and laws without having to use the language of Revelation. In the context of legal politics, education means that our constitution and laws should be sourced from the text of the Quran. Policies or norms that are made must be made in order to achieve state goals. This is in line with the view of Moh. Mahfud MD who said legal politics<sup>10</sup> is a legal policy or legal direction that will be enforced by the state to achieve state goals, which can take the form of making new laws and replacing old laws.

The term education in the context of Islam generally refers to the terms al-tarbiyah, al-ta'lim and al-ta'dib. Of the three terms, the term that is popularly used in the practice of Islamic education is the term al-tarbiyah, while the terms al-ta'dib and al-ta'lim are rarely used.<sup>11</sup>The word al-Tarbiyah in Arabic, Rabba, yarbu, tarbiyah: has the meaning of “grow”, “develop”, grow (nasya'a) and become big or mature (tara'ra'a). That is, education (tarbiyah) is an effort to grow and mature students, both physically, psychologically, socially, and spiritually. Qurtubi as quoted by Sahrodi said that "Rabb" is a description given to a comparison between God as educator and humans as students. God knows well the needs of those who are educated, for he is their creator. Besides, God's providence is not limited to certain groups. He cares for all of His creation. That's why He is called Rabb al-A'lamin.<sup>12</sup>

Theoretically, HAP is part of human rights, namely economic, social and cultural rights (ekosob). In particular, the concept of human rights in the field of education is reflected in the Preamble of the 1945 Constitution which states that the Indonesian government is tasked with educating the nation's life.<sup>13</sup>

Our constitution has guaranteed the HAP which has been stated in Article 31 of the 1945 Constitution as the result of the last amendment. The presence of a constitution that is nuanced in human rights will provide protection to citizens and give responsibility to the state in its fulfillment or implementation.

This is in line with Sri Soemantri's opinion that a constitution generally contains three main things, namely:<sup>14</sup>

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<sup>9</sup>Absori, Kelik Wardiono, Saepul Rochman, Prophetic Law: A Critique of Non-Systematic Law Paradigms, Genta Publishing: Yogyakarta, 2015, p. 385.

<sup>10</sup>Moh. Mahfud, MD, Building Legal Politics, Upholding the Constitution, Jakarta: LP3ES Library, 2006, p. 5

<sup>11</sup>Abdul Halim, Philosophy of Islamic Education: Historical, Theoretical and Practical Approaches, Jakarta: Ciputat Pers, 2002, p. 25

<sup>12</sup>Jamali Sahrodi, Dissecting Islamic Education Reason, Introduction To Yogyakarta Islamic Education: Pustaka Rihlah Group, 2005, p. 42

<sup>13</sup>Bagir Manan, et al., Development of Human Rights Thought and Regulation in Indonesia Bandung: PT Alumni, 2001, p. 69.

<sup>14</sup>Sri Soemantri, Procedures and Systems for Amending the Constitution, second edition, 1st printing, Bandung: Alumni, 2006, p. 60.

*first*, the existence of guarantees for human rights and citizens;  
*second*, the establishment of a fundamental constitutional structure of a country;  
*third*, the division and limitation of constitutional tasks which are also fundamental.

In full, Article 31 of the 1945 Constitution after the amendment to reads as follows:

- 1) Every citizen has the right to education.
- 2) Every citizen is obliged to attend basic education and the government is obliged to pay for it.
- 3) The government seeks and organizes a national education system, which increases faith and piety as well as noble character in the context of the intellectual life of the nation, which is regulated by law.
- 4) The state prioritizes the education budget at least twenty percent of the state revenue and expenditure budget as well as from the regional revenue and expenditure budget to meet the needs of national education administration.
- 5) The government advances science and technology by upholding religious values and national unity for the advancement of civilization and the welfare of mankind.

Referring to points 3 and 4 above, in fact the legal politics of Indonesian education has led to a transcendental basis, namely wanting to develop the nation's generation holistically in terms of both physically, psychologically, socially, and spiritually. However, in its realization it still needs to be reviewed again and will be discussed in the next sub-discussion.

### **The Role of the State in Providing Education Guarantee**

*Our current government is the National Government. We believe that the obligations and responsibilities of the Government of our Republic are heavy with regard to the development of education and teaching as depicted (Ki Hajar Dewantara).<sup>15</sup>*

The constitution has explicitly mandated that the fulfillment of HAP is the responsibility of the state, especially the government. These arrangements and guarantees are already very strong because they are regulated in the Constitution or the constitution. This arrangement has the consequence of having the duties and responsibilities of the state, in this case the central and local governments, to fulfill the rights of citizens to obtain education. However, in practice this constitutional guarantee has not been fully implemented due to various reasons.

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<sup>15</sup>Ki Hajar's opinion above emphasizes that the State has a central role in the implementation of education. Ki Hajar, who is a teacher at Taman Siswa, an anti-state (colonial) school, even stated that he was willing to join the state in providing education, as long as it was a National State, not a Colonial State. Ki Hajar also suggested that private educational institutions should be turned into educational institutions organized by the state, not the other way around. (ASASI Bulletin Edition May-June 2013, Institute for Community Studies and Advocacy, Jakarta, page 12)

In the juridical context, the right of every Indonesian citizen to obtain national education that is in line with human values and justice is formulated in the 1945 Constitution of the Republic of Indonesia in Article 28C paragraph (1), namely that everyone has the right to develop themselves through the fulfillment of their basic needs, the right to education and obtain benefits from science and technology, art and culture, in order to improve the quality of life for the welfare of its people, Article 28D paragraph (3) states that every citizen has the right to get equal opportunities in government.

