



RESEARCH ARTICLE

INDONESIA'S LEGAL POLICY DURING  
COVID-19 PANDEMIC: BETWEEN THE  
RIGHT TO EDUCATION AND PUBLIC  
HEALTH

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ABSTRACT

Basically, every country is obliged to ensure quality education without discrimination against every citizen, including Indonesia. Recognition of the right to education is so important that it becomes one of the goals of the state as stated in the Preamble of the 1945 Constitution, namely to educate the nation's life. However, since the COVID-19 pandemic hit the world, the education sector has also been affected. People have no choice, but to implement the Covid-19

prevention habits and protocols. In the case of Indonesia, the government has closed the schools and universities since mid-March 2020 and switched to the online learning system. In this article, the author will explain the Indonesia's legal policy in fulfilling the community's right to education during pandemic, at the same time analyzing how government responds to the public demands. This normative legal research is conducted using a conceptual and statutory approach, which will then be analyzed descriptive-qualitatively. The result shows that educational policies during COVID-19 pandemic can be divided into two phases: early pandemic and new normal transition. In the first phase, the government focused on protecting the health and safety to all communities in the education institution areas by implementing certain protocols, closing the schools and switching to distance/online learning. Although public health and safety are top priorities, the policies resulted in disparities among students. While in the new normal transition phase, The government tends to respond to public demands on education problems by loosening its policies a little through schools disclosure and providing the internet support in online learning

**Keywords:** Legal Policy; Right to Education; Public Safety.

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## INTRODUCTION

ON THE BEGINNING of 2020, The novel coronavirus disease 2019 (COVID-19) originated in Wuhan city of China, has spread rapidly around the world, sending billions of people into lockdown.<sup>1</sup> Although previously The World Health Organization (WHO) avoided the word "pandemic" because it was thought to cause fear and panic, seeing an increase in the spread of this virus, inevitably made WHO decide COVID-19 as a pandemic on the 11th March 2020.<sup>2</sup> Until November, there were 49,106,931 confirmed cases worldwide, with 1,239,157 deaths.<sup>3</sup>

Although the Covid 19 case has been confirmed since January, the Indonesian government's response has been slow and inconsistent.<sup>4</sup> The majority of public officials do not consider the emergence of this virus to be a cause for concern. Until early March, two new cases were confirmed positive in Indonesia and continued to increase during April. As of November 2020, Indonesia has reported 433,836 positive cases, making it the first place with the most cases in Southeast Asia. In terms of mortality, Indonesia ranks third in Asia

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- <sup>1</sup> Pradeep Sahu, *Closure of universities due to Coronavirus Disease 2019 (COVID-19): Impact on Education and Mental Health of Students and Academic Staff*, 12 CUREUS 1-6 (2020). <https://dx.doi.org/10.7759%2F Cureus.7541>
  - <sup>2</sup> Muhammad Adnan & Anwar Kainat. Online Learning amid the COVID-19 Pandemic: Students' Perspectives. 2 JOURNAL OF PEDAGOGICAL SOCIOLOGY AND PSYCHOLOGY 45-51 (2020).
  - <sup>3</sup> Worldometer. Coronavirus Update (Live): Cases and Deaths from COVID-19 Virus Pandemic. (2020). <https://www.worldometers.info/coronavirus/%0Ahttps://www.worldometers.info/coronavirus/>, accessed on 9 April 2020.
  - <sup>4</sup> Sofia Al Farizi & Bagus Nuari Harmawan, *Data Transparency and Information Sharing: Coronavirus Prevention Problems in Indonesia*, 8 J. ADM. KESEHAT. INDONES. 35 (2020).

with 14,540 deaths. Meanwhile, it was announced that 364,417 people had recovered, leaving 54,879 cases currently being treated.<sup>5</sup>

Basically, COVID-19 is transmitted from person to person and is propagated primarily via respiratory drops released through coughing and sneezing within a range.<sup>6</sup> This kind of transmission model causes its spread so fast that it becomes a serious concern of governments around the world. WHO also issued a number of appeals such as physical distancing, wearing masks and washing hands. This health protocol is also applied globally so that it has an impact on the social and economic aspects of society,<sup>7</sup> Especially in terms of physical distancing which causes the majority of countries to close their territory from outsiders, including temporarily closing schools and higher education institutions and adjusting learning activities to the distance learning model.

These nationwide closures are impacting hundreds of millions of students. Several other countries have implemented localized closures impacting millions of additional learners. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), by April 2020 over 1.37 million students have been affected in their learning, with total of 172 countries worldwide closing their schools caused by COVID-19 pandemic, including Indonesia. The number continues to increase until november with 224.1 million students affected.<sup>8</sup> Although recently several countries have started to open schools fully, eighty percent of students all over

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<sup>5</sup> COVID-19 Handling Task Force. *Covid-19 Data*. (2020). <https://covid19.go.id/peta-sebaran>, accessed on 8 November 2020.

<sup>6</sup> Myungsun Park et al., *Optimization of primer sets and detection protocols for SARS-CoV-2 of coronavirus disease 2019 (COVID-19) using PCR and real-time PCR*, 52 EXP. MOL. MED. 963–977 (2020), <http://dx.doi.org/10.1038/s12276-020-0452-7>.

