

STATE RESPONSIBILITY TO PROVIDE FREE EDUCATION IN INDONESIA: FULL OR SHARED RESPONSIBILITY?

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Abstract - This article examines the extent of the state's responsibility in providing free education, accessibility, and financing issues, focusing on whether it should be a full or shared responsibility. The research employs a doctrinal research with conceptual and comparative approach. This study examines international human rights instruments, analyzes the development of constitutional provisions in Indonesia, and compares constitutions worldwide. Article shows that primary education is universally recognized as the full responsibility of the state. In contrast, higher education often involves shared responsibility with private entities due to fiscal constraints and policy considerations. The results of the analysis of several Constitutional Court Decisions also mandate that the government always controls the implementation of education, prevents excessive privatization, and ensures equitable access. In addition. Indicators of state responsibility include non-discriminatory access, affordability, and alignment with human rights principles. The research further explores the importance of government oversight to prevent excessive privatization and ensure equitable access to education. It identifies key indicators of state responsibility, including non-discriminatory access, affordability, and alignment with human rights principles, contributing to the broader discourse on education as a human right and public good.

Keywords: State; Responsibility; Provide; Free Education; Full or Shared.

INTRODUCTION

Education is a right for every citizen, it is human rights that belong to every human being without exception (Titahelu & S, 2022, p. 29-42). This guarantee is embodied in the state constitution. Modern constitutions have placed education as a fundamental citizen's right. The development of the constitution, which initially only regulated how power is exercised and limited along with a number of its authorities, has ultimately moved to guarantee fundamental rights concerning human dignity (Palguna & Dwi Atmaja, 2023, p. 350-370). These natural rights concerning human dignity have evolved and been constructed by the state in positive law to fulfill and realize state responsibility (Luminta, 2013, p. 129). Fulfilling the right to education is also intertwined with the sustainability of democracy, freedom, and social welfare. Amartya Sen and Martha Nussbaum stated that without quality and equitable education, individuals cannot contribute positively to creating meaningful democracy. Instead, it impacts pseudo-democracy/formality and does not produce political deliberation (Sen, 1999b, p. 33-34). This statement is valid conceptually and has been proven through empirical facts. A country with access to quality education will make a stable democratic order and vice versa. Therefore, the state strives to continue fulfilling the right to education to build a democratic civilization.

Various constitutions regulate the right to education in separate articles or chapters, such as the right to education, free education, education for all, etc. The constitution has emphasized that the government is responsible for providing fair, equitable, and quality access to education for all its citizens without any discrimination. On the other hand, internationally, the right to education has also been explicitly recognized in declarations, conventions, and other related documents (Ullah, 2013, p. 329-340), such as the The Universal Declaration of Human Rights (UDHR), International Covenant on Social, Economic and Cultural Rights (ICESCR), Convention on The Right of The Child (CRC), UNESCO Convention Against Discrimination in Education (CDE), and The World Declaration on Education for All (WDEA).

The state's commitment to prioritizing education is reflected in its constitution, which has its characteristics. The Indonesian constitution itself has placed education as a citizen's right in Article 28C paragraph (1) and Article 31 of the 1945 Constitution of The Republic of Indonesia, which regulates the government's responsibility to organize a national education system and prioritizes explicitly a budget of 20% of the State Budget and Local Government Budget. When looking at Article 31, the question is whether the state is fully responsible for organizing national education, with all its constraints, or whether it is justified when other subjects organize the education. If education becomes a full

responsibility, then the government must guarantee all aspects of education and close private sector spaces (education as public goods). Meanwhile, if it is justified that other parties participate in managing education, then education will become a private commodity.

This study is essential to see the extent to which the government's responsibility is seen from the perspective of the Constitution or, in other words, how the Constitution interprets the government's responsibility. This can determine who has the right and obligation to be responsible. This paper is divided into 2 (two) sub-discussions. Initially, the background, problems, and research methods used have been explained. Then, the first sub-discussion discusses the right to education in the constitution, reviews the concept of the modern constitution and international instruments, and presents a comparative study of the constitution that mentions "free education." Furthermore, the second sub-discussion discusses national education in the Indonesian constitution, which has been reviewed from developments since the 1945 Constitution, the Republic of Federal of Indonesia Constitution, and the 1950 temporary constitution, including the original intent of the 1945 Constitution amendment. In addition, several crucial constitutional court decisions are presented in viewing the government's responsibility and discussing the analysis of the application of government responsibility between complete/shared responsibility.

