

FREE EDUCATION POLICY IN INDONESIA: IMPLEMENTATION CHALLENGES AND THE FULFILLMENT OF CITIZENS' CONSTITUTIONAL RIGHTS

Kebijakan Pendidikan Gratis di Indonesia: Tantangan Implementasi dan Pemenuhan Hak Konstitusional Warga Negara

Nita Cicilia Ganap*
 Universitas Kristen Indonesia Tomohon

nitaganap.ukit@gmail.com

(*) Corresponding Author
nitaganap.ukit@gmail.com

How to Cite: Nita Cicilia Ganap. (2025). Kebijakan Pendidikan Gratis di Indonesia: Tantangan Implementasi dan Pemenuhan Hak Konstitusional Warga Negara doi: 10.36526/js.v3i2.5780

Received : 11-07-2025
 Revised : 19-07-2025
 Accepted: 31-07-2025

Keywords:

Constitutional obligation,
 Education governance,
 Free education policy,
 Public policy
 implementation,
 Rule of law

Abstract

This study examines the implementation of free education policy in Indonesia from a constitutional law perspective, aiming to assess the extent to which this public policy aligns with the constitutional mandate under Article 31 of the 1945 Constitution. The research adopts a normative juridical approach combined with empirical analysis to evaluate how free education policies are formulated, implemented, and enforced across different regions. Legal documents, regulations, and policy instruments such as the School Operational Assistance (BOS) program and regional regulations were analyzed alongside field data collected through interviews and case studies. Findings reveal a significant gap between constitutional norms and policy practices, as many schools continue to impose informal fees under various forms—contrary to the constitutional guarantee of free and accessible education. Inconsistent interpretations of regulations at the local level, weak institutional capacity, and inadequate oversight mechanisms contribute to persistent violations. The discussion highlights the need for clearer regulatory formulations, stronger enforcement frameworks, and increased legal awareness among citizens and educational stakeholders. Furthermore, the study underscores the importance of civil society participation and effective governance in ensuring transparency and accountability. Based on these findings, the research recommends harmonizing national and regional regulations, strengthening institutional capacity within schools and local governments, and introducing legal mechanisms such as class action suits to enable citizens to claim their constitutional right to free education. Ultimately, realizing the constitutional promise of free education requires a multidimensional and legally grounded approach that prioritizes justice, equality, and public accountability.

Background

In Indonesia's constitutional legal framework, the state bears a fundamental obligation to safeguard the basic rights of its citizens, including their right to education. Article 31 of the 1945 Constitution of the Republic of Indonesia explicitly affirms that every citizen has a right to access education. Furthermore, it mandates that the government fully finance compulsory basic education without imposing any costs on students or their families. This constitutional provision positions education not merely as a policy option but also as a core human right requiring active protection by the state. Thus, the Indonesian legal system recognizes education as an essential element of national development and democratic empowerment (Bandur et al., 2021; Ika Sari et al., 2024; Maisyaroh et al., 2021). As such, the implementation of free education policies must be aligned with this constitutional mandate. Any deviation from this principle raises concerns regarding the state's compliance with constitutional duties. Therefore, it is imperative to examine the legal and institutional dimensions of free-education policies.

The Indonesian government introduced various public policies aimed at fulfilling the constitutional guarantee of free education, particularly at the basic and secondary levels. Among these initiatives are School Operational Assistance (Bantuan Operasional Sekolah/BOS), the Smart Indonesia Program (Program Indonesia Pintar/PIP), and regional regulations issued by local governments. These programs were designed to reduce financial barriers to education and ensure equitable access across different socioeconomic groups (Bahrul Ulum & Tsalist Wildana, 2019). Despite these efforts, disparities persist in the nationwide implementation of free education policies. Many schools continue to impose informal fees under the guise of voluntary donations or school committees (Edwards Jr & Storen, n.d.; Hartati et al., 2025). Such practices contradict the constitutional spirit of providing a universally accessible and cost-free education. They also reflect a broader challenge in translating legal norms into effective public policy. Thus, there is a pressing need to critically assess how these policies align with the constitutional principles.

