

RESEARCH ARTICLE

Constitutional Educational Justice a Review on Education Budget: Nowadays Challenges

Agusweka Poltak Siregar ✉, I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

✉ agusweka@student.uns.ac.id

ABSTRACT

The constitutional guarantee of the right to education occupies a central position within the 1945 Constitution of the Republic of Indonesia, particularly through Chapter XA on Human Rights and Article 31, which affirms both the entitlement to education and the State's obligation to organize a national education system. This paper examines Indonesia's contemporary educational challenges through a constitutional lens, emphasizing the normative force of the 20 percent education budget mandate and its judicial enforcement by the Constitutional Court. Despite this clear constitutional framework, Indonesia continues to face four fundamental and persistent problems in its education sector: high dropout rates, limited inclusivity for persons with disabilities, a structural mismatch between educational outcomes and labor market demands, and inconsistent fulfillment of constitutional budgetary obligations.

The study adopts a normative juridical method, using statutes, Constitutional Court decisions, and legal doctrines including Hans Kelsen's theory of norm validity, L.M. Friedman's legal system framework, and Mochtar Kusumaatmadja's Development Law Theory to analyze the effectiveness of education governance and fiscal policy. Central Constitutional Court decisions, including 026/PUU-IV/2006, 24/PUU-V/2007, 5/PUU-X/2012, and 3/PUU-XXII/2024, demonstrate the Court's consistent role in safeguarding educational rights and correcting deviations in budgetary policy. These rulings affirm that the 20 percent allocation is not merely symbolic but a binding obligation integral to achieving substantive equality and preventing commercialization or discrimination in education.

Findings indicate that constitutional jurisprudence alone is insufficient without political commitment, administrative consistency, and transparent fiscal practices. Although the Constitution provides a robust normative foundation, implementation gaps continue to hinder equitable access, particularly for marginalized groups and rural communities. This paper argues that improving human capital quality requires not only adherence to constitutional mandates but also a systemic transformation of educational policy, financing, and governance.

Keywords: Execution, Education Budget, Constitution, Inclusive.

1 Introduction

Equality of position before the law or what is often known as the principle of equality before the law is one of the principles in law that is important in its realization. This principle is one of the keys to the rule of law doctrine which is often applied by developing countries, especially in Indonesia. Equality before the law is something that is very important to implement, because this is related to justice in the judicial process. Fairness here does not mean being equal to all existing legal decisions, but having equality to submit, obey, and obtain a position or to be treated in a balanced manner based on the case process that occurs.

The principle of equality before the law explains that this principle contains the meaning of equality and equality in law for each person without any exceptions. The principle of equality before the law is used as a reference for standardization to emphasize various kinds of marginalized groups or minority groups. If we look at it from another point of view, because of the inequality of resources, in the form of power, capital and information, the result is that this principle is often dominated by powerful people and entrepreneurs as protectors to protect the assets and power they have.

At its most basic level, the rule of law is the concept that both the government and citizens know the law and obey it. The phrase 'equality before the law' is often used in relation to the rule of law and means: the law should apply to all people equally regardless of their status in society – rich or poor, young or old, regardless of their gender, race, culture, religion, or any other attribute.

Equality before the law means that all human beings have the right to be treated equally before the law. They are also entitled to the equal protection of the law, which means all people have the right to be treated fairly and not be discriminated against because of their race, color, gender, language, religion, political beliefs, status or any other unlawful reason.

Importantly, the law must be superior. All citizens must enjoy equality before the law and be subject to the laws.

This concept was outlined by Professor A.V. Dicey who described the rule of law as

1. It means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may be punished for a breach of law, but he can be punished for nothing else.[1]
2. It means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the 'rule of law' in this case excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary courts.[2]

3. With us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts; . . . the principles of private law have . . . by the action of the courts and Parliament so extended as to determine the position of the Crown and its servants; thus the constitution is the result of the ordinary law of the land.[3]

One of the contents of the Constitution is the guarantee of human rights, constitutional rights as citizens. These rights are contained in the Constitution comprehensively.[4] In the 1945 Constitution there is one chapter, namely Chapter XA which contains guarantees for human rights. One of the constitutional rights of citizens guaranteed by the 1945 Constitution is the right to education (the right to education). This right is mentioned in particular in Article 28C paragraph (1) regarding the right to receive education and benefit from science and Article 28E paragraph (1) which talks about the right to choose education and teaching.

The Indonesian government is pensive with the education sector. The Constitution stipulates that the education budget is at least 20 percent. Comparing with several countries, not many countries include their education budget in the Constitution. Besides Indonesia, which mentions the education budget in the Constitution, among them is Brazil as regulated in the provisions of Article 212 of the Brazilian Constitution.[5] Such an arrangement demonstrates the importance of the right to education that the budget allocation for its implementation is stated in the Constitution.

Educational issues are often handled by the Constitutional Court in a number of judicial review. This has happened and was decided by the Constitutional Court in the review of Law no. 20 of 2003 concerning the National Education System (UU Sisdiknas), especially the explanation of Article 49 paragraph (1) which states, "The fulfillment of education funding can be done in stages". The petitioner for reviewing this law considers that the provision is contrary to Article 31 paragraph (4) of the 1945 Constitution which clearly states that the education budget allocation is at least 20% of the APBN and APBD. The Constitutional Court granted this request and stated that the explanation of Article 49 paragraph (1) of the National Education System Law was contrary to the 1945 Constitution. In its considerations, the Court stated that the implementation of the constitution could not be delayed. The Court views that the explanation of Article 49 has opened the door for not implementing or at least delaying the allocation of at least 20% of the APBN and APBD for the education budget.

A number of Constitutional Court (MK) decisions related to education have served as milestones in the protection of constitutional rights. Among them is Decision Number 026/PUU-IV/2006 concerning the Review of Law Number 18 of 2006 regarding the 2007 State Budget. In that decision, the Court declared that the law—specifically the education budget provision of only 11.8% of the total

budget—was unconstitutional as it contradicted Article 31 of the 1945 Constitution, which mandates a minimum allocation of 20% of the national budget to education.

Following that, Decision Number 24/PUU-V/2007 reviewed Article 49(1) of Law Number 20 of 2003 on the National Education System. The Court ruled that the inclusion of the phrase "gaji pendidik dan" (teacher salaries and...) in the context of calculating the education budget was unconstitutional. This was because it potentially diluted the actual operational funds allocated to educational programs and infrastructure, thus impairing the state's constitutional obligation to ensure quality education.

In Decision Number 5/PUU-X/2012, the Court examined Article 50(3) of the same law, which allowed the establishment of international-standard education units (RSBI/BSI). The Court concluded that such arrangements threatened national identity, created discriminatory treatment, and facilitated the commercialization of education—all of which violated the constitutional principle of equality and accessibility in education.

The MK continued to reinforce the state's duty toward educational equity through its most recent and transformative ruling: Decision Number 3/PUU-XXII/2024, delivered in May 2025. In this case, the Court declared that the constitutional guarantee of free basic education under Article 31(2) UUD 1945 must apply to both public and private schools. Previously, only public schools were obligated to offer tuition-free basic education (SD–SMP level), leaving private school students—who may enroll out of necessity, not privilege—outside the scope of protection. This decision closes a normative gap in the implementation of the *wajib belajar* (mandatory education) program by asserting that the state must ensure access to free education regardless of the institutional form.

While the Court clarified that the ruling does not prohibit private schools from charging fees, it emphasized the state's obligation to support low-income students in private schools through budget reallocation or subsidies, effectively directing the government to reconfigure fiscal priorities in accordance with the principle of substantive equality.

2 Literature Review

Enhancing the intellectual life of the nation is a key objective of the Indonesian state as outlined in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD RI 1945).[6] To ensure citizens' right to education, the government has codified this in the 1945 Constitution. This is detailed in Chapter XIII, Article 31, paragraph (1), which states that "every citizen is entitled to education," and paragraph (2), which declares that "the government is responsible for establishing and maintaining a national education system regulated by law." [7] According to Judge Achmad Sodiki, the applicant's objections are that the content of the regulation contradicts the nation's goal of enhancing the intellectual life of the country and the state's obligation to do so. The regulation is also seen as creating dualism in Indonesia's

education system, promoting a new form of education liberalization, and causing discrimination and stratification in education. Additionally, it is believed to erode the identity of the Indonesian nation which uses the Indonesian language.[8]

According to Hans Kelsen, a legal rule becomes valid once it is properly enacted, even if it may not be initially well-received by the public. However, if the rule continues to be rejected by society, it will lose its validity and become an invalid rule. Therefore, for a legal rule to be considered valid, it must be accepted by society. Nonetheless, a valid legal rule is not necessarily "effective". In this context, the validity of a legal rule falls into the category of "what ought to be" (das Sollen), whereas effectiveness falls into the category of "reality" (das Sein).[9]

Hans Kelsen emphasizes the reciprocal relationship between the validity and effectiveness of a legal rule or norm. According to him, before a rule or legal norm can be effectively implemented, it must first be valid. If a legal norm is not valid, then the rule cannot function effectively.[10] *Regarding the effectiveness of a legal rule or norm, there are various perspectives depending on the legal school of thought. For positivists or proponents of the basic norm theory (grundnorm), it is not an issue because a valid norm cannot be enforced without being accompanied by legal sanctions for those who violate it.*[11]

According to L.M. Friedmann, there are three sub-systems that affect the effectiveness of a legal system: legal substance, legal structure, and legal culture[12]. *This research is also supported by Mochtar Kusumaatmadja's Development Law Theory, which includes two main points:*

- 1. Order or regulation in the context of reform or development is something that is desired and considered absolutely necessary.*
- 2. Law, in the sense of rules or regulations, can serve as a tool for regulation or a means for development by directing human activities towards reform.*

In relation to Mochtar Kusumaatmadja's concept, the Indonesian Minister of National Education Regulation Number 20 of 2003 on the National Education System, particularly the RSBI-SBI program, serves as a tool for societal reform with expected impacts in Indonesia. These impacts include: First, creating equal opportunities for all prospective students to attend RSBI-SBI schools regardless of social status, economic background, gender, or religion. Second, serving as a means to improve the quality of education as a manifestation of educational development, considering factors such as income, process, and outcomes. Third, establishing principles of good governance, which include participatory, transparent, accountable, professional, democratic, and responsible practices. This governance should ensure excellent service, prevent collusion, corruption, and nepotism (KKN), guarantee legal certainty, and be accessible to the broader community. This situation conforms to the principles of legality articulated by Lon L. Fuller, where one of the eight principles is that legal rules should be stable and not frequently changed.

According to Mochtar Kusumaatmadja's Theory of Development Law, the purpose of law in a developing society is not merely to maintain order but also to function as a tool of social engineering. In its second phase, this theory places strong emphasis on the law as a means to achieve social justice. Justice here is understood not only in terms of formal equality before the

law but also in terms of substantive equality, ensuring that all members of society enjoy equal rights and opportunities. This interpretation aligns closely with the principle of popular sovereignty as reflected in Pancasila, particularly in its affirmation of human dignity and equality. If the ultimate goal of law in a state founded upon Pancasila is to bring about social justice for all, then law must serve as an active instrument to realize that goal in tangible ways — not merely through regulation but through the transformation of unjust structures.[13]

In line with Mochtar Kusumaatmadja's Development Theory, all Indonesian citizens are entitled to receive quality education at every level, including primary, secondary, higher, and vocational education. The provincial government's responsibility for RSBI assets and staff managed at the provincial level needs further discussion, as the province is still obligated to provide school budgets to ensure the improvement of educational quality in their respective regions. For the district or city governments, former RSBI schools must be managed as development schools, and they are also responsible for allocating school budgets to guarantee the enhancement of educational quality in their areas.

3 Method

The research methodology employs a normative juridical approach, comprehensively analyzing legal principles and regulations governing budgeting, inclusivity, and legal enhancements for an integrated national educational system in Indonesia. This methodology entails a methodical examination of prevailing laws, doctrines, and statutes with the objective of pinpointing shortcomings, suggesting legal modifications, and providing valuable perspectives to enhance the enforcement of laws in these particular circumstances. In addition, the study utilizes library research and applies a normative juridical perspective to evaluate the regulatory framework for national educational system according to Law 20 of 2003.

4 Result and Discussion

We are facing at least four fundamental problems in the field of education, namely the high rate of not going to school, education problems for disabled groups, the world of education with an Incompatibility to world of work. and budget allocation. First, based on the 2018 national socio-economic survey, the number of out of school at the SMA, SMK and SLB levels is 10.25 percent in 2020 from the national socio-economic survey. Due to the unaffordable cost of education, children are dropping out of school. Although it has been declared free school, however, there are still some things you have to pay for. Ironically, not a few poor people who can only pay what they can afford even get gossip from classmates and even teachers.

Next, there are not a few groups of people with disabilities have difficulty finding inclusive schools, which means that the number of inclusive schools is relatively small. What was designed to include the students with disabilities with the rest of the class have taken a turn in achieving the blended classroom curriculum. In fact,

indirectly, inclusive schools also divide, so that they are significantly excluded from social reality. The awareness of all students are the same, needed to be revised, because there are those who are different from the rest of the class and teachers or principals, students, and parents of students must spread this awareness and embracing the students with disabilities.