This paper raises the issue of how the constitutional responsibility for the government in fulfilling the right to education is reviewed from the concept of the constitution, a general comparison of constitutions, the original intent of the amendment to the 1945 Constitution, and the interpretation of the constitution by the Constitutional Court and how the implementation of government responsibility in fulfilling the right to education relates to the issue of financing and community involvement. This paper tries to present a new perspective by comparing constitutions and their developments in Indonesia to see the patterns and changes that occur. Through a conceptual approach to the constitutional rights of citizens, a comparison of the constitutions of several countries, tracing the originality of the amendments to the 1945 Constitution, and an analysis of related Constitutional Court decisions. This paper aims to identify and analyze the government's responsibility, either fully or partially (shared with the community), in managing education.

1. Global Overview of Government Responsibilities in Education Based on International Instruments and State Constitutions

Karel Vasak, in the human rights classification, places education as a second generation of human rights within the scope of economic, social, and cultural rights (ecosob rights). In this second generation, its nature is positive (positive right), which means that the state is actively taking specific actions to fight for and fulfill basic needs (Vasak, 1977) one of which is education. Its upbeat, proper nature is also based on various international legal instruments that have placed the right to education as part of human rights. For example, in The Universal Declaration of Human Rights (UDHR) 1948, Article 26 states "everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory." This article makes education a right for everyone and an obligation to fulfill education, at least for elementary education (primary education). This declaration also ultimately became a milestone in the history of human civilization that every country must fulfill.

In its development, the right to education is regulated in more detail in several conventions and other international agreements that are more legally binding. For example, in Article 13 (1) of the International Covenant on Social, Economic, and Cultural Rights (ICESCR) 1966, education is a form of actualizing self-development and human dignity. It must strengthen respect for human rights and fundamental freedoms. The basic principle is how the state must mobilize its resources to fulfill access to primary education. However, in this ICESCR, the right to education can be fulfilled in stages, as the principle of fulfilling ECOSOC rights (economic, social, and cultural) and adjusting to the capabilities of each country. Furthermore, the right to education is also regulated in Article 28 of the Convention on the Rights of the Child (CRC) 1989, which states that education is one of the rights of children that must be fulfilled by providing equal opportunities. The main goal is to eliminate ignorance and illiteracy worldwide, facilitate scientific and technical knowledge access, and advance modern teaching methods.

In addition, the right to education is also regulated in the UNESCO Convention Against Discrimination in Education (CDE) 1960. The goal is to ensure that education is accessible to everyone regardless of skin color, gender, language, religion, political choice, ethnicity, economic and socio-cultural background. This convention is expected to create equal opportunities for everyone and ensure that the state guarantees such access through policies and legislation. Technically, it is explained in article 4 (a) of the



convention that the state is responsible for providing access to compulsory and free primary education and promoting equal opportunities and equal treatment for everyone.

The States Parties to this Convention undertake further to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

a. To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

In line with several previous conventions and an evaluation after 40 years since the UDHR, there is also The World Declaration on Education for All in 1990 (WDEA). The background is that although the right to education has been stated as part of human rights, in reality, in its development, there are still limitations in access to education experienced by children, women, and other marginalized groups, including constraints in the development of knowledge, skills, and adaptation to socio-cultural and technological changes. The declaration provides a guarantee for anyone, without exception (education for all), to get access to primary education that is equal and non-discriminatory. So, to guarantee this, quality essential education services must be expanded, and consistent steps must be taken to reduce the gap. Article 3 (1-3).

"Basic education should be provided to all children, youth and adults. To this end, basic education services of quality should be expanded and consistent measures must be taken to reduce disparities."

Based on the conventions explained previously, one similarity between UDHR, ICESCR, CRC, CDE, and WDEA is how to place state responsibility at each level of education. At the fundamental/primary education level, the state is fully responsible for providing free access to education while making it an obligation (compulsory). While at the secondary education level, in its various forms, including technical and vocational secondary education, as well as at the higher/tertiary education level, it must be publicly available and accessible to all through various appropriate means and provide "financial assistance if needed." Here, in both secondary and higher education, the state's responsibility lies only in providing equal access, not guaranteeing free access to education. In its fulfillment, it is returned to the state's ability, in this case, the state's fiscal strength.