<sup>7</sup> Maria Nicola, Zaid Alsafi, Catrin Sohrabi, Ahmed Kerwan, Ahmed Al-Jabir, Christos Iosifidis, Maliha Agha, & Riaz Agha. The socio-economic implications of the coronavirus pandemic (COVID-19): A review. 78 INTERNATIONAL JOURNAL OF SURGERY (LONDON, ENGLAND) 185-193 (2020). <https://dx.doi.org/10.1016%2Fj.ijso.2020.04.018>

<sup>8</sup> UNESCO. COVID-19 Impact on Education. (2020). <https://en.unesco.org/covid19/educationresponse>, Accessed on 12 October 2020.

the world are still at risk of falling behind academically in the years to come, jeopardizing the future growth rates and income from their fields of activity.<sup>9</sup>

In previous research by Rachel Hilburg, et al. concluded that the pandemic has a very significant impact on medical education that relies on face-to-face learning models. Educators and teachers are also forced to adapt to a series of technological tools to keep maximizing learning activities.<sup>10</sup> In fact, this adaptation process has many impacts on students. Research from Wenjun Cao et al, for example, shows a correlation between postponement of school and unbearable psychological pressure and symptoms of anxiety.<sup>11</sup> The same findings were presented by Kapasia et al, who assessed the learning status of Indian undergraduate and postgraduate students during pandemic. About forty six (46) percent of students are feeling stress, depression, and anxiety, while the rest are suffering from internet connectivity problem, insufficient gadget, and uninteresting teachings.<sup>12</sup>

Corlatean with reference to other research also explains some of the constraints and risks of education during a pandemic, ranging from economic disparities among students, the unequal ability and readiness of teaching staff, to racial and gender discrimination due to closure of educational institutions.<sup>13</sup> While Pham and Ho, who conducted research on Vietnam Education during the COVID-19 pandemic, showed that the government and educational institutions

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<sup>9</sup> Titus Corlatean, *Risks, discrimination and opportunities for education during the times of COVID-19 pandemic*, Res. Assoc. (2020), <http://rais.education/wp-content/uploads/2020/06/004TC.pdf>.

<sup>10</sup> Rachel Hilburg et al., *Medical Education During the Coronavirus Disease-2019 Pandemic: Learning From a Distance*, ADV. CHRONIC KIDNEY DIS. (2020), <https://doi.org/10.1053/j.ackd.2020.05.017>.

<sup>11</sup> Wenjun Cao et al., *The psychological impact of the COVID-19 epidemic on college students in China*, 287 *Psychiatry Res.* 112934 (2020), <https://doi.org/10.1016/j.psychres.2020.112934>.

<sup>12</sup> Nanigopal Kapasia et al., *Impact of lockdown on learning status of undergraduate and postgraduate students during COVID-19 pandemic in West Bengal, India*, 116 *Child. Youth Serv. Rev.* 105194 (2020), <https://doi.org/10.1016/j.chilyouth.2020.105194>.

<sup>13</sup> Titus Corlatean, *supra note 9*.

use the combination of traditional modes (i.e., posting materials for students in remote areas) and the online learning to minimize the disparities.<sup>14</sup>

Beside all of the findings above, The Global Campaign for Education and UNESCO has stated that the COVID-19 crisis is an opportunity to focus all efforts on developing policies for educational inclusion.<sup>15</sup> Thus, it is important to do basic research in order to explain the government's legal policies in learning management during COVID-19 pandemic. The policy also needs to be analyzed to determine the direction and priorities of the government regarding the community's right to adequate education and public safety. As well as an effort to re-evaluate the existing legal policies, whether they have fulfilled the rights of the community as mandated by the constitution.

As a legal research, the main focus of this study is to analyze the politics of law in government policies related to the implementation of education during the COVID-19 pandemic. Thus, this research requires secondary data from literature studies. Based on this, the research is categorized as doctrinal or normative legal research. Judging from its nature, this research is descriptive-prescriptive. Descriptive in nature because it is in the form of an explanation which aims to obtain a complete picture (description) of the legal situation prevailing in a certain place (Indonesia) and at certain times (COVID-19 Pandemic) that occur in society. Prescriptive is intended to provide an argument for the research results that have been analyzed. To obtain information from various aspects of the

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<sup>14</sup> Hiep Hung Pham & Tien Thi Hanh Ho, Toward a 'new normal' with e-learning in Vietnamese higher education during the post COVID-19 pandemic, 39 High. Educ. Res. Dev. 1327–1331 (2020). <https://doi.org/10.1080/07294360.2020.1823945>

<sup>15</sup> Global Campaign for Education. Civil Society Organisations Call on States and the International Community to Ensure the Right to Education for All during the #COVID19 Crisis. (2020). <https://www.campaignforeducation.org/en/2020/04/24/civil-society-organisations-call-on-states-andtheinternational-community-to-ensure-the-right-to-education-for-all-during-the-covid19-crisis/>, accessed on 4 July 2020.

issues, this study uses several approach methods: first, a statutory approach, which is carried out by examining statutory regulations related to the legal issue being studied (education policies during pandemic). Second, the conceptual approach, which departs from the views and concepts that develop in legal science. Based on the type of normative research, secondary data is used which include primary and secondary legal materials. Primary legal materials are binding legal materials consist of the Basic Law (1945 Constitution of The Republic of Indonesia) and statutory regulations under it. Meanwhile, the secondary legal materials used include the results of previous research, Journals, books, and actual news.

## ON THE RIGHT TO EDUCATION & PUBLIC HEALTH

### I. EDUCATION AS FUNDAMENTAL & CONSTITUTIONAL RIGHT

As Spring wrote in his book, the greatest difficulty in justifying and defining the right to education is due to the pluralism of languages and cultures.<sup>16</sup> In this sense, it is difficult to formulate a definition of education which in general can represent the entire economic, social and cultural context of the world. However, the existence of the right to education can be traced since it was first recognized in the Universal Declaration of Human Rights (UDHR), which established in 1948 by the countries of the newly formed United Nations.<sup>17</sup>

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<sup>16</sup> Joel H Spring, *The universal right to education: justification, definition and guidelines* (2000).

<sup>17</sup> Tristan Mccowan, *Reframing the universal right to education*, 46 *Comp. Educ.* 509–525 (2010).



Basically, education as fundamental right are mentioned in the Article 26 of the 1948 UDHR, stated that:<sup>18</sup>

- 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 on the basis of 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 shall further the activities of the United Nations for the maintenance of peace.
- 3) Parents have a prior right to choose the kind of education that shall be given to their children.

