


Review of Non-Discrimination Law in Education in Indonesia:
Analysis Based on the Convention on the Rights of the Child

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ARTICLE INFO	ABSTRACT
<p><i>Keywords:</i></p> <p>Law; Protection; Non-Discriminatory Education; Indonesia</p> <p><i>Article history:</i></p> <p>Received 2024-06-25 Revised 2024-07-28 Accepted 2024-08-22</p>	<p>Education is a fundamental human right recognized in various national and international legal instruments. In Indonesia, the right to education is guaranteed by the 1945 Constitution and several other laws. However, discrimination in the education system remains a significant problem that hinders access and quality of education for all children. This research aims to explore non-discriminatory laws to protect education in Indonesia by referring to the standards set by the Convention on the Rights of the Child. The research method used is a literature review, which involves systematic observation of relevant research on discrimination in education in Indonesia. The research results show that Indonesia has established a legal framework for non-discriminatory education, including the 1945 Constitution, the National Education System Law, the Human Rights Law, and various other regulations, which explicitly prohibit all forms of discrimination in education. However, discrimination in education, whether based on SARA, gender, economic conditions, disability, or social status, is still a serious problem that hinders equal access and quality of education for all children in Indonesia.</p> <p><i>This is an open access article under the CC BY license.</i></p> <div></div>
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1. INTRODUCTION

Education is one of the most fundamental human rights recognized by various international legal instruments, including the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of the Child (CRC). In Indonesia, the right to education is guaranteed by the 1945 Constitution, which affirms that every citizen has the right to education. Education is not only a means to improve knowledge and skills, but also an important tool to promote equality, social justice, and national integration (Noventue et al., 2024).

However, although Indonesia has ratified the CRC through Presidential Decree No. 36 of 1990 and has various laws and policies to ensure access to education for all, discrimination in the education system is still a significant problem. Discrimination based on ethnicity, religion, race, intergroup (SARA), gender, economic status, and disability is still common, resulting in inequality in access and quality of education (Rosada & Albertus , 2019). For example, children from minority groups are often treated differently or marginalized in school. In some areas, girls still face obstacles in accessing

education equally with boys (Anto et al., 2023). Similarly, children with disabilities often do not receive adequate facilities and support to fully participate in teaching and learning activities (Haryanto, 2021).

This situation shows a gap between existing legal principles and practice in the field. Law No. 20 of 2003 on the National Education System (UU Sisdiknas) and Law No. 39 of 1999 on Human Rights have emphasized the importance of fair and non-discriminatory education. However, challenges in the implementation of this law in various regions are still a major obstacle to achieving inclusive and equal education for all children in Indonesia (Setiawan & Apsari, 2019). Furthermore, challenges such as lack of public awareness, weak law enforcement (Windari, 2011), and limited educational facilities and infrastructure in several regions exacerbate this discrimination problem. Although the government has attempted to address some of these issues through affirmative programs such as the Smart Indonesia Program (PIP) and School Operational Assistance (BOS), the results achieved are still far from expectations (Herlinawati et al., 2018). Many schools in remote or isolated areas are still unable to effectively implement the principles of non-discriminatory education (Amelia, 2019).

Therefore, this study aims to evaluate and analyze the law on non-discriminatory protection of education in Indonesia concerning the standards set by the CRC. This study will delve deeper into the forms of discrimination that still occur in the educational environment, how the law in Indonesia responds to this problem, and the challenges faced in its implementation. Ultimately, this study is expected to provide recommendations to strengthen regulations and policies, as well as strategies to ensure that every child in Indonesia can enjoy his or her right to education without discrimination, according to Indonesia's international obligations under the CRC.

2. METHODS

The method used in this study is a literature review, which involves a systematic and comprehensive review of existing studies on the legal aspects of non-discriminatory education in Indonesia. This method is carried out through a series of steps, including (1) Systematic search in academic databases such as Scopus, Web of Science, and Google Scholar using relevant keywords such as "non-discriminatory education", "education law", "equality in education", and "Indonesia". (2) Application of inclusion and exclusion criteria to select studies relevant to the research topic, considering aspects such as topic relevance, source quality, and the legal context in Indonesia; (3) Thematic analysis of the selected studies, using a coding framework to identify emerging patterns and themes, such as forms of discrimination in education and existing legal responses; and (4) Narrative synthesis of the existing findings, highlighting key themes and patterns emerging from the data, as well as how the law in Indonesia responds to issues of discrimination in education.

3. RESULTS AND DISCUSSION

Legal Framework for Non-Discriminatory Education Protection in Indonesia

The legal framework in Indonesia that guarantees non-discriminatory education includes various provisions that ensure that every citizen has the right to access education regardless of their background. This legal framework emphasizes that education is a fundamental right that must be enjoyed equally by all people by rejecting all forms of discrimination based on ethnicity, religion, race, gender, social status, or physical condition. Through the existing laws, the State is committed to providing equal education to all citizens by the principles of human rights.

