

STATE CONSTITUTIONAL RESPONSIBILITY IN FULFILLING THE RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES

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Abstract

Education is one of the most basic rights that every person must have. The right to education is a right of every citizen guaranteed in the constitution, which is commonly understood as a citizen's constitutional right. Constitutional rights are basic rights which were later adopted in the constitution which include human rights and citizens' rights which are guaranteed in the 1945 Constitution and apply to every Indonesian citizen. This research aims to answer how to strengthen the state's responsibilities in fulfilling the right to education for persons with disabilities from a Constitutional perspective. The type of research used is normative legal research using a statutory approach, philosophical approach, conceptual approach, and comparison. The theoretical framework used as a tool for analysis is state responsibility theory, human rights theory, legislation theory, and capability theory. The results of this dissertation research are as follows: It was found that the essence of the state's responsibility in fulfilling the right to education for people with disabilities is to realize the value of social justice in education, provide human rights protection, and provide education for all (education for all). This departs from diversity, religion, culture, gender, physical and mental, social and motoric. The responsibility of the state in fulfilling the right to education for persons with disabilities in a constitutional perspective, is a concept of state responsibility which is in accordance with the provisions of the Constitution, namely the provisions of the fourth paragraph of the 1945 Constitution of the Republic of Indonesia which contains the state's aim of protecting the entire nation and making the nation's life intelligent based on Pancasila, and is expressly stated. and measured in the provisions of Article 28 H paragraph (2) which confirms that everyone has the right to receive special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice.

Keywords: State Constitutional Responsibility, Right to Education, Persons with Disabilities.

INTRODUCTION

As a state governed by the rule of law, Indonesia is constitutionally obliged to guarantee that every citizen can obtain their rights. Even sovereign states recognized worldwide must ensure that their citizens are not oppressed in exercising their human rights, regardless of their status. The state must facilitate the human rights of every citizen by regulating them through laws and legislation; even the state itself is not permitted to revoke these rights, which are inherently granted by God Almighty to every individual. Human rights are absolute and eternal, not limited by any time frame. Human rights apply to every person, everywhere in the world, and at the same time, everyone must respect the human rights of others.

In the context of human rights, one of the state's responsibilities is to uphold the respect, protection, fulfillment, advancement, and enforcement of human rights. This responsibility encompasses all aspects of societal life and is universal, reflecting the nature of human rights themselves. State responsibility involves the state, through its apparatus, as the primary actor

tasked with respecting, protecting, and fulfilling human rights. This principle is enshrined in international human rights covenants and conventions, as well as in domestic regulations.

International Human Rights Law declares that the state holds the position of duty-bearer in the implementation of human rights. The state's obligations in this regard are threefold: to respect, to protect, and to fulfill. The obligation to respect entails refraining from intervention unless it is lawful and legitimate. The obligation to protect requires the state to safeguard rights not only against violations committed by the state itself but also against violations or actions by other parties (non-state actors) that may threaten human rights. Meanwhile, the obligation to fulfill necessitates the state to take legislative, administrative, judicial, and practical measures to ensure the implementation of these rights.¹

Failure to meet these three obligations results in a human rights violation. In such instances, the violation can only be attributed to the state (executive, legislative, and judicial branches). The state's unwillingness or inability to protect and fulfill rights is referred to as passive human rights violations (violations by omission). In contrast, failure to respect rights is known as active human rights violations (violations by commission).² Acts of commission in the violation of economic, social, and cultural rights can be committed by individuals or groups (third parties) contrary to their duties and obligations, directly or indirectly violating the rights of the people. Acts of omission may also be committed in the name of the government or state institutions by enacting regulations or policies that exacerbate human rights violations or contradict ratified covenants that have been enacted into law.³

The regulation of human rights in Indonesia has been implicit since the establishment of Pancasila as the foundational philosophy of the state, encompassing both human relationships with God Almighty and inter-human relationships. This is reflected in the values inherent in the principles of Pancasila, including the fulfillment of the right to education.

Education is one of the most fundamental rights that everyone must possess.⁴ The right to education is guaranteed by the constitution and is commonly understood as a constitutional right of citizens. Constitutional rights are fundamental rights adopted in the constitution, including human rights and citizens' rights guaranteed under the 1945 Constitution, and are applicable to all Indonesian citizens.

The fulfillment of the right to education as a human right in Indonesia is not only viewed as a moral right but also as a constitutional right that must be fulfilled by the state. Moreover, fulfilling the right to education indirectly facilitates the realization of other human rights.⁵ Completion of education is a prerequisite for obtaining the right to work, based on the assumption that higher education levels make it easier to find employment.

The human right to education belongs to all Indonesian citizens, regardless of ethnicity, religion, race, social or economic status, physical or mental condition, or any other distinction. One of the vulnerable groups whose right to education must be fulfilled is people with disabilities.

People with disabilities have equal status, rights, and obligations as non-disabled members of society. As part of the Indonesian citizenry, people with disabilities deserve special treatment intended to protect them from vulnerability to various discriminatory acts and, more importantly, to protect them from various human rights violations. People with disabilities are defined as individuals who have long-term physical, intellectual, mental, and/or sensory impairments, which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.⁶ People with disabilities often lack recognition in society; their presence is often underestimated. Their limitations cause them to be perceived as a weak and powerless group in need of sympathy.

