

# Legal Policy of Basic Education in National Education System

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## Abstract

This article reviews the essence of education as a systematic process to improve the dignity of human beings holistically that enables the aspect of learner' humanity can develop optimally. The formal education should be strategic for the effort to develop learner' potential. As it turns out in practice, it has certain weaknesses, particularly in view of the accountability and legitimacy aspects of its establishment. The results show that education represents a constitutional right as guaranteed by the constitution. However, there must be a serious effort to improve the national education system as a product of legal policy and its implementation in basic education. In such efforts, it will obtain the quality of human resources of the children who are able to compete globally with the advanced nations in this world. In essence, the implementation strategy of education is a conscious and planned effort to create conducive learning system so that learners can actively develop their potential to have spiritual strength, self-control, personality, intelligence, noble character, and skills needed for themselves, nation and state. The implementation of national education should be designed on the basis of paradigm, theories or concepts of learning that can provide perspectives on how to design effective learning theories. The national education system should be able to ensure equality in educational opportunities, quality improvement and relevance and efficiency in education management.

**Keywords:** Constitutional Rights, Legal Policy, Local Government, National Education System

## 1. Introduction

The development of a nation is determined by the quality of human resources. A strategy to improve the quality of human resources in Indonesia is education. Education is expected to create the human resources which able to cope the increasingly complex problems of life, whether faced by each individual, society, nation, and country.<sup>1</sup> In the future, the development of national education is based on the paradigm of "building a fully Indonesian man" that functions as a subject and has the capacity to actualize the potential and humanity dimension optimally.

The essence of education is a systematic process to improve the dignity of human beings holistically that enables the aspect of learner' humanity can develop optimally. Thus, formal education should be strategic for the effort to develop learner' potential. Essentially, the implementation strategy of education is a conscious and planned effort to create conducive learning system so that learners can actively develop their potential to have spiritual strength, self-control, personality, intelligence, noble character, and skills needed for themselves, nation and state. The administration of educational services is without transparency and accountability, household expenditures on children's education are high and increasing, and huge social and geographical disparities exist.<sup>2</sup>

How the implementation of the national education system in basic education in Indonesia? A number of research results show that education management system in Indonesia is very "underdeveloped," when compared with education systems in other Asian countries. The education service in Indonesia is still oriented to the "Academic Stress" philosophy that imposes, suppress, and even threaten. Not create conducive learning atmosphere to provide wide space for children to develop their creativity. Thus, creativity was needed to innovate and compete in the future.<sup>3</sup>

Based on data released by *the Programme for International Student Assessment (PISA)* in 2012, the capabilities of Indonesian children aged 15 years in the field of mathematics, science, and reading is still low compared with other children in the world. As result of PISA 2012, Indonesia is ranked 64<sup>th</sup> of 65 countries participating in the test. The average score of mathematics for Indonesian children is 375, the reading is 396, and the science is 382. Whereas, the average score of OECD (*the Organization for Economic Cooperation and Development*): 494 (mathematics), 496 (science), and 501 (reading).

The logical consequence of low human resources makes Indonesia difficult to confronting the global competition. The Indonesian nation is unable to respond to the development of science and technology. The world of education is very difficult to produce excellent graduates. An interesting analysis of these findings, according to the authors, is that the policy of a national education system on the basic education system (especially grades 1 and 2) does not take into account "the capacity and working power of the brain" of children. Since birth, every child has been given the potential of intelligence (200 billion more) that the child brought

<sup>1</sup> Reyes, X. A. (2010). "Educational equity and access as universal human rights: Effects on teacher education in the US". *International Online Journal of Educational Sciences*, 2(1).

<sup>2</sup> Kristiansen, S. (2006). "Decentralising education in Indonesia". *International journal of educational development*, 26(5), 513-531.

<sup>3</sup> Makmun, A.S. (2003). *Psikologi Kependidikan*. Bandung: Rosda Karya.

since birth. Potential intelligence can be developed in ages 3 to 8 years to a higher level.

The “Academic Stress” is exacerbated in the implementation of education in various regions is also causing problems ranging from shortage of teachers, educational facilities that have not been adequate until the difficulty of the community to follow education due to economic problems and the necessities of life. The orientation of the national education is also nowadays become a business industry that is no longer oriented to efforts to educate the life of the nation. It can be observed with the occurrence of the practice of buying and selling titles, diplomas, and academic record. The lack of government support for the needs of a complete and comfortable study place. Improved education can only be enjoyed by a group of people who have a strong economy, while for the poor, education is just a dream.