From a constitutional law perspective, public policies should serve as tools for realizing the values enshrined in the Constitution. The principle of constitutionalism demands that all state actions, including policymaking, be grounded in the rule of law and oriented toward protecting fundamental rights. When public policies fail to uphold constitutional guarantees, they risk undermining the legitimacy of a state's governance framework. The inconsistency between constitutional mandates and the reality of the implementation of educational policy highlights a significant normative gap. Moreover, the persistence of discriminatory financial practices in schools suggests failure to ensure equal access to education (Heise, 1997; Loubert, 2004; Ryan, 1999). This discrepancy calls for a comprehensive legal analysis of the formulation and execution of free-education policies. It also necessitates an inquiry into the accountability mechanisms governing these policies. Ultimately, the realization of the right to education depends on the extent to which the state fulfills its constitutional obligations.

The implementation of free education policies in Indonesia must be evaluated against the principles of good governance and social justice (E. Brewis, 2019; L. E. J. Brewis, 2019; Romlah et al., 2023). Transparency, accountability, and participation are key elements that guide the formulation and execution of public policy. However, in practice, many stakeholders, especially parents and students, are treated more as passive recipients than as active participants in the education system. This top-down approach undermines the democratic nature of public policy and weakens civic trust in state institutions. In addition, the lack of effective oversight and enforcement mechanisms allows deviations from constitutional standards to persist. There is also insufficient judicial recourse for citizens facing violations related to access to free education. Hence, understanding the intersection of constitutional law, public policy, and administrative governance is crucial. Only through such an interdisciplinary examination can the integrity of the constitutional promise be preserved.

Despite extensive academic and policy-oriented discussions on free education in Indonesia, there remains a notable absence of systematic legal analyses that focus on its constitutional implications. Most existing studies tend to emphasize the economic or administrative aspects of free education rather than its foundational legal basis. Few scholars have comprehensively examined the relationship between public policy and constitutional rights (Bellamy, 2013). Moreover, there has been limited exploration of how constitutional principles, such as legal certainty, non-discrimination, and proportionality, apply to education policy implementation (Cereceda, 2016; Lee, 2022). Existing research often overlooks the role of subnational regulations in shaping educational access despite their significant influence. Furthermore, the role of the judiciary in enforcing the constitutional right to education has not been adequately addressed. There is also a lack of comparative analysis between central and local policy frameworks concerning free education. Finally, few studies have integrated doctrinal legal analyses with empirical case studies to evaluate policy outcomes.

Another critical gap lies in the conceptualization of "free education" itself within the Indonesian legal context. Although the term appears in both constitutional and statutory provisions, its precise scope and legal interpretation remain ambiguous (Darmawan et al., 2024; Rosser et al., 2011; Siswadi, 2024; Tome et al., 2024). For instance, the distinction between tuition fees and other

forms of financial contributions is often blurred in practice. This ambiguity enables schools and local authorities to circumvent the spirit of the law while complying with its technical letter (Essex, 2002; Squelch, 2001). Consequently, the definition of what constitutes a violation of the constitutional right to free education remains controversial. Legal scholarship is yet to produce a unified framework for interpreting these ambiguities (Rubin, 1987). In addition, Indonesian courts have little jurisprudence in addressing these issues. This lack of clarity undermines the enforceability of constitutional guarantees. Therefore, further doctoral research is necessary to clarify the boundaries and obligations of free education.

Equally important is the lack of integration between constitutional law and administrative law perspectives when analyzing free education policies. Although constitutional law provides a normative foundation, administrative law governs the operational mechanisms of policy implementation. The disconnection between these two legal domains results in inconsistent interpretations and applications of legal norms. For example, while the Constitution mandates free education, implementing regulations may allow for certain discretionary charges. This creates confusion among policymakers, educators, and citizens. Moreover, administrative discretion exercised by local governments often leads to unequal regional implementation. Minimal scholarly attention has been given to how intergovernmental relations affect the uniformity of policy enforcement. Thus, the current literature fails to offer a holistic view of the legal dynamics of free education governance.