Given the large number of people with disabilities in Indonesia who experience educational inequality, it is necessary to support programs and activities based on the principle of equal rights for people with disabilities. These programs should be carried out comprehensively and sustainably, supported by special facilities and infrastructure to ensure that people with disabilities have the same rights as the general public.

This necessity is also reinforced by the provisions of Article 26, paragraphs (1) and (2) of the Universal Declaration of Human Rights (UDHR), which state:⁷

1. 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 based on merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and further the activities of the United Nations for the maintenance of peace.

The sociological problem is evident in the widespread phenomenon that many people with disabilities have not received education. According to data from the Central Statistics Agency (BPS) in 2020, the number of children with disabilities in Indonesia reached 1,600,000. Data from the Ministry of Education and Culture shows that out of these 1,600,000 children with disabilities, only 18 percent have received education in Special Schools (SLB) and inclusive education services. Of this 18 percent, 115,000 children receive education in Special Schools, and 299,000 attend regular schools that provide inclusive education. Meanwhile, 82 percent of children with disabilities have not received education in formal institutions. This situation illustrates a serious problem for children with disabilities, necessitating solutions to ensure their right to education as dignified human beings.

Based on data from the Ministry of Research, Technology, and Higher Education (Kemenristekdikti) in 2020, Indonesia currently has 4,504 higher education institutions, comprising both public and private universities under the Ministry of Research and Technology, Higher Education, and other state ministries or agencies. Of these institutions, 74 have accepted students with disabilities. Although this number is not large compared to the total number of universities in Indonesia, it represents a positive step and a model for other

universities toward becoming disability-friendly campuses. Despite the increasingly open educational opportunities for people with disabilities, their participation in education remains low.

The low level of participation among students with disabilities in higher education in Indonesia should not come as a surprise, as educational institutions are often not prepared, either in terms of infrastructure, financial resources, or other aspects. Essentially, the commitment of higher education institutions to accepting prospective students with disabilities is the main factor that determines whether their right to higher education is accommodated.

In general, participation of people with disabilities in higher education remains low due to numerous obstacles, including a lack of support from their social networks (such as friends, parents, and family) and inadequate infrastructure (facilities and equipment) and suprastructure (policies) on campus, which deter them from applying for or pursuing higher education.

People with disabilities still face challenges in accessing education, such as admission requirements that demand physical and mental fitness, absence of disabilities, normal color vision, and other criteria, which restrict their choices. Such policies indirectly contradict the goal of a disability-friendly campus. In the modern era, assistive technology is available to support people with disabilities in the learning process.

From the data presented above, it is clear that the fulfillment of the right to education for children with disabilities in Indonesia has not been fully achieved, hindering the realization of an "education for all" system. Articles 28C, 28H, paragraph (2), and 31 of the 1945 Constitution affirm that education is a right for every citizen and must be fulfilled. Every individual has the right to access facilities and special treatment to gain equal opportunities and benefits in achieving equality and justice, and the state, represented by the government, has an absolute responsibility to fulfill these rights. However, this is not yet a well-established norm.

METHOD

The type of research used in this study is normative legal research, which treats law as a system of norms. This type of research examines the principles, norms, and rules contained in legislation, court decisions, agreements, and doctrines (teachings). According to Peter Mahmud Marzuki, normative legal research (legal research) aims to discover coherence truth, specifically whether legal rules align with legal norms, whether commands or prohibitions are consistent with legal principles, and whether an individual's actions are in accordance with legal norms (not just legal rules) or legal principles.⁸ As a form of legal research, and in line with the unique characteristics of jurisprudence, several approaches are employed in normative legal research, including:⁹ (a) the Statute Approach, (b) the Conceptual Approach, (c) the Analytical Approach, (d) the Comparative Approach, (e) the Historical Approach, (f) the Philosophical Approach, and (g) the Case Approach. This research utilizes library materials or secondary data, which include primary, secondary, and tertiary legal materials. The collection of legal materials is conducted through documentary studies related to the constitutional responsibilities of the state in fulfilling the right to education for children with disabilities. The

collected legal materials are then analyzed through a series of consistent, systematic, and aesthetic activities. This series of activities involves presenting, examining, systematizing, interpreting, and evaluating the entirety of the data or legal materials available.

RESULTS AND DISCUSSION

1. The State's Responsibility in Fulfilling the Right to Education for Persons with Disabilities from the Perspective of the Preamble to the 1945 Constitution of the Republic of Indonesia

The Constitution of Indonesia (UUD 1945) serves as the source for regulating and elaborating human rights in Indonesia. Therefore, the study of the state's responsibility in fulfilling human rights for persons with disabilities from the perspective of the UUD 1945 can be analyzed from each of its preambular paragraphs. The content and meaning of each paragraph can be explained as follows:

a. First Paragraph

The meaning contained in the Preamble of the 1945 Constitution, particularly the first paragraph, is the recognition of human rights. However, individual freedom must be subordinate to the collective freedom of the nation. Additionally, the first paragraph contains an objective statement, namely a challenge to colonialism because colonialism denies the equality of human beings. Therefore, this paragraph asserts that colonialism in the world must be opposed and eliminated as it is contrary to human rights. Furthermore, the first paragraph of the Preamble also contains a subjective principle, which is the aspiration and determination of the Indonesian people to liberate themselves from colonialism.

Examining the content and meaning of the first paragraph of the Preamble of the 1945 Constitution, it can be understood that this paragraph substantially contains a statement about the firm determination of the Indonesian people to realize independence. Meanwhile, the fulfillment of human rights by the state is a constitutional responsibility aimed at granting freedom and protecting the human rights of persons with disabilities throughout Indonesia.

The opportunity to regulate the constitutional responsibility of the state in fulfilling human rights as a manifestation of independence is demonstrated by the government and local governments by placing education as one of the concurrent affairs as stipulated in Article 11, Paragraph (1) of Law No. 23 of 2014 on Regional Government. Concurrent affairs are those that are jointly managed by the central government, provincial government, and district or city governments. Education is a mandatory concurrent affair related to basic services. Therefore, Minimum Service Standards (SPM) are established to ensure the constitutional rights of the people as explained in Law No. 23 of 2014.

In Article 13, Paragraph (1) of Law No. 23 of 2014, it is stated that the distribution of concurrent government affairs between the central government and the provincial, district, and city governments is based on the principles of accountability, efficiency, externalities, and national strategic interests. The explanation of the article further elaborates that the principle of

accountability refers to the determination of the party responsible for carrying out government affairs based on the proximity of the extent, scale, and impact of those affairs. The principle of efficiency determines that the party carrying out government affairs is chosen based on the highest achievable level of utility. The principle of externalities determines the party carrying out government affairs based on the extent, scale, and impact that arise due to such governance.

The "principle of national strategic interests" means that the party responsible for carrying out government affairs is chosen based on considerations of preserving the unity and integrity of the nation, safeguarding state sovereignty, implementing foreign relations, achieving national strategic programs, and other considerations as regulated in legislation. Based on these principles, the criteria for the authority of the central government, provincial governments, and district/city governments are stipulated as provided in Article 13, Paragraphs (2), (3), and (4) of Law No. 23 of 2014, as shown in Table 4.

b. Second Paragraph

The text of the second paragraph of the Preamble to the 1945 Constitution reads: "And the movement for Indonesia's independence has now reached a happy moment, safely bringing the entire Indonesian people to the threshold of Indonesia's independence, which is sovereign, united, just, and prosperous."

The meaning of the second paragraph of the Preamble to the 1945 Constitution includes: (1) The struggle for independence in Indonesia has reached a decisive point; (2) The moment that has now been reached must be utilized to declare independence; (3) Independence is not the ultimate goal but must be filled by establishing a sovereign, united, just, and prosperous Indonesia.

The second paragraph of the Preamble to the 1945 Constitution reflects pride and appreciation for the struggle of freedom fighters. It signifies an awareness that the current state cannot be separated from the past and that current actions will determine the future.

This pride and appreciation must be expressed through the creation of a sovereign, united, just, and prosperous nation. It is a constitutional responsibility of the state to achieve justice and prosperity for its citizens. One of the state's responsibilities in achieving justice and prosperity is to provide educational services to citizens with physical, mental, and sensory disabilities. Consequently, the state, as an agency (instrument) of society, must make education available, accessible, acceptable, and adaptable.¹⁰

Availability means that educational institutions and programs must be available in adequate numbers within the jurisdiction of the state. The requirements for them to function depend on many factors, including the development context in which they operate; for example, all institutions and programs tend to require buildings or physical protection from certain elements, equal sanitation facilities for men and women, safe drinking water, trained teachers with competitive salaries, teaching materials, and so on. Some may also require facilities such as libraries, computer laboratories, and information technology.

Accessibility means that access to various educational institutions and programs must be available to everyone, without discrimination, within the jurisdiction of the state. Accessibility has three general dimensions: (1) Non-Discrimination, where education must be accessible to all, especially vulnerable groups, both legally and in fact, without discrimination in any prohibited area; (2) Physical Accessibility, where education must be physically safe and accessible, both for people in geographically supportive areas and through technology; (3) Economic Accessibility, where the cost of education must be affordable for everyone. These dimensions of accessibility are subject to the phrasing in Article 13, Paragraph (2) regarding basic, secondary, and higher education; where basic education must be "free of charge for all," and the state must progressively introduce free secondary and higher education.

Acceptability refers to the form and substance of education, including the curriculum and teaching methods, which must be acceptable (e.g., relevant, culturally appropriate, and of good quality) to students and, in some cases, their parents; this is subject to the educational goals pursued by Article 13 (1) and the minimum educational standards agreed upon by the state (see Articles 13 (3) and (4)). Adaptability means that education must be flexible enough to adapt to the needs of changing societies and communities and respond to the needs of students in their diverse societies and cultural settings.

Based on the four characteristics of fulfilling basic education mentioned in the General Comment on the Covenant on Economic, Social, and Cultural Rights, the state, as an agency of society, must ensure that education is adequately available, accessible to all without discrimination, safe to reach both physically and economically, and that the curriculum and teaching methods are acceptable, relevant, culturally appropriate, and of high quality, and adaptable to societal needs.

c. Third Paragraph

The third paragraph of the Preamble to the 1945 Constitution of Indonesia reads: "By the grace of Almighty God and moved by the noble desire to live a free national life, the people of Indonesia hereby declare their independence."

The meaning of this third paragraph is twofold: it serves as the material motivation for Indonesia's independence, which is to live freely and independently. Furthermore, it conveys a spiritual motivation, namely the awareness and acknowledgment that Indonesia's independence is not solely the result of the people's struggle, but also due to the blessing of God.

This paragraph contains both a declaration of independence and a religious affirmation. The declaration of independence must be followed by development in all aspects of life, including economic, social, cultural, political, and educational fields. In the field of education, independence must be filled with fair and equitable educational development without regard to race, skin color, religion, culture, or the physical or mental conditions of citizens. A contemporary issue is the educational development for citizens with physical, mental, sensory, or social disabilities. Education for persons with disabilities is implemented through inclusive education.

Inclusive education is a government policy aimed at providing education that is accessible to all citizens, ensuring equal educational opportunities for both children with special needs and those without, so that all may attend school and receive a proper and quality education for their future. Inclusive education is one of the educational institutions organized by the government to provide space for students with special needs or those with exceptional talents and intelligence to receive education on par with regular students, without discrimination.¹¹

Providing education services that cater simultaneously to students with special needs and regular students will foster interactive relationships, allowing both groups to learn to understand, accept differences, and develop sympathy, empathy, and cooperation among all students.¹²

In inclusive education, there is a diverse range of students in terms of backgrounds, abilities, and capacities, which requires serious efforts to create a learner-friendly environment where all students can learn comfortably and enjoyably.

An international agreement that promotes the realization of an inclusive education system is the "Convention on the Rights of Persons with Disabilities and Optional Protocol," ratified in March 2007. Article 24 of this Convention mandates that every country must implement an inclusive education system at all levels of education. One of its objectives is to foster full participation of individuals with special needs in community life.

However, in practice, the inclusive education system in Indonesia still faces challenges, with ongoing debates between the government and education practitioners. Although inclusive schools continue to make improvements, ideally, these schools should be conducive environments for both children with and without special needs. The environment created supports children with special needs, allowing them to learn from spontaneous interactions with their peers, especially in social and emotional aspects. At the same time, it gives non-disabled children opportunities to learn empathy, assist, and care for others. Moreover, evidence shows that non-disabled children can achieve good academic performance without feeling hindered. The implementation of inclusive education is one of the prerequisites for building an inclusive society, a societal structure that respects and upholds the values of diversity as a reality of life. Numerous issues arise in the practice of inclusive education, such as limited facilities supporting the inclusive education system, and the lack of knowledge and skills among teachers in inclusive schools, indicating that the system is not yet well-prepared. Inclusive education for children with special needs should create a learning-friendly environment that allows all students to learn comfortably and enjoyably.

From the above explanation, it can be concluded that the third paragraph, which contains a declaration of independence, must be realized through development in various fields, particularly in this context, inclusive education for persons with disabilities who are more vulnerable than non-disabled persons. This development of inclusive education is based on policies aligned with the "Convention on the Rights of Persons with Disabilities," which upholds the dignity of learners through diversity, subsequently ratified into Law No. 19 of 2011 on the ratification of the CRPD.

d. Fourth Paragraph

The fourth paragraph of the Preamble to the 1945 Constitution of Indonesia reads: "Further, to establish a government of the state of Indonesia, and to promote the general welfare, to educate the life of the nation, and to participate in the establishment of a world order based on freedom, eternal peace, and social justice, the independence of Indonesia is organized within a state structure of the Republic of Indonesia based on the sovereignty of the people, founded upon the belief in Almighty God, just and civilized humanity, the unity of Indonesia, democracy guided by the inner wisdom of deliberation and representation, and the realization of social justice for all the people of Indonesia."

The phrase in the fourth paragraph, "... to educate the life of the nation ..." reflects the founding fathers' high commitment to education, recognizing it as a key to national progress. This aligns with Matthew S. Urdan's statement that: 13

"Nearly four-hundred years later, not only do these funding and educational quality disparities continue to persist, but they are exacerbated by the positional nature of education. A quality education is necessary to get into a good college. A good college education is necessary to obtain a good job. A good job is necessary to pursue one's dreams and live the life every man and woman wants to live, or in other words, to 'secure the blessings of liberty to ourselves and our posterity.'"

The meaning of the fourth paragraph of the Preamble to the 1945 Constitution is: (1) it contains the functions and objectives of the Indonesian state, namely, to protect the whole Indonesian nation and the entire homeland of Indonesia, to promote the general welfare, to educate the life of the nation, and to participate in the establishment of a world order based on freedom, eternal peace, and social justice; (2) the independence of the Indonesian nation is formulated in the 1945 Constitution; (3) the system of government is based on popular sovereignty (democracy); (4) the foundation of the state is Pancasila.

