

RIGHTS AS FLOATING SIGNIFIER: A LACLAUIAN READING OF EDUCATION RIGHTS IN INDONESIA'S CONSTITUTIONAL COURT

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Abstract

Within legal discourse, as the constitutional rights are formed in abstract form, constitutional courts then occupy a central position in defining the meaning of constitutional rights, including the right to education. The Court has expressed the right to education in fundamentally different ways in a number of rulings. The court views the right to education as a social right that necessitates state accountability. However, the rights to education are characterized as being limited by financial resources. This study, which looks at how the Court has interpreted and reinterpreted the constitutional right to education, is based on this tension. Based on this inquiry, the study employs a socio-legal methodology that integrates Ernesto Laclau's discourse theory with the legal normativity ingrained in legal studies. According to this framework, the divergence of constitutional interpretation demonstrates that the right to education is a floating signifier,

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meaning that it is contingently re-articulated by the Court through competing logics of what we refer to as emancipation and domination logics rather than having a fixed meaning. These court decisions show the variety of constitutional interpretation; sometimes it takes an exploitative approach that maintains the status quo and validates existing power structures, while other times it takes an emancipatory approach that seeks to improve access and eradicate structural injustices. The study promotes a more politically aware explanation of constitutional interpretation by tracking this tension and emphasizing how the meaning of rights is constantly debated rather than settled.

Keywords: Constitutional rights discourses; Constitutional interpretation; Floating signifiers; Right to education

I. INTRODUCTION

1.1. Background

In legal studies, the Constitution has been recognized as the cornerstone of the legal system, providing the framework for numerous laws and rules.¹ Ackerman claims that the constitution establishes the basic “rules of the game” for the law-making process.² Furthermore, in the Indonesian context particularly, the constitution has become “*the most important law in the life of a nation and a state*,” according to Sukarno.³ But contemporary constitutional discourse does more than merely view the constitution as a normative validator. As Weinrib argues, modern constitutional law also encompasses a system of enforceable rights.⁴ Yet, just as the realization of rights in general necessitates struggle, the rights enshrined in the constitution similarly require ongoing efforts to be actualized.⁵ One such right is the right to education, which is explicitly recognized in the 1945 Constitution of Indonesia.

¹ Hans Kelsen, *Pure Theory of Law* (London: University of California Press, 1967), 50–70.

² Bruce Ackerman, *The Future of Liberal Revolution* (London: Yale University Press, 1992), 14.

³ Sekretariat Negara Republik Indonesia [Cabinet Secretariat of the Republic of Indonesia], *Himpunan Risalah Sidang-Sidang dari Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI) dan Panitia Persiapan Kemerdekaan Indonesia* [Collection of Minutes of Sessions from the Investigating Committee for Preparatory Work for Independence and the Preparatory Committee for Indonesian Independence] (Jakarta: Sekretariat Negara Republik Indonesia, 1959).

⁴ Jacob Weinrib, *Dimensions of Dignity: The Theory and Practice of Modern Constitutional Law* (Cambridge: Cambridge University Press, 2016).

⁵ Herlambang P. Wiratraman, “Constitutional Struggles and the Court in Indonesia’s Turn to Authoritarian Politics,” *Federal Law Review* 50, no. 3 (June 2022): 314–330.

The struggle for the right to education became particularly visible through student movements that emerged in mid-2024.⁶ These movements were a response to the escalating costs of education, culminating in the popular slogan “*Orang miskin dilarang kuliah*” (“Poor people are prohibited from attending university”), which served as a critique of the growing unaffordability of higher education.⁷ In reaction to this, the Secretary of the Directorate General of Higher Education, Research, and Technology asserted that higher education constitutes merely “tertiary education.”⁸ This statement suggests that, according to the government acting on behalf of the state, the constitutional right to education does not necessarily extend to higher education. As a result, this interpretation legitimizes the increasing cost of higher education in Indonesia, under the rationale that the state’s obligation to fulfill the right to education is limited to primary or basic education.

Based on the aforementioned facts, there is a glaring difference in how the right to education is regarded, which has an impact on how the government and students view their obligations. Interestingly, the 1945 Constitution’s Article 31(1), which unequivocally declares that “*every citizen has the right to education*,” serves as the foundation for both sides’ arguments. Therefore, despite this frequent constitutional reference, the right to education can be viewed as a right that lacks a single, definite meaning. Instead, it serves as a platform for interpretive disagreement where different perspectives on its applicability and breadth are put forward. The ongoing discussion over how to define and implement the

⁶ See, for example, “Turunkan Biaya Kuliah di Perguruan Tinggi Negeri [Lower Tuition Fees at State Universities],” *Kompas*, accessed May 19, 2024. See also “Jangan sampai Kenaikan UKT Beban Mahasiswa Sampai Tidak Mampu Kuliah Lagi [Do Not Let the Increase in Single Tuition Fees Burden Students to the Point That They Can No Longer Afford to Study],” Dewan Perwakilan Rakyat Republik Indonesia [House of Representatives of the Republic of Indonesia], accessed May 16, 2024.

⁷ For example, undergraduate students paid a maximum of Rp12,500,000 (approximately \$714) in 2020, whereas in 2024 they were required to pay up to Rp100,000,000 (approximately \$5,714). See “Students Petition for Judicial Review of the Regulation of the Minister of Education, Culture, Research, and Technology of the Republic of Indonesia No. 2 of 2024 on Standar Satuan Biaya Operasional Pendidikan Tinggi pada Perguruan Tinggi Negeri di Lingkungan Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi [Standards for Operational Costs for Higher Education at State Universities within the Ministry of Education, Culture, Research, and Technology], against Law No. 12 of 2012 on Higher Education” (2024), 22–24.

⁸ “Kemendikbudristek Dorong Perguruan Tinggi Tetapkan Uang Kuliah Tunggal dengan Bijak dan Berkeadilan [The Ministry of Education, Culture, Research, and Technology Encourages Universities to Set Single Tuition Fees Wisely and Fairly],” Kementerian Pendidikan dan Kebudayaan [Ministry of Education and Culture], accessed May 22, 2024.

right to education has a significant impact on this study, which uses the right to education as a specific example to investigate constitutional conflict.

These factors necessitate setting our investigation within the framework of past scholarly research. The Constitutional Court's interpretation of the constitution has been thoroughly examined in earlier studies. For instance, Hapsoro and Ismail use a prescriptive viewpoint to evaluate the Court's interpretive practices in connection to the fulfillment of a living constitution in Indonesia,⁹ whereas Ahmad et al. examine constitutional interpretation via the prism of the Constitutional Dialogue approach.¹⁰ Despite these advancements, there is still a dearth of critical socio-legal examination of constitutional interpretation in the literature. By emphasizing constitutional interpretation as a profoundly embedded political and social process of meaning-making, this work bridges this gap.

1.2. Research Questions

Reflecting ongoing contestations over the right to education, this study is guided by two main questions. First, how does the Constitutional Court interpret the right to education? To address this, the study undertakes a close doctrinal and discursive reading of selected Constitutional Court decisions on education, paying particular attention to the Court's reasoning, interpretive approaches, and justificatory narratives. It examines how constitutional provisions are framed in relation to issues such as state obligations, affordability, and public participation. Second, how might a Laclauian perspective be used to critically analyze these interpretations? According to this viewpoint, constitutional rights are variable and politically produced rather than fixed. It enables the analysis to follow the emergence of judicial interpretations in hegemonic battles, when conflicting articulations temporarily stabilize the meaning of rights.

⁹ Fakhris Lutfianto Hapsoro and Ismail Ismail, "Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan the Living Constitution [Constitutional Interpretation in Constitutional Review to Realize the Living Constitution]," *Jurnal Hukum & Pembangunan* 50, no. 4 (December 2020): 995–1005.

¹⁰ Ahmad Ahmad, Fence M. Wantu, and Dian Ekawaty Ismail, "Convergence of Constitutional Interpretation to the Test of Laws through a Constitutional Dialogue Approach," *Jurnal Konstitusi* 20, no. 3 (September 2023): 514–35.

1.3. Method

This study takes a socio-legal approach to investigate how Indonesian constitutional rights are interpreted, building on these research concerns. This approach places constitutional interpretation amid larger social and political forces rather than approaching it as a strictly technical or doctrinal activity. In this way, interpretation is viewed as a process of creating meaning that is influenced by changing societal circumstances, power dynamics, and institutional settings. According to this standpoint, constitutional interpretation can be viewed as a site of discursive contestation, where various actors, such as lawmakers, courts, and civil society organizations, work to advance and stabilize specific interpretations of constitutional rights. This interpretation is based on Ernesto Laclau's discourse theory, which emphasizes that meanings are contingent, provisional, and subject to rearticulation rather than being completely fixed.

This analysis demonstrates that constitutional rights do not function as completely established guarantees by tracking how the right to education has been construed across Constitutional Court rulings. Rather, they are contested and dynamic forms. Their meanings are always open to revision, renegotiation, and alteration in response to changing legal arguments, political arrangements, and societal influences, even though they may momentarily solidify.

II. RESULT & DISCUSSIONS

2.1. Laclau's Discourse Theory on Constitutional Interpretation

It is generally understood that constitutional norms, even though they are fundamental, but that kind of norms often need to be interpreted.¹¹ In practice, constitutional texts do not carry fixed meanings by themselves, they acquire meaning through judicial interpretation carried out by constitutional court.¹² This places judges at the center of constitutional law, as their role in interpreting the constitution is widely recognized by legal scholars. The need for

¹¹ Gonçalo de Almeida Ribeiro, "What Is Constitutional Interpretation?," *International Journal of Constitutional Law* 20, no. 3 (July 2022): 1130–61.

¹² Ziyad Motala and Cyril Ramaphosa, *Constitutional Law: Analysis and Cases* (Oxford: Oxford University Press, 2002), 13.

interpretation becomes even more apparent given that constitutional provisions are typically written in abstract and open-ended language, allowing for multiple possible readings. As a result, scholars have developed a range of approaches to interpreting constitutional norms.

In Indonesian legal scholarship, the process of interpretation of the constitutional norms, also the legal norms in a general way, has led the discourses on legal interpretation.¹³ Drawing on Mertokusumo, these methods include grammatical, systematic, historical, and teleological approaches.¹⁴ Grammatical interpretation focuses on the ordinary meaning of words. Systematic interpretation connects a provision with other legal rules and the broader legal framework. Historical interpretation takes into account the context in which a law was created, whereas teleological interpretation emphasizes the purpose of the legislation and gives legislative intent precedence over a purely literal reading.¹⁵

Constitutional interpretation in practice frequently reveals deeper theoretical disputes, despite Mertokusumo's theory suggesting that different interpretative approaches might complement one another.¹⁶ This is especially shown in the debate between originalism and non-originalism.¹⁷ Originalism seeks to anchor constitutional meaning in the original intent or understanding of the constitutional drafters at the time the constitution was made. By contrast, non-originalist approaches reject the idea of a fixed historical meaning.¹⁸ As argued by Dworkin, the constitution can [and should] be understood as a living document, whose broad principles must be interpreted in light of contemporary context. From this non-originalist perspective, constitutional meaning has evolved over time, allowing courts to respond to changing societal realities rather than being bound strictly by the drafters' original intentions.¹⁹

¹³ Satjipto Rahardjo, *Ilmu Hukum* [Jurisprudence] (Bandung: Citra Aditya Bakti, 2006), 95.

¹⁴ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* [Rechtsvinding: An Introduction] (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010), 57–63.

¹⁵ Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* [Rechtsvinding: An Introduction], 57–63.

¹⁶ Michael Stokes Paulsen, "How to Interpret the Constitution (And How Not To)," *The Yale Law Journal* 115, no. 8 (June 2006): 2037–66.

¹⁷ Paulsen, "How to Interpret the Constitution," 2042.

¹⁸ Paulsen, "How to Interpret the Constitution," 2048.

¹⁹ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 133–37.

However, that kind of methodological interpretation of legal norms, in many instances, is presented as if it operates within an apolitical framework. Yet this assumption is difficult to sustain. A constitution is, by its very nature, a political agreement—one that functions both as an emancipatory instrument for marginalized groups and as a mechanism to restrain majority dominance.²⁰ When constitutional interpretation is treated as apolitical, there is a risk that both the constitution and the practice of judicial review end up reflecting what Hirschl identifies as the entrenchment of rights and the exercise of judicial review often serve elite interests, helping to preserve existing power structures rather than emerging from progressive political struggles or genuinely altruistic elite initiatives.²¹

Although it is urgent to define constitutional interpretation in a more political manner, these methods are often criticized. According to Whittington, these criticisms typically fall into one of three categories. Political interpretation is viewed as tyrannical because it raises questions about unbridled judicial power and the possibility of abuse, irrational because it is thought to rely on subjective or value-laden reasoning, and anarchic because it seems to threaten legal stability and predictability.²² But these criticisms have not yet taken on concrete shapes. For example, the Indonesian Constitutional Court has taken a more nuanced approach in a number of its interpretations, as shown in the Court's consideration in the Constitutional Court Decision No. 35/PUU-XXI/2023:

“The management of natural resources must not solely prioritize the principle of efficiency to maximize output, let alone serve the interests of a small group of capital owners. Instead, it must aim to enhance the people’s welfare equitably. Therefore, the management of coastal areas and small islands, which are highly vulnerable, must be conducted with utmost caution to ensure

²⁰ In one of his studies, Jeremy Waldron writes that a constitution is a framework for resolving disagreements within society. He challenges the notion that law can be apolitical; rather, law is always intertwined with political struggle, interpretation, and power dynamics. See Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 2012).

²¹ Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (London: Harvard University Press, 2004).

²² Keith E. Whittington, “Extrajudicial Constitutional Interpretation: Three Objections and Responses,” *North Carolina Law Review* 80, no. 3 (April 2002): 773–851.

*that activities in these areas do not result in severe damage or fall under the doctrine of abnormally dangerous activity [...]*²³

Political methods to constitutional interpretation have the potential to be emancipatory, but they also present significant methodological difficulties. Political interpretation does not depend on a single, generally recognized technique, in contrast to doctrinal or black-letter methods. This frequently prompts questions regarding subjectivity, arbitrariness, and the general validity of judicial reasoning.²⁴ Political interpretation can be readily written off as little more than ideological preference rather than a method of systematic constitutional analysis in the absence of a precise framework.²⁵ This leads to a central question: how can political interpretation be done in a way that is both normatively and analytically legitimate?

To answer that question, one way we propose to approach this problem is by engaging with the discourse theory of Ernesto Laclau (1935–2014). Laclau, an Argentine postmodern philosopher, is widely regarded as a key figure in post-Marxist thought. He challenged the ontological presumptions of orthodox Marxism, which he considered to be unduly restrictive and inflexible. Laclau took a more structuralist stance, rejecting economic determinism and essentialist conceptions of society. He argued that social identities are not fixed or given, but contingent and constantly reshaped through political and social processes.²⁶ In this view, society itself is best understood as a discursive space that is continuously formed and re-formed through practices of articulation.

In the context of constitutional interpretation, Laclau's discourse theory provides an analytical framework through which the constitution can be understood not as a document with a fixed or inherent meaning, but as a contingent social construct whose meaning is produced through discursive

²³ Constitutional Court of the Republic of Indonesia, Decision No. 35/PUU-XXI/2023 regarding the judicial review of Law No. 27 of 2007 on Coastal and Small Island Area Management in conjunction with Law No. 1 of 2014 on Amendments to Law No. 27 of 2007 on Coastal and Small Island Area Management.

²⁴ Whittington, "Extrajudicial Constitutional Interpretation," 778.

²⁵ Hirschl, *Towards Juristocracy*, 107.

²⁶ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso Books, 2001), 67.

articulation. Although we must acknowledge that Laclau does not build his theories on the constitution directly, his point on social meaning emerges from articulatory practices within discursive spaces shaped by political and social actors, holding a significant contribution that can be inserted in the constitutional studies.²⁷ Based on Laclau's conceptual framework, we can underline that the constitutional interpretation can be understood as a political process in which competing actors struggle to temporarily fix meaning and establish hegemony by embedding particular values and interests into constitutional norms.

Consequently, under this framework, constitutional rights should be seen as rights that emerge from a discursive process that allows for reinterpretation based on evolving social and political needs.²⁸ This explains the problem that was already mentioned about the right to education interpretation. The case was possible, because constitutional rights itself does not contain a fixed meaning. The process of constitutional interpretation involves a network of signifiers that can be imagined as a spider's web, where signifiers interconnect to provide meaning to the social. For instance, the right to education becomes 'the social,'²⁹ with concepts such as free higher education, tertiary education, and various other factors serving as signifiers that compete to contribute to its meaning. Therefore, constitutional interpretation is not merely a juridical task but a political project that continuously links legal norms to various external signifiers.

By situating constitutional norms within a discursive space through articulation, constitutional interpretation necessarily involves the interaction of signifiers that form the meaning of constitutional norms in a specific context. This process is driven by two distinct ways of articulation, which Laclau termed 'the logic of difference' and 'the logic of equivalence'.³⁰ By definition, the logic of

²⁷ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 67.

²⁸ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 135–39.

²⁹ In Laclau's discourse theory, the social does not refer to a pre-given or objective social reality, but to a field of meaning constituted through discursive articulation. Social objects, identities, and practices do not possess inherent or essential meanings; rather, their meaning emerges relationally through a network of signifiers within a discursive formation. What appears as "the social" is therefore always contingent, incomplete, and open to rearticulation, as no signifier can fully fix meaning once and for all. See Laclau and Mouffe, *Hegemony and Socialist Strategy*, 135–39.

³⁰ Ernesto Laclau, *On Populist Reason* (London: Verso, 2005), 77–78.

difference is the act of creating meaning while preserving differences between signifiers. In order to recognize diversity and multiplicity in constitutional standards, this logic permits each signifier to maintain its unique meaning inside a discourse. This is especially important when diverse social ideals collide with these norms. For instance, the logic of difference makes it easier to identify different interpretations resulting from different beliefs, customs, and regional settings when it comes to religious freedom.

At the same time, constitutional interpretation also relies on the logic of equivalence, which links different signifiers into a chain by emphasizing their shared opposition to an external limit. By using this reasoning, different types of inequality—such as discrimination on the basis of gender, race, or religion—can be described as similar manifestations of injustice and brought together under overarching fundamental concepts like equality before the law. Therefore, constitutional rules can serve as universal guarantees that transcend specific disparities thanks to the logic of equivalency.

But as Laclau highlights, there is an inherent instability in the way these two logics interact throughout discursive moments. The formation of equivalential chains inevitably excludes certain meanings and positions, which reflect the operation of the logic of differences, producing antagonism that marks the limits of a given interpretation.³¹ Such antagonism emerges in constitutional interpretation when a dominant articulation marginalizes alternative values or interests while elevating a specific reading of a rule. The dominant interpretation may therefore be contested by groups whose experiences or claims are not included in the dominant chain of equivalency, turning constitutional meaning from a matter of settled consensus into a site of continuous contestation.³²

³¹ The interpretation of constitutional rights might, to some extent, result in a Schmittian view, in which constitutional interpretation turns into a practice that establishes “otherness,” making a distinct division between “us” and “them.” According to this theory, rights serve as instruments to establish social and political borders that separate the dominant group from marginalized or excluded groups, rather than merely as legal entitlements. See Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 2007).

³² Ernesto Laclau, “Identity and Hegemony: The Role of Universality in the Constitution of Political Logics,” in *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left*, ed. Judith Butler, Ernesto Laclau, and Slavoj Žižek (London: Verso, 2000), 54–55.

The inherent antagonism presents an opportunity to analyze the systemic and epistemological injustices that are deeply ingrained in the constitutional framework, even as it may exacerbate polarization. Consequently, by taking into account broader socio-political conditions, Laclau's theory enables judges to engage in judicial activism that goes beyond simple textual interpretation.³³ For instance, when addressing a right to education case, a judge might create a "chain of equivalency" connecting ideas such as gender equality, free education, and high-quality education. However, this strategy must continue to be receptive to a "logic of difference," honoring various regional requirements and cultural circumstances. After that clarification, we can see that Laclau's theory provides a way to comprehend legal standards by considering the social, political, and economic settings in which they are found. This method presents judges as political agents who can address a variety of injustices and correct structural disparities that arise when legal standards deviate from the fundamental emancipatory principles of the constitution.

2.2. The Making of Education Right in Indonesia

In order to track the historical development of the right to education in Indonesia, this part will now apply Laclau's discourse theory as conceptually defined. This historical account is meant to serve as an analytical tool to show how contentious and contingent constitutional interpretation is, rather than as a solely descriptive account of constitutional evolution. The evolution of the right to education is analyzed to demonstrate how its meaning has been continuously re-articulated in response to changing socio-political settings, in keeping with Laclau's emphasis on articulation and discursive struggle.

Indonesian constitutional history illustrates that constitutional norms do not emerge with fixed meanings. Since the proclamation of independence by Sukarno and Hatta, the Indonesian Constitution has undergone several transformations shaped by changing political priorities and ideological commitments. As Wheare suggests, constitutional design and adaptation often reflect dominant beliefs or

³³ Sonja C. Grover, *Judicial Activism and the Democratic Rule of Law* (London: Springer, 2022).

negotiated compromises among competing interests within society.³⁴ Accordingly, tracing the historical articulation of the right to education allows this study to identify how different discursive formations have shaped its constitutional meaning over time.

Article 31(1) of the 1945 Constitution recognizes that every citizen has the right to education. However, the provision itself offers little guidance regarding the scope and content of this right. This textual openness has enabled ongoing contestation over its meaning, with different actors grounding their claims in the same constitutional provision. The ambiguity of Article 31(1) thus makes historical inquiry relevant, as it reveals how early constitutional framings influenced later interpretive struggles.

During the drafting of the 1945 Constitution, educational issues received limited attention, largely due to the revolutionary context in which the constitution was formulated. The urgent task of establishing the basic structure of an independent state resulted in what has often been described as a “*revolutionary grondwet*.”³⁵ Moreover, as articulated by Soekarno, the constitution was grounded in a rejection of individualism and capitalism, leaving little room for extensive debate on fundamental rights, including education. This early articulation positioned education primarily as a state duty rather than as an individual entitlement.³⁶

Nevertheless, the objective of “*educating the life of the nation*,” articulated by Soekarno during the Great Meeting of 10 July 1945 and later enshrined in the preamble of the Constitution, introduced a foundational discursive link between education and nation-building.³⁷ The initial articulation of education positioned it as a vital, collective undertaking necessary for the state's continued existence.

³⁴ K. C. Wheare, *Modern Constitutions* (London: Oxford University Press, 1975), 67.

³⁵ Denny Indrayana, “Indonesia: In Search for a Democratic Constitution (1945-2008),” in *Constitutionalism in Southeast Asia*, ed. Clauspeter Hill and Jörg Menzel (Singapore [Singapore]: Konrad-Adenauer-Stiftung, 2008); see also Soekarno's speech at the Panitia Persiapan Kemerdekaan [Preparatory Committee for Independence] meeting on August 19, 1945, where he stated, “...ini adalah sekadar Undang-undang Dasar sementara, Undang-undang Dasar kilat, bahwa boleh dikatakan pula, inilah revolutive grondwet” [...this is merely a temporary constitution, a flash constitution, so to speak; this is a revolutionary constitution], in Sekretariat Negara Republik Indonesia [Cabinet Secretariat of the Republic of Indonesia], *Himpunan Risalah Sidang-Sidang*, 344.

³⁶ Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualisasi Pancasila* [Plenary State: Historicity, Rationality, and Actualization of Pancasila] (Jakarta: Penerbit PT Gramedia Pustaka Utama, 2017), 583.

³⁷ John Dewey, *Democracy and Education* (New York: Free Press, 1997), 233.

This perspective was subsequently formalised in the Outlines of Education and Teaching, adopted in August 1945. These foundational documents highlighted the significance of affordability and accessibility, demonstrating an early emphasis on the concrete obstacles to educational prospects.³⁸

The constitutional changes between 1949 and 1959 did not significantly alter the basic definition of the right to education. Education was mainly described as a tool for promoting national unity and consciousness, even though the 1949 Federal Constitution (*Konstitusi Republik Indonesia Serikat*) and the 1950 Provisional Constitution (*Undang-Undang Dasar Sementara 1950*) reorganized and expanded constitutional articles. It was not yet defined as an all-encompassing individual right.³⁹ The original viewpoint's tenacity demonstrates how well-established discursive constructions can withstand formal constitutional changes.

An important forum for a more direct contestation of the definition of the right to education was the Constitutional Assembly. The Constitutional Assembly (*Konstituante*) debates. Education was increasingly described as a claimable right throughout these conversations, transcending a broad state obligation. Corresponding state obligations were immediately implied by this new articulation, especially with regard to providing sufficient facilities and guaranteeing access to higher education.⁴⁰ These discussions essentially represent a change in discourse by establishing education as a right based on social justice and equality ideals.

This change was further highlighted by the constitutional amendments (1999-2002) put into place following the Reformasi era. Debates over terminology, educational costs, and state budgeting culminated in the explicit constitutional mandate requiring the state to allocate at least 20 percent of national and

³⁸ Mahkamah Konstitusi Republik Indonesia [Constitutional Court of the Republic of Indonesia], *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Pembahasan—Buku IX: Pendidikan dan Kebudayaan* [Comprehensive Text of the 1945 Constitution of the Republic of Indonesia's Amendments: Background, Process, and Results of Discussion, Book IX: Education and Culture] (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), 21.

³⁹ Simon Butt and Tim Lindsey, *Indonesian Law* (Oxford: Oxford University Press, 2018), 5–7; see also P. J. Drooglever, "The Genesis of the Indonesian Constitution of 1949," *Bijdragen Tot de Taal-, Land- En Volkenkunde* [Contributions to Linguistics, Geography, and Ethnology] 153, no. 1 (January

⁴⁰ Konstituante Republik Indonesia [Constitutional Assembly of the Republic of Indonesia], *Risalah Perundingan—Sidang Ke 1, Rapat Ke 1 Sampai Ke 19* [Minutes of Negotiations—1st Session, 1st to 19th Meetings] (Jakarta: Konstituante Republik Indonesia, 1956), 25.

regional budgets to education.⁴¹ The incorporation of the right to education into the human rights chapter of the Constitution further re-articulated education as a justiciable constitutional right.⁴²

The historical evolution of the right to education is crucial because it demonstrates that this right has never held a fixed or singular meaning within Indonesian constitutional law. Instead, its substance has been continually formed through a series of articulations, negotiations, and conflicts across various historical periods. By tracking these changes, this research positions current constitutional interpretation within a larger context of discursive contestation. This, in turn, provides the necessary foundation for examining how the Constitutional Court presently interprets and solidifies the meaning of the right to education.

2.3. Interpreting the Right to Education: The Role of Constitutional Court

This study analyzes the Constitutional Court's decisions on the right to education as a constitutional struggle, considering the broader context of Indonesia's history of constitution-making and constitutional amendments. In this context, constitutional struggle refers to the process through which the meaning of constitutional rights is contested, negotiated, and temporarily stabilized through institutional and discursive confrontation, particularly in judicial review proceedings. Because the right to education is explicitly recognized in the constitution, it has become a focal point of legal and political contestation when legislative policies are perceived to undermine or restrict its realization.⁴³

As the right to education is explicitly mentioned in the constitution, various social actors—including civil society groups, students, and advocacy organizations—have sought to articulate their understanding of the right to

⁴¹ Sekretariat Jenderal MPR-RI [General Secretariat of the People's Consultative Assembly of the Republic of Indonesia], *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1999–2002), Tahun Sidang 2000 Buku Satu* [Minutes of Amendments to the Constitution of the Republic of Indonesia 1945 (1999–2002), Session Year 2000, Book One] (Jakarta: Sekretariat Jenderal MPR-RI, 2008), 112–13 and 535–36.

⁴² Sekretariat Jenderal MPR-RI [General Secretariat of the People's Consultative Assembly of the Republic of Indonesia], *Risalah Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1999–2002), Tahun Sidang 2000 Buku Satu* [Minutes of Amendments to the Constitution of the Republic of Indonesia 1945 (1999–2002), Session Year 2000, Book One], 100.

⁴³ Neha Tripathi and Anubhav Kumar, "The Constitutional Struggle for Religious Freedom: A Comparative Study of India and Indonesia," *Constitutional Review* 8, no. 1 (May 2022): 1–36; Herlambang P. Wiratraman, "Constitutional Struggles," 321.

education by challenging statutory laws before the Constitutional Court. These challenges reflect competing attempts to fix the meaning of constitutional norms within the constitutional order. As previously noted, the Constitutional Court functions as the authoritative interpreter of the constitution, and its decisions represent a moment in which particular interpretations of constitutional rights are institutionalized. From this point, the Court's rulings are not merely applications of pre-existing norms, but outcomes of a process of meaning-making in which competing interpretations are assessed and selectively incorporated.⁴⁴

This judicial role is particularly significant because constitutional texts do not speak for themselves, nor do constitutional norms automatically actualize in social practice. Instead, their meaning must be articulated through interpretive acts that connect abstract constitutional provisions to concrete legal and social contexts.⁴⁵ Article 24C of the Indonesian Constitution empowers the Constitutional Court to conduct judicial review of legislation, thereby positioning the Court as a key site of constitutional struggle where the meaning of rights—including the right to education—is contested and provisionally settled. Consequently, the Court's decisions offer critical insights into how constitutional rights are defined, limited, and transformed through judicial interpretation.

2.3.1. Constitutional Court Decision No. 11-14-21-126 and 136/PUU-VII/2009

In Constitutional Court Decision Nos. 11-14-21-126 and 136/PUU-VII/2009, the Court was confronted with competing articulations of the constitutional right to education, particularly concerning the tension between state responsibility and the involvement of non-state actors in education provision. The Court upheld Article 53(1) of Law No. 20 of 2003 on the National Education System, which states, "*Organizers and/or formal education units established by the government or the community in the form of educational legal entities.*" The Court argued that this article does not absolve the state of its obligation to provide education. It

⁴⁴ Lee Epstein, Olga Shvetsova, and Jack Knight, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law & Society Review* 35, no. 1 (2001): 117–63.

⁴⁵ Fritz Edward Siregar, "Indonesia Constitutional Court Constitutional Interpretation Methodology (2003-2008)," *Constitutional Review* 1, no. 1 (March 2015): 1–27; Simon Butt, "The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?," *Asian Journal of Comparative Law* 14, no. 1 (March 2019): 147–74.

emphasized that the article does not limit access to education, increase education costs, or change the educational paradigm in a way that hinders citizens' right to education, nor does it make education a private good.⁴⁶

The Court also defended Article 12(2)(b) of Law No. 20 of 2003, which allows citizens to participate in education costs. The term “participate” was interpreted by the Court as not diminishing the state's responsibility to cover the costs of education. Instead, it signifies the state's willingness to accept community contributions to education costs, especially when the state cannot fulfill the entire financial burden.⁴⁷ The Court observed that the clause, “*except for students who are exempt from these obligations in accordance with applicable laws and regulations,*” embodies the principle of balance. This ensures equal opportunities for all students by requiring those who can afford to contribute to do so, while exempting those who cannot.⁴⁸

The Court's decision established an equivalence between the right to education and the principles of accessibility, affordability, and state responsibility, while also integrating community involvement as a supportive factor.⁴⁹ The Court prevented a polarization between liberalization and constitutional rights—and thus countered the petitioners' effort to create an antagonism between “public education” and “market-oriented education”—by treating the creation of educational legal entities and cost-sharing arrangements as elements that complement, rather than contradict, state duties.

In order to protect current distinctions within the right to education, the Court simultaneously applied the concept of difference. By emphasizing exemptions for economically disadvantaged pupils, the Court prevented the

⁴⁶ Constitutional Court of the Republic of Indonesia, Decision No. 11-14-21-126 and 136/PUU-VII/2009 regarding the review of Law No. 20 of 2003 on the National Education System and Law No. 9 of 2009 on Educational Legal Entities, 399.

⁴⁷ Constitutional Court of the Republic of Indonesia, Decision No. 11-14-21-126 and 136/PUU-VII/2009 regarding the review of Law No. 20 of 2003 on the National Education System and Law No. 9 of 2009 on Educational Legal Entities, 379.

⁴⁸ Constitutional Court of the Republic of Indonesia, Decision No. 11-14-21-126 and 136/PUU-VII/2009 regarding the review of Law No. 20 of 2003 on the National Education System and Law No. 9 of 2009 on Educational Legal Entities, 139.

⁴⁹ Constitutional Court of the Republic of Indonesia, Decision No. 11-14-21-126 and 136/PUU-VII/2009 regarding the review of Law No. 20 of 2003 on the National Education System and Law No. 9 of 2009 on Educational Legal Entities, 378.

constitutional subjects from being treated equally, making a distinction between those who can and cannot make financial contributions.⁵⁰ The Court was able to balance the necessity to take social and economic variety into account while implementing the right to education with the universality of that right because of this differentiation.

Although the Court's reasoning confirms that legal-entity status and educational autonomy are not intrinsically illegal, it nevertheless highlights a serious internal conflict. The Court acknowledged that financial autonomy presents a risk of encouraging colleges to put income generation ahead of educational accessibility and quality. The possibility for market-based reasoning to conflict with the constitutional requirement of equal educational access is a latent animosity in the Court's view that is highlighted by this compromise.

A temporary definition of the right to education based on shared responsibility was established by the Court's ruling. The state can use society resources without renouncing its constitutional duties, even though it is still the primary duty-bearer. By combining conflicting signifiers—state responsibility, community involvement, affordability, and quality—into a cohesive constitutional narrative, this interpretation temporarily stabilizes the meaning of education while not resolving the constitutional dispute over it. Consequently, this exemplifies constitutional interpretation as a space for discursive struggle where the meaning of rights is negotiated, temporarily fixed, and constantly subject to future challenge.

2.3.2. Constitutional Court Decision No. 111/PUU-X/2012

A major constitutional dispute over the interpretation of the right to education was raised by Constitutional Court Decision No. 111/PUU-X/2012, particularly with regard to the boundary between governmental duty and individual financial burden in higher education. The Court was presented with opposing viewpoints: one saw student loans as a workable way to increase access, while the other

⁵⁰ Constitutional Court of the Republic of Indonesia, Decision No. 11-14-21-126 and 136/PUU-VII/2009 regarding the review of Law No. 20 of 2003 on the National Education System and Law No. 9 of 2009 on Educational Legal Entities, 391–97.

described them as the state's failure to uphold its constitutional duty under Article 31 of the 1945 Constitution.⁵¹

In that decision, the Court created a temporary and conditional framework for the right to education rather than completely rejecting the student loan program.⁵² The Court reaffirmed that interest-free student loans cannot take precedence over the state's fundamental obligation to fund higher education, even though they were temporarily approved as a transitional measure. Discursively, the Court established a connection between social justice, equality, and state accountability and the right to education. As a result, student loans were seen as an additional signal that was inevitably subordinate to these fundamental constitutional obligations.

There is an inherent inconsistency in the Court's reasoning that mentioned above. The Court condemned the normality of burdening people with costs, particularly where such measures threaten to exclude economically disadvantaged populations, while acknowledging the reality of budgetary constraints and policy pragmatism. Importantly, the Court sought to keep the loan system from taking over as the predominant, comprehensive definition of the right to education by requiring subsidies to increase with growing national capacity.

Therefore, the constitutional right to education was temporarily defined as an entitlement subject to progressive realization and the principle of non-retrogression in Decision No. 111/PUU-X/2012. This decision set the limits of permissible state policy even if it did not settle the constitutional dispute over education finance. In particular, the Court reiterated that financial constraints cannot always be used as an excuse to postpone the fulfillment of fundamental rights. As a result, this ruling serves as an example of how judicial interpretation serves as a battlefield for constitutional conflict, where conflicting policy justifications are discussed and ranked according to constitutional norms.

⁵¹ Constitutional Court of the Republic of Indonesia, Decision No. 111/PUU-X/2012 regarding the judicial review of Law No. 12 of 2012 on Higher Education against the 1945 Constitution of the Republic of Indonesia, 122.

⁵² Constitutional Court of the Republic of Indonesia, Decision No. 111/PUU-X/2012 regarding the judicial review of Law No. 12 of 2012 on Higher Education against the 1945 Constitution of the Republic of Indonesia, 126.

2.3.3. Constitutional Court Decision No. 103/PUU-X/2012

In Constitutional Court Decision No. 103/PUU-X/2012, a pivotal issue raised was the establishment of *Perguruan Tinggi Negeri Berbadan Hukum* (PTN-BH), or Public Universities with Legal Entity Status. The petitioners contended that the PTN-BH model potentially enables the state to retreat from its constitutional obligation to provide affordable and equitable education. As autonomous legal entities, PTN-BH institutions are granted broad authority over administrative and financial management, which could open space for the commercialization of higher education and the reduction of direct state funding.⁵³ In this case, the Court re-articulated the meaning of the right to education by positioning university autonomy within a hierarchical constitutional framework in which state responsibility remains primary.⁵⁴

Discursively, the Court rejected the petitioners' attempt to draw a boundary between the constitutional right to education and PTN-BH. The integration of PTN-BH is viewed as an analogous chain connecting autonomy, regulation, and public responsibility rather than an indication of a governmental retreat. According to this interpretation, institutional autonomy is a managerial framework that is constantly subject to state supervision. As a result, the state is constituted as both a guarantor and a regulator, fulfilling its constitutional duty while allowing for the presence of many institutional forms.

At the same time, the Court limited the permissible amount of cost-sharing by applying a differentiation reasoning. The Court upheld limited public support while prohibiting a general application of shifting expenses to students by making a distinction between basic and higher education. By removing unduly onerous financial requirements from the constitutional interpretation of the right to education, this distinction helps to preserve the meaning of accessibility.

Based on this reasoning, the Court tentatively established the right to education as a public utility based on this logic. Although institutional autonomy

⁵³ Constitutional Court of the Republic of Indonesia, Decision No. 103/PUU-X/2012 regarding the review of Law No. 12 of 2012 on Higher Education, 31.

⁵⁴ Constitutional Court of the Republic of Indonesia, Decision No. 103/PUU-X/2012 regarding the review of Law No. 12 of 2012 on Higher Education, 216.

is acknowledged, market logic cannot take precedence over this right. The decision does not eliminate the potential for commercialization; rather, it controls this risk by subjecting institutional autonomy to constitutional goals and regulatory supervision. As a result, Decision No. 103/PUU-X/2012 serves as an example of constitutional interpretation as a contentious arena where conflicting opinions—treating education as an economic endeavor vs a public service—are discussed and ranked in accordance with constitutional norms.

2.4. The Court Decision and the Floating Signifiers in the-Making

The Constitutional Court's decisions demonstrate that there is no clear, consistent definition of the right to education. The Court's decisions alternate between upholding the state's primary responsibility for this right and characterizing it as a shared duty in which citizens are also required to participate. This variation highlights how constitutional rights are contested and changeable, making them difficult to interpret definitively. Tushnet points out that various political and social groups define rights according to their differing ideological commitments, demonstrating that the definitions of rights are not neutral nor widely accepted.⁵⁵

Political disputes and opposing ideologies constantly affect the meaning of constitutional rights, which are neither fixed nor apolitical. Divergent views of rights demonstrate this. Social justice movements, for instance, usually emphasize economic and social rights including housing, healthcare, and education. Market-oriented perspectives, on the other hand, place more emphasis on property rights and freedom from governmental intervention. These variations show how rights are continuously debated within different ideological contexts.

The inherent multiplicity of a single concept, where it holds several, even contradictory, meanings, is a well-established subject in social theory. This notion is consistent with Derrida's concept of "supplementarity," which holds that meaning is dependent on things outside of the text itself rather than being entirely complete or self-sufficient.⁵⁶ As a result, constitutional rights are only

⁵⁵ Mark Tushnet, *The New Constitutional Order* (New Jersey: Princeton University Press, 2003).

⁵⁶ Jacques Derrida, *Of Grammatology* (Baltimore: Johns Hopkins University Press, 1997), 27–73 and 144–49.

meaningful in particular social and political settings. Because of this contextual dependence, many interpretations can coexist at the same time, preventing any one interpretation from ever being definitively closed.

The notion that the social realm is created through discursive formations based on power relations is supported by Foucault's discourse analysis.⁵⁷ As a result, meaning—including that of rights—is produced through ongoing placement and repositioning within discourses that are often precarious and contested. Therefore, the prevailing power structures rather than innate legal reasoning determine the recognized, official interpretation.⁵⁸ When it comes to the right to education, this means that its definition is fluid and varies depending on how it is expressed in institutional, political, and legal contexts.

The essential intellectual framework for understanding the intrinsic instability of constitutional meaning is provided by Laclau's discourse theory. According to this idea, social and political meanings are never set in stone; rather, any stability is always tentative, context-dependent, and changeable.⁵⁹ Therefore, it is important to see constitutional rights—like the right to education—as arenas where competing forces compete to use hegemonic contestation to enforce a fixed interpretation. This situation, which Laclau refers to as a “surplus of meaning,” is crucial for political language because it keeps any one interpretation from becoming totally dominant.⁶⁰ The fundamental fabric of “the social” would become inarticulable without this essential surplus.

After that exploration, it is preferable to think of constitutional rights as “floating signifiers”—words with an abundance of meaning that can be interpreted in a variety of ways. Their importance is dynamically determined by their connections to more expansive areas of discourse rather than being set by the constitutional text.⁶¹ As a result, there is no intrinsic or ultimate meaning

⁵⁷ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings—1972–1977* (New York: Pantheon, 1980), 93.

⁵⁸ Foucault, *Power/Knowledge*, 98.

⁵⁹ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 106.

⁶⁰ Ernesto Laclau, *Emancipation(s)* (London: Verso, 1996), 39.

⁶¹ Ernesto Laclau, “The Impossibility of Society,” *Canadian Journal of Political and Social Theory* 15, no. 1 (May 1983): 22; Ernesto Laclau, “Metaphor and Social Antagonism,” in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (London: MacMillan Education Ltd, 1988), 254.

to rights like the right to education. Rather, their definition is continuously disputed by institutional activities, political pressure, and court decisions. All constitutional rights, which are enmeshed in an ongoing discursive debate, are subject to this flexibility. As a result, constitutional rights should be viewed as discursive creations whose meanings are always changing due to ongoing constitutional struggles rather than as unchanging, permanent promises.

2.5. Floating Signifiers in Constitutional Interpretation: A Double-Edged Sword

To understand floating signifiers' broader importance, especially in the context of Indonesian constitutional court debate, it is first required to comprehend their theoretical underpinnings. According to Laclau, floating signifiers are inherently ambiguous or meaningless, which eventually leads to conflicting forces trying to define and contest them.⁶² Through articulatory activities, where meanings are created using the logic of difference and equivalency, this competition is communicated. These processes are intricately linked to political and ideological conflicts; they are neither impartial nor independent. These articulatory methods are used by many actors to influence how constitutional ideas are interpreted and used in accordance with their own goals and worldviews.

At the center of this process lies what Laclau calls the 'nodal point'—a privileged signifier that temporarily anchors meaning within a discursive formation.⁶³ The nodal point enables the construction of a chain of equivalence among otherwise distinct elements, providing a degree of coherence to the discourse.⁶⁴ Following Jessop (and building on Laclau's insights), we can understand the nodal point as the locus of hegemony: it exercises a discursive power capable of limiting the endless play of meaning by privileging certain

⁶² Ernesto Laclau, *Emancipation(s)*, 53.

⁶³ Ernesto Laclau and Chantal Mouffe, preface to the second edition of *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 2001), xi. For examples, see Georg Glasze, "The Discursive Constitution of a World-Spanning Region and the Role of Empty Signifiers: The Case of Francophonía," *Geopolitics* 12, no. 4 (August 2007): 656–79; Claus Offe, "Governance: An 'Empty Signifier'?", *Constellations* 16, no. 4 (November 2009): 550–62. For Lacan's conceptual framework, see Jacques Lacan, *Écrits: A Selection* (New York: Routledge, 2001), 117; see also Yannis Stavrakakis, *The Lacanian Left: Psychoanalysis, Theory, Politics* (Edinburgh [Edinburgh]: Edinburgh University Press, 2007), 67.

⁶⁴ Damian O'Doherty, "Missing Connexions: The Politics of Airport Expansion in the United Kingdom," *Organization* 22, no. 3 (September 2015): 418–31.

interpretations over others.⁶⁵ Through its hegemonic function, the nodal point suppresses competing meanings and stabilizes a particular interpretation within the field of discourse.⁶⁶

The importance of this framework is found in how it affects constitutional interpretation. By using “nodal points,” judicial interpretation transforms constitutional adjudication into a process that generates and institutionalizes hegemonic meanings rather than a neutral application of legal reason. Therefore, constitutional interpretation has two possible outcomes: either it is exploitative, supporting prevailing ideologies and denying constitutional legitimacy to dissenting claims, or it is emancipatory, expanding protection and inclusion through the rearticulation of rights.

The Court's choice of “nodal points”—such as “state responsibility,” “affordability,” or “public interest”—is very important. This decision essentially establishes which claims are dismissed as excessive or illogical and which are acknowledged as valid constitutional rights. Raising these ideas can either give marginalized people constitutional chances or, on the other hand, use the well-known rhetoric of constitutional balance to defend laws that perpetuate inequality. Therefore, the fundamental question is not whether the Court's interpretation of the Constitution is political, but rather how its decisions define the boundaries of constitutional legitimacy.

2.5.1. Emancipatory Interpretation of Rights

One implication of understanding constitutional rights as floating signifiers is that their interpretation remains open to emancipatory rearticulation, particularly in contexts marked by structural inequality. In this sense, an emancipatory interpretation does not claim that rights inherently liberate marginalized groups, but rather that their meaning can be redefined through contestation within

⁶⁵ Bob Jessop, “Critical Discourse Analysis in Laclau and Mouffe's Post-Marxism,” *Simbiótica: Revista Eletrônica* [Simbiótica: Electronic Journal] 6, no. 2 (2019): 8–30.

⁶⁶ In fact, Laclau himself admitted that the articulatory project was a discursive struggle in which signifiers contested to hegemonize other signifiers, with the result that particular meanings came to stand for the discourse as a whole. See Ernesto Laclau, *Politics and Ideology in Marxist Theory: Capitalism-Fascism-Populism* (London: NLB, