



Volume 36 No 2, May 2021
DOI: 10.20473/ydk.v36i2.25897

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan
Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)
by <http://e-journal.unair.ac.id/index.php/YDK/index> under a Creative
Commons Attribution-NonCommercial-ShareAlike 4.0
International License.



FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

Article history: Submitted 10 March 2021; Accepted 6 April 2021; Available Online 1 May 2021.

Legal Politics of Responsive National Education System in the Globalization Era and the Covid-19 Pandemic

Putera Astomo

puteraastomo@unsulbar.ac.id
West Sulawesi University

Abstract

The Government's serious effort to build a National Education System in anticipating the development and progress of globalization is manifested through making, stipulating and implementing policies related to the education sector. To prevent illegal policies, laws and regulations are needed as a juridical basis for these policies especially during the current Covid-19 pandemic. The making of laws and regulations that pertain to public affairs is called political law. What needs to be emphasized in legal politics is the guarantee of protection for public participation in the formation of laws and regulations. Community participation, if associated with responsive law, implies that the principle of public participation is paramount in the formation of law for the realization of democratic legal products. Responsive legal politics still creates problems due to the lack of public participation in the making of laws and regulations. Therefore, the research problem is whether the legal politics of the National Education System in the era of globalization is responsive or not. To address this problem a normative juridical approach is used. The results show that the responsive legal politics of the National Education System in the era of globalization consists of the following: Law Number 20 of 2003 on the National Education System, Law Number 14 of 2005 on Teachers and Lecturers, Law Number 12 of 2012 on Higher Education, and Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading.

Keywords: Globalization Era; Political Law; Legal Politics; Responsive; National Education System.

Introduction

The era of globalization gives rise to a world without borders and exerts a powerful influence on every aspect of human life, including politics, law, economy, society, culture and education. Of these, however, education is the fundamental key for the advancement of a state's civilization as it enables the invaluable contributions

of human intelligence. Even if a state were to possess rich natural resources, for instance, it would be unable to manage them if it lacks human resources. Therefore, the state plays an important role in building, developing and advancing education in order to create high-quality human resources for the advancement of its civilization, particularly in the formation of experts in science, technology and information.

Furthermore, the era of globalization brings new challenges that must be addressed by education in particular because globalization demands a change in one's mindset. Thus, the vision, mission and strategy of education must be well planned in order to prepare quality human resources which can effectively respond to the challenges of globalization.

Likewise, Indonesia as a nation is currently facing a number of enormous challenges in developing the quality of its human resources. Apart from the challenge of globalization, there is also the challenge of economic crises, which have an impact on political and social crises that may potentially even lead to national disintegration. An element of constitutional reform particularly strategic for building the future of this nation is national education. The need to fix the problem of national education has become increasingly urgent, considering that education is the best way for Indonesia to establish a social order whose members are faithful and devoted to the God Almighty, civilized, skilled, knowledgeable and responsible in carrying out their duties and obligations as a community, citizens of nation and citizens of state.¹

The development of the National Education System is a part of the National Development Program. The development of the National Education System must apply balanced rights and obligations between the Government and citizens. That is, the Government has the authority to administer the education system based on laws and regulations, while its obligation is to provide legal protection of the constitutional rights of every citizen to receive an education, as stated by Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Paragraph (3)

¹ Anna Triningsih, 'Politik Hukum Pendidikan Nasional: Analisis Politik Hukum Dalam Masa Reformasi' (2017) 14 Jurnal Konstitusi.[332].

further states that the Government shall seek and implement a national education system which increases faith and piety as well as noble morals for the sake of enriching the life of the nation, as regulated by law.

The Government's serious efforts to build a National Education System in anticipating the development of globalization are manifested through the making, stipulation and implementation of policies related to the education sector. In this case, to prevent illegal policies, laws and regulations are needed as a juridical basis for these policies. With the rest of the world, Indonesia has not been untouched by the Covid-19 pandemic. The pandemic not only has had a devastating effect on its citizens' health and safety but has caused enormous losses in the political, legal, economic, social and cultural spheres, one of which is the implementation of the National Education System. The Covid-19 pandemic affected its implementation especially in regard to face-to-face learning since it was feared that exposure to and transmission of the coronavirus could occur thereby. As a result, the face-to-face learning system was changed to an online learning system. A change this significant is not immediately carried out, however, but is predicated on the existence of laws and regulations which form the legal basis for its stipulation.

This statutory regulation passes through the law-making process regulated in Law Number 12 of 2011 on the Formation of Laws and Regulations to Law Number 15 of 2019 on Amendments to Law Number 12 of 2011 on the Formation of Laws and Regulations. The formation of these statutory regulations is called "legal politics", which refers to an official state's policy to form, implement and enforce laws and regulations in various fields of public life, and includes the legislation in the education sector.

One of the rights to be emphasized in legal politics is the guarantee of protection for public participation in the making of laws and regulations. Community participation, if associated with responsive law, implies that the principle of public participation is of primary importance in the formation of law for the realization of democratic legal products. Responsive legal politics still creates problems due to the lack of public participation in the formation of laws and regulations. The

resulting legal products tend to be repressive because they benefit the interests of the political elites and the rulers and ignore the role of society.

Therefore, the problem lies in whether the legal politics of the National Education System in the era of globalization is responsive or not. A normative juridical approach is used where the focus of this study is to examine the laws and regulations in the education sector as a result of legal politics.

The Influence of Globalization on Science and Technology

The development and advancement of science, technology and information further encourage renewed efforts in the utilization of technological products. The era of globalization affects the lifestyle and mindset of people as science has led to the creation of sophisticated modern technology for our daily lives worldwide. It cannot be denied that human beings, with their high rates of consumption, will never be satisfied and will always seek to enjoy whatever is the latest product. The question to be investigated is this: what is meant by globalization? The word “globalization” comes from the English word “global”, which means “universal”. Thus, “globalization” can be interpreted as a process of universalization, or the process of spreading new elements in all aspects of human life, globally, including the elements of information, technology, health, trade, education, perspective, lifestyle, and others. Another meaning of globalization is the process by which daily life experiences, ideas and information become standard around the world, since whatever is discovered or occurs anywhere in the world can spread to other parts of the world easily and quickly.²

Globalization refers to a globalized order of society that knows no boundaries. It is essentially a process in which ideas are raised by one nation, which other nations begin to follow until they arrive at a point of mutual agreement and the ideas become a common guideline for nations around the world. Information and communication technologies are major supporting factors in globalization. Today, the development

² Mohammad Wayong, ‘MENUJU ERA GLOBALISASI PENDIDIKAN: Tantangan Dan Harapan Bagi Perguruan Tinggi Di Tanah Air’ (2017) 6 *Inspiratif Pendidikan*. [219].

of technology is so rapid that information of various forms and interests can be spread worldwide. Therefore, it is impossible to avoid globalization.³

Globalization, in principle, is a competition on a global scale. Competition itself stresses the value of excellence to which Darwin's theory of the survival of the fittest applies. In natural selection, only the superior will survive. Therefore, the direction of our education in this century is to form a superior generation that will be able to compete on a global scale. In the social context, the characteristics of the society in this globalization era are as follows: First, this is a century that considers science as the means to solve the problems of human life. Thus, this century will give birth to a learning society (i.e., a knowledge society). The superiority of a nation will be associated with the superiority of that nation in the field of science. Second, in this era, a borderless world will emerge. Geographical barriers have become vague as a result of advances in communication and information science. Due to this easy exchange of information, any event that occurs in one part of the world will be known almost simultaneously in other parts of the world. Third, this era will give rise to global competition; it will be known as a competitive era. When the era of competition arises, superior humans are needed, because competition will require the emergence of superior humans. Fourth, this era will generate distance learning technologies such as teleconferencing, internet, and the other modern learning media, in the form of global education. Fifth, this era will give rise to multicultural human interactions taking place across cultures, races, ethnicities, languages and religions.⁴

According to the author, globalization is an era of development. Progress and change continuously occur in human life. The development of science and technology, for example, in turn encourages the further development of various other types of information. In creating a world without restrictions, globalization has positive and negative impacts on the dynamics of human life in the political,

³ Hendro Setyo Wahyudi and Mita Puspita Sukmasari, 'Teknologi Dan Kehidupan Masyarakat' (2014) 3 Jurnal Analisa Sosiologi.[13].

⁴ Haidar Putra Daulay, 'Kapita Selekta Pendidikan Islam Di Indonesia'. [44].

legal, economic, social and cultural fields. A clearly visible example of this is the impact of globalization on the culture of various peoples.

Positive impacts of cultural globalization include certain values and attitudes of society changing from the irrational to the rational. The development of science and technology worldwide has also made it easier for people to do certain activities and has encouraged advanced thinking and better living standards. A negative impact of cultural globalization includes the development of individualism. That is, as people feel increasingly empowered by advanced technology, they feel they no longer need other people. Other negative impacts of cultural globalization include enhancing the materialism of a society; increasing consumerism, or the excessive consumption of products; and hedonism, a view of life that asserts people will be happy by seeking pleasure and avoiding painful feelings as much as possible.⁵

The Relationship between Legal Politics and Responsive Law

According to Wignjosuebrototo, the term “political law” in Dutch is derived from the term “rechtpolitiek”, which became popular after the revival of liberal efforts to reform the liberal legal order in the early 20th century. This policy, known as “bewuste rechtpolitiek”, seeks to develop a colonial legal system to control the power and authority of the king and the executive apparatus over the colony, and on the other hand, to strive for more certain legal protection for members of every stratum of society in the colony. In the study of legal politics, the first general question that arises is whether the study of legal politics is a study of legal science. If so, what is the object of study and the scope of legal politics? According to Abdul Latif and Hasbi Ali (2010), such questions can be answered from a theoretical point of view and a philosophical point of view. Political law is the part of legal science that examines changes that must be made in strong law in order to fulfill the affairs of public life; thus, legal politics discusses the direction of legal system development.

⁵ Mayjen TNI Madsuni, ‘Ideologi Pancasila Merupakan Center of Gravity Mampu Menghadapi Ancaman Ideologi Besar Dunia’ (2017) 32 Jurnal Kajian Lemhannas RI.[54].

The politics of law builds the *ius constitutendum* of the *ius constitutum*.⁶

According to Soedarto, politics of law is a policy of the state authorized through state agencies to determine the desired regulations, which are expected to express what is contained in society and to achieve what they aspire to. According to Satjipto Rahardjo, legal politics is both the activity of choosing and the means used to achieve certain social and legal goals in society. According to Padmo Wahjono, legal politics is the basic policy that determines the direction, form and content of the law. According to Teuku Mohammad Radhie, legal politics is a statement of the will of the state authorities regarding the laws that apply in their territory as well as the direction of the development of the law.⁷

According to Mahfud MD, legal politics is an official policy line on law that will be enforced either by making new laws or by replacing old laws in order to achieve state goals.⁸

What is meant by responsive law? Nonet and Selznick qualify the law into three stages of evolution in the relationship between law, social order and political order. These three categories of law are (1) repressive laws, (2) autonomous laws and (3) responsive laws. In principle, repressive law recognizes the law and the state as two inseparable entities. The enforcement of repressive laws cannot be separated from the close integration of law and politics. The manifestation of this close integration is the direct subordination of legal institutions to the ruling elites. Second, autonomous law is referred to as rule of law. Autonomous law focuses on regulation, which means it tends to narrow the scope of legally relevant facts, thus separating thinking from social reality. The result is legalism, which is a tendency to rely on legal authority at the expense of solving problems at the practical level. Responsive law, on the other hand, is results-oriented, focused on goals to

⁶ Syahriza Alkohir Anggoro, 'Politik Hukum: Mencari Sejumlah Penjelasan' (2019) 10 Jurnal Cakrawala Hukum.[77].