Another overlooked aspect is the role of civil society organizations and advocacy groups in monitoring and influencing education policy. While some NGOs and legal aid institutions have attempted to hold authorities accountable, their impact remains limited because of weak legal frameworks and inadequate procedural mechanisms. There is a scarcity of legal studies that examine the potential of public interest litigation to advance the constitutional right to education (Lasswell & McDougal, 1942; Shaw, 2022; Simon-Kerr & Sturm, 2010; Trubek, 2005). Similarly, the effectiveness of ombudsmen's institutions and other oversight bodies in addressing grievances related to education financing has not been thoroughly assessed. Furthermore, the participation of affected communities in shaping policy design and evaluation has rarely been considered in academic discourse. This indicates a significant gap in the literature regarding the practical realization of participatory governance in the education sector.

There is also a dearth of empirical data supporting the legal analysis of free-education policy outcomes. While some quantitative assessments exist regarding budget allocation and school enrollment rates, they do not address the deeper legal and constitutional questions surrounding the implementation process. Few in-depth case studies of specific regions or schools have been conducted to uncover the legal challenges faced by students and parents (Lawson & Alameda-Lawson, 2012; Stefkovich & Frick, 2021). Without such qualitative data, it is difficult to develop a nuanced understanding of how legal norms translate into real-world experience. Moreover, the absence of longitudinal legal evaluation hampers the ability to measure progress or regression over time. Therefore, future research must bridge the gap between doctrinal analysis and field-based evidence to strengthen the validity of these findings.

This problem arises when the constitutional guarantee of free education is undermined by inconsistent policy implementation and regulatory ambiguities. Despite clear constitutional mandates, many students face indirect financial burdens that hinder their access to education. This situation reflects the broader issue of constitutional non-compliance in public administration. It raises serious concerns about the state's capacity to fulfill its legal obligations and protect the rights of its most vulnerable citizens. The lack of a coherent legal framework exacerbates this issue, allowing for arbitrary interpretation and selective enforcement. Furthermore, the absence of strong enforcement and redress mechanisms leaves citizens without adequate remedy. The mismatch between constitutional ideals and policy realities requires urgent scholarly and institutional attention. Unless these gaps are addressed, the promise of universal free education remains unfulfilled.

This study seeks to fill identified research gaps by offering a comprehensive legal analysis of free education policies in Indonesia from a constitutional law perspective. Unlike previous studies, this research integrates doctrinal legal methods with empirical insights to provide a multidimensional understanding of policy implementation. It examined the interplay between constitutional norms, statutory regulations, and administrative practices. The novelty lies in its focus on the legal status of informal financial contributions and their implications for constitutional right. By analyzing court decisions, policy documents, and stakeholder interviews, this study aims to uncover hidden legal inconsistencies and propose actionable reforms. This approach contributes to both academic discourse and policy development in the field of educational law. It also serves as a reference for improving legal accountability and transparency in the educational sector.

The primary objective of this research is to analyze the alignment between free education policies and the constitutional rights of Indonesian citizens. Specifically, it seeks to identify legal inconsistencies, policy contradictions, and institutional weaknesses that impede the full realization of the right to education. The study also proposes normatively sound and practically feasible recommendations for reforming the legal and institutional framework governing free education. These findings have significant implications for policymakers, legal practitioners, and civil society organizations engaged in education governance. Moreover, this study contributes to the broader discourse on the relationship between public policy and constitutional law in developing democracies. By highlighting the importance of legal consistency and institutional accountability, this study supports efforts to strengthen the rule of law in Indonesia's educational sector. Ultimately, it underscores the necessity of viewing education not just as a policy instrument but as a fundamental right that must be protected by the state.