The fourth paragraph sets out the country's goals and the foundation for achieving these goals, which is Pancasila. The goals of the Indonesian state in the preamble include: (1) protecting the entire Indonesian nation, (2) promoting general welfare, (3) educating the life of the nation, and (4) participating in maintaining world order. Efforts to achieve these goals must be based on Pancasila. Thus, various policies or programs developed in Indonesia must clearly contribute to the achievement of state goals and be based on Pancasila.

1. The State's Goal to Protect the Entire Indonesian Nation (Protection)

The formation of the Indonesian state aims to protect all Indonesian people without exception. The aspects protected include all components that constitute the nation, including the people, natural resources, and cultural heritage.

The parameter or measure of a protected citizen is when their rights have been fulfilled in accordance with national law. The rights of citizens are determined in the 1945 Constitution, such as Article 28C (1), which states that everyone has the right to develop themselves through the fulfillment of their basic needs, to receive education, and to benefit from science and

technology, art, and culture, for improving their quality of life and for the welfare of humanity. Article 28H (2) stipulates that everyone is entitled to facilities and special treatment to obtain equal opportunities and benefits to achieve equality and justice. Articles 31 (1) and (2) assert that every citizen has the right to education and that the government is obliged to fund it.

The constitutional responsibility of the state in fulfilling human rights for persons with disabilities is based on the 1945 Constitution and is further delegated to the central and regional governments to fulfill and protect the right to education for persons with disabilities. This includes the right to quality education, the right to reasonable accommodation, and scholarships for those who excel but come from economically disadvantaged families.

As a legal state, it is obliged to provide constitutional guarantees that every citizen can exercise their rights. Even states recognized as sovereign must ensure that none of their citizens are repressed in exercising their human rights, regardless of their status. The state must facilitate the human rights of every citizen by regulating them through laws, and it is not permitted to take away rights that are a gift from Almighty God to every human being. Human rights are absolute and eternal and are not limited by a certain period. Human rights apply to everyone everywhere in the world, and at the same time, everyone must respect the rights of others.

The state must provide protection and special treatment to persons with disabilities who have physical, mental, and emotional vulnerabilities, given their different capabilities compared to those born in normal conditions. The state's responsibility to respect, protect, and fulfill the right to education for persons with disabilities aligns with capability theory. Capability theory is the foundation of justice as presented by Amartya Sen in his book, "The Idea of Justice." Sen argues that capability is the actual ability to achieve something that is considered valuable (functioning). To achieve a valuable functioning in life, people must have numerous opportunities or choices to freely choose. These choices enable people throughout their lives, depending on their capabilities; if one lacks opportunities, they will only reach a minimal level of functioning. People with disabilities have different abilities than those born in fortunate conditions. By nature, persons with disabilities have physical, mental, or sensory limitations. Given these limitations, they experience capability deprivation. Due to this deprivation, they lack access to achieve functioning, hence the state has a constitutional responsibility to provide protection, fulfillment, and special treatment for the right to education for persons with disabilities to realize equality and justice.¹⁴

Furthermore, this is strengthened by the theory of facility responsibility, as proposed by Ridwan, which states that the state's responsibility in fulfilling the right to education for persons with disabilities is guided by the theory of facility responsibility. Philosophically, the responsibility to fulfill the right to education for persons with disabilities is the state's responsibility, with that responsibility being delegated to the central government, provincial governments, and district/city governments. To protect the rights of persons with disabilities, the government has formed an independent commission or committee at the national, provincial, and district/city levels, and the commission has the authority to protect and fulfill the rights of persons with disabilities, particularly the right to education. This theory's reasoning is that the state is a social contract formed by individuals in society to fulfill the interests of

citizens. The state, as a representative of the individuals in society, must protect the fundamental rights of its citizens. Thus, the state must fulfill the fundamental rights of citizens, including the right to education, and special protection for vulnerable groups such as persons with disabilities.

2. The Objective of the Indonesian State to Promote General Welfare (Prosperity)

The parameters for achieving general welfare minimally include three elements: (1) clothing, (2) food, and (3) shelter. This means that the citizens of Indonesia can be considered prosperous if these three elements are adequately fulfilled. To achieve this objective, various strategies are employed in the governance of the nation, including the implementation of a regional autonomy system. In this context, each region is granted the authority to manage and regulate its governmental affairs to improve welfare.

The state is a tool created by its people to achieve common goals, namely prosperity and social justice. According to Kranenburg, the theory of the Welfare State is not merely about maintaining legal order but also actively working to promote the welfare of its citizens. Welfare encompasses various domains with broad scope; therefore, the state's objectives should be referred to in the plural form, as "state objectives."