The right to education in several international agreements is not only limited to the right to access education, but some provisions provide freedom for every parent to choose the best school for their children, other than those established by public authorities, including the freedom for every individual and private body to develop and manage educational institutions. This will later have consequences for the existence of private educational institutions in addition to public ones and the opening of opportunities for the commercialization of education. At this point, a fundamental question arises regarding the extent to which the state is responsible or can intervene in education development. On the one hand, the state must calculate its fiscal capacity to finance education; on the other hand, other parties participate in the development of education. This is where the state's position must be clear in determining what actions can be taken (intervention) to ensure equal access to education.

Regarding fulfilling these rights, various countries have placed the right to education as a constitutional right explicitly stated in their constitutions. Palguna and Dwi Atmaja, in their writings, conclude that the concept of education as part of human rights has evolved in the final stage, namely from previously being natural rights to constitutional rights that have a position as a fundamental right of a country and are explicitly regulated in a written constitution (Palguna & Dwi Atmaja, 2023, p. 350). There are 3 (three) points logical consequences of the position of the right to education as a constitutional right. First, the nature of the right to education as a positive right places an active role for the state in fulfilling the right to education (David, 2014, p. 41-44). This differs from the civil and political rights groups, which are negative rights, whose fulfillment limits state intervention because they are liberty (freedom from the state's absolute power). Second, as a consequence of positive rights, the state must regulate the education system as a guideline for every education provider. This authority is the state's responsibility because, as a public institution, the state has policy and legislative instruments that can provide guarantees for implementing education. Third, education must advance human dignity and create a civilization of society.

Various modern constitutions (Wheare, 1975) currently use multiple terms to guarantee the right to education, for example, right to education, free education, education for all, etc. Previously, in 2004,

Katarina Tomasevski identified four variations in the approach of countries in the world in regulating the right to education in their constitutions (Tomasevski, 2004, p. 15). *First*, around 79 countries constitutionally guarantee free and compulsory education. *Second*, around 37 countries guarantee the right to education in their constitutions, but only limited to citizens or permanent residents. *Third*, around 30 countries state that ensuring the right to education is partial or gradual. *Fourth*, there are around 40 countries whose constitutions do not mention the right to education. The research still needs to be expanded to answer whether the constitutions of these countries guarantee education by the state or not. The question has developed in line with the development of constitutions in the world, such as what is the position of the right to education in the constitution, what is the state's responsibility in guaranteeing free education at various levels, and what are the goals of education according to the constitution of each country.

Further studies were conducted by the author using a comparative constitutional approach. The author has found the clause "*free education/similar*" in 141 of 193 constitutions in various countries.¹ Variations in the provisions of the right to education were also found, ranging from using terms, the state's responsibility in ensuring free education at various levels, the purpose of education, the involvement of the private sector, and other special provisions. These variations can be briefly described as follows.

1. The position of the right to education in the constitution

Based on the research, the position of the right to education is attached in several places. Broadly speaking, there are 2 (two) differences, namely placing education as a right (fundamental right, basic right, public right, social and economic right, civil right), for example in most countries, such as Afghanistan, Albania, Algeria, Chile, Colombia, Denmark, Ecuador, Estonia, Hungary, Japan, Jordan, Italy, Uzbekistan and many more. While there are also several state constitutions that place education as an obligation for the state/government with various terms such as *government's duty*, *fundamental principle of state policy*, *the national government's duty*, *state policy*, *policy of state*, *responsibilities of state*. Some countries that use this term include Bangladesh, Brazil, Guinea, North Korea, Lithuania, Madagascar, Oman, Uganda, Vietnam etc. The placement of education as a citizen's right or as an obligation/duty of the state and government actually does not have very different consequences. Both are interrelated because in any case a right will give birth to an obligation on the other side and vice versa.

2. The state's responsibility to ensure free education at all levels

As discussed previously regarding international instruments on the right to education, it is stated that at the *primary education level*, it must be done free of charge and is an obligation of citizens. In general, most constitutions have written *free education* for the primary education level. However, based on a comparative study of the constitution, various variants were found regarding the guarantee of free education at various levels.

Table 1 Constitutional Provisions on the Guarantee of Free Education

Guarantee of free education	Countries
Primary education	Most of the countries studied include <i>primary education</i> as a guarantee of free education, including Bahrain, Congo, Costa Rica, Denmark, El Salvador, Guinea, Gambia, Ghana, Ireland, Italy, Kenya, Sweden, Spain, etc.
Secondary Education	Azerbaijan, Egypt, Hungary, Kazakhstan, Uzbekistan etc.
Higher/Tertiary Education	Albania, Armenia, Belarus, Bolivia, Bulgaria, Cambodia, Greece, Guyana, Haiti, Iraq, North Korea etc.
Classification by age	a. Brazil: 4 (four) years to 17 (seventeen) years b. Chile: Primary and secondary education extended to age 21.

¹ This research was conducted by searching the topic of "*free education*" on the Constitution Project (a website developed from the Comparative Constitutions Project by Zachary Elkins and Tom Ginsburg at the University of Texas Austin and the University of Chicago. Based on this search, 141 out of 193 countries were found to explicitly regulate the right to education. After that, an in-depth analysis was carried out on each constitution to find differences which were later classified based on variants or types, starting from the use of terms, the state's responsibility in guaranteeing free education at various levels, educational goals, the involvement of the private sector to other special provisions.



	c.	India: ages 6 (six) to 14 (fourteen) years
	d.	Pakistan: ages 5 (five) to 16 (sixteen) years
	e.	Taiwan: ages 6 (six) to 12 (twelve) years
	f.	Thailand: from pre-school age to 12 (twelve) years
	g.	Togo: free up to age 15
Not mentioned or regulated further by law		Algeria, Argentina, Bangladesh, Burundi, Colombia, Croatia, Estonia, France etc.

Regarding this level of education, there is also a provision in the constitution stating that the guarantee of free education is carried out in stages. This means that the constitution provides flexibility for the state to adjust to the state's fiscal situation. However, in this case, the state must make progressive efforts to advance access to education. On the other hand, the responsibility for the provision of schooling also rests not only on the public authority (government) but in several constitutions; it has been explicitly stated that there is a private role in establishing schools, for example, in Gabon, Ireland, Lebanon, Mongolia and Paraguay constitutions.

3. The Goals of Education

In general, the purpose of education in various constitutions is to educate the nation's life, advancement in science and technology, and the formation of character, morals, and national identity. However, the uniqueness of this educational purpose is also found in several constitutions that cannot be separated from the background of the country's problems. For example, the specific goal of eradicating illiteracy in Arab countries such as Bahrain, Oman, Kuwait, and the United Arab Emirates, education directed at preventing the occurrence of racial discrimination practices in the past in South Africa, to special education to form a religious foundation such as Belgium and Ireland.

Now, analysis of the international instrument about *shared vs full responsibility*? The involvement of the private sector in the provision of education can determine the extent of the government's responsibility in fulfilling the right to education. The statement relates to whether the government is fully responsible for fulfilling the right to education (*full responsibility*) or there is a division of responsibility between the government and the private sector or the community (*shared responsibility*). The private sector or community here can be a corporation, religious institution or *non-governmental organization* (NGO). The involvement of the private sector or the community in the division of responsibility for the provision of education can be in the form of establishing private schools, charging school fees to parents (the community) and the process of providing education which is handed over to *the market work*. This is a necessity as an alternative education based on international provisions on the freedom of parents to choose schools for their children, including private schools. On the other hand, there is a *gap* between the government's responsibility which only guarantees basic education and the need for higher education levels.

The presence of the private sector as an ongoing education provider raises severe concerns about its negative impact on the fulfillment of the right to education, especially regarding the availability and accessibility of free education, equality of educational opportunities, and the quality of education. This is the challenge that the government must answer. The government must ensure that all educational institutions comply with the specified standards amidst the variety of schools and standards used by private schools (Tomasevski, 2004, p. 55-56). Government control aims to reaffirm the right to education and education as a public good.

This privatization of education can create two perceptions of education, with two different levels of quality. Privately run education as "education based on parental choice", while public education is dubbed as "poor public education for the poor". The free education option for many parents is not "free" in the true sense of the word because their responsibilities to their children leave them little choice but to enroll in public schools. This makes children's education dependent on their family's purchasing power, which is in direct conflict with international human rights law that requires governments to ensure equal access to education for every child (Tomasevski, 2004, p. 57-58).

2. State Responsibilities In National Education Based On The Constitution of Indonesia

The right to education in the constitution of Indonesia can be traced from the 1945 Constitution before the amendment to after the amendment. Its development can be seen from using the terminology of

education as a citizen's right to become a fundamental right, further elaboration of the objectives, access to free education, and the government's obligation to organize a national education system. Significant changes in the right to education after the amendment to the 1945 Constitution can be traced through the original intent of each paragraph in Article 31. The original intent is used to trace the reasons behind the selection of a norm in the Constitution and to see the dynamics of the discussion during the amendment process. It is essential to know the legal politics used by the formulators of the amendment, especially regarding the right to education. The study of the original intent in the amendment to Article 31 of the 1945 Constitution concerning education and culture can be traced through Book IX of the Comprehensive Manuscript of the Amendment to the 1945 Constitution of the Republic of Indonesia. It is divided into 3 (three) discussion points: the right to education, budget matters, and the choice of free education levels.

First, The Ad Hoc Committee (PAH) debate was moderate regarding the right to obtain education. Almost all factions have agreed that education is the right of every person, and the government is obliged to organize a national education system. The debate only lies in using the term between teaching or education and combining the vocabulary of education and culture. Ultimately, the choice fell on the education option proposed by several parties, one of which was Samsi Husairi, who argued that "education" has a broader scope than "teaching," which only revolves around the learning process. Meanwhile, the purpose of education will not be discussed too much because this article focuses more on the government's responsibility to prioritize education through budget policies, education obligations, and free education access. Therefore, further description will discuss the original intent of the state's bias in prioritizing education through budget politics and the provision of free education access.

The second is the state's bias in prioritizing education through budget policy. Currently, the formulation regarding this matter is regulated in Article 31 paragraph (4) of the 1945 Constitution:

"The state prioritizes the education budget of at least twenty percent of the state revenue and expenditure budget and of the regional revenue and expenditure budget to meet the needs of organizing national education."

Behind the formulation is a long debate, from whether to include a particular percentage for education budgeting to choosing what percentage to include. It is important to see the extent of the state's responsibility in prioritizing education. The debate is divided into two sides: the need to include clear quantitative standards or just qualitative ones. Several parties who agree on determining quantitative standards (mentioning a certain percentage in the state and regional budgets) are motivated by the lack of state support in prioritizing education. The proof is that the education budget at that time was relatively low, namely less than 2% of GDP (Gross Domestic Product) or less than 10% of the State Budget (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 87). UNESCO requires that each country allocate a minimum of 4% of GDP for education, which has been adopted by countries such as the United States, Germany, the Netherlands, Japan, South Korea, Taiwan, and Malaysia (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 89). The hope is that by clearly stating the percentage in the Constitution (quantitative), it can encourage any government to commit to the advancement of education (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 174).

Meanwhile, for the option of simply stating qualitative standards (there is no need for a certain percentage in the state and regional budgets) based on the factors of the country's financial resilience after the crisis and dependence on economic development, as well as general constitutional norms (no need for technical). The economic reasons used are based on concerns that the state will not be able to meet the special percentage because it is related to uncertain economic conditions (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 177), so it has the potential to be unconstitutional if the government does not allocate according to the special percentage (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 419). Another reason regarding the general nature of constitutional norms is based on the fact that technical norms such as the special percentage of the education budget should not be regulated in the constitution, but rather in laws or technical regulations. So it is sufficient to state that technical regulations will be further regulated by law (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 191).

The discourse on the special percentage of the education budget finally narrowed down to the first option, which is stated concretely by selecting the clause "prioritizing" the 20% budget from the State Budget and Local Government Budget for national education. This provision was taken as a step or commitment from the state to advance education and prioritize the education sector, through budget political partisanship. Although according to Andy Omara, this quantitative norm is an unusual method, because all other provisions are general and qualitative. The existence of this quantitative norm opens

up the potential for legal consequences, where anyone can conduct a material test against the State Budget Law, if the government fails to fulfill its constitutional obligations. In his notes, there are at least five cases of requests for material tests to the Constitutional Court that are closely related to this provision (Omara, 2016).

Third, provision of free access to education by the government. This formulation is explicitly regulated in Article 31 paragraph (2) of the 1945 Constitution, "Every inhabitant country must follow basic education and government must finance it". The article is interpreted as the provision of free education by the government at the basic education level or *primary education*, as has been regulated in various international legal instruments and provisions in various constitutions of other countries. In this case, the government in organizing basic education is fully responsible (*full responsibility*). However, it turns out that in the discussion there was also a debate that emphasized the urgency of including the norm in the constitution, the choice of indicators for how long the basic education is and which parties can be charged with free education (whether only public education providers or also private education providers).

The urgency of the provision of free access to basic education is based on the commitment and responsibility of the state to at least provide basic knowledge (fundamental knowledge) for everyone. The state's responsibility is manifested in the provision of education that is free of charge (fully borne by the state) (Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, 2008, p. 83). Other discussions also discussed how long the basic education is, whether 6 years or up to 12 years is enough. Here the formulators of the amendment to the 1945 Constitution agreed that the level would be further regulated in the law. However, what is interesting about the discussion is the option of private education as an alternative besides education provided by the government. If the government is only fully responsible for basic education, then it is possible that the private sector can contribute to the provision of education at other levels. At this point, the responsibility for education can be said to have been "divided" or shared responsibility between the government and private institutions. Regarding the involvement of the private sector in the provision of education which causes the division of responsibility is explained in the following discussion.

If the original intent is used to interpret the original meaning of the constitutional norm because it comes from the discussion of the previous amendment to the 1945 Constitution (post-interpretation), then to understand the meaning of the constitutional norm that has developed with all its adjustments to the context of the times, the analysis of the Constitutional Court Decision is used. Because the Constitutional Court is the interpreter of the Constitution or the judicial institution with the authority to interpret the Constitution (Asshiddiqie, 2014). It is essential to see the Constitutional Court's attitude in siding with the state to provide equal, quality access to education and continue to affirm education as a public good. The intersection between public and private interests in several laws submitted for judicial review at the Constitutional Court can also be studied from the extent of the state's responsibility in education matters.

There are at least 3 (three) Constitutional Court decisions that are landmark decisions and related to education, namely regarding legal entities for education, implementation of educational autonomy, and equal access to education in the establishment of schools. *First*, Constitutional Court Decision Number 11-14-21-126 and 136/PUU-VII/2009 regarding the judicial review of Law Number 20 of 2003 concerning the National Education System (UU Sisdiknas) and revoking in its entirety Law Number 9 of 2009 concerning Legal Entities for Education. Several interesting points from the decision can be analyzed from the aspect of government accountability in fulfilling the right to education. The Constitutional Court assessed that the responsibility for education does not necessarily become the full responsibility of the government (full responsibility), but rather the responsibility is also borne by each citizen to achieve the quality they desire. The analogy used by the Constitutional Court is to equate the fulfillment of citizens' right to life. Although the state is obliged to be responsible for the right to life of every citizen, respect and protection of these rights are also borne by others.

Community involvement is not interpreted as a release of state responsibility but according to the Constitutional Court, it is an implementation of democracy that prioritizes community participation. The meaning of community involvement in this case has a broad scope, not only the financing aspect, but also encompasses aspects of planning, implementation and evaluation. Therefore, the meaning of state responsibility for education does not mean rejecting the participation and contribution of the community. The Constitutional Court's consideration emphasizes that the responsibility for education is essentially shared responsibility.

Another point of consideration by the Constitutional Court in the judicial review of the Legal Entities for Education Bill also discussed the existence of government responsibility for education with the existence of educational bodies outside the government. These legal entities for education were formed respectively by the Central Government through the Government Education Legal Entity, the Regional Government through the Regional Government Education Legal Entity and the community/private party

through the Community Education Legal Entity. With the existence of the Legal Entities for Education mission law formal education that becomes task government. The main issue in the Legal Entities for Education Bill which wants to standardize in one particular form of legal entity and prohibits other forms is clearly contrary to the spirit of education in the 1945 Constitution of the Republic of Indonesia. Because education must be built in the spirit of pluralism by paying attention to the existing forms of education. The standardization of the formal form is also not applicable, because it must go through a long process for the release/separation of central or regional government assets, by requesting the approval of the National/Local House of Representative.