⁷ Putera Astomo, 'Pembentukan Undang-Undang Dalam Rangka Pembaharuan Hukum Nasional Di Era Demokrasi' (2014) 11 Jurnal Konstitusi.[577].

⁸ I Putu Sastra Wibawa, 'Politik Hukum Perlindungan Dan Pengelolaan Lingkungan Menuju Ekokrasi Indonesia' (2016) 18 Kanun: Jurnal Ilmu Hukum.[51].

be achieved outside the law. In responsive law, the legal order is negotiated, not won through subordination. The hallmark of responsive law is its search for the implied values contained in regulations and policies. In the responsive legal model, disapproval is expressed toward doctrines which are perceived as standardized interpretation and inflexible.⁹

Samekto provides the conclusion that legal typologies in repressive law, autonomous law and responsive law occur in the discourse of the relationship between law and power. Part of the discourse on legal typology is *das sein*, but partly *das sollen*. Based on the understanding of Nonet and Selznick's thoughts, the typology of law in repressive law, autonomous law and responsive law closely corresponds to types of society. Therefore, it is difficult to say that the authorities can use repressive law, autonomous law and responsive law concurrently. Repressive law is a legal typology that applies law in the interests of power; law enforcement is manipulated for the sake of power. This typology can be implemented when society is weak from multiple angles: economically weak, weak in resource capacity, and weak in the sense that people's power cannot be formed. Autonomous law implies that the law must be released from political interests; it must be impersonal, neutral and impartial. It can be said that teaching autonomous law is an elaboration of the rule of law. Autonomous law is very much reflected in the modern legal system that was born in Western Europe in the 18th–19th centuries. In theory, autonomous law can only be applied in a democratic society infused with a spirit of freedom. The discourse on responsive law from Nonet and Selznick is actually very similar to that on progressive law offered by Satjipto Rahardjo. Thus, the concept of progressive law can be used to further explain the nature of the responsive law of Nonet and Selznick, because they both aim to uphold substantive justice. Progressive law avoids the deadlock that results because the law (which is said to be autonomous) is unable to provide benefits to bring about substantial justice. Therefore, a general legal text requires creative accuracy (sharpening) by the law enforcer when the law

⁹ Soenyono, 'Fungsi Melayani Kepentingan Sosial Dalam Reformasi Hukum Menuju Hukum Responsif' (2011) 2 Jurnal Hukum.[277].

is applied to real events. This is where progressive thinking is needed. Substantive law enforcement requires a re-awareness that law, in essence, is for humans, which affirmation is manifested in the notion of progressive law. In the implementation of progressive law, it is clear that a creative law enforcer is needed, with the firm knowledge of his position as a state organ that serves the interests of the people and does not rigidly interpret legal regulations at the field level.¹⁰

According to the author, from the perspective of legal politics, political configuration and the character of legal products are related to one another. Law is a political product. Thus, the character of each legal product will be determined or colored to a large extent by consideration of the political configuration that produces it. This is based on the fact that since every legal product is a political decision, law can be viewed as a crystallization of political thoughts interacting among politicians. Although from the *das sollen* perspective, politics must be subject to legal provisions, from the *das sein* perspective, the law is in fact determined by the political configuration that gave birth to it.¹¹

According to Nonet and Selznick, democratic and authoritarian concepts are identified based on three indicators, namely the party system and the role of representative bodies, the role of the executive, and the freedom of the press, while the responsive/autonomous legal concept is identified based on the process of making legislation, granting legal functions and the authority to interpret the law. Based on these indicators, Mahfud MD describes democratic and authoritarian concepts as follows: 1) The configuration of democratic politics allows the maximum amount of people to play an active role in determining state policy. In such a configuration, the government is more of a “committee” which must carry out the will of the people and which is formulated democratically. The people’s representative bodies and political parties are formed proportionally and are more decisive in the making of state policy, while the press can carry out its functions freely without the risk of

¹⁰ Fx Adji Samekto, ‘Relasi Hukum Dengan Kekuasaan: Melihat Hukum Dalam Perpektif Realitas’.[89].

¹¹ Liky Faizal, ‘Produk Hukum Di Indonesia Perspektif Politik Hukum’ (2017) Jurnal ASAS.

being banned. 2) An authoritarian political configuration places the government in an extremely dominant position with an interventionist nature in determining and implementing state policies. Such a configuration seeks to prevent the potential and the aspirations of the people from becoming proportionally aggregated and articulated. Even with the dominant role of the government, the people's representative bodies and political parties do not function properly and are more of a justification tool (i.e., a rubberstamp) against the will of the government, while the press does not have freedom but is continuously under government control and faces the risk of being banned. 3) Responsive / autonomous legal products reflect the fulfillment of the demands of both individuals and various social groups to better express a sense of justice in society. The responsive law-making process openly invites the participation and aspirations of the community, and in judicial institutions, the law is given the function of implementing the will of the community, while its formulation is usually sufficiently detailed to prevent interpretation based on the will and vision of the government itself. 4) Conservative/orthodox legal products reflect the political vision of those in power and thereby discourage the serious participation and aspirations of the people. If such a procedure for their involvement exists, it is usually more of a formality. In such a product, law is usually assigned a function with an instrumentalist positivist character or as a tool for the implementation of ideology and government programs. The formulation of the legal material is usually basic in nature in order to enable the government's interpretation of it according to its own vision with various implementing regulations.¹² Mochtar Kusumaatmadja and B. Arief Sidharta provide the following explanation:

What is Power? Is power equal to force? People who have (physical) strength are often also in power, so there is a tendency for some of the people to equate power with force. Sometimes, even often, this is not the case. Power often comes from formal authority which gives authority or power to a person or party in a particular field. In this case, we can say that the power comes from the law, namely the legal provisions that grant the said authority. Government officials belong to this group. Considering that law requires compulsion to

¹² Solikhul Hadi, 'Pengaruh Konfigurasi Politik Pemerintah Terhadap Produk Hukum' (2015) 9 Addin. [383].

obey its provisions, it can be said that law requires power for its enforcement. Without power, the law would be nothing but a social rule containing mere recommendations. On the other hand, law differs from other social rules, which also recognize forms of coercion, in that the power of coercion itself is governed by law both in terms of its scope and implementation. The relationship between law and power in society can thus be concluded as follows: law requires power for its implementation, on the other hand power itself is determined by law's limits. In a more popular way, this conclusion can perhaps be expressed in the slogan that: law without power is wishful thinking, power without law is cruelty.¹³

The close relationship between law and power can be seen in two ways. The first is in the concept of sanctions. The existence of behaviour that does not comply with legal rules necessitates sanctions to enforce these legal rules. Because sanctions are a form of violence, their use requires juridical legitimacy (i.e., legal justification) in order to make them a form of legal violence. The second is in the concept of constitutional enforcement. The development of an orderly system of legal rules in a country is regulated by the law itself, which is usually stated in the constitution. The enforcement of the constitution, including the enforcement of correct procedures in law enforcement, assumes the use of force. This means that the law itself must ensure protection for the sake of enforcement, that is, power. Another pattern of relationship between law and power involves the important distinction that law is not the same as power. Though law and power are separate entities, there is, however, a close relationship between them. The relationship can take the form of a dominative relationship or a reciprocal relationship. There are three manifestations of the relationship between law and power in this context: First, the law is subject to power. That is, law is not only a subordination of power, but is also often a means of power. Power has supremacy over law. Therefore, the legal definitions put forward by experts place the law under the control of power. Second, power is subject to law. In this case, power is under the control of laws; laws determine the existence of power. In legal thinking, the submission of power to the law is a basic concept of state administration. This concept is formulated in terms

¹³ Enju Juanda, 'Hukum Dan Kekuasaan' (2017) 5 Jurnal Ilmiah Galuh Justisi.[177].

of the supremacy of law (supreme of law). The rule of law means that the law is the highest rule for regulating the life of a society, nation and state. Law as the highest rule appears in the concept of basic state norms (i.e., *staatsfundamentalnorm*) or *grundnorm*, according to Hans Kelsen's thought. In addition, the rule of law also signifies that the use of power to carry out the state administration's various functions must be based on legislation. Without a legal basis, power is invalid. Third, there is a reciprocal (or symbiotic) relationship between law and power. In this case, the relationship between law and power is one in which neither is dominant nor determines the other; rather, the relationship is functional, meaning that the priority of the relationship is its performing certain functions which can be carried out between the two.¹⁴

Based on the description regarding the relationship between legal politics and responsive law, the author argues that their relationship is depicted by political configuration, which in turn reflects the political attitudes of the legislators and the executive in the formation of laws. An authoritarian political configuration will produce authoritarian or populist legal products because the character of the legal products prioritizes the interests of the authorities and overrides the interests of the people. On the other hand, a democratic political configuration will produce democratic legal products because the character of the legal products prioritizes the interests of the people and overrides personal or group interests.

The principles used in forming legislation also depict the relationship between legal politics and responsive law. Van der Vlies divides the principles in the formation of good state regulations (*beginselen van behoorlijke regelgeving*) into two principles, namely formal principles and material principles. Formal principles include clear objectives (*beginsel van duidelijke doelstelling*), the principle of appropriate organs/institutions (*beginsel van het juiste orgaan*), the principle of the need for regulation (*het noodzakelijkheids beginsel*), the principle of enforceability (*het beginsel van uitvoerbaarheid*) and a consensus principle (*het*

¹⁴Andi Safriani, 'Telaah Terhadap Hubungan Hukum Dan Kekuasaan' (2017) 4 *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*. [37].

beginsel van consensus). Meanwhile, material principles include the principle regarding correct terminology and systematics (het beginsel van duidelijke terminologie en duidelijke systematiek), the principle of recognition (het beginsel van de kenbaarheid), the principle of equal treatment in law (het rechtsgelijkheids beginsel), the principle of legal certainty (het rechtszekerheids beginsel) and the principle of law enforcement according to individual circumstances (het beginsel van de individuele rechtsbedeling).¹⁵

The principles for the formation of statutory regulations are found in Article 5 of Law Number 12 of 2011 on the Formation of Prevailing Laws, which states that the mechanism of forming statutory regulations must be based on the following principles of the formation of good statutory regulations: a) Clarity of purpose, b) Appropriate forming institutions or officials, c) Conformity between types, hierarchy, and content, d) Applicability, e) Usefulness and Efficiency, f) Clarity of formulation, and g) Openness. The seven principles referred to are then mentioned in the Explanation of Article 5 of Law Number 12 Year 2011 on the Formation of Legislative Regulations which states that: 1) Clarity of purpose is that any formation of laws and regulations must have clear objectives to be achieved. 2) The appropriate institutional or establishing official is that each type of statutory regulation must be made by the competent state institution or official establishing the statutory regulations. These laws and regulations can be canceled or become null and void if they are made by an unauthorized state institution or official. 3) The conformity between types, hierarchy and content is that in the formation of laws and regulations, the appropriate content material is in accordance with the type and hierarchy of statutory regulations. 4) Applicability is that every formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically and juridically. 5) Usefulness and efficiency is that any statutory regulation is made because it is truly necessary and useful in regulating the life of society, nation and state. 6)

¹⁵ Abdul Gani Abdullah, 'Pengantar Memahami Undang-Undang Perundang-Undangan' (2004) 1 Jurnal Legislasi Indonesia.[1].

Clarity of formulation means that each statutory regulation must meet the technical requirements for drafting statutory regulations, must be systematic, and must select words or terms as well as legal language that is easy to understand in order to prevent various interpretations in its implementation. 7) Openness means that the formation of statutory regulations, including planning, drafting, discussing, ratifying or stipulating, and promulgating is transparent and open in nature.

Of the seven principles for the formation of statutory regulations mentioned in Article 5 of Law Number 12 of 2011 on the Formation of Legislative Regulations, the predominant principle by which the relationship between legal politics and responsive law should be construed is the principle of openness. According to the author, it is highly appropriate if the principle of openness and transparency is linked to community participation in the formation of laws and regulations. Every draft of legislation must be open and transparent to the public in order to ensure that the public has the opportunity to provide constructive input and criticism of these laws and are thereby able to create aspirational and participatory laws and regulations, in accordance with democratic principles. Public participation in the formation of statutory regulations is also mentioned in Article 96 paragraph (1) of Law Number 12 of 2011 on the Formation of Laws and Regulations, which states that the public has the right to provide input verbally and in writing in the Formation of Legislation.

Legal Politics of a Responsive National Education System in the Globalization Era and the Covid-19 Pandemic

In Indonesia, the development of the National Education System is mandated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which states that its purpose is “to form an Indonesian State Government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educating the nation’s life, and participating in implementing world order based on freedom, eternal peace and social justice”.

According to Malik Fadjar, from a sociological point of view, education, apart from having a role in preparing humans to make contributions to society,

also has an effect on social transformation, and vice versa. Various patterns of the education system describe the features, traditions, culture and social conditions of the existing society. Thus, it is important to note that an education system is built to carry out the “community mandate”, namely to channel its members to certain positions. However, the flow of globalization, which has penetrated all aspects of life, is inevitable. Along with globalization, cosmopolitanism is embraced as a kind of “ideology”, and multiculturalism has increasingly become a vision of civilized life. This fact requires that educational strategies be able to accommodate changes in global civilization through their associated institutions. The direction of this change refers to things that are imperative or empirical. In this context, whether desired or not, national educational institutions must involve themselves in social, cultural, political and economic struggles in general. This is important to ensure that the world of education is not barren and giddy in anticipating the trends of globalization that are plaguing all aspects of human life today.¹⁶

Education is the most effective means of addressing globalization. Education may also provide motivation for achieving a significant improvement in the quality of education through taking advantage of the effects of globalization.¹⁷ Considering the impact of globalization on the current education process, it is necessary to reorient education as the spearhead of progress in the intellectual life of the nation. Globalization is not to be shunned, but on the contrary, needs to be met with mental readiness as well as critical, humanist and religious reasoning power, to ensure that education is able to develop intelligent professionals intellectually, personally, socially, vocationally and overall kinetically.¹⁸

The national education system must be able to ensure equal opportunities and increase the quality, relevance and efficiency of education management to

¹⁶ Rusniati, ‘Pendidikan Nasional Dan Tantangan Globalisasi: Kajian Kritis Terhadap Pemikiran A. Malik Fajar’ (2015) 16 Jurnal Ilmiah Didaktika.[105].

¹⁷ Efrizal and Nasution, ‘Penguatan Tiga Pilar Pendidikan Di Era Globalisasi’ (2015) 9 Dialektika.[85].

¹⁸ Eva Dewi, ‘Potret Pendidikan Di Era Globalisasi Teknosentrisme Dan Proses Dehumanisasi’ (2019) 3 Sukma: Jurnal Pendidikan.[93].

face challenges in accordance with the demands of changes in local, national and global life. Thus, education renewal is necessary in a planned, directed and sustainable manner.¹⁹ According to the author, the legal politics of the National Education System consists of official state policies to form, implement, and enforce laws and regulations (i.e., legal products) with regard to the implementation of the National Education System specifically. Its purpose is to realize the national ideals and goals as written in the Preamble of the Law, in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, “Educating the life of the nation”. The objective of the responsive legal politics of the National Education System in the era of globalization is the creation of legal products in the field of education that are democratic by prioritizing public participation in the process of their formation, implementation and enforcement, which demands the development and advancement of science, technology and information.

Fundamentally, education policy is part of public policy. This understanding is based on the following characteristics of public policy in general: First, public policy is made by the State, namely regarding the executive, legislative and judicial institutions. Second, public policy regulates public life and does not regulate the life of an individual or certain group. Public policy governs everything for which a public administrator institution has domain. Third, a policy is defined as a public policy if the benefits obtained by people who are not direct users of the products are greater than those of the direct users, referred to as externalities. In this regard, the education system that is produced as a legal product cannot be separated from the aspirations and realities that exist in the community in the process of its formation as a policy. Considering this reality in the process of law formation, the formation of the education system is in fact not much different when compared to the process of forming public policies. In relation to the national education system, policymakers related to educational issues must be attentive to various aspects (e.g., social, cultural, and so on) in the process before making a public policy in the

¹⁹ Irfan Iryadi, ‘Pendidikan Untuk Semua Dalam Undang-Undang Pemerintahan Aceh’ (2016) 18 Kanun: Jurnal Ilmu Hukum.[289].

field of education. To respond to the education problem, policymakers must deeply consider multiple angles before making the policy.²⁰

The responsive legal politics of the National Education System in the era of globalization and the Covid-19 pandemic consists of the following:

1. Law Number 20 of 2003 on the National Education System

Law Number 20 of 2003 on the National Education System states that the National Education System must be able to ensure equitable distribution of educational opportunities, increase the quality and relevance and efficiency of education management to face challenges in accordance with the demands of changes in local, national and global life, rendering it necessary to make educational reforms in a planned, directed, and sustainable manner.

Article 4 of Law Number 20 of 2003 on the National Education System states that the principles of education are as follows: 1) Education is carried out in a democratic and fair manner and is not discriminatory by upholding human rights, religious values, cultural values and national diversity. 2) Education is held as a systemic unit with an open and multi-meaning system. 3) Education is held as a lifelong process of cultivating and empowering students. 4) Education is held by modeling, building eagerness and developing the creativity of students in the learning process. 5) Education is held by developing a culture of reading, writing and arithmetic for all members of society. 6) Education is held by empowering all components of society through participation in the implementation and control of the education services.

Article 5 of Law Number 20 of 2003 on the National Education System states the following: 1) Every citizen has the same right to obtain quality education. 2) Citizens with physical, emotional, mental, intellectual and/or social disabilities are entitled to special education. 3) Citizens in remote or underdeveloped areas as well as remote indigenous peoples have the right to receive special education service. 4) Citizens who have the potential for intelligence and special talents are entitled

²⁰ Maryanto, 'Politik Hukum Pendidikan' (2012) II Civis, Jurnal Ilmiah Ii, Volume Indonesia, Pemerintah.[199].

to special education. 5) Every citizen has the right to the opportunity to improve lifelong education.

The question is whether Law Number 20 of 2003 on the National Education System is responsive. Based on Article 4 to Article 5 of Law Number 20 of 2003 on the National Education System, according to the author from a sociological perspective, Law Number 20 of 2003 on the National Education System is responsive and able to anticipate the flow of globalization because the National Education System is built based on democratic principles. Namely, public participation in the development of the National Education System is protected. This is based on the development and improvement of the quality of education services since globalization causes changes that occur in people's lives, one of which is the right to education that is not discriminatory. The principle of democracy in the development and implementation of the National Education System is viewed from the perspective of Human Rights, that people have the same right to obtain education, as is constitutionally protected under Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every citizen has the right to education.

2. Law No. 14 of 2005 on Teachers and Lecturers

Law Number 14 of 2005 on Teachers and Lecturers states that to ensure the expansion and distribution of access, improvement of quality and relevance, as well as good governance and educational accountability that is able to face challenges in accordance with the demands of changes in local, national and global life, it is necessary to empower and improve the quality of teachers and lecturers in a planned, directed and sustainable manner. This is to ensure that teachers and lecturers will have a strategic function, role and position in the national development of education.

What is the position of teachers and lecturers in Law Number 14 of 2005 on Teachers and Lecturers? The position of teachers is stated in Article 2 paragraph (1) of Law Number 14 of 2005 on Teachers and Lecturers, which states that teachers have a position as professional staff at the levels of early childhood education, basic education and secondary education and in the formal education pathway who are appointed in accordance with statutory regulations. On the other hand,

the position of lecturers is described in Article 3 paragraph (1) of Law Number 14 of 2005 on Teachers and Lecturers, which states that lecturers have a position as professional staff at the higher education level who are appointed in accordance with statutory regulations.

What are the obligations of teacher and lecturer according to Law Number 14 of 2005 on Teachers and Lecturers? Teacher obligations are regulated in Article 20 of Law Number 14 of 2005 on Teachers and Lecturers, which states that in carrying out professional duties, teachers have the following obligations: a) plan a learning process, carry out a quality learning process, and assess and evaluate learning outcomes, b) continuously improve and develop academic qualifications and competencies in line with the development of science, technology and arts, c) act objectively and non-discriminatively on the basis of considerations of gender, religion, ethnicity, race, and certain physical conditions, or family background, and the socioeconomic status of students, d) uphold laws and regulations, the teacher's code of ethics, as well as religious and ethical values, and e) maintain and cultivate the unity and integrity of the nation. The obligations of lecturers are regulated in Article 60 of Law Number 14 of 2005 concerning Teachers and Lecturers, which states that in carrying out professional duties, lecturers have the following obligations: a) carry out education, research, and community service, b) plan the learning process, carry out the learning process, and assess and evaluate learning outcomes, c) improve and develop academic qualifications and competencies on an ongoing basis in line with the development of science, technology and arts, d) act objectively and non-discriminatively on the basis of considerations of gender, religion, ethnicity, race, certain physical conditions, or the socio-economic background of students in learning, e) uphold laws and regulations, code of ethics, as well as religious and ethical values, and f) maintain and cultivate the unity and integrity of the nation.

The question is whether Law Number 14 of 2005 on Teachers and Lecturers is responsive. According to the author, Law No. 14 of 2005 on Teachers and Lecturers is responsive and able to anticipate the flow of globalization. First, to build education

in the era of globalization requires human resources in the form of educators, such as qualified lecturers and teachers, for teaching staff is the main tool of education. Needed educators are those able to work professionally, have competence (i.e., soft skills), and sufficient skills to transfer knowledge to students through the teaching and learning process in every education unit including primary schools, secondary schools, and colleges. Therefore educators are required to improve and develop their academic qualifications and competences on a regular basis as stated in Law Number 14 of 2005 on Teachers and Lecturers. Second, in terms of position and obligations, teachers and lecturers have the position of professional educators, meaning that their scientific competence is not in doubt since they have participated in a lengthy educational process according to their respective competencies. After obtaining a degree and becoming an educator, their knowledge is implemented in the learning process at each level of education. Specifically, the teacher teaches in primary and secondary schools, while the lecturer teaches and conducts research and community service (Tridharma of Higher Education) in higher education.

3. Law Number 12 of 2012 on Higher Education

If the characteristics of higher education policies in Indonesia are based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, building quality and globally competitive human resources will be easy. The most important objective is the benefit of higher education for the community. It is deeply unfortunate when higher education is able to produce professional and high-quality workers, whose existence is consequently not recognized in society and whose contribution cannot be felt by the community. This is where the government and all Indonesian people are tasked to work together in improving national education, that Indonesia's human resources be recognized internationally.²¹

Law Number 12 of 2012 on Higher Education states that higher education as part of the national education system has a strategic role in educating the nation's people and advancing science and technology by paying attention to and applying

²¹ Alfalachu Indiantoro, 'Perubahan Sistem Kebijakan Pendidikan Tinggi Dalam Dimensi Pendidikan Hukum' (2017) 1 *Justitia Jurnal Hukum*.

the values of the humanities as well as the sustainable culture and empowerment of the Indonesian nation. To increase the national competitiveness in the face of globalization in all fields, higher education is needed to develop the fields of science and technology and produce intellectuals, scientists and professionals who are cultured and creative, tolerant, democratic, strong, and who dare to stand up for the truth for the sake of national interest. Is there a difference between higher education and higher institutions? Article 1 point 2 of Law Number 12 of 2012 on Higher Education states that higher education refers to the level of education after secondary education and includes diploma programs, undergraduate programs, master programs, doctoral programs, and professional programs, as well as specialist programs, organized by universities and based on the Indonesian cultures.

Based on Article 1 number 2 of Law Number 12 of 2012 on Higher Education, the difference between higher education and higher institutions is that higher education refers to the level of education, while higher institutions refer to an institution or university that has the task of providing higher education levels. Thus, higher education institutions are the main actor in determining the success or failure of the implementation of higher education. Is the function of higher education institutions related to higher education? Article 58 paragraph (1) of Law Number 12 of 2012 on Higher Education states that Higher Education Institutions carry out the following functions and roles: a) a learning forum for Students and Society, b) an educational forum for future leaders of the nation, c) a Science and Technology development center, d) a center of the study of virtue and moral strength to seek and aim for the truth, and e) a center for the development of the nation's civilization.

The question is whether Law Number 12 of 2012 on Higher Education is responsive. Article 91 of Law Number 12 of 2012 concerning Higher Education states the following: 1) The community participates in the development of Higher Education. 2) The community's participation as referred to in paragraph (1) shall be carried out by: a) determining the competence of graduates through professional organizations, business and industrial world, b) providing scholarships and / or educational assistance to students, c) supervising and maintaining the quality

of higher education through professional organizations or non-governmental organizations, d) organizing quality private universities, e) developing the character, interests and talents of students, f) providing internships and practice for students, g) providing various assistance through corporate social responsibility, h) supporting Research and Community Service activities, i) sharing resources for the implementation of Tridharma, and j) other participation in accordance with the provisions of laws and regulations. Based on Article 91 of Law Number 12 of 2012 on Higher Education, according to the author, sociologically, Law Number 12 of 2012 on Higher Education is responsive and able to anticipate the flow of globalization due to the existence of protection of community participation in building, developing and improving the quality of higher education in higher education institutions. Community participation includes the following: 1) supervising the performance of higher education stakeholders in providing higher education services in the context of realizing good quality academic services, 2) providing the widest possible job opportunities for college graduates to prevent unemployment, and 3) supporting the Government in providing scholarship assistance for high-achieving and underprivileged students. Thus, the existence and role of higher institutions along with community support in the management of higher education is necessary to create a highly competitive nation and state, especially in facing the challenges of globalization.

4. Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading

In a Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading, several aspects related to the implementation of education policies during the Covid-19 Pandemic include the following: 1) Implementation of the School Examination and National Examination of 2020 is canceled to prevent transmission of the Covid-19 Virus. 2) The teaching and learning process is carried out from home with an online or remote system to prevent transmission

of the Covid-19 Virus. 3) The Education Office and individual schools were asked to prepare a new student admission mechanism by following the health protocol to prevent transmission of the Covid-19 Virus. 4) School Operational Assistance Funds or Educational Operational Assistance can be used for procurement of goods according to school needs, including to finance prevention needs for the Covid-19 Pandemic, such as the provision of cleaning tools, hand sanitizers, disinfectants and masks for people and school residents and to pay for online/distance learning.

According to the author, the most significant information in this circular is the learning process policies regarding an online or distance learning system. The sudden Covid-19 pandemic requires an educational element to sustain online learning. It is urgent in the current condition to make innovations and adaptations related to the use of available technology to support the learning process.²²

During the Covid-19 pandemic learning at home or online is a solution continue the rest of the semester. Online learning is defined as the experience of knowledge transfer using video, audio, images, text communication and software.²³ The question is whether Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading is responsive. Based on education policies during the Covid-19 Pandemic listed in Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading, this circular is responsive because the education policies issued are in accordance with the expectations of the community to prevent the spread and transmission of the Covid-19 Virus which has caused the death of many people.

²² Samar Ahmed and others, 'Emerging Faculty Needs for Enhancing Student Engagement on a Virtual Platform' (2020) 9 MedEdPublish.

²³ Giorgi Basilaia and David Kvavadze, 'Transition to Online Education in Schools during a SARS-CoV-2 Coronavirus (COVID-19) Pandemic in Georgia' (2020) 5 Pedagogical Research.

Conclusion

Based on the above explanations, several conclusions can be made with regard to the responsive legal politics of the National Education System in the era of globalization. *First*, Law Number 20 of 2003 on the National Education System is responsive and able to anticipate the flow of globalization due to the fact that the National Education System is built on the basis of democratic principles, namely protecting community participation in the development of a National Education System, the objective of which is to improve the quality of education services. This is because globalization causes changes in people's lives, one of which is the right to education that is not discriminatory. *Second*, Law Number 14 of 2005 on Teachers and Lecturers is responsive and able to anticipate the flow of globalization regarding what is done to build education in the era of globalization. In particular, it secures the most essential human resources in the form of qualified lecturers and teachers, for educators are the main tools of education. Educators who are needed are those able to work professionally, have competence (i.e., soft skills), and sufficient skills to transfer knowledge to students through the teaching and learning process in each education unit including primary schools, secondary schools, and colleges. *Third*, Law Number 12 of 2012 on Higher Education is responsive and able to anticipate the flow of globalization because there is protection for public participation in building, developing and improving the quality of higher education in higher education institutions. *Fourth*, Circular of the Minister of Education and Culture Number 4 of 2020 on Implementation of Education Policies in the Emergency of Coronavirus Disease (Covid-19) Spreading issues education policies in accordance with the expectations of the community to prevent the spread and transmission of the Covid-19 Virus which has caused the death of many people.

Bibliography

Abdul Gani Abdullah, 'Pengantar Memahami Undang-Undang Perundang-Undangan' (2004) 1 Jurnal Legislasi Indonesia.

Alfalachu Indiantoro, 'Perubahan Sistem Kebijakan Pendidikan Tinggi Dalam

- Dimensi Pendidikan Hukum' (2017) 1 *Justitia Jurnal Hukum*.
- Andi Safriani, 'Telaah Terhadap Hubungan Hukum Dan Kekuasaan' (2017) 4 *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum*.
- Anna Triningsih, 'Politik Hukum Pendidikan Nasional: Analisis Politik Hukum Dalam Masa Reformasi' (2017) 14 *Jurnal Konstitusi*.
- Enju Juanda, 'Hukum Dan Kekuasaan' (2017) 5 *Jurnal Ilmiah Galuh Justisi*.
- Eva Dewi, 'Potret Pendidikan Di Era Globalisasi Teknosentrisme Dan Proses Dehumanisasi' (2019) 3 *Sukma: Jurnal Pendidikan*.
- Fx Adji Samekto, 'Relasi Hukum Dengan Kekuasaan: Melihat Hukum Dalam Perpektif Realitas'.
- Giorgi Basilaia and David Kvavadze, 'Transition to Online Education in Schools during a SARS-CoV-2 Coronavirus (COVID-19) Pandemic in Georgia' (2020) 5 *Pedagogical Research*.
- Haidar Putra Daulay, 'Kapita Selekta Pendidikan Islam Di Indonesia'.
- Hendro Setyo Wahyudi and Mita Puspita Sukmasari, 'Teknologi Dan Kehidupan Masyarakat' (2014) 3 *Jurnal Analisa Sosiologi*.
- I Putu Sastra Wibawa, 'Politik Hukum Perlindungan Dan Pengelolaan Lingkungan Menuju Ekokrasi Indonesia' (2016) 18 *Kanun: Jurnal Ilmu Hukum*.
- Irfan Iryadi, 'Pendidikan Untuk Semua Dalam Undang-Undang Pemerintahan Aceh' (2016) 18 *Kanun: Jurnal Ilmu Hukum*.
- Liky Faizal, 'Produk Hukum Di Indonesia Perspektif Politik Hukum' [2017] *Jurnal ASAS*.
- Maryanto, 'Politik Hukum Pendidikan' (2012) II *Civis, Jurnal Ilmiah Ii, Volume Indonesia, Pemerintah*.
- Mayjen TNI Madsuni, 'Ideologi Pancasila Merupakan Center of Gravity Mampu Menghadapi Ancaman Ideologi Besar Dunia' (2017) 32 *Jurnal Kajian Lemhannas RI*.
- Mohammad Wayong, 'MENUJU ERA GLOBALISASI PENDIDIKAN: Tantangan Dan Harapan Bagi Perguruan Tinggi Di Tanah Air' (2017) 6 *Inspiratif Pendidikan*.

Nasution E and, 'Penguatan Tiga Pilar Pendidikan Di Era Globalisasi' (2015) 9 Dialektika.

Putera Astomo, 'Pembentukan Undang-Undang Dalam Rangka Pembaharuan Hukum Nasional Di Era Demokrasi' (2014) 11 Jurnal Konstitusi.

Rusniati, 'Pendidikan Nasional Dan Tantangan Globalisasi: Kajian Kritis Terhadap Pemikiran A. Malik Fajar' (2015) 16 Jurnal Ilmiah Didaktika.

Samar Ahmed and others, 'Emerging Faculty Needs for Enhancing Student Engagement on a Virtual Platform' (2020) 9 MedEdPublish.

Soenyono, 'Fungsi Melayani Kepentingan Sosial Dalam Reformasi Hukum Menuju Hukum Responsif' (2011) 2 Jurnal Hukum.

Solikhul Hadi, 'Pengaruh Konfigurasi Politik Pemerintah Terhadap Produk Hukum' (2015) 9 Addin.

Syahriza Alkohir Anggoro, 'Politik Hukum: Mencari Sejumlah Penjelasan' (2019) 10 Jurnal Cakrawala Hukum.

HOW TO CITE: Putera Astomo, 'Legal Politics of Responsive National Education System in the Globalization Era and the Covid-19 Pandemic' (2021) 36 Yuridika.