The right to education is clearly established in international agreements and reinforced in a number of covenants, conventions, declarations and frameworks relating to education, human rights and the rights of children. One of the most remarkable initiative is the 1990 World Conference on Education for All (EFA) in Jomtien, Thailand. Despite any political, social and cultural difference in interpretation the education, the opening in the EFA world declaration is able to unite the vision and support of all participating countries for the right to education. The first line in preamble stated that: "Recalling that education is fundamental rights for all people, women and men, of all ages, throughout the world".<sup>19</sup>

Fundamental rights are closely related to the constitution, at least in its formal concept. A formal concept of fundamental right is employed if such rights are mentioned as rights contained in a constitution, or if the rights in question are classified by a constitution as fundamental rights, or if they are endowed by the constitution with

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<sup>18</sup> UNITED NATIONS, *United Nations Human Rights Declaration 2* (1948), [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>19</sup> SPRING, *supra* note 16.

special protection.<sup>20</sup> Nowadays, most litigation and scholarship also premised on theories that education, as a practical matter, has become so important to individuals' life chances that the Constitution must protect it. In fact, most of countries have recognized the right to education as a right that must be fulfilled and protected in the constitution. For example In the United States history, the national and state-level commitment to education became far more concrete since the final ratification of their Fourteenth Amendment constitution.<sup>21</sup> While in India, the right to education has only been recognized as a constitutional right since the 86th amendment to the constitution in 2002, which introduced Article 21(a) stated that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".<sup>22</sup> In other words, the right to education has already recognized and formalized as constitutional rights, even though the recognition happened at different timescales.

As a republic country that declares itself as a "*rechstaat*", Indonesia also recognizes and upholds human rights. This can be seen from Indonesia's participation in a series of international conventions and treaties related to human rights. Until now, there are 8 (eight) of the 9 (nine) main international human rights instruments that have been ratified by Indonesia. Among these are the International Covenant on Economic, Social and Cultural Rights (Law No.11 of 2005),<sup>23</sup> Convention on the Rights of the Child (Presidential Decree

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<sup>20</sup> AGUSTÍN J Menéndez & Erik O. Eriksen, eds. *Arguing Fundamental Rights*. Springer Science & Business Media (2006).

<sup>21</sup> DEREK W. BLACK, THE FUNDAMENTAL RIGHT TO EDUCATION, 94 NOTRE DAME LAW REV. 1059–1114 (2019).

<sup>22</sup> C. CHATTERJEE, E.A. HANUSHEK & S. MAHENDIRAN, CAN GREATER ACCESS TO EDUCATION BE INEQUITABLE? NEW EVIDENCE FROM INDIA'S RIGHT TO EDUCATION ACT. *NBER WORKING PAPER* W27377 (2020).

<sup>23</sup> REPUBLIC OF INDONESIA, UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 11 TAHUN 2005 TENTANG PENGESAHAN INTERNASIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHT (KOVENAN INTERNASIONAL TENTANG HAK-HAK EKONOMI, SOSIAL DAN BUDAYA) (2005), [https://jdih.kemnaker.go.id/data\\_puu/5.pdf](https://jdih.kemnaker.go.id/data_puu/5.pdf).

No. 36/1990),<sup>24</sup> and International Covenant on Civil and Political Rights (Law No. 12 of 2005),<sup>25</sup> in which many of these international treaties mention the guarantee of the right to education.

The right to education as fundamental values have also been contained in the Constitution of the Republic of Indonesia, which indicates that the state recognizes and upholds these rights as constitutional rights of every citizen that must be protected. This is in line with the objectives of the state as stated in the preamble of the 1945 constitution, that the government of the Republic of Indonesia was formed to protect the entire Indonesian nation, promote public welfare, and educate the nation's life. In line with the objectives of the country, the founders of the State stipulated further regulations regarding the right to education in Article 31 Paragraph (1) of the 1945 Constitution (before the amendment) that, "Every citizen has the right to receive teaching."<sup>26</sup>

Article 31 of the 1945 Constitution after the fourth amendment then describes in more detail the rights of citizens in education as follows: (1). Every citizen has the right to education; (2). Every citizen is obliged to attend basic education and the government is obliged to provide the budget; (3). The government strives for and implements a national education system, which increases faith and piety as well as noble morals in the framework of the intellectual life of the nation, which is regulated in law; (4). The state prioritizes the education budget for at least twenty percent of the state revenue and

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<sup>24</sup> REPUBLIC OF INDONESIA, *KEPUTUSAN PRESIDEN REPUBLIK INDONESIA NOMOR 36 TAHUN 1990 TENTANG PENGESAHAN CONVENTION ON THE RIGHTS OF THE CHILD (KONVENSI TENTANG HAK-HAK ANAK) 1984 (1990)*, <https://peraturan.bpk.go.id/Home/Details/63923/keppres-no-36-tahun-1990>.

<sup>25</sup> REPUBLIC OF INDONESIA, *UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 12 TAHUN 2005 TENTANG PENGESAHAN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (KOVENAN INTERNASIONAL TENTANG HAK-HAK SIPIL DAN POLITIK) (2005)*, [https://peraturan.bpk.go.id/Home/Details/40261/uu-no-12-tahun-2005#:~:text=UU No. 12 Tahun 2005,Politik\) %5BJDIH BPK RI%5D](https://peraturan.bpk.go.id/Home/Details/40261/uu-no-12-tahun-2005#:~:text=UU No. 12 Tahun 2005,Politik) %5BJDIH BPK RI%5D).