This legal framework includes the constitutional basis, laws related to the national education system, human rights protection, and international commitments ratified by Indonesia. This legal framework works synergistically to ensure that the principle of non-discrimination is fully applied in the national education system. The legal framework for the protection of non-discrimination in education in Indonesia is as follows

The 1945 Constitution (UUD 1945)

Article 31 of the 1945 Constitution states that every citizen has the right to education and that the government is obliged to finance basic education for every citizen. This is a constitutional basis that emphasizes that education is a right that must be enjoyed by all Indonesian citizens without exception (Nadzirah et al., 2018). This article is the main legal basis that supports the state's obligation to provide access to education for all citizens, including those from vulnerable and marginalized groups. The principle of non-discrimination is implied in Article 31 and emphasized by Article 28I of the 1945 Constitution, which states that the right to education is among the human rights that cannot be diminished under any circumstances. This means that education must be equally available to all citizens without discrimination based on ethnicity, religion, race, gender, social status, or physical condition. These articles emphasize the State's obligation to ensure that all citizens have equal access to quality education.

Law Number 20 of 2003 concerning the National Education System (UU Sisdiknas)

Law No. 20 of 2003 on the National Education System is one of the laws born after the reform era. This law was passed on July 8, 2003, under the administration of President Megawati. Law No. 20 of 2003 concerning the National Education System is still the legal basis and legitimate instrument for outlining education policy in Indonesia (Rahman et al., 2021).

Article 4 of the National Education System Law emphasizes that education must be carried out democratically, fairly, and non-discriminatory by upholding human rights, religious values, cultural values, and national diversity. This means that all forms of discrimination in education are prohibited, whether related to ethnicity, religion, race, gender, economic status, or physical condition.

Article 5 of the National Education System Law further states that every citizen has the right to quality education. This not only emphasizes equal access to education but also ensures that the quality of education received by each student must be the same, regardless of their background.

Law Number 39 of 1999 concerning Human Rights (HAM Law)

The importance of enforcing human rights in education is very urgent because education plays a primary role in shaping the next generation of the nation. Without guarantees of enforcing human rights in education, our education process risks producing a generation that ignores its rights and existence as a human being, and will most likely produce a generation that does not respect human dignity (Ansori, 2016). Article 12 of the Human Rights Law specifically states that every child has the right to protection from discrimination, exploitation, and inhumane treatment, and has the right to receive a decent education. This emphasizes that the state must protect children's rights, including their right to receive education without discrimination. This article also reinforces the principle that education should not be a tool for discrimination, but rather a means to advance equality and social justice among all children, regardless of their background.

The Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC), adopted by the UN General Assembly in 1989, is one of the most influential international legal instruments for the protection of children's rights, including the right to education without discrimination. Article 28 of the CRC explicitly affirms the right of every child to education. The CRC requires state parties, including Indonesia, to ensure that basic education is free and compulsory for all children and to promote secondary and higher education that is accessible to all children without discrimination (Nong & Faradila, 2013).

Indonesia ratified the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990, and the Human Rights Law reflects Indonesia's commitment to align its national regulations with the international standards outlined in the CRC. The CRC requires states to ensure that all children, without exception, have access to inclusive and non-discriminatory education. Thus, the Human Rights Law serves as a bridge between domestic law and Indonesia's international obligations to protect children's rights, including the right to education.

Forms of Educational Discrimination and How the Law Responds to Them

Discrimination in education can take many forms, each of which can affect children's access to and quality of education. This discrimination not only affects students' ability to learn and develop but also violates their basic human right to an equal education. Various types of discrimination, such as those based on SARA (ethnicity, religion, race, and inter-group), gender, economic conditions, disability, and social status, remain challenges in Indonesia. However, Indonesian law has responded by enacting various laws and policies that aim to protect the rights of every individual to a fair and inclusive education. This section discusses the various forms of discrimination that occur in educational settings and how the law responds to address these issues, to ensure that every child has an equal opportunity to receive a quality education without discrimination.

Discrimination Based on Ethnicity, Religion, Race, and Inter-Group (SARA)

It is an undeniable fact that Indonesian society is composed of different ethnicities, socio-cultures, languages, and religions. These differences are a source of national wealth that other countries do not have.