A state can be considered a Welfare State when it exhibits certain general characteristics, such as allocating more than half of its expenditure to social policies or ensuring comprehensive and universal welfare for its citizens. Additionally, a Welfare State demonstrates a long-term commitment by implementing a set of government programs aimed at guaranteeing welfare in response to challenges posed by modernity, individualization, and an industrialized society. Furthermore, the state maintains its primary responsibility while effectively combining the efforts of various parties, such as social organizations and independent or voluntary groups, to provide social protection for its citizens.¹⁵

The fourth paragraph of the Preamble to the 1945 Constitution clearly conveys a message to state officials to continually strive to promote general welfare. This means that state officials (the government) are obliged to make continuous efforts to ensure the well-being of their citizens. This is a constitutional mandate that cannot be ignored, and state officials cannot escape this responsibility.

Article 23, paragraph (1), mandates that "the management of the government's budget and finances must be prioritized for the welfare of the people." This implies that developments in sectors such as the economy, education, health, and industry must prioritize the improvement of citizens' welfare. Furthermore, Article 27, paragraph (2), guarantees that "every citizen has the right to work and a decent livelihood for humanity." This article clearly provides a constitutional guarantee for citizens to obtain employment. Consequently, based on Article 23, paragraph (1), the management of government budgets and finances should also be directed towards developments that can absorb a significant amount of labor. Thus, policies aligned with the constitutional mandate should not merely be rhetorical. Article 28C further provides a constitutional foundation, stating that citizens have the right to have their fundamental rights fulfilled. Therefore, it is clear that the state is responsible for ensuring the basic rights of its

citizens, including clothing, shelter, food, education, and health. Article 28H reinforces this by stating that everyone has the right to live a prosperous life, both physically and spiritually, to reside, and to have a healthy environment, as well as the right to receive healthcare services, special treatment, and equal opportunities to achieve equality and justice, along with social security that enables holistic self-development as a dignified human being.

Additionally, Article 31 provides an opportunity for citizens to receive education and explicitly states that the state is obligated to ensure citizens' right to education and the state's duty to provide the highest level of education. This means the state has the responsibility to organize educational development that reaches higher education levels and guarantees access to education for its citizens.

3. The Objective of the Indonesian State to Educate the Nation (Education)

The goal of educating the nation is oriented toward the following objectives: This is reinforced by the provisions of Article 31, paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which affirm that every citizen has the right to basic education, and the state is obliged to finance it by prioritizing an education budget of at least 20% of the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD) at the provincial, city, and regency levels. This ensures the needs for implementing the national education system are met, thereby advancing science and technology while upholding religious values and national unity for the advancement of civilization and the welfare of all Indonesian citizens.

The constitutional provisions in Article 31 of the 1945 Constitution convey the following messages:

1. Education is the constitutional right of every citizen.
2. Every citizen is required to complete basic education.
3. The government is obliged to finance basic education.
4. The government is responsible for establishing and organizing a national education system aimed at enhancing faith, piety, and noble character to educate the nation, as regulated by law.
5. The education budget is prioritized by the state, with a minimum allocation of 20% of the APBN and the APBD at the provincial, city, and regency levels.
6. The government promotes science and technology while upholding religious values and national unity to advance civilization and the welfare of humanity.

The clarity of the rules in Article 31, paragraph (5), of the 1945 Constitution regarding the prioritization of the education budget of at least 20% of the APBN and APBD at the provincial, city, and regency levels differs from the stipulations in the National Education System, which states that funding for community-based education can come from the organizers, the community, the government, regional governments, and/or other sources that do not conflict with prevailing laws and regulations.

2. The State's Responsibility in Fulfilling the Right to Education for Persons with Disabilities Based on the Articles of the 1945 Constitution of the Republic of Indonesia

To understand the state's responsibility in fulfilling human rights for persons with disabilities, based on the constitution (the 1945 Constitution of the Republic of Indonesia), particularly in the relevant articles, it is essential to examine the provisions concerning the state's responsibility in fulfilling the right to education. These articles include: (i) Article 1, paragraph (3), (ii) Article 28H, paragraph (2), and (iii) Article 31, paragraphs (1), (2), (3), (4), and (5).

Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia characterizes the state as one that protects human rights. However, the rule of law adopted in Indonesia has distinct features rooted in Indonesia itself, specifically a legal state based on Pancasila. Thus, when viewed in the general sense of a legal state, the fundamental principle is that the government must operate based on law, not on power, as expressed by the phrase "rule by law, not rule by man." This principle includes upholding equality, individual freedom, and human rights.

The substance of the Preamble to the 1945 Constitution of the Republic of Indonesia in its fourth paragraph outlines the state's objectives to protect all Indonesians, promote general welfare, and advance national education. The realization of these values is further elaborated in Article 28C, paragraph (2) of the 1945 Constitution. This provision is relevant to the fulfillment of human rights for persons with disabilities, as it asserts that every person is entitled to education without exception. Thus, the state, as the highest organization, has a constitutional responsibility to fulfill and protect the right to education for all citizens, including persons with disabilities. Article 28H, paragraph (2) further emphasizes that every person has the right to special treatment, particularly citizens who experience physical, mental, social, or sensory impairments, to achieve equality and justice. This article specifically addresses the rights of persons with disabilities.¹⁶

While Article 28H, paragraph (2) of the 1945 Constitution is broad, using the terminology "every person," implying no specific limitations on the groups targeted by this article, the Constitutional Court has interpreted the meaning of "every person" in this context. This interpretation has been provided in three decisions: Constitutional Court Decision No. 10-17-23/PUU-VII/2009, Decision No. 143/PUU-VII/2009, and Decision No. 16/PUU-VIII/2010. In these decisions, the Constitutional Court stated:

"The constitutional rights in Article 28H, paragraph (2) of the 1945 Constitution represent a constitutional guarantee for those who experience marginalization, backwardness, exclusion, restriction, differentiation, disparities in political participation and public life stemming from structural and socio-cultural inequalities (discrimination), both formally and informally, in public and private spheres, known as affirmative action."