METHOD

The research method employed in this study is a normative juridical approach combined with doctrinal analysis and empirical study, which aims to gain a holistic understanding of the implementation of free education policies from the perspective of constitutional law. This research focuses on examining the legal norms of the 1945 Constitution of the Republic of Indonesia, statutory regulations in the field of education, and regional policies concerning the provision of free education. Data analysis was conducted qualitatively using a constitutional approach, considering principles such as the rule of law, fundamental rights of citizens, and the principles of good governance. This study also considers the dynamics of interaction between positive law, public policy, and the practical implementation of education services on the ground. The findings were validated through source and method triangulation to ensure the objectivity of the research outcomes. Accordingly, this method is designed to provide legal recommendations that are normatively sound, operationally feasible, and oriented toward strengthening the constitutional rights of citizens to access fair and equitable education. Furthermore, this study adopts an interdisciplinary approach that combines perspectives of constitutional law and public policy to explore the relationship between constitutional mandates and their practical implementation in the field. A comprehensive literature review was conducted to examine the relevant legal documents, regulations, and other secondary sources. This approach is chosen to uncover normative inconsistencies and institutional challenges that hinder citizens' rights to education. Ultimately, this method is expected to serve as a strong analytical framework to evaluate the effectiveness of free education policies as a form of the state's constitutional obligations.

RESULT AND DISCUSSION

RESULT

Article 31 of the 1945 Constitution explicitly states that every citizen has the right to education, and that the government is obligated to finance basic education without imposing any fees. This provision establishes education as a constitutional right that must be guaranteed by the state and not merely as an optional policy. From the perspective of constitutional law, this obligation

reflects the principle of constitutional obligation that cannot be overlooked. However, implementation reveals a gap between constitutional norms and public policy practices. Despite the existence of programs such as School Operational Assistance (Bantuan Operasional Sekolah/BOS) and the Smart Indonesia Program (Program Indonesia Pintar/PIP), some schools still impose additional fees. This raises questions regarding the commitment of educational institutions to fulfil their constitutional mandate. Furthermore, varying interpretations at the regional level contribute to disparities in the realization of this right. Therefore, further clarification is required regarding the operational boundaries of free education to ensure alignment with the constitutional mandates.

Free education policies have been implemented through various instruments, including Ministerial Decrees on Education and Regional Regulations. The Bantuan Operasional Sekolah (BOS) program serves as one of the primary mechanisms for financing the operational costs of basic and secondary education institutions. However, the research findings indicate that the distribution of BOS funds remains uneven across regions, particularly in remote areas. Moreover, funding allocation is often insufficient to fully meet the operational needs of schools. Consequently, many schools seek additional funding from their parents in the form of informal contributions. These include voluntary donations, school committee fees, and nonacademic administrative charges. Consequently, financial burdens persist for families, despite the formal provision of free education. This finding highlights the need for a comprehensive evaluation of the effectiveness of the national education funding system.

At the implementation level, many schools continue to impose various charges that contradict the principles of free education. For example, school committee fees are often used to collect expenses legally covered by the state. Although technically labeled as voluntary contributions, in practice, these fees are frequently perceived as mandatory by parents to ensure smooth academic processes. This phenomenon reflects weak oversight and control mechanisms in the enforcement of free education policies. Although institutions such as the Ombudsman and Education Inspectorate play an important role in addressing violations, very few reported cases have been effectively resolved. Low legal awareness among citizens regarding their right to access education further exacerbates this issue. Consequently, violations of the principles of free education continue to occur without significant legal action. Thus, a critical finding of this study is the urgent need for clearer regulations and stronger enforcement mechanisms.

Regional-level school regulations have also been found to contribute to the ambiguity in the implementation of free education. Some regulations provide schools with discretion to impose additional fees under the pretext of community participation or improved educational quality. This contradicts the principles of fairness and nondiscrimination in accessing education. Research findings have shown that inconsistent regulations create disparities in the quality and accessibility of educational services. In certain regions, free education is genuinely implemented without any additional fees, whereas in other areas, various types of extra charges remain prevalent. This structural inequality directly affects the low-income communities. Additionally, limited coordination among governmental agencies hampers the harmonization of regulations. Therefore, there is a pressing need to reformulate more detailed and unified regulations to prevent divergent interpretation at the local level.