Indonesia is a country that is very rich in tribes, ethnicities, religions, and cultures. This makes Indonesia one of the largest multicultural countries in the world. With more than thirteen thousand islands, about 300 tribes, and 200 languages, Indonesia has six religions practiced by its people, namely Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism (Riyadi et al., 2024). After Indonesia's independence, enemies in the form of physical forces (colonists) from other countries were gone, but with that came selfishness based on ethnicity, religion, regionalism, and others, which made the nationalism built by the nation's founders seem to fade. This can be seen in the frequent conflicts based on religion, ethnicity, groups, and others (Ruslan, 2014).

In Indonesia, racial discrimination is still a major issue in the educational environment. For example, children from certain minority groups may be treated differently or marginalized by both their peers and educators. This may take the form of negative stereotyping, exclusion, or lack of support for their academic development (Heryanto et. al., 2021).

Indonesian law, such as Law No. 20 of 2003 on the National Education System, prohibits discrimination based on SARA. Article 4 of the National Education System Law emphasizes that education must be provided in a fair and non-discriminatory manner. In addition, Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination also provides legal protection against racial and ethnic discrimination.

Discrimination Based on Gender

Gender differences are something that is normal as long as they do not cause gender injustice. However, the reality in society shows that gender differences often cause various forms of injustice for women (Khaerani, 2017). Women often face quite complex challenges in fighting for their rights. Women are always discriminated against in various aspects, especially in work, education, and even in their personal lives. In a patriarchal world, women have a limited scope, there is always a distance that limits women's scope. Women cannot make their own choices, they are always required to play many roles, whether they have to play a domestic role or have a career, this is different from men who are only allowed to take one responsibility, which is to work or be the backbone of the family (Wira et al., 2023). In some areas, particularly rural or more conservative areas, girls still face greater challenges in accessing education. This may take the form of restrictions on further education for girls, an emphasis on domestic rather than academic roles, or a lack of adequate facilities to support their full participation in school (Luqman & Sulaikhan, 2023).

Law No. 23 of 2004 on the Elimination of Domestic Violence and other policies related to gender equality provide a legal framework to protect girls' rights in education. In addition, there are various affirmative programs and policies of the Ministry of Education and Culture that promote gender equality in education.

Discrimination Based on Economic Conditions

Children from poor families often face discrimination in the form of limited access to educational facilities, lack of resources to support learning (such as books and stationery), and even social exclusion from their more affluent peers. These children may also be forced to leave school early to help support their families' finances (Hidayat, 2022). The government has implemented various programs, such as the Smart Indonesia Program (PIP) and the School Operational Assistance (BOS), which aim to reduce the economic gap in access to education. The Education Law and other related regulations also support free or subsidized education to ensure that all children, regardless of economic status, can attend school.

Discrimination Against Persons with Disabilities

Children with disabilities often experience discrimination in the form of a lack of physical accessibility in schools, a lack of special education support, or a lack of awareness and understanding of their needs by educators and other students. This can prevent them from fully participating in teaching and learning activities.

Persons with disabilities are individuals who have the right to claim their inherent rights, especially when these rights are violated and cause harm due to physical limitations (Yuliana, 2019). Law No. 8 of 2016 on Persons with Disabilities specifically protects the rights of persons with disabilities, including the right to an adequate education. This law requires schools to provide facilities that are friendly to persons with disabilities and support inclusive education. In addition, the Ministry of Education and Culture has developed inclusive education policies and programs to integrate children with disabilities into the general education system.

Discrimination Based on Social Status

Discrimination based on social status also occurs in the school environment, where students from different social backgrounds are treated differently by classmates or even teachers. Students from working-class families or families with social problems may be considered less valuable than students from more stable or wealthy families (Sulaiman, 2012).

Education law in Indonesia emphasizes that all children have the right to a fair education without discrimination, including discrimination based on social status. Law No. 39 of 1999 on Human Rights also emphasizes that everyone, regardless of social background, has the right to fair treatment in all areas, including education (Pratiwi et al., 2024).

4. CONCLUSION

Education is a fundamental human right widely recognized in various national and international legal instruments, including in Indonesia. The results of the study show that although Indonesia has made progress in establishing a legal framework for non-discriminatory education, significant challenges remain in its effective implementation.

The legal framework in Indonesia, which includes the 1945 Constitution, the National Education System Law, the Human Rights Law, and other regulations, has expressly prohibited all forms of discrimination in education. However, discrimination in education, whether based on race, religion, gender, economic condition, disability, or social status, is still a serious problem that hinders equal access and quality of education for all children in Indonesia.

To overcome this problem, stronger and more consistent efforts are needed in law enforcement, increasing public awareness, and improving educational facilities and infrastructure. Effective implementation of existing policies and programs, as well as adjusting the legal framework to real conditions on the ground, are essential to realizing inclusive and equal education for all children in Indonesia. Thus, Indonesia's commitment to international standards in ensuring non-discriminatory education can be achieved, and every child can enjoy their right to quality education without discrimination.

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