<sup>26</sup> REPUBLIC OF INDONESIA, *Undang Undang Dasar 1945 (1945)*, <https://luk.staff.ugm.ac.id/atur/UUD1945.pdf>.

expenditure budget as well as from the regional opinion and expenditure budget to meet the needs of providing national education; (5). The government advances science and technology by upholding religious values and national unity for the advancement of civilization and the welfare of mankind. The government's obligation in the implementation of national education is to provide services and facilities, as well as to guarantee the implementation of quality education for every citizen without discrimination and is obliged to guarantee the availability of funds to provide education for every citizen aged seven to fifteen years. This is as stated in Article 11 of Law Number 20 of 2003 concerning the National Education System.<sup>27</sup>

## II. THE CONCEPT OF PUBLIC HEALTH & SAFETY

In general, public health and safety is defined as the science of the anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of public, taking into account the possible impact on the surrounding communities and the general environment.<sup>28</sup> The provision of public health is one of the most important responsibilities of government.<sup>29</sup> Basically, the duty of public health involves managing the problems and dangers that occur in society every day. Workers like firefighters, police officers, emergency medical technicians (EMTs) and air traffic controllers respond to society's emergencies and help keep the general public safe.

Under the traditional conception, public health focuses on the health of entire populations rather than individual patients. In public

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<sup>27</sup> RISTINA YUDHANTI, *KEBIJAKAN HUKUM PEMENUHAN HAK KONSTITUSIONAL WARGA ATAS PENDIDIKAN DASAR*, 7 *PANDECTA RES. LAW J.* (2013).

<sup>28</sup> *MEDICAL SAFETY AND GLOBAL HEALTH, PUBLIC HEALTH AND SAFETY, LONGDOM.* [HTTPS://WWW.LONGDOM.ORG/SPECIAL-ISSUE/PUBLIC-HEALTH-AND-SAFETY-399.HTML](https://www.longdom.org/special-issue/public-health-and-safety-399.html), ACCESSED ON 9 NOVEMBER 2020

<sup>29</sup> TOM LATOURRETTE, DAVID S. LOUGHRAN, & SETH A. SEABURY. *OCCUPATIONAL SAFETY AND HEALTH FOR PUBLIC SAFETY EMPLOYEES: ASSESSING THE EVIDENCE AND THE IMPLICATIONS FOR PUBLIC POLICY*. 792. RAND CORPORATION (2008).

health, the 'patient' is the whole community or population, and the goal of public health is to reduce disease and early death in populations.<sup>30</sup> One of the most commonly cited definitions of public health comes from the Institute of Medicine (IOM) report *The Future of Public Health*: "Public health is what we, as a society, do collectively to assure the conditions for people to be healthym.<sup>31</sup> The IOM report also makes public health the responsibility of everyone, although it gives primacy to government efforts: "The mission of public health is addressed by private organizations and individuals as well as by public agencies. But the governmental public health agency has a unique function: to see to it that vital elements are in place and that the mission is adequately addressed."

Rothstein also emphasized a different concept about public health, namely through government intervention. In this context, public health involves public officials as policy makers who are right in accordance with their authority, by balancing personal rights and public interests, to protect public health.<sup>32</sup> The moral and political responsibility of the government to mandate public health actions, including quarantine, isolation, immunization, contact tracing, property seizures, and environmental regulation, if the health of the population is threatened, for example the infectious disease.

In the case of Indonesia, The individual right to health as the basis of Public health is equally important as the people's right to education in the constitution. Article 28H paragraph (1) of 1945 Contitution of The Republic of Indonesia stated that "Everyone has the right to live in physical and mental prosperity, to live, and to have a good and healthy living environment and the right to obtain health services." In addition, with regard to the right to health it is also regulated in Article 34, particularly in paragraphs (3) and (4) which reads "The state is responsible for the provision of proper health

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<sup>30</sup> BEAUCHAMP, DAN E., AND BONNIE STEINBOCK, EDS. *NEW ETHICS FOR THE PUBLIC'S HEALTH*. OXFORD UNIVERSITY PRESS (1999).

<sup>31</sup> BAILUS WALKER, *THE FUTURE OF PUBLIC HEALTH : INSTITUTE OF MEDICINE ' S 988 REPORT THE INSTITUTE*, 10 19–31 (2008).

<sup>32</sup> MARK A ROTHSTEIN, *RETHINKING THE MEANING OF*, 30 *J. LAW, MED. ETHICS* 144–149 (2002), [HTTP://DOI.WILEY.COM/10.1111/J.1748-720X.2002.TB00381.X](http://doi.wiley.com/10.1111/j.1748-720X.2002.tb00381.x).

service facilities and public service facilities. The affirmation of the right to health as a human right is emphasized in Law Number 36 of 2009 concerning Health.<sup>33</sup> In the preamble it is stated that: a. that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia; b. that every activity in an effort to maintain and improve the highest degree of public health is carried out on the basis of non-discriminatory, participatory and sustainable principles in the framework of forming Indonesia's human resources, as well as enhancing the nation's resilience and competitiveness for national development.<sup>34</sup> (Affandi, 2019).

## THE LEGAL POLICY DURING COVID-19 PANDEMIC: EDUCATION OR HEALTH?

BASED ON THE EXPLANATION above, it can be concluded that both the right to education and public health are equally recognized and guaranteed in the Indonesian constitution, which makes it recognized as fundamental and constitutional rights. Therefore, the fulfillment of both rights becomes the responsibility of the state, especially the government as reaffirmed in Article 28I paragraph (4) which reads "Protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government."

Thus, it is interesting to examine how government tries to fulfill the right to education in a pandemic situation that requires priority

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<sup>33</sup> REPUBLIC OF INDONESIA, *Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan* (2009), [https://infeksiemerging.kemkes.go.id/download/UU\\_36\\_2009\\_Kesehatan.pdf](https://infeksiemerging.kemkes.go.id/download/UU_36_2009_Kesehatan.pdf).

<sup>34</sup> HERNADI AFFANDI, IMPLEMENTASI HAK ATAS KESEHATAN MENURUT UNDANG-UNDANG DASAR 1945: ANTARA PENGATURAN DAN REALISASI TANGGUNG JAWAB NEGARA, 4 J. HUK. POSITUM 36 (2019).

for public safety and health, where these two aspects (education and health) are both fundamental and constitutional rights which the state must fulfill. The main basis that the protection of human rights is the obligation of the government is the principle of democracy that in fact the government is given the mandate of power to protect the rights of citizens. Moreover, the concept of a welfare state as a modern state concept has given more power to the government to act. This power is solely for advancing and achieving the fulfillment of human rights. The government is no longer just safeguarding someone not to violate or have their rights violated, but must strive to fulfill these rights, including to fulfill the basic right to education in a pandemic situation.