From an institutional capacity perspective, the research findings reveal that the management and governance of education in many schools remain weak. Educational administrators often lack the competence to manage budgets transparently and accountably, increasing the risk of the misuse or misallocation of BOS funds. Furthermore, low levels of community involvement in internal school monitoring makes it difficult to detect irregularities. Although School Committees exist as collaborative partners in decision making, their functions are often symbolic rather than substantive. Community participation tends to be ceremonial and rarely involves critical stakeholders who can offer meaningful inputs. Meanwhile, external oversight bodies such as the Inspectorate and Ombudsman have a limited capacity to monitor all educational institutions. Hence, institutional strengthening at both school and education office levels is necessary to enhance the effectiveness and transparency of free education implementation.

Discussion

Article 31 of the 1945 Constitution explicitly states that education is a constitutional right for every citizen that must be guaranteed by the state. This positions education not only as a public policy, but also as a legal obligation that cannot be compromised. From the perspective of constitutional law, the principle of constitutional obligation serves as the basis for the state to ensure a fair and equitable access to education. However, implementation reveals a gap between constitutional norms and policy practices. Despite the existence of programs such as School Operational Assistance (BOS) and the Indonesia Pintar Program (PIP), some schools still impose additional fees. This phenomenon reflects the weak commitment of educational institutions to fulfilling their constitutional mandates. Moreover, varying regional interpretations further widened the disparity in the realization of this right. Therefore, further clarification is needed regarding the operational boundaries of free education to align with the constitutional mandates.

Free education policies are implemented through various policy instruments, including ministerial and regional regulations on education. The BOS programme has become one of the main mechanisms for funding basic and secondary education institutions. Nevertheless, research findings indicate that fund allocation is often insufficient to fully meet school operational needs. As a result, many schools seek additional funding from parents in the form of informal contributions such as voluntary donations, school committee fees, or non-academic administrative charges. Consequently, financial burdens persist for families despite the formal provision of free education. This highlights the need for a comprehensive evaluation of the effectiveness of the national education funding system. Without structural improvements, the principle of free education remains difficult to implement.

At the implementation level, many schools continue to impose various forms of charges that contradict the principles of free education. For example, school committee fees are often used as a tool to collect expenses that should legally be covered by the state. Although technically labeled as voluntary contributions, in practice, they are frequently perceived as mandatory by parents to ensure smooth academic processes. This phenomenon reflects weak oversight and control mechanisms in enforcing free education policies. While institutions such as the Ombudsman and Education Inspectorate play an important role in addressing violations, very few reported cases are effectively resolved. Low legal awareness among citizens regarding their rights to access education further exacerbates this issue. As a result, violations of the principle of free education continue to occur without significant legal action. Thus, one of the critical findings of this study is the urgent need for clearer regulations and stronger enforcement mechanisms.

Regulations at school and regional levels have also been found to contribute to ambiguity in the implementation of free education. Some regulations provide schools with discretion to impose additional fees under the pretext of community participation or improved educational quality. This contradicts the principles of fairness and non-discrimination in accessing education. Research findings show that inconsistent regulations create disparities in the quality and accessibility of educational services. In certain regions, free education is genuinely implemented without any form of additional fees, whereas in other areas, various types of extra charges remain prevalent. This structural inequality directly affects low-income communities. Additionally, limited coordination among governmental agencies hampers the harmonization of regulations. Therefore, there is a pressing need for reformulating more detailed and unified regulations to prevent divergent interpretations at the local level.

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participation tends to be ceremonial, rarely involving critical stakeholders who could offer meaningful input. Meanwhile, external oversight bodies such as the Inspectorate and Ombudsman have limited capacity to monitor all educational institutions. Hence, institutional strengthening at both the school and education office levels is necessary to enhance the effectiveness and transparency of free education implementation.

