

## Legal Protection of The Fulfillment of The Right To Education During Covid-19 Pandemic

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### Articel History

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**Abstract:** *The purpose of this research is to examine the current online learning as an alternative to the implementation of learning during the COVID-19 pandemic, which the implementation still brings about various problems for educators, students, and educational institutions. The formulation of the problem taken in this study is how to protect the law against the fulfillment of the right to education during the covid-19 pandemic. The results of the study reveal that online learning can be done as an alternative to the fulfillment of the right to education and can be used as a means to improve the education system in Indonesia, especially in terms of equitable distribution of education quality with the renewal of the national education system law as a legal umbrella in the implementation of the education system in Indonesia.*

**Keywords:** *legal protection, right to education, covid-19*

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### A. PRELIMINARY

The outbreak of the Covid-19 Virus in Indonesia was first confirmed in March 2020. Since then the spread of Covid-19 has been very fast to all parts of Indonesia. In an effort to prevent the spread of the virus, the World Health Organization (WHO) has instructed to stop activities that have the potential to cause crowds.<sup>1</sup> To that end, the

Indonesian government directs to carry out work from home/study from home which is strengthened by the issuance of Presidential Decree No. 11 of 2020 concerning the Establishment of a Covid-19 Public Health Emergency and Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the context of Acceleration of Handling Covid-19.

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<sup>1</sup>Cindy Ochtavia Yolanda Putri, "Pembelajaran Daring, Efektif Gak Sih Buat Mahasiswa?", *egsaugm*, October 14, 2020,

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<https://egsa.geo.ugm.ac.id/2020/10/14/pembelajaran-daring-efektif-gak-sih-buat-mahasiswa/>

The impact of COVID-19 is very large in people's lives, not only in the health and economic fields, but also in other fields, especially education. In terms of education, the government issues Circular Letter of the Ministry of Education and Culture Number 4 of 2020 concerning the Implementation of Educational Policies in the Emergency Period for the Spread of Corona Virus Disease (COVID-19) and Circular Letter of the Ministry of Education and Culture, Directorate of Higher Education No. 1 of 2020 regarding the prevention of the spread of COVID-19 in the world of Education. In these two circulars, the Ministry of Education and Culture instructs to carry out distance learning (Study From Home / SFH) or better known as online learning.

The implementation of the distance learning system has forcibly changed the face-to-face formal education pattern that has been implemented so far into online learning using technological facilities.<sup>2</sup> Previously, Indonesia was familiar with the distance learning system regulated in Law Number 20 of 2003 concerning the National Education System. The distance learning system in this law is expected to be an alternative when teachers and students can't meet face to face in the classroom.

The implementation of online learning raises new problems related to the fulfillment of the right to education, because not all Indonesians have mobile phones or computers to support online learning. Other problems also arise regarding the ability to provide mobile data which require quite a high cost, especially for lower-middle class students. Not only that, internet connection is also a problem that must

be considered, considering that internet access in some areas in Indonesia are still not reachable.

In the research results of ISEAS-Yusof Ishak Institute entitled "Teaching and Learning During School Closure: Lessons from Indonesia", shows that nearly 69 million Indonesian students face the risk of losing their learning as a result of school closures to prevent the spread of COVID-19. This research found that only 40% of Indonesians have internet access.<sup>3</sup>

Based on the results of the research, it can be observed that there are legal issues that must be addressed immediately, namely regarding legal protection of the community's right to education during the pandemic. This becomes very important considering that education is a vital right that became the goal of the establishment of the Unitary State of the Republic of Indonesia (NKRI) as stipulated in the preamble to the 1945 Constitution.<sup>4</sup>

Based on the description above, the focus of the study in this research is how is the legal protection for the fulfillment of the right to education during the COVID-19 pandemic.

## **B. RESEARCH METHODS**

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<sup>2</sup>Hwian Christianto, "Penggunaan Media Internet Dalam Pemenuhan Hak Atas Pendidikan Di Masa Pandemi Covid-19: Perspektif Hak Asasi Manusia Dan Hukum Pidana", Jurnal HAM, Volume 11, Nomor 2, Agustus 2020, hal.240

<sup>3</sup>Senza Arsendy et.al., "Teaching and Learning During School Closure: Lessons from Indonesia," ISEAS – YUSOF ISHAK INSTITUTE, Singapore, 2020, hal.1

<sup>4</sup>Republik Indonesia, "Pembukaan Undang-Undang Dasar 1945 Alinea ke-4"

This research was conducted using normative legal research which emphasizes and leads to a literature review in order to collect data from various literatures related to the legal issues under study. The approach used is a statute approach, a conceptual approach and a comparative approach.

### **C. DISCUSSION**

Right to Education is a human right that is protected by the constitution in various countries, including Indonesia. Provisions for education as part of human rights are stated in Article 26 of the Declaration of Human Rights which states:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

In the Indonesian constitution, the right to education is regulated in Chapter XA concerning Human Rights in Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that:

"Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race."

Human rights in Indonesia are believed to be values and norms that live in society. Country has the responsibility to protect and enforce

human rights as stated in Article 28I paragraph (4) of the 1945 Constitution which reads "The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government.". This article emphasizes that the government is responsible for the fulfilment of the human rights of every citizen. Then in Article 28I paragraph 5 it is stated that to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations.

Education is one of the basic rights of all citizens which should not be denied, ignored, and reduced under any circumstances and by anyone. Neglect of the right to education means neglect of human dignity.<sup>5</sup> In Article 12 paragraph 1 of Law Number 39 of 1999 concerning Human Rights it is stated that:

"Everyone has the right to protection of his self development, to obtain an education, to educate himself, and to improve the quality of his life to become responsible, content, and prosperous people, in accordance with his human rights."

The right to education has been formulated in the Indonesian Constitution, namely Article 31 paragraph 1 of the 1945 Constitution which reads: "Every citizen has the right to education." Education is an important aspect that must be considered by the state. The state's responsibility for

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<sup>5</sup>Patria Widiyastuti, "*Hak Atas Pendidikan Tinggi Warga Negara*", Fakultas Hukum Universitas Airlangga, Surabaya, 2010, hal.9

education is to provide basic needs, such as providing facilities and infrastructure, as well as professional educators. Through education, the state can grow human resources with good competitive quality. Therefore, citizens must have access to education even to universities, including during the current Covid-19 pandemic.

The covid-19 pandemic is making changes in the system education in Indonesia. As a form of fulfilling the right to education during the COVID-19 pandemic, the Ministry of Education and Culture (Kemendikbud) issued Circular Letter Number 15 of 2020 concerning Guidelines for the Implementation of Learning from Home in the Emergency Period for the Spread of Covid-19. In this circular, it is stated that the purpose of implementing Learning From Home (BDR) is to ensure the fulfillment of the rights of students to obtain educational services during the Covid-19 emergency, protect education unit residents from the adverse effects of Covid-19, prevent the spread and transmission of Covid-19 in Indonesia. education units and ensure the fulfillment of psychosocial support for educators, students, and parents.<sup>6</sup>

The implementation of learning from home is carried out by distance learning which is divided into two approaches, namely distance learning online (online) and distance learning

outside the network (offline). To support online distance learning, the Ministry of Education and Culture recommends at least 23 pages that students can use as learning resources. Then, for offline learning the media provided by the Ministry of Education and Culture are learning programs from home through TVRI, radio, self-study modules and worksheets, printed teaching materials as well as teaching aids and learning media from objects and the surrounding environment.<sup>7</sup>

Regarding distance learning requirements, it has been regulated in Article 31 Paragraph 3 of the Law on the National Education System which affirms "Distance Education is held in various forms, modes, and scopes supported by learning facilities and services as well as an assessment system that ensures the quality of graduates in accordance with standards. national education." In this case distance learning must be prepared carefully and planned from service facilities to the learning process to the learning evaluation stage. As stated in article 4 of the Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 3 of 2020 which states that there are eight National Education Standards, namely a. graduate competence standard; b. learning content standards; c. learning process standards; d. learning education assessment standards; e. standards of Lecturers and Education Personnel; f. standard of learning facilities and infrastructure; g. Learning management standards; and h. Learning financing standards.

The National Education System Law has indeed regulated distance education using information technology

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<sup>6</sup>Surat Edaran Nomor 15 Tahun 2020 tentang Pedoman Penyelenggaraan Belajar dari Rumah dalam Masa Darurat Penyebaran Covid-19  
<sup>7</sup>Kemendikbud, "Kemendikbud Terbitkan Pedoman Penyelenggaraan Belajar dari Rumah," Jakarta, May 29, 2020, [Kemendikbud.go.id](http://Kemendikbud.go.id) » Republik Indonesia

as an effort to fulfill the right to education when educators and students cannot carry out face-to-face learning. It's just that in implementing it, there are many difficulties encountered, including the ability to use internet access to be a necessity that must be considered when distance education using technology media will be carried out.

The challenges that must be faced during the Covid-19 pandemic lie in learning methods and supporting learning facilities. The usage of internet is very necessary for the realization of the right to education during the Covid-19 pandemic. Learning methods must also change in terms of delivery methods and interaction models used. In the past, all educational paths used the face-to-face method, this time the meetings were conducted online. The presentation of the material must also be made denser, more interesting and more understandable. The use of the Internet on various media platforms such as Zoom, Google meet, Cisco Webex, WhatsApp, and other media provides various conveniences for educators and students.

Judging from the legal aspect, legal protection for education during this pandemic is still weak and narrow, because the rules that enforce online learning are still made in the form of a Circular. The nature of this circular is easy to change, so that all rules regarding the online learning system during this pandemic should be made and included in the National Education System Law, because the law should function to realize protection that is not only temporary but also must to be able to be implemented in the future, considering what is happening today is not impossible to happen again in the future.

In the process of providing education in Indonesia, the state is the most responsible party. With the power possessed by the state, the state has the right to urge the establishment of legal protection for the human rights of every citizen, especially the human right to access education.

The next problem lies in the adaptability of educators and students to the media used. Online learning as an alternative to break the chain of the spread of COVID-19 provides a new color in the learning system. Education that is usually carried out with direct interaction between educators and students has now turned into indirect interaction learning. This change has an impact on the method of providing education, but learning must still be carried out with various risks.

In a pandemic situation that continues to increase, the education sector must continue to receive special attention so that the right to education is still fulfilled. From a current general perspective, the COVID-19 pandemic poses many problems for the world of education, but when viewed from a different perspective, these problems can be turned into opportunities to advance the development of the world of education.<sup>8</sup> As stated in the preamble to Law No. 20 of 2003,

"That the national education system must be able to ensure equal distribution of educational opportunities, improve quality as well as the relevance and efficiency of education management to face

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<sup>8</sup>Rismauli Pangaribuan, "Dampak Positif Pandemi Covid-19 Terhadap Dunia Pendidikan," March 08, 2020, <https://www.stit-alkifayahriau.ac.id/dampak-positif-pandemi-covid-19-terhadap-dunia-pendidikan/>



challenges in accordance with the demands of changes in local, national, and global life so that it is necessary to reform education in a planned, directed, and sustainable manner."

Therefore, a law is needed to protect and realize the right to education of its citizens, because as a legal state that recognizes human rights, Indonesia must apply laws that are in line with the protection of human rights, but still pay attention to Pancasila which is the *volksgeist* or "soul of the nation".<sup>9</sup>

To be able to realize this, the government must encourage educators and students to make online learning as a habit using increasingly sophisticated technology media. For example, by making rules that require all educators to create online learning content for each learning material.

Next, online learning that is currently being carried out can be used as a means to improve the education system in Indonesia, especially in terms of equitable distribution of education quality. Equitable distribution of proper education must be protected by laws and regulations so that all levels of society can implement it, because Indonesia is a state of law. Equitable distribution of education during a pandemic needs to refer to Katarina Tomasevski's opinion that there are four indicators of the state's obligation to fulfill the right to education, these indicators are availability, accessibility, acceptability, and adaptability.<sup>10</sup>

<sup>9</sup>RM A.B. Kusuma, *Sistem Pemerintahan Mandiri Negara versus Sistem Presidensial Orde Reformasi* (Depok: Publishing Agency, Faculty of Law, University of Indonesia, 2011)

<sup>10</sup>Katarina Tomasevski, *Human Rights-Based Education Simplification of Human Rights Requirements*, Global Cooperation Project between the United Nations Special Rapporteur on the Right

The online learning method is clearly different from face-to-face learning. Educators need to understand the facilities used to prepare learning materials. However, not all educators are able to operate technology such as computers or gadgets to support learning activities. Therefore, the government needs to regulate to require all educators to exchange learning contents, so that the fulfillment of the right to education can be carried out optimally. Because with this exchange, people in the village can enjoy educational content taught by educators in urban areas. Then, higher-level education that is still at a low level can also get learning content taught by professors in well-known higher education,

All government efforts have been made to assist online learning, such as by providing free quotas for educators and students. This is expected to slightly reduce barriers to online activities and learning. According to data submitted by the Ministry of Education and Culture in 2020 the government allocated Rp. 7.2 trillion for internet data assistance to teachers, students, lecturers and students for four months. The distribution of internet data assistance is carried out in two stages every month.<sup>11</sup> However, this effort does not seem to function optimally to solve the problems caused by online learning because the internet data that provided

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to Education and UNESCO Asia Pacific Region Education Bureau, UNESCO Asia Pacific Region Education Bureau, Bangkok. page 7

<sup>11</sup>Yogya (RE), "Kemendikbud: Bantuan Kuota Belajar Tahun 2021 Akan Dilanjutkan" January 09, 2021,

<https://radioedukasi.kemdikbud.go.id/read/2681/kemendikbud-bantuan-kuota-belajar-tahun-2021-akan-dilanjutkan.html>

for free is still in limited quantities and cannot be accessed freely.

With this problem, the government can increase the provision of quotas to educators and students without being limited, so that online learning can be carried out optimally. Article 31 Paragraph (4) of the 1945 Constitution has mandated that the education budget is at least 20% of the State Revenue and Expenditure Budget (APBN) and of the Regional Revenue and Expenditure Budget (APBD) to meet the needs of national education. This cost is of course beyond the salary of educators and official education costs. In other words, when this figure is not sufficient to realize the right to education, the government must increase the allocation of funds for the education sector.

To improve the quality of education during the COVID-19 pandemic, renewal Education requires serious attention and policy from the government. Related to this, many countries in the world have implemented various forms of policies in the education sector, such as Singapore which is one of the countries with the best quality education in Asia. During the COVID-19 pandemic, the Singapore government implemented home base learning (HBL)<sup>12</sup> using materials from the Singapore Student Learning Space (SLS)<sup>13</sup> so that students

do not miss learning. Even *Ministry of Education* (MoE) launched HBL guidelines aimed at parents. The guide is constantly being improved and updated according to the changing conditions in Singapore. The Singapore government also lends digital devices and internet access assistance to help underprivileged students, and ensures that each student will get a personal laptop or tablet by the end of 2021. In addition, students from vulnerable groups also continue to receive the School Meals Program (SMP)., even if they are not in school. SMP funds are transferred to the School Smartcard which can be used to buy food or groceries. MoE also reduces the burden of the curriculum by cutting the load of material that is usually taught in the current semester. The MoE also postponed the implementation of the mother tongue exam,

#### **D. CONCLUSION**

Legal protection for the right to education during the COVID-19 pandemic is still weak, because all the rules and regulations applied are still regulated in circulars. The position of circulars in the legal system in Indonesia is not included in the laws and regulations and is temporary so that they are easily changed. Therefore, with the power it has, the government as a policy maker should further strengthen the rules regarding the implementation of online learning during this COVID-19 pandemic, because the law should function to realize protection that is not temporary but must be implemented in the future. With the strengthening of the rule of law, online learning that is currently being carried out can be an

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interests. However, this platform later became very useful for learning during the pandemic both in the early stages and during CB. Ibid., p. 7

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<sup>12</sup>Home Based Learning (HBL) or Home Based Learning initiated by MOE involves online and offline learning approaches. V. Enda Wulandari, *Pendidikan Singapura di Masa Pandemi Covid-19* Pandemic, Educational and Cultural Attache of the Indonesian Embassy in Singapore, 2020, p.21

<sup>13</sup>SLS is an online learning portal launched by MoE since 2017. This portal not only contains learning resources, but also has features that can be arranged and used by teachers to create a meaningful learning atmosphere. SLS was originally designed to encourage and facilitate students to learn independently according to their needs and

alternative to fulfill the right to education.

## **BIBLIOGRAPHY**

### **Books and Journals**

- Anisa, (2020). "Pemenuhan Hak Atas Pendidikan Bagi Siswa Menengah Pada Masa Pandemi Covid-19". (Skripsi, Fakultas Hukum Universitas Islam Indonesia, 2020)
- Asmuni, "Problematika Pembelajaran Daring di Masa Pandemi Covid-19 dan Solusi Pemecahannya", Jurnal Penelitian dan Pengembangan Pendidikan, Vol. 7 No. 4, Oktober 2020
- Belinda Gunawan, "Analisis Yuridis Pendidikan Jarak Jauh Dalam Perspektif Hak Asasi Manusia Dalam Undang-Undang Dasar Nri 1945 Pada Masa Pandemi Covid-19 Di Indonesia", Jurnal HAM, Volume 11 Nomor 3, Desember 2020
- Cynthia Phillo, Hessa Arteja, M. Faiz Rizqi, "Perlindungan Hukum Terhadap Hak Anak Atas Pendidikan Pada Masa Pandemi Covid-19", Law Review Volume XX, No. 3 – Maret 2021
- Hwian Cristianto, "Penggunaan Media Internet Dalam Pemenuhan Hak Atas Pendidikan Di Masa Pandemi Covid-19: Perspektif Hak Asasi Manusia Dan Hukum Pidana", Jurnal HAM, Volume 11 Nomor 02, Agustus 2020
- Katarina Tomasevski, Pendidikan Berbasis Hak Asasi Penyederhanaan Persyaratan Hak Asasi Manusia, Global Proyek Kerja Sama antara Pelapor Khusus Persrikatan Bangsa-Bangsa (PBB) tentang Hak atas Pendidikan dan

Biro Pendidikan Wilayah Asia Pasifik UNESCO, Biro Pendidikan Wilayah Asia Pasifik UNESCO, Bangkok.

- Nadziroh, Chairiyah, Wachid Pratomo, "Hak Warga Negara Dalam Memperoleh Pendidikan Dasar Di Indonesia", Jurnal Pendidikan Ke-SD-an, Vol. 4, Nomor 3, Mei 2018
- Patria Widyastuti, (2010). "Hak Atas Pendidikan Tinggi Warga Negara". (Skripsi, Fakultas Hukum Universitas Airlangga, 2010)
- RM A.B. Kusuma, Sistem Pemerintahan Pendiri Negara versus Sistem Presidensial Orde Reformasi (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2011)
- Senza Arsendy et.al., "Teaching and Learning During School Closure: Lessons from Indonesia," ISEAS – YUSOF ISHAK INSTITUTE, Singapore, 2020
- Sheilla Chairunnisyah Sirait, "Tanggung Jawab Pemerintah Untuk Memberikan Pendidikan Kepada Anak Terlantar Dalam Perspektif Undang-Undang Perlindungan Anak", De Lega Lata, Volume 2, Nomor 1, Januari – Juni 2017

### **Newspapers and the Internet**

- Arin, "Kemendikbud: Bantuan Kuota Belajar Tahun 2021 Akan Dilanjutkan" January 09, 2021, <https://radioedukasi.kemendikbud.go.id/read/2681/kemendikbud-bantuan-kuota-belajar-tahun-2021-akan-dilanjutkan.html>
- Cindy Ochtavia Yolanda Putri, "Pembelajaran Daring, Efektif Gak Sih Buat Mahasiswa?," egsaugm, October 14, 2020, <https://egsa.geo.ugm.ac.id/2020/>



- 10/14/pembelajaran-daring-efektif-gak-sih-buat-mahasiswa/Kemendikbud, "Kemendikbud Terbitkan Pedoman Penyelenggaraan Belajar dari Rumah," Jakarta, May 29, 2020, <https://www.kemdikbud.go.id/main/blog/2020/05/kemendikbud-terbitkan-pedoman-penyelenggaraan-belajar-dari-rumah>
- Rismauli Pangaribuan, "Dampak Positif Pandemi Covid-19 Terhadap Dunia Pendidikan," March 08, 2020, <https://www.stit-alkifayahriau.ac.id/dampak-positif-pandemi-covid-19-terhadap-dunia-pendidikan/>
- V. Enda Wulandari, "Pendidikan Singapura di Masa Pandemi Covid-19", Atase Pendidikan dan Kebudayaan KBRI Singapura, September 2020, <http://repositori.kemdikbud.go.id/20424/1/Pendidikan%20Singapura%20di%20Masa%20Pandemic%20Covid-19.pdf>

## **Legislation**

- Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945
- Deklarasi Universal Hak Asasi Manusia Tahun 1948
- Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia
- Undang-Undang Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional
- Surat Edaran Kementerian Pendidikan dan Kebudayaan, Direktorat Pendidikan Tinggi No. 1 Tahun 2020 mengenai pencegahan penyebaran COVID-19 di dunia Pendidikan
- Peraturan Menteri Pendidikan dan Kebudayaan Republik Indonesia Nomor 3 Tahun 2020 Tentang Standar Nasional Pendidikan Tinggi
- Surat Edaran Kementerian Pendidikan dan Kebudayaan Nomor 4 Tahun 2020 tentang Pelaksanaan Kebijakan Pendidikan dalam Masa Darurat Penyebaran Corona Virus Disease (COVID-19)
- Surat Edaran Nomor 15 Tahun 2020 tentang Pedoman Penyelenggaraan Belajar dari Rumah dalam Masa Darurat Penyebaran Covid-19