Literally, the mentioned conditions must be overcome, given the existence and development of a nation lies in the quality of its people not dependent on natural resources. It is important to understand that having knowledge is less able to help person existence if not supported by creative ability, critical thinking, and other positive character. Education at every level must play a role is not only transfer of knowledge, but also transfer of value as well as character development.

The concepts and policies of national educational should be based on the basic rights of children as mentioned above. Referring to the basic rights of children, education should provide space for optimal capacity of the children. Starting with a way of view that education is part to develop the potential, thinking power and reasoning and the development of creativity. However, if observed nationally, especially on the level of practice, it turns out the current education system actually castrate the basic rights of the child, so that the current education system will ultimately lead to the collapse of human resources owned by this nation. Children who are educated and produced by formal educational institutions in such an educational system have not shown encouraging results, low academic achievement, and their positive personality traits are extremely poor. If this continues to happen, and no serious efforts and remedial action, then the quality of human resources of Indonesian society will remain far from other nations.

Normatively, article 46 paragraph (1) of Act No. 20 of 2003 on National Education System, which essentially affirms that *education funding is a shared responsibility between the government, local government and the community*. As well as Government Regulation No. 48 of 2008 in article 2 paragraph (1), it is clearly stated that *education funding is a shared responsibility between the government, local government and the community*. The second point that the education regulation is different from that stipulated in the Constitution namely the 1945 Constitution article 31 paragraph (2) that: “*every citizen is obliged to follow basic education and the government shall fund it.*” Thus, it is the State’ obligation and responsibility concerning education and not communities, so that the political direction of our basic education law has changed from the actual purpose.

As described above, then according to the author there must be a serious effort to improve the national education system as a product of legal policy and its implementation in basic education. In such efforts, it will obtain the quality of human resources of the children who are able to compete globally with the advanced nations in this world.

## 2. Relation of Legal Policy and National Education System

Legal policy of a country is different from other countries.<sup>1</sup> This difference is due to the historical background, world-view, socio-cultural, and political will of each government. In other words, legal policy is local and particular (applicable only from and for certain countries), and not universal. But it does not mean that the legal policy of a country ignores the reality and politics of international law.

Factors that will determine the legal policy are not solely determined by what we aspire to or depend on the will of law-makers, practitioners or theorists only, but it also determined by the facts and developments of law in other countries and international law.<sup>2</sup> The differences of legal policy of a certain country with other countries that later led to what is called the National Legal Policy.

National legal policy represents basic guidance for all forms and processes of formulation, establishment and development of law in a country. If the national legal policy is a basic guideline for all forms and processes of formulation, establishment and development of law, it is certain that national legal policy should be formulated in a fundamental law and regulation rather than a technical regulation. Hierarchy arrangement of laws and regulations is to synchronize or avoid technical conflicts of implementation between one with other laws and regulations. That way, one or more laws and regulations are expected to proceed according to the purpose of legislation. The rules hierarchy is based on several considerations:

*First*, the establishment of laws and legislation is a requirement in the framework of the development of national law that can only be realized if supported by certain methods, and standards that bind all the institutions authorized to make laws and regulations; *Second*, to improve the coordination and smoothness of the legislative

<sup>1</sup> Mahfud, M.D. (2010). *Membangun Politik Menegakkan Konstitusi*. Jakarta: Rajawali Pers, page 15.

<sup>2</sup> Hartono, S. (1991). *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Bandung: Alumni, page 23.

process, then the Republic of Indonesia as a law-based country needs to have rules on the establishment of legislation; *Third*, so far the provisions relating to the establishment of rule and legislation are contained in several laws and regulations that are no longer in accordance with the constitutional law of the Republic of Indonesia.

Law and legislation in any country is always made human with a mindset. This mindset can be influenced by many factors such as ideological or religious beliefs, experiences, knowledge and also interests. These interests can vary (private, groups or parties, people, or foreign interests). Legal policy is part of legal policy. Therefore, as a basis, the political wisdom of the law applies to the politics of legislation. However, It can be interpreted that the functioning of a law is a sign that the law has reached the goal of law, which is trying to maintain and protect the community in the life. The level of legal effectiveness is also determined by how high the level of compliance of citizens to the rule of law that has been established.

According to Achmad Ali,<sup>1</sup> if a rule of law can be obeyed by most of the targets that are subjected to obedience, then it can be intended that the rule of law is effective. Nevertheless, even though a rule that is adhered to can be said to be effective, the level of its effectiveness still depends on the importance of obeying it. If the adherence of a society to a rule of law due to the interests of compliance then the level of obedience is considered very low. Different when its obedience is based on the importance of internalization, i.e obedience because the rule of law really fits with its intrinsic value, then this level of obedience is the highest level of obedience.

In an implementation context, the implementation of national education should be designed on the basis of paradigm, theories or concepts of learn and learning that can provide perspectives on how to design effective learning theories in helping learners gain learning experiences as well as learning achievement competencies as expected.

Given the target to be achieved of the multi-intelligence national educational as well as the characteristic of competency-based national curriculum learning, the development of learning adopts the paradigm of thinking from constructivist theory developed by Piaget and Vygotsky, combined with some ideas from the Social Learning Theory of Albert Bandura, as well as the humanistic education or humanistic approach. Degeng,<sup>2</sup> has made comparisons of constructivist and behavioristic approaches (which so far fostered the practice of learning in schools) and their implications for the planning of learning theories.

### 3. Fundamental Concepts of Human Rights and Education as Constitutional Rights

Since the UNs declared human rights in 1948, the issue of human rights has many discussed until now. One of the rights contained in the General Declaration of Human Rights is the education right, and it is subsequently implemented in the International Covenant on Economic, Social and Cultural Rights on 16 December 1966, as a binding rule for every State of United Nations' members. One of them is Indonesia. Education is one of access to welfare, and the enforcement of human rights comes from education, therefore the education right is a human right to achieve a welfare and enhancement of human dignity, therefore must obtain guarantees and protection from the State against the basic rights of citizens in the field of education.

The right to education, including various aspects of education and academic freedom is an important part of human rights law. Although the right to education is generally regarded as a cultural right, it also deals with other human rights. Because it is so close to education with other human rights, so education is a prerequisite for the implementation of human rights. The enjoyment of civil and political rights, such as freedom of information, expression, gather and association, the right to vote and to be elected, or to equal opportunity for public service, depends on at least a minimum level of education, including literacy. Correspondingly, many economic, social and cultural rights such as the right to choose a job, to receive equal pay for equal work, to form trade unions, or to take part in cultural life, to enjoy the benefits of scientific progress and to get a higher education based on ability, can only be implemented significantly after a person obtains the minimum level of education.

Universally, as the General Declaration of Human Rights that education is the right of every human being. The importance of education is aimed at strengthening human rights.<sup>3</sup> It is one of the important tools to promote human rights. Tolerance and respect for human rights is not only an important goal of education. The educational objectives and targets relating to human rights are recognized internationally, set forth in Article 26 paragraph (2) of the Declaration of Human Rights that:

*“Education should be directed toward the widest personal development and strengthening respect for human rights and fundamental freedoms. It should promote mutual understanding, tolerance and friendship among all nations, racial and religious groups, and expand the union activities of nations in maintaining peace.”*

<sup>1</sup> Ali, A. (2001). *Keterpurukan Hukum di Indonesia (Penyebab dan Solusinya)*. Jakarta: Penerbit Ghalia.

<sup>2</sup> Degeng, I.N.S. 1998. *Mencari Paradigma Baru Pemecahan Masalah Belajar*. Malang: IKIP Malang.

<sup>3</sup> Driss, B. (2017). GATS and International Trade in Health Services: Impact and Regulations. *Hasanuddin Law Review*, 3(2), 104-116. doi: <http://dx.doi.org/10.20956/halrev.v3i2.1050>

The most detailed provisions on the goals and objectives of the right to education in international law may be specified in article 29 paragraph (1) of the UNs' Convention on the Child Rights.<sup>1</sup> This convention has been ratified by most UNs' member and hence it may be regarded as the most universally accepted standard of human rights in the field of education. Ratified states agree that the education of the child should be directed:

- a. To develop the personality, talent and mental and psychic abilities of children for the development of their abilities.
- b. To develop the respect for human rights and fundamental freedoms and for the principles set out or specified in the UNs' Charter.
- c. To develop the respects of children to their parents, cultural identity, language, and values, and for the national values in which the child lives, or against the country in which he/she is living and for civilizations different from their own.
- d. To prepare children to live responsibly in a free society, with a spirit of mutual understanding, peace, tolerance and sexual equality, and friendship among all people, ethnic, national and religious groups and people of native origin.
- e. To develop the respect for natural environment

In addition, the importance of education to educate the life of the nation, to promote human rights in Indonesia, it is also an important tool to advance knowledge, and dignity of the Indonesian nation. In addition to education as a right given under the constitution, education also becomes an obligation granted by the state to its people.

Education is a constitutional right, which is guaranteed its implementation nationally based on the constitution. In Indonesia, this right is recognized and guaranteed in the 1945 Constitution. The responsibility of the state in education is set forth in the articles of the 1945 constitution, and the objectives of education in concrete terms are "... to educate the life of the nation..." as stated in the Preamble to the 1945 Constitution. Indeed, far before the establishment of the General Declaration of Human Rights in 1948, the founding fathers have realized that education is an access to intelligent and dignified nation life, therefore the right to education is guaranteed in the 1945 Constitution as the highest law.

#### **4. Macro Perspective in the Development of National Education System**

The preamble of the 1945 constitution mandates the government of the Indonesian to protect the entire nation of Indonesia and the entire blood of Indonesia and to promote the common prosperity, to educate the life of the nation, and to carry out the world order based on freedom, eternal peace and social justice. As the 1945 Constitution of the State of the Republic of Indonesia mandates the Government to undertake and organize a national education system that promotes faith and piety to God almighty and noble character in order to educate the life of the nation which is regulated by law.

The national education system should be able to ensure equality in educational opportunities, quality improvement and relevance and efficiency of education management, so that it is necessary to reform the education in a planned, directed and sustainable manner. National education functions to develop the ability and form the character and civilization of a dignified nation in order to educate the life of nation, aims to develop the potential of learners and become democratic and responsible citizen.

The development of national education is an effort that aims to realize Indonesian are quality, advanced, independent, and modern. It is an important part of the overall and serious effort to improve the dignity of the nation. Success in build an education will contribute greatly to the achievement of overall national development goals. In such a context, the development of education covers a wide range of dimensions that include social, cultural, economic, and political.

In a social perspective, education will give birth to educated people who have an important role in the process of social change in society. It becomes a determinant factor in promoting the acceleration of community mobility, leading to the establishment of new social formations. This new social formation consists of educated middle-class society, which is an important element in strengthening social cohesion. The education that gave birth to the educated society became the cohesion that linked social units within the society: family, community, associations, and social organization which later became a large organization of state institutions. Thus, it can make an important contribution to strengthening social integration.

In a cultural perspective, education is an important vehicle and an effective medium for teaching norms, socializing values, and instilling ethos among citizens. It can also be an instrument to develop the nation's personality, strengthening national identity, and establish national identity. Even the role of education becomes even more important when the flow of globalization is so strong, which brings the influence of values and culture that are often contrary to the values and personality of the Indonesian nation. In this context, it can be a

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<sup>1</sup> *United Nation Convention on the Rights of the Child*. This convention behave since 20 September 1990, it has ratified by 193 countries.



strategic vehicle for building collective conscience as citizens and strengthening social ties, while respecting cultural, racial, ethnic and religious diversity so as to strengthen national wholeness.

In an economic perspective, education will produce reliable humans to be the subjects of national economic development. Therefore, it should be able to give birth to qualified graduates who have knowledge, master technology, and have adequate technical skills and life skills. It should also be able to produce professionals who have entrepreneurial skills, which became one of the main pillars of national economic activity. Even the role of education becomes very important and strategic to improve national competitiveness and build the independence of the nation, which becomes the absolute prerequisite in entering the competition among nations in the global era.

Nowadays, in the global era, various nations of the world have developed a *Knowledge-Based Economy* (KBE), which requires quality human support. Therefore, education is absolutely necessary to sustain the development of *Education for the Knowledge Economy* (EKE). In this context, educational institutions should also serve as centers of research and development, resulting in superior research products that support the KBE. The availability of qualified human beings that dominate science and technology greatly determines the nation's ability to enter global competence and free market economy, which demands high competitiveness. Thus, education is expected to lead the nation of Indonesia to achieve excellence in global competition.

In a political perspective, education should be able to develop the capacity of individuals to become good citizens, who have an awareness of rights and responsibilities in the life of society, nation and state. Therefore, it should be able to give birth to individuals who have the vision and idealism to build a common strength as a nation. Vision and idealism must be referring to and derived from the ideology of national ideology, embraced by all components of the nation. In the long term, education will undoubtedly give birth to a layer of educated society which then forms a critical mass, which is a key element in the effort to build a civil society. Then, education is a major undertaking to lay a solid social foundation for the creation of a democratic society, which is based on an educated, middle class society that is the main pillar of civil society, which is one of the pillars for the realization of the development of a democratic society.

In the next five years, the development of national education is faced with serious challenges, especially in efforts to improve performance that includes (a) equity and access expansion; (b) improvement of quality, relevance, and competitiveness; (c) governance arrangements, accountability and public image; and (d) financing. In effort to improves the performance of national education, a comprehensive reform that has begun with the decentralization and education autonomy policy as part of the governments' political reforms.

The political reform of this government is marked by a radical change of governance from the centralized to decentralized systems, granting wide autonomy to the regions governed by Act No. 22 of 1999 which is then re-amended with Act No. 32 of 2004 on Regional Government. Education which initially became the authority of the central government then diverted into the authority of local government.<sup>1</sup> Management of education which is the authority of local government is intended to improve the efficiency and effectiveness of education management, so it is expected to improve the performance of national education.

In the era of autonomy and decentralization, the national education system is required to make changes, adjustments, and reforms in order to bring about an autonomous and democratic education, which focuses on diversity and encourages community participation, without losing national insight. In this context, the government together with the Representatives has drafted Act No. 20 of 2003 on the National Education System as a manifestation of the determination of educational reform to address various challenges in the life of society, nation and state in the era of global competition. Specifically, we analyzes the reality of basic education today, basic education is the foundation of secondary education. Basic education includes Elementary School (SD) and *Madrasah Ibtidaiyah* (MI) or equivalent as well as Junior High School and *Madrasah Tsanawiyah* (MTs), or equivalent.

In contrast, some educational practitioners' mindset, the meaning and essence of learning is often simply interpreted as the acceptance of information from informational sources (teachers and textbooks). As a result, teachers still interpret teaching activities as information transfer activities (read: pouring "water" information) from teacher to student. For the purpose of implementation of good learning, teachers need to do meaning reverse and the essence of learning. In this view and paradigm, the meaning and essence of learning is defined as the process of building meaning/understanding of information and experience. The process of building meaning can be done by the students themselves or with others. The process is filtered by perception, thought (initial knowledge), and student feelings. Learning is not the process of absorbing the knowledge of the teacher. Test results may vary despite receiving the same teaching, from the same teacher, and at the same time.

The logical consequence of learning above, teaching is the participation of teachers in build student understanding. Such participation can manifest behavior as ask critically, ask for clarity, or present situations

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<sup>1</sup> Butt, S. (2010). "Regional autonomy and legal disorder: The proliferation of local laws in Indonesia". *Sydney Law Review.*, Vol. 32: 177-191.

that appear to be contradict to student' understanding so that students are "encouraged" to improve their understanding. Given learning is an active activity of students, namely building understanding, then the participation of teachers should not seize the authority or rights of students in developing ideas. The participation of teacher should always bring about the development of the understanding as a responsibility to the student itself, not the teacher.

It is fully realized that every child born normally (physical-mental) has the potential to be intelligent. With that intelligence, the child will actualize himself in the midst of society. Intelligent person will contribute to advancing humanity. The scientific work and views will be able to free man from the idiocy to a better and more civilized order of life.

In common, any child born with curiosity, it is never satisfied, because God provides human beings with a set of tools useful to solve the various curiosity. As described earlier that when the baby is born, the brain has neuron 200 billion brain cells that are ready to be developed to the highest potential level. Of these, there are several billion containing information. At 4 years the lower brain structure has grown to 80%. This can be seen clearly in the sensory-motor development so the child looks to be active, running around, playing, riding bikes, and other physical activities. Through the rough motor movements found in the feet and smooth motor in the hand, the movement of leg muscles and hands as if never tire to move. Therefore, it is a waste if at this age the child is told to sit sweetly listening to the command. By the age of 5 years the child has almost 90% of the words that will be used later in his/her daily life.

A researcher Paul Chauchard found that, "in human there is a natural brain power to exercise reflection and freedom, but that natural ability will only develop if cultivated through the environment." Further, Chauchard mentions "when a child does not make contact with other man, the natural brain ability to "disappear" means that the child has no "intellectual readiness" to become a dignified human.<sup>1</sup> The study of conditions supported by empirical data encourages the need to improve the quality of education in Indonesia from an early age, thoroughly and systematically, ranging from curriculum review to all levels of education, improving the quality of educators and education personnel as well as the quality of other standards.

## 5. Conclusion

Education represents a constitutional right as guaranteed by the constitution. The essence of education is a systematic process to improve the human dignity holistically. In essence, the implementation strategy of education is a conscious and planned effort to create conducive learning system so that learners can actively develop their potential to have spiritual strength, self-control, personality, intelligence, noble character, and skills needed for themselves, nation and state. The implementation of national education should be designed on the basis of paradigm, theories or concepts of learn and learning that can provide perspectives on how to design effective learning theories. The national education system should be able to ensure equality in educational opportunities, quality improvement and relevance and efficiency in education management.

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