This interpretation affirms that persons with disabilities are included in the terminology "every person" as stipulated in Article 28H, paragraph (2) of the 1945 Constitution. Moreover, it clarifies that the terms "facilitation" and "special treatment" should not be understood as discriminatory practices but within the scope of fulfilling constitutional rights.

Based on the provisions of Article 28H, paragraph (2) of the 1945 Constitution, reinforced by Constitutional Court Decisions No. 10-17-23/PUU-VII/2009, No. 143/PUU-VII/2009, and No. 16/PUU-VIII/2010, the constitution explicitly guarantees the fulfillment of the rights of persons with disabilities and provides them with special facilitation and treatment in realizing their constitutional rights.

In the context of fulfilling and protecting human rights for persons with disabilities, the state must provide special treatment for persons with disabilities, recognizing that they may have different abilities from those born without impairments. The special treatment required includes providing adequate facilities and infrastructure, reasonable accommodation, equal sanitation facilities for men and women, access to safe drinking water, qualified teachers with competitive salaries, appropriate teaching materials, and other necessary resources. These may also include facilities such as libraries, computer laboratories, and information technology.

Theoretically, the provisions in Article 28H, paragraph (2) of the 1945 Constitution align with the Capability Approach, which forms the foundation of the theory of justice as presented by Amartya Sen in his book "The Idea of Justice." Sen argues that capability is the actual ability to achieve something that has been considered valuable (functioning). To achieve valuable functioning in life, people must have numerous opportunities or choices to select from, allowing for freedom of choice. These choices determine a person's life opportunities based on their capability. If a person lacks opportunities, they will only achieve functioning at a minimal level.¹⁷ Persons with disabilities have different capabilities compared to those born without impairments. Naturally, persons with disabilities experience physical, mental, or sensory limitations, which result in capability deprivation. Due to this deprivation, they lack access to achieve functioning; hence, the state has a constitutional responsibility to provide protection, fulfillment, and special treatment for the right to education for persons with disabilities to realize equality and justice.

The right to education is further regulated in Article 31 of the 1945 Constitution. Article 31 of the 1945 Constitution of the Republic of Indonesia stipulates that education is a basic right for every citizen. Moreover, basic education is mandatory for all citizens, and the state is obliged to fund it. Therefore, the state, delegated to the government and regional governments, holds significant responsibility for organizing the national education system, with a minimum allocation of twenty percent of the state revenue and expenditure budget and regional revenue and expenditure budgets.

The right of every person to develop themselves through the fulfillment of their basic needs, including the right to education, aligns with the state's responsibility to fulfill the right to education for persons with disabilities. Therefore, the state's responsibility in fulfilling human rights for persons with disabilities is based on constitutional grounds, specifically the 1945 Constitution.

The state's responsibility in fulfilling the right to education for persons with disabilities as an effort to realize the mandate of the constitution means that this responsibility has a strong constitutional basis to be further regulated in laws and regulations below the 1945 Constitution.

This includes synchronization at the central and regional levels, encompassing laws, government regulations, presidential regulations, ministerial regulations, provincial regulations, governor regulations, district/city regulations, and regent/mayor regulations.

CONCLUSION

The state's responsibility in fulfilling the right to education for persons with disabilities, from a constitutional perspective, is a concept of state responsibility aligned with the provisions of the Constitution. This includes the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which sets forth the state's objectives to protect all its citizens and promote the intellectual life of the nation based on Pancasila. Furthermore, Article 28H, paragraph (2) affirms that every person has the right to receive facilitation and special treatment to obtain equal opportunities and benefits to achieve equality and justice.

Footnote

- 1) Amartya Sen, 2009, *The Idea of Justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, hlm. 258.
- 2) Amartya Sen, 2009, *The Idea of Justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, hlm. 258.
- 3) Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Rajawali Press, Depok, 2019, hlm.163-167.
- 4) Collin Hay, dalam Winda Roselina Effendi, *Konsep Welfare State Di Indoneisa*, Jurnal Trias Politika, Vol.1, No.1, Tahun 2017, hlm. 174.
- 5) Dina Indriyani, *Hak Asasi Manusia Dalam Memperoleh Pendidikan*, Jurnal Pendidikan, Politik, Dan Kewarganegaraan, FKIP, Universitas Surya Kencana, Vol. 7, No. 1 (2017) hlm. 5.
- 6) Fajri Nursyamsi, Estu Dyah Arifianti, dkk, *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*, (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2015, hlm. 23.
- 7) <http://jurnal.umsu.ac.id/index.php/delegalata/article/view/1146/1152>, diakses, tanggal 20-08-2022, hlm. 158-160.
- 8) *Ibid*, hlm.28.
- 9) Kadir, *Penyelenggaraan Sekolah Inklusi di Indonesia*, Jurnal Pendidikan Agama Islam, 2015, hlm, 37.
- 10) Knut D. Asplund, Suparman Marzuki, Eko Riyadi, *Hukum Hak Asasi Manusia*, Cetakan Kedua, PUSHAM UUI, Provinsi Daerah Istimewa, Yogyakarta, 2016, hlm. 123.
- 11) Matthew S. Urdan, (Feb 04-2011), *Against a Constitutional Right to Education*, in *Analysis, Federal Government, History, State Government, Supreme Court Share This Print This Post* <http://www.insidegov.org/?p=527> While the framers of the United States constitution firmly believed that an educated citizenry was essential for the practice of democracy, and many of them argued for a national University of the United States and school system, there is no right to education articulated in the constitution or the Bill of Rights, and so no national system of education was ever organized. Pulliam and Van Patten (2007). Payne-Tsoupros (2010). (Analysis, Federal Government, History State Government, Supreme Court <http://www.insidegov.org/?p=527>, Payne-Tsoupros (2010). (Analysis, Federal Government, History State Government, Supreme Court <http://www.insidegov.org/?p=527>, Feb 04, 2011) Feb 04, 2011)
- 12) Nuraini, *Model Layanan Pendidikan Bagi Anak Berkebutuhan Khusus*, Jurnal Edukatif, 2019, hlm.33

- 13) Peter Mahmud Marzuki, Penelitian Hukum: Edisi Revisi, Jakarta, Kencana Persada Group, 2016, hlm.47.
- 14) Redja Mudyahardjo, 2012, Pengantar Pendidikan, Sebuah Studi tentang Dasar- Dasar Pendidikan pada Umumnya dan Pendidikan di Indonesia, Jakarta: PT Raja Grafindo, hlm. 3.
- 15) Sofian Munawar Asgart, Yogyakarta: Kota Pendidikan Minus HAM. (Yogyakarta: Penerbit Ombak, 2012), hlm.9.
- 16) To Promote: Membaca Perkembangan Wacana Hak Asasi Manusia di Indonesia, Ed. Eko Riyadi, PUSHAM UII, Yogyakarta, 2012, hlm, 305.
- 17) Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas Pasal 1 (Ayat) 1.

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- 1) Amartya Sen, 2009, the Idea of Justice, the Belknap Press of Harvard University Press, Cambridge, Massachussets.
- 2) Amiruddin dan Zainal Asikin, Pengantar Metode Penelitian Hukum, Rajawali Press, Depok, 2019.
- 3) Collin Hay, dalam Winda Roselina Effendi, Konsep Welfare State Di Indoneisa, Jurnal Trias Politika, Vol.1, No.1, Tahun 2017.
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- 5) Fajri Nursyamsi, Estu Dyah Arifianti, dkk, Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas, (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), 2015.
- 6) <http://jurnal.umsu.ac.id/index.php/delegalata/article/view/1146/1152>, diakses, tanggal 20-08-2022.
- 7) Kadir, Penyelenggaraan Sekolah Inklusi di Indonesia, Jurnal Pendidikan Agama Islam, 2015.
- 8) Knut D. Asplund, Suparman Marzuki, Eko Riyadi, Hukum Hak Asasi Manusia, Cetakan Kedua, PUSHAM UII, Provinsi Daerah Istimewa, Yogyakarta, 2016.
- 9) Matthew S. Urdan, (Feb 04-2011), Against a Constitutional Right to Education, in Analysis, Federal Government, History, State Government, Supreme Court Share This Print This Post <http://www.insidegov.org/?p=527> While the framers of the United States constitution firmly believed that an educated citizenry was essential for the practice of democracy, and many of them argued for a national University of the United States and school system, there is no right to education articulated in the constitution or the Bill of Rights, and so no national system of education was ever organized. Pulliam and Van Patten (2007). Payne-Tsoupros (2010). (Analysis, Federal Government, History State Government, Supreme Court <http://www.insidegov.org/?p=527>, Payne-Tsoupros (2010). (Analysis, Federal Government, History State Government, Supreme Court <http://www.insidegov.org/?p=527>, Feb 04, 2011) Feb 04, 2011)
- 10) Nuraini, Model Layanan Pendidikan Bagi Anak Berkebutuhan Khusus, Jurnal Edukatif, 2019.
- 11) Peter Mahmud Marzuki, Penelitian Hukum: Edisi Revisi, Jakarta, Kencana Persada Group, 2016.
- 12) Redja Mudyahardjo, 2012, Pengantar Pendidikan, Sebuah Studi tentang Dasar- Dasar Pendidikan pada Umumnya dan Pendidikan di Indonesia, Jakarta: PT Raja Grafindo.
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- 14) To Promote: Membaca Perkembangan Wacana Hak Asasi Manusia di Indonesia, Ed. Eko Riyadi, PUSHAM UII, Yogyakarta, 2012.