Since the announcement of the first case on March 2nd, 2020, the spread of the coronavirus in Indonesia has continued to increase rapidly. In April, coronavirus has infected more than 5,000 people (Indonesian Task Force for the Acceleration of Handling COVID-19, 2020). Due to the outbreak, the mortality rate in Indonesia was quite high with a total of 582 deaths with Case Fatality Rate (CFR) of 8.9% on April 19th, 2020.<sup>35</sup> (Indonesian Ministry of Health, 2020). The percentage of deaths due to coronavirus in Indonesia exceeds the global CFR of 5.85% on April 19th, 2020.<sup>36</sup> This situation caused the government to take quick action to limit community activities outside the home, including teaching and learning activities in order to contain the spread of COVID-19. A series of policies regulating education during pandemic include the following:

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<sup>35</sup> MINISTRY OF HEALTH REPUBLIC OF INDONESIA. COVID-19, Infection Emerging. (2020). Available at: <https://infeksiemerging.kemkes.go.id/> (Accessed: 9 April 2020).

<sup>36</sup> WORLDOMETER. Coronavirus Update (Live): Cases and Deaths from COVID-19 Virus Pandemic, (2020). Available at: <https://www.worldometers.info/coronavirus/>, accessed on 9 April 2020.

### 1. Educational Institution Area Protocol<sup>37</sup>

Responding to the emergence of positive cases of COVID-19 in Indonesia, on March 6 2020 the Government, through the Indonesian Presidential Chief of Staff, said that the Ministry of Health has compiled a handling protocol related to the prevention and control of Covid-19. The contents of the Protocol refer to the appeal of WHO, the Ministry of Health and the Ministry of Law and Human Rights. In total, there are five protocols issued by the government regarding Covid-19, namely the Health Protocol, the Communication Protocol, the Border Monitoring Protocol, the Education Area Protocol, and the Public Area and Transportation Protocol. The protocol is implemented throughout Indonesia by the government, guided centrally by the Ministry of Health.

In general, the protocol for the educational institution area contains 15 instructions that must be followed by all people in schools and other educational institutions. Several things are regulated, among others, regarding the coordination of the Education Office and the Health Office in each region related to regional planning and readiness to face COVID-19, providing facilities and instructions for washing hands in various strategic locations in schools, appeals to school residents who are sick with symptoms of fever / cough / runny nose / sore throat / shortness of breath to isolate themselves at home, and the obligation for educational institutions to be able to conduct initial screening of education residents who have complaints of illness including checking body temperature, to be further informed and coordinated with the local Health Office for carried out further examination.

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<sup>37</sup> MINISTRY OF HEALTH REPUBLIC OF INDONESIA, PENANGANAN COVID-19 PROTOKOL AREA INSTITUSI PENDIDIKAN 2 (2020), <https://covid19.go.id/p/protokol/protokol-penanganan-covid-19-di-area-institusi-pendidikan>.



## 2. Circular Letter Number 4 of 2020 concerning Implementation of Education Policies in the time of Emergency for the Spread of COVID<sup>38</sup>

This policy was issued by the Minister of Education and Culture of the Republic of Indonesia on 24 March 2020. In the opening of the letter it is stated that; "With regard to the increasing spread of Covid-19, the physical and mental health of students, teachers, school principals and all school members is a major consideration in implementing education policy". In substance, this decree regulates five things: first, that national examination activities for 2020 are eliminated and substituted for school exams, second, that the learning process is carried out at home through online / distance learning, third, implementation of school exams and class promotion based on health protocols, Fourth, the acceptance of new students according to health protocols, and fifth, school operational assistance funds can be used to finance needs in preventing Covid-19.

## 3. Regulation of the Minister of Education and Culture Number 19 of 2020 concerning Amendments to Regulation Number 8 of 2020 concerning Technical Instructions for Regular School Operational Assistance<sup>39</sup>

This regulation was issued by the government on March 2020 in order to adjust the budget for online learning during a pandemic. In this provision, the government provides flexibility for schools to

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<sup>38</sup> MINISTRY OF EDUCATION AND CULTURE REPUBLIC OF INDONESIA, *SURAT EDARAN NOMOR 4 TAHUN 2020 TENTANG PELAKSANAAN KEBIJAKAN PENDIDIKAN DALAM MASA DARURAT PENYEBARAN CORONA VIRUS DISEASE (COVID- 1 9) (2020)*, <https://drive.google.com/file/d/1VrAOA3Qz5bV2p6FgN7Xv7GHVmS0u44Er/view>.

<sup>39</sup> MINISTRY OF EDUCATION AND CULTURE REPUBLIC OF INDONESIA, *PERATURAN MENTERI PENDIDIKAN DAN KEBUDAYAAN REPUBLIK INDONESIA NOMOR 19 TAHUN 2020 TENTANG PERUBAHAN ATAS PERATURAN MENTERI PENDIDIKAN DAN KEBUDAYAAN NOMOR 8 TAHUN 2020 TENTANG PETUNJUK TEKNIS BANTUAN OPERASIONAL SEKOLAH REGULER (2020)*, <http://ditpsd.kemdikbud.go.id/upload/filemanager/download/Permendikbud.No.19.Tahun.2020.Ttg.Perubahan.Juknis.BOS.Reguler.pdf>.

use school operational assistance funds for financing during the Covid-19 pandemic. Article 9A states that school operational assistance funds can be used to purchase pulses, data packages, and / or paid online education services for educators and / or students in the context of implementing learning from home. Including the purchase of hand sanitizing liquid or soap, disinfectant, mask or other hygiene support.

**4. Joint Decree of the Minister of Education and Culture, Minister of Religion, Minister of Health, and Minister of Domestic Affairs concerning Guidelines for Implementation of Learning in the 2019 Corona Virus Disease Pandemic (Number 01/KB/2020, Number 516 TAHUN 2020, Number HK.03.01/Menkes/363/2020, Number 440-882 of 2020)**

The Joint Decree of the four Ministers was officially enforced since mid-June, at which time the task force for the acceleration of handling COVID-19 had designated green, yellow, orange and red zones in all regencies / cities in Indonesia. The zoning refers to the policy of the Indonesian Covid-19 Task Force which divides the risk map for the spread of COVID-19 into five categories. The five categories are high risk (red zone), medium risk (orange zone), low risk (yellow zone), no cases (green zone), and not affected (light green zone). There are several indicators used to calculate the status of the Covid-19 risk zone in Indonesia, namely: epidemiology, public health surveillance, and health services.

Based on the second dictum in the Joint Decree of the four Ministers, regions belonging to the green zone can carry out face-to-face learning gradually during the transition period until the environment is completely ready to enter a new habit phase (new normal). Provisions regarding the terms of face-to-face learning are also regulated in the decision attachment. These rules are very detailed, starting from the health protocol, the duration of study, the minimum distance between students, to the maximum number of students in one room. Meanwhile, areas that are still in the yellow, orange and red zones are prohibited from doing face-to-face learning in educational units and continuing to learn from home. Although

schools can be opened based on a zoning system, the policy of reopening schools to be able to conduct face-to-face learning remains in the hands of the regional head. In addition, the principal and parents of students also have the right to determine whether the school is ready to conduct face-to-face learning again or continue to implement the distance learning system.

**5. Joint Decree of the Minister of Education and Culture, Minister of Religion, Minister of Health, and Minister of Domestic Affairs concerning Guidelines for Implementation of Learning in the 2019 Corona Virus Disease Pandemic (Number 03/KB/2020, Number 612 of 2020, Number HK.01.08/Menkes/502/2020, Number 119/4536/SJ)<sup>40</sup>**

This provision was stipulated on August 7, 2020. Basically, it is the same legal product but its content has been adjusted by opening face-to-face learning in the yellow zone. This was done as the government's response to the demands of the community who were not satisfied with the distance learning model. As stated in this joint decree preamble, the results of the Government's evaluation indicate the need for face-to-face learning from students who experience problems in implementing distance learning. Based on the results of the evaluation, face-to-face learning was then extended to the yellow zone which has a low risk of transmission based on the risk mapping by the national task force in handling COVID-19. Based on data as of August 2020 from the official website <http://covid19.go.id>, around 48 percent of students are still in the red and orange zones. Meanwhile, about 52 percent of students are in the yellow and green zones. This data is dynamic and can continue to change at any time depending on the data on the spread of the COVID-19 virus.

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<sup>40</sup> REPUBLIC OF INDONESIA, KEPUTUSAN BERSAMA MENTERI PENDIDIKAN DAN KEBUDAYAAN, MENTERI AGAMA, MENTERI KESEHATAN, DAN MENTERI DALAM NEGERI REPUBLIK INDONESIA TENTANG PERUBAHAN ATAS KEPUTUSAN BERSAMA MENTERI PENDIDIKAN DAN KEBUDAYAAN, MENTERI AGAMA, MENTERI KESEHATAN, DAN MENTERI DALAM NEGERI 1–17 (2020), <https://www.kemdikbud.go.id/main/files/download/5baf1873d5766d3>.

6. Regulation of the Secretary General of The Ministry of Education and Culture Number 14 of 2020 concerning Technical Guidelines for Internet Data Quota Assistance in 2020<sup>41</sup>

Through its Press Release, the Ministry of Education and Culture emphasized that internet data quota assistance is provided to students, students, educators and teachers, as well as lecturers. In the policy regulation issued this September, the form of assistance provided is in the form of internet data quota divided into general quota and study quota with an explanation that: General quota is a quota that can be used to access all pages and applications; and Learning Quota is a quota that can only be used to access learning pages and applications, with a list listed on <http://kuota-belajar.kemdikbud.go.id/>. Internet quota packages for educators at PAUD and primary and secondary education get 42 GB per month with details of 5 GB general quota and 37 GB study quota. While the internet quota package for students and lecturers gets 50 GB per month, with details of 5 GB general quota and 45 GB study quota. This internet quota assistance program is the government's effort to realize the aspirations of the community regarding the challenges of distance learning during the pandemic. Among them is to facilitate online learning of all teachers, students, lecturers, and students, especially during the pandemic. Previously, the Indonesian Child Protection Commission (KPAI) noted that there were many student complaints about the distance learning system during the Covid-19 pandemic related to internet quota constraints. This is based on a survey of 1,700 students in Indonesia, where complaints about phone credit and internet quota were recorded at the highest at 43 percent.<sup>42</sup>

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<sup>41</sup> MINISTRY OF EDUCATION AND CULTURE REPUBLIC OF INDONESIA, PERATURAN SEKRETARIS JENDERAL NOMOR 14 TAHUN 2020 TENTANG PETUNJUK TEKNIS BANTUAN KUOTA DATA INTERNET TAHUN 2020 (2020), [https://anggunpaud.kemdikbud.go.id/images/upload/images/19092020\\_SALINAN\\_PERSESJEN\\_NOMOR\\_14\\_TAHUN\\_2020-merged.pdf](https://anggunpaud.kemdikbud.go.id/images/upload/images/19092020_SALINAN_PERSESJEN_NOMOR_14_TAHUN_2020-merged.pdf).

<sup>42</sup> Dian Erika Nugraheny, *Survei KPAI: 43 Persen Siswa Keluhkan Kuota Internet untuk Pembelajaran Daring*, KOMPAS.COM (2020),

(Nugraheny, 2020). Through this policy, the Government is committed to ensuring that not only some but all teachers, students, lecturers and students can be helped during distance learning.