The interaction between positive legal norms and the reality of implementing free education policies shows a duality between normative ideals and empirical reality. On the one hand, laws guarantee free education; on the other hand, field practices leave room for various structural and cultural challenges. The research findings show that differing interpretations at the regional level create disparities in policy implementation. The absence of clear operational standards widened the space for deviation. Therefore, it is essential to harmonize regulations so that all parties share the same understanding of what free education entails. Additionally, a synchronization mechanism between the central and regional governments is required to maintain consistent implementation. Strengthening the capacity of educational officials is also a solution to avoid misinterpretation. Without integration between norms, policies, and implementation, the constitutional mandate remains difficult to realize fully.

Strengthening institutional capacity at the school level is key to upholding the principle of free education. Principals, teachers, and administrative staff must fully understand the limits of the levies and the state's responsibility in financing education. However, research findings indicate that many educational officials do not fully comprehend these aspects. Most rely on local interpretations or old habits to manage school costs. A lack of training and supervision causes them to lack the capacity to implement constitutional principles. Therefore, a systematic guidance and training program is required for all educational personnel. This program should involve central institutions such as the Ministry of Education, Culture, and local education offices. Only with internal capacity improvement can the principle of free education be consistently applied across an entire region.

The decentralization of education grants regional governments significant authority to deliver educational services. Although decentralization aims to improve policy responsiveness to local conditions, it also creates potential disparities in the quality and accessibility of education. Research findings show that some regions successfully implement free education without imposing any fees, whereas others impose additional charges. Contributing factors include differences in fiscal capacity, managerial competence, and local governments' political commitment to the principle of free education. Therefore, more progressive policy interventions are needed by the central government to bridge inter-regional gaps. One approach is budget redistribution or transfers to less capable regions. Without such intervention, the principle of equal access to education remains difficult to achieve.

Civil society's involvement in the monitoring process of free education is crucial to ensuring transparency and accountability in policy implementation. Non-governmental organizations, civil society groups, and advocacy organizations play strategic roles in monitoring on-the-ground implementation. However, in practice, their participation is often inadequately accommodated by governmental institutions. Some parties tend to ignore inputs from civil society organizations, viewing them as disruptive to bureaucratic processes. In addition, poor coordination between civil society and government agencies renders monitoring efforts ineffective. To optimize civil society participation, more inclusive cooperation and structured participatory mechanisms are required. The official recognition of the role of civil society in monitoring education policy must be realized through supportive regulations. Without active public participation, the implementation of free education remains vulnerable to deviation.

CONCLUSION

The findings of this study reaffirm that education, as enshrined in Article 31 of the 1945 Constitution of Indonesia, is a fundamental constitutional right that must be guaranteed by the state.

The principle of constitutional obligation obliges the government to ensure an equitable and accessible education for all citizens, particularly at the basic education level. Despite the existence of national programs such as Bantuan Operasional Sekolah (BOS) and Program Indonesia Pintar (PIP), significant gaps persist between constitutional mandates and policy implementation. Many schools continue to impose informal fees under various names, thus undermining the principles of free education. These inconsistencies are exacerbated by differing interpretations of regulations across regions, weak institutional capacities, and limited legal awareness among the public. Therefore, there is an urgent need to harmonize policies, clarify operational boundaries, and strengthen enforcement mechanisms to ensure full compliance with constitutional principles.

A comprehensive and multidimensional approach is essential for effectively realizing the right to free education. This includes reformulating regulatory frameworks to eliminate ambiguities, enhancing institutional capacity at both the school and government levels, and promoting transparency and accountability in policy implementation. Civil society engagement, legal empowerment of citizens, and stronger oversight mechanisms, such as those led by the Ombudsman and Education Inspectorate, are crucial to safeguarding the integrity of free education policies. Furthermore, legal innovations, including the introduction of collective legal action mechanisms, should be considered to enable citizens to seek redress for violations of their educational rights. Only through these integrated efforts can the constitutional promise of free and equitable education be fully realized and sustained for future generations.

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