The existence of an educational entity outside the government in the Legal Entities for Education Bill also has implications for the implementation of autonomy, including in financial management. Here the position of the Constitutional Court is firm in providing guidelines for government responsibility for the implementation of education. As a legal entity for education, financial management has been carried out independently (by the head of the management organ). The implication is that the government or its Legal Entities for Education cannot intervene, because the authority to manage finances is absolutely in the hands of the management of the education organ. This independence of financial management is the gateway for reducing government responsibility. This is because Legal Entities for Education functions like a corporation, with the aim of seeking funding sources and is completely handed over to market mechanisms. Even in the provisions of Article 57 of the Legal Entities for Education Bill, it can be dissolved for one reason, namely that it can be declared bankrupt. One of those who can be harmed by the application of this concept is students. This is because Article 41 paragraph (8) and (9) of the BHP Law stipulates that a maximum of 1/3 of the operational costs of education can be borne by students. However, in the Legal Entities for Education Bill there is no formulation regarding how much the operational costs are or at least how the cost calculation formula is, thus causing uncertainty. In condition No existence certainty source funds that can got by a Legal Entities for Education then the most vulnerable target is participant educate that is with method create levy with other name outside cost school or the final lecture in a way direct or No direct burdensome participant educate.

Looking at the Constitutional Court's considerations regarding the testing of the two different laws with interrelated topics or issues, it can be concluded that the Constitutional Court did not turn a blind eye to the involvement of the community in education, including in this case the private sector. The proof is that the Constitutional Court stated in its ruling that the community participates in organizing education. However, on the one hand, the Constitutional Court also does not want education to become a commercial good and its management to be handed over to market mechanisms, as regulated in the Legal Entities for Education Bill. The Constitutional Court's position is in line with the legal policy of the amendment to the 1945 Constitution of the Republic of Indonesia which places education as a public good *and* not a private good.

Second, Constitutional Court Decision 103/PUU-X/2012 concerning the constitutionality test of the form of Legal-Entity Higher Education Institution or (PTN-BH) in Law Number 12 of 2012 concerning Higher Education. The main issue in this test is the implementation of educational autonomy delegated to National Higher Education Institution with legal entity status or PTN BH. The applicant for the test argued that the form of PTN BH can reduce state responsibility and become an entry point for commercialization of higher education. Because with autonomous authority, PTN BH is given the freedom to seek funding sources outside the government and has the potential to burden university finances to students. However, in its legal considerations, the Constitutional Court stated that although PTN BH is given autonomy in managing non-academic fields including organization, finance, student affairs, personnel, and infrastructure, the state's responsibility cannot be eliminated. The government continues to control PTN BH with various regulatory instruments through Government Regulations on statutes, the establishment of PTN BH, management and implementation of higher education that is affordable to the community. The government sets the standard unit operating costs for higher education periodically which are used as a basis by state universities to determine the costs borne by students. Article 88 paragraphs (1) and (3).

The Constitutional Court's consideration also concerns the concern about the autonomy of PTN BH which has an impact on the burden of costs on students, as argued by the applicant. The existence of autonomous authority to seek other sources of funding can indeed open up opportunities for commercialization of higher education. Moreover, if the university has not met its needs, then the easiest target for acceptance is students. Here the Constitutional Court is of the opinion that the government must conduct periodic evaluations in the implementation of PTN BH including controlling education costs. The aim is to avoid burdening costs that hinder public access to education. So that the state's responsibility once again cannot be eliminated or reduced by the existence of PTN BH.

In the decision, the Constitutional Court's *standing* still does not shift from fulfilling the government's responsibility even at the higher education level. As discussed previously, the minimum standard for fulfilling the right to education by the state is basic education. This means that for the higher education

level, the government's responsibility can be shared with other parties (shared responsibility), including in this case the form of university management that is open to private cooperation. This opportunity opens up a gap for PTN BH to seek other sources of funding outside the state budget. However, the Constitutional Court again emphasized that there must still be government control through periodic evaluations including controlling education costs.