Based on a number of legal policies above, it can be seen that the legal policies of the Indonesian government in fulfilling the right to education during a pandemic is dynamic. In general, the policy can be divided into two phases: Pandemic Initial Phase, and Entering New Normal Phase. Details can be seen in the following table:

**Table 1 Education Policies During COVID-19 Pandemic**

Phase	Statutory Regulation	General Policies	Consideration
EARLY PANDEMIC (March-June)	1. Educational Institution Area Protocol	15 instructions obligatory to all people in schools and educational institutions	Responding to the emergence of positive cases of COVID-19 in Indonesia
	2. Circular Letter Number 4 of 2020 concerning Implementation of Education Policies in the time of Emergency for the Spread of COVID	learning process is carried out at home through online/distance learning	With regard to the increasing spread of Covid-19, and to maintain physical and mental health of students & teachers
	3. Regulation of the Minister of Education and Culture Number 19 of 2020 concerning Technical Instructions for Regular School Operational Assistance	school operational assistance funds can be used to purchase phone credit, data packages, and / or paid online education services for educators and / or students, and other needs to prevent COVID-19.	to provides flexibility for schools to use school operational assistance funds for financing during the Covid-19 pandemic

<https://nasional.kompas.com/read/2020/08/08/10265321/survei-kpai-43-persen-siswa-keluhkan-kuota-internet-untuk-pembelajaran>.

NEW NORMAL TRANSITION (July-Present)	4. Joint Decree of the four Minister concerning Guidelines for Implementation of Learning in the 2019 Corona Virus Disease Pandemic (First)	Re-opening schools based on COVID-19 Spread zoning (risk mapping). Regions belonging to the green zone (no cases) can carry out face-to-face learning gradually, while yellow, orange and red zone are prohibited.	Public demand to reopen schools, the task force for the acceleration of handling COVID-19 had designated green, yellow, orange and red zones in all regencies / cities in Indonesia.
	5. Joint Decree of the four Minister concerning Guidelines for Implementation of Learning in the 2019 Corona Virus Disease Pandemic (revision)	Re-open schools in green zone (no risk) and yellow zone (low risk)	In response to the community's demands and the Government's evaluation which indicate the need for face-to-face learning from students who experience problems in distance learning.
	6. Regulation of the Secretary General of The Ministry of Education and Culture Number 14 of 2020 concerning Technical Guidelines for Internet Data Quota Assistance in 2020	internet data quota assistance is provided to students, students, educators and teachers, as well as lecturers.	To respond and realize the aspirations of the community regarding the credit and internet quota problem during distance learning

**Source:** Author's processed data

In the early days of the pandemic, it was seen that the government was still focused on limiting the spread of cases with large-scale social restriction policies. Using a series of health protocols in various sectors including the area of educational institutions, the

government also closed all schools and educational institutions, and transferred all teaching and learning activities to a distance learning system or online system. The government, in this case the Minister of Education and Culture together with the Minister of Home Affairs, also coordinates with all regional heads to ensure that learning policies during the Covid-19 Pandemic are carried out well in all regions in Indonesia. It can be seen that the principles of education policy during the Covid-19 pandemic were to prioritize the health and safety of students, educators, education personnel, families, and society in general, while taking into account the conditions of students in fulfilling educational services during the Covid-19 pandemic. At the start of the pandemic (March-June), it could be said that the right to public health and safety was the top priority compared to the right to education.

Particularly, China was the first to adopt the policy of “Disrupted Classes, Undisrupted Learning” by providing online, distance and remote teaching.<sup>43</sup> The Indonesian government is trying to adopt the same adaptation by formulating online learning policies and emergency curricula. In a pandemic like today, closing schools and using online learning systems or distance learning is a dilemma decision to bridge the fulfillment of the right to health and public safety without neglecting the community's right to education. However, in principle, online learning can only be effective in digitally advanced countries.<sup>44</sup>

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<sup>43</sup> R Huang et al., *Guidance on Open Educational Practices during School Closures : Utilizing OER under COVID-19 Pandemic in line with UNESCO OER Recommendation*, ACCESS, OPEN PRACT. OPEN EDUC. OER, UTIL. RECOMM. UNESCO O E R (2020), [http://sli.bnu.edu.cn/uploads/soft/200518/2\\_1851146971.pdf](http://sli.bnu.edu.cn/uploads/soft/200518/2_1851146971.pdf).

<sup>44</sup> Giorgi Basilaia & David Kvavadze, *Transition to Online Education in Schools during a SARS-CoV-2 Coronavirus (COVID-19) Pandemic in Georgia*, 5 PEDAGOG. RES. (2020), [https://www.researchgate.net/profile/Giorgi\\_Basilaia/publication/340560537\\_Transition\\_to\\_Online\\_Education\\_in\\_Schools\\_during\\_a\\_SARS-CoV-2\\_Coronavirus\\_COVID\\_19\\_Pandemic\\_in\\_Georgia/links/5e90a5d04585150839cf4397/Transition-to-Online-Education-in-Schools-during-a-SARS-CoV-2-Coronavirus-COVID-19-Pandemic-in-Georgia.pdf](https://www.researchgate.net/profile/Giorgi_Basilaia/publication/340560537_Transition_to_Online_Education_in_Schools_during_a_SARS-CoV-2_Coronavirus_COVID_19_Pandemic_in_Georgia/links/5e90a5d04585150839cf4397/Transition-to-Online-Education-in-Schools-during-a-SARS-CoV-2-Coronavirus-COVID-19-Pandemic-in-Georgia.pdf).