Then, the number of high school and college graduates who are less skilled in industry and technology. The policy of connecting the education system to the industrial world is not really implemented, and there is a lack of attention to needs on the work field. Thus, the Government must create an integrated curriculum and syllabus with the needs on the work field.

Fourth, the issue of education budget allocation and the State's responsibility to fulfill constitutional mandates in this sector remains a recurring constitutional challenge. The 1945 Constitution, particularly Article 31 paragraph (4), explicitly requires that a minimum of 20% of the State and regional budgets be allocated to education. However, this mandate has not always been honored in legislation or practice, which has led to significant judicial scrutiny by the Constitutional Court.

In Decision Number 026/PUU-IV/2006, the Court ruled that limiting education funds to 11.8% in the 2007 State Budget was unconstitutional. Similarly, Decision Number 24/PUU-V/2007 removed the phrase "teacher salaries and" from Article 49 paragraph (1) of Law Number 20 of 2003, on the basis that teacher salaries should not be included in the 20% allocation, thereby ensuring that this quota directly funds educational quality and access. Meanwhile, Decision Number 5/PUU-X/2012 declared the international-standard school program (RSBI/BSI) unconstitutional for fostering discrimination and commercializing public education, which contradicts the constitutional principle of equality before the law.

More recently, in Decision Number 3/PUU-XXII/2024, the Court again reaffirmed the binding nature of Article 31 of the 1945 Constitution. In this case, the Constitutional Court explicitly stated that the 20% allocation for education is not a mere policy direction but a normative constitutional obligation. The Court emphasized that any legal norm or budgetary decision failing to allocate at least 20% of the budget to education—without clear justification—constitutes a violation of the Constitution. This decision also clarified that the calculation of the 20% must be independent of expenditures such as infrastructure projects outside the core educational function, thereby eliminating budgetary manipulation disguised as educational spending.

Taken together, these decisions demonstrate the active constitutional protection of the right to education by the judiciary. However, despite such firm jurisprudence, implementation challenges persist at the national and regional levels. Political negotiation, administrative inefficiencies, and lack of transparency still impair the realization of education budgets. In several instances, budget earmarks fall short of

the minimum standard or are distributed inefficiently, failing to reach underprivileged or rural areas.

Therefore, it is evident that constitutional enforcement must go hand-in-hand with political will and institutional accountability. Judicial review by the Court can only offer a corrective role; transformational change requires active engagement by the executive, legislative, and civil society to ensure that education receives the prioritization it deserves—not merely in rhetoric but in actual policy. Upholding education funding is not only about numbers; it is a direct investment in human dignity, national identity, and the long-term sustainability of democracy itself.

5 Conclusion

Education remains the cornerstone for enhancing the quality of human resources in Indonesia. As this paper has outlined, there are at least four fundamental challenges in the national education sector: high dropout rates, lack of inclusive education for people with disabilities, mismatch between education outcomes and employment demands, and the inconsistency of the government's commitment to education budget allocation as mandated by the Constitution.

First, economic barriers continue to prevent many children from accessing secondary education despite policies declaring education to be free. Second, the scarcity of truly inclusive schools hinders the rights of children with disabilities to enjoy equal educational opportunities. Third, the disconnect between curriculum and labor market needs has resulted in graduates who are underprepared for the demands of modern industry and technology. Finally, the recurring failure of the state to meet the constitutional mandate of allocating a minimum of 20% of the state and regional budgets for education, as affirmed in various Constitutional Court decisions, represents a structural problem that undermines the long-term development of Indonesia's human capital.

The Constitutional Court, through a series of progressive rulings—Decision Number 026/PUU-IV/2006, 24/PUU-V/2007, 5/PUU-X/2012, and most recently 3/PUU-XXII/2024—has emphasized the constitutional obligation to prioritize education in both policy and budgeting. These decisions reinforce that education is not merely a policy domain, but a fundamental right with binding normative force. However, judicial review alone is insufficient. It must be matched by concrete action from the executive and legislative branches, as well as active oversight by civil society.

In conclusion, regardless of how advanced and intricate technology becomes, it will remain ineffectual without human resources that are equally sophisticated, adaptable, and grounded in strong educational foundations. Investment in education is therefore not optional—it is imperative. Upholding constitutional commitments, addressing inequities, and ensuring access to quality, inclusive, and relevant education

must remain central to Indonesia's national agenda. Only by doing so can the nation secure a future of dignity, competitiveness, and sustainable development.

These four fundamental problems in education is the key to improving the quality of human resources. No matter how sophisticated and complex the technology is, it will be meaningless without the quality of as sophisticated and as complex human resources.

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