In addition, the Government of Indonesia ratified the International Covenant on Economic, Social and Cultural Rights through Law no. 11 of 2005, which can be interpreted as the Government's acknowledgment and commitment to the basic rights of Indonesian citizens in the economic, social and cultural fields; Mainly, the rights of citizens to obtain educational services. The logical consequence of the ratification of the Ecosob Covenant is that the Government is obliged to provide quality and free basic education. In the Covenant, it is clear and unavoidable that the mandate of the Ecosob Covenant is to provide universal normative standards for education.

In carrying out its obligations to fulfill the right to education for its citizens, the state needs to adhere to at least two main things. First, based on the availability of resources, the state is obliged to provide various standard facilities and facilities for the education of its citizens, and ensure easy access and affordability for every citizen to enjoy them. It is true that education cannot be reduced and is limited to (formal) schools, but in order to fulfill this standard obligation on the right to education, the state is obliged to provide facilities and ease of access and affordability for its citizens to enjoy school facilities. Education cq schooling is the right of citizens, including quality education/schooling. As an obligation, The state should not relinquish this responsibility and give up the opportunity to enjoy education via school for its citizens based on the ability of their respective purchasing power in dealing with the school industry. The right to education, including the opportunity to enjoy education through school, is a human right and its fulfillment is the responsibility of the state.<sup>16</sup>

*Second*, education, more specifically schools, should not be (-mis-) used by the state or its elites to serve as a means of indoctrination or other forms of abuse of power. This point relates to the substance of the education itself held. The purpose of education is to educate students and live together, while indoctrination and other abuses of power over schools will narrow students' horizons and make room for the dehumanization process to take place. The substance of enlightening education, including an intellectual curriculum, is a human right and its fulfillment is the responsibility of the state.<sup>17</sup>

At the practical level, the question arises, to what extent has the government carried out and implemented the constitutional duties in fulfilling the HAP. Considering the fulfillment of this HAP is a strategic reason, in the sense

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<sup>16</sup> ASASI Bulletin Editorial May-June 2013 Edition, Jakarta Institute of Studies and Advocacy, page 4

<sup>17</sup> Ibid, p. 4

that it will bring progress to the community so that it will directly or indirectly bring the nation's progress. In an effort to align themselves with developed nations, hard work to improve the quality of human resources through education is absolutely necessary.

One example of the lack of maximum role of the State in the last decade, there appears to be a trend of rampant privatization and commercialization in the field of education/schools. This can be seen from the various products of education/school policies and practices, where education tends to be treated as if it is not a right but more as a commodity. As a commodity, only those with purchasing power can enjoy it. The most obvious example is the international standard school pilot project (RSBI), which was later cancelled.<sup>18</sup>

The right to education (The Rights to Education) is one of 8 core rights regulated in the 1966 International Covenant on Economic, Social and Cultural Rights, which is regulated in articles 13 and 14. Indonesia has ratified this Covenant on September 30, 2005. To assess the implementation of the right to education, it can be seen from the criteria: (i) Availability (availability), (ii) Accessibility (accessibility) (iii) Acceptability (acceptance or acceptable) and (iv) Adaptability (suitability).

Availability, namely various educational institutions and programs must be available in sufficient numbers, such as buildings for physical protection, sanitation facilities for men and women, healthy drinking water, trained teachers with competitive salaries, teaching materials, and the availability of library facilities, computer laboratories and information technology. Accessibility means that educational institutions and programs must be accessible to everyone without discrimination. Accessibility has three dimensions of general characteristics, namely (a) without discrimination: education must be accessible to all, especially by the most vulnerable groups, legally and factually and without discrimination against prohibited areas anywhere; (b) physical accessibility: education must be physically safe to reach; (c) economic accessibility: the cost of education should be affordable for everyone. Primary education should be free of charge for all and the State should progressively introduce free secondary and higher education.<sup>19</sup>

Acceptability, namely the form and content of education, including the curriculum and teaching methods that are acceptable, relevant according to the student's culture and of good quality. Adaptability, namely education must be flexible and able to adapt to the needs of social and community changes and be able to respond to the needs of students regardless of their socio-cultural background.<sup>20</sup>

The realization of the fulfillment of the right to education in Indonesia in general can be categorized as minimal. This can be proven by the very small percentage of the budget in the APBN, which is only around 5-8% per year. Physical facilities Schools in a number of areas were badly damaged so that students could not enjoy a proper education. For children in remote areas, they do

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<sup>18</sup> Opcit, p. 4

<sup>19</sup> KOMNAS HAM Research Results, Protection and Fulfillment of the Right to Education, KOMNAS HAM Publisher, Jakarta, 2005, page 63

<sup>20</sup> Ibid, p. 64

not have adequate physical access to go to school. The cost of education is also relatively high for most children in Indonesia.

## CONCLUSION

Related With the discussion above, the following conclusions can be drawn:

1. Our Constitution has guaranteed the Right to Education which has been stated in Article 31 of the 1945 Constitution as a result of the latest amendments. The presence of a constitution with nuances of human rights will provide protection to citizens and give responsibility to the state in its fulfillment or implementation. Indonesia's education policy has been aligned with the transcendental context, namely making policies that are sourced from Revelation or the text of the Koran and then set forth in the constitution and laws without having to use the language of Revelation.
2. The realization of the fulfillment of the right to education in Indonesia in general can be categorized as minimal. Especially on the following four indicators: (i) Availability (availability), (ii) Accessibility (accessibility) (iii) Acceptability (acceptance or acceptable) and (iv) Adaptability (suitability).

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