In the case of Indonesia, with its geographic conditions in the form of islands and uneven infrastructure, the online learning policy has actually created gaps among students. The Ministry of Communication and Information, for example, said that until 2019 there were still 24,000 villages that had not been touched by internet services. A member of the House of Representatives (DPR) also criticized the policy of the Ministry of Education and Culture by referring to the condition of schools in Indonesia, where the majority have not had electricity. According to the data he obtained, there are still around 6,604 out of 116,783 without electricity. As many as 33,227 other education units have electricity but cannot access the internet, while the remaining 7,552 education units have no electricity, let alone the internet.<sup>45</sup>

On the other hand, e-learning, no matter how sophisticated the technology used, has not been able to replace the implementation of face-to-face learning because the conventional face-to-face interaction method is still much more effective than online learning, at least for Indonesia.<sup>46</sup> Several separate studies also show that online learning is not fully effective to implement, especially schools in villages that lack facilities in the form of integrated technology to support the online learning process. The high cost and adequate facilities between teachers and students also make the online learning process not as effective as expected.<sup>47</sup> For example, research from Ameli et al on the effectiveness of online learning systems during a pandemic in elementary schools in Madura, East Java. It is concluded that the lack of facilities and infrastructure which is influenced by economic factors

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<sup>45</sup> DHITA SEFTIAWAN, *Ribuan Sekolah Tak Teraliri Internet, DPR Dorong Kemendikbud Buat Cetak Biru Orientasi Daring* (2020), <https://www.pikiran-rakyat.com/pendidikan/pr-01386169/ribuan-sekolah-tak-teraliri-internet>.

<sup>46</sup> MUHAMMAD YAUMI, *MEDIA DAN TEKNOLOGI PEMBELAJARAN*, PRANADA MEDIA (2018).

<sup>47</sup> John Demuyakor, *Coronavirus (COVID-19) and Online Learning in Higher Institutions of Education: A Survey of the Perceptions of Ghanaian International Students in China*, 10 *ONLINE J. COMMUN. MEDIA TECHNOL.* e202018 (2020), <https://www.ojcm.net/download/coronavirus-covid-19-and-online-learning-in-higher-institutions-of-education-a-survey-of-the-8286.pdf>.



and technological unpreparedness is an obstacle in the progress of online learning activities, so that learning outcomes are ineffective.<sup>48</sup>

Another important thing that must be considered is the closure of schools and educational institutions. Based on research from Masonbrink, et al., It is stated that extended school closures can also lead to lower test scores, lower educational attainment and decreased earning potential.<sup>49</sup> During closures, students need reliable access to technology, a stable learning environment and parents with the necessary time and skills to support for remote learning. Although distance learning has obstacles for all individuals, those in poverty are at greater disadvantage and thus at increased risk for widening educational disparities. Only one in seven children lacks home internet access, with a two-fold higher rate among low income communities.<sup>50</sup>

This is what the Indonesian government is also aware of, which then encourages the government to relax its school closure policy. Along with complaints and demands from the community due to disparities in distance learning, the government is reopening schools based on a zoning system or a risk map for the spread of Covid-19. It can be seen here that the government has begun to improvise by opening some schools in areas where the spread of Covid-19 is minimal. Thus, the pendulum of priorities on public health and safety has begun to shift towards fulfilling the right to education. However, this policy has not been able to completely eliminate the gap and social disparities from distance learning. Given the ineffective handling of the spread of COVID-19 and the increasing number of

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<sup>48</sup> Briliannur Dwi et al., *Analisis Keefektifan Pembelajaran Online di Masa Pandemi Covid-19*, 2 J. PENDIDIK. GURU SEKOL. DASAR 3 (2020), <https://ummaspul.ejournal.id/MGR/article/download/559/313>.

<sup>49</sup> Abbey R. Masonbrink & Emily Hurley, *Advocating for children during the COVID-19 school closures*, 146 PEDIATRICS (2020), [https://scholar.google.com/scholar?output=instlink&q=info:Uh8TAQSEu5cJ:scholar.google.com/&hl=en&as\\_sdt=0,5&scillfp=1786287175863471987&oi=lle](https://scholar.google.com/scholar?output=instlink&q=info:Uh8TAQSEu5cJ:scholar.google.com/&hl=en&as_sdt=0,5&scillfp=1786287175863471987&oi=lle).

<sup>50</sup> HARRY ANTHONY; VEGAS PSACHAROPOULOS, GEORGE; COLLIS, VICTORIA; PATRINOS & EMILIANA, *Lost Wages: The COVID-19 Cost of School Closures* (2020), <https://www.econstor.eu/bitstream/10419/217486/1/GLO-DP-0548.pdf>.

positive cases, the number of areas in the green zone (no case or no risk) and yellow zone (low risk) is still very minimal, namely 117 regions or around 24 percent of the total area in Indonesia. This gap is attempted to be overcome by issuing financial policies in the form of phone credit and internet packages which are expected to slightly ease the burden on students and educators while carrying out online learning.

## CONCLUSION

Based on the results and analysis above, we can conclude that educational policies of Indonesia's government during COVID-19 pandemic can be divided into two phases: namely the "early pandemic" which occur from beginning of march until June, and "new normal transition", starting from July until the present day. In the first phase, the government focused on protecting the health and safety to all communities in the education institution areas by implementing certain protocols, closing the schools and switching to distance/online learning system. Although the legal policy is to put the public health and safety as top priorities in the early spread of pandemic, the educational policies resulted in disparities among students. While in the new normal transition phase, government tends to respond to the public demands and education problems by loosening its policies a little through school disclosure and providing the internet support in online learning. This shows that the government is in a dilemmatic position to fulfill the community's right to health and the right to education at the same time. However, based on a series of existing policies, it still shows that the legal policy of the government in education during the pandemic still prioritizes public health and safety while struggling to maintain the community's right to proper education. The education gap in Indonesia has occurred even before the pandemic and with the situation where the spread of COVID-19 has not shown a significant decline, this gap and inequality will widen. On that basis, we suggest that the government focus on fulfilling basic facilities and

infrastructure such as electricity and internet networks to support distance learning policies. In addition, the government needs priority and consistency in handling COVID-19 cases so that a significant reduction in cases occurs and the education situation can take place back to normal.

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"Education without values, as useful as it is, seems rather to make man a more clever devil."

**C.S. Lewis**

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