Third 97/PUU-XVI/2018 regarding the judicial review of Article 34 of the National Education System Law concerning state responsibility in the minimum 6-year compulsory education program. The applicant argued that the state's responsibility should not only stop at basic education (elementary school) but should be increased to high school. Regarding the petition, the Constitutional Court stated that Article 34 of the National Education System Law was in accordance with the contents of Article 31 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which stipulates that the government is obliged to finance basic education. The phrase "minimal" in the National Education System Law actually opens a wide door for the government to continue to strive for guarantees at a higher level of education. This means that as long as the state has guaranteed basic education, the state's responsibility for education has been fulfilled. Meanwhile, for higher levels of education, from time to time the state must strive to fulfill the right to education for its citizens better and higher than just basic education. This is intertwined with the principle of economic, social and cultural rights, the fulfillment of which is adjusted to the availability of facilities, infrastructure, resources, and budget. In addition, in another decision, namely 92/PUU-XII/2014 The regulation of compulsory education and state responsibility for education levels is an open legal policy, meaning that its constitutionality is complete when the state guarantees basic education and is handed over to the government to regulate other levels in the implementing regulations.

The state's responsibility for education is different from the state's, bearing all education costs by rejecting the participation and concern of the community for education. This means that the responsibility for education is not a full responsibility for the state but a shared responsibility. This is in line with the principles of modern democracy, which are based on collaboration between actors in national development. The government's full responsibility lies in the implementation of primary education (minimum), determining the system, goals, and big picture (vision), and providing educational services evenly, non-discriminatory, according to standards, etc. (education for all).


Meanwhile, outside of that, responsibility for education can be shared between the community or the private sector because the extent and extent of the government's commitment to finance education other than primary education is very dependent on the financial capacity of the government and regional governments by paying attention to the provisions of Article 31 paragraph (4) of the 1945 Constitution. So, there needs to be an explicit parameter to measure the extent to which the state's responsibility must be complete and the extent to which this responsibility can be shared or borne together.

In this case, the Constitutional Court has a measure or parameter for government responsibility for education, which in principle is based on 4 aspects, namely:

1. Aspects of the state's function to improve the life of the nation (Fourth Paragraph of the Opening), the obligations of the state and government in the field of education as determined by Article 31 Paragraph (2), Paragraph (3), Paragraph (4), and Paragraph (5), as well as the rights and obligations of citizens in the field of education as determined by Article 31 Paragraph (1) and Paragraph (2), Article 28C Paragraph (1) and Paragraph (2), and Article 28 Paragraph (1) of the 1945 Constitution;
2. The philosophical aspect is regarding the ideals to build a quality national education system that is meaningful for the life of the nation, the sociological aspect is the reality regarding the provision of existing education including that provided by various foundations, associations, and so on, and the legal aspect is not causing conflict with other laws and regulations related to legal entities;
3. The regulatory aspects regarding legal entities for education in the law in question must be an implementation of state responsibility and are not intended to reduce or avoid the state's constitutional obligations in the field of education, so as not to burden the community and/or students;
4. The aspect of community aspirations must receive attention in the formation of laws regarding legal entities for education, so as not to cause chaos and new problems in the world of education in Indonesia.

These aspects or principles can be derived into several indicators to test the extent of the government's responsibility for education. This indicator was developed from the Constitutional Court Decision Number 11-14-21-126 and 136/PUU-VII/2009, which essentially states that the state is responsible for education and the involvement of the community and the private sector. This indicator is a parameter that the state remains responsible for education as long as:

1. There is nothing to indicate a factual loss of the state's obligations towards citizens, either in part or in whole;
2. Does not complicate access to education;
3. Don't make the cost expensive;

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4. Does not change the educational paradigm so that correct inhabitant country to obtain education obstructed ;
 5. Do not make education a private good.

CONCLUSION

The government is fully responsible for organizing primary education, determining the system, objectives, and big picture (vision), and providing education services evenly, with non-discrimination standards (education for all). This is stated in various international instruments and state constitutions in terms such as human rights, basic rights, fundamental rights, or other terms. Ideally, the government is fully responsible for every aspect of national education. However, the government is sometimes unable to reach all aspects/levels of education due to the limitations of the country's fiscal capacity and development priorities so that this responsibility can be shared (with the community/private parties. In this case, international instruments and the constitution understand such conditions as long as the distribution of responsibility is carried out proportionally and does not eliminate the essence of education as a fundamental right that is a public good. The parameters used to determine the extent of the state's responsibility in fulfilling the right to education can adhere to several landmark decisions of the Constitutional Court. For example, the government is still said to be responsible as long as it has control over access, costs, and guarantees for efforts to sustain (progressive and sustainable) education and does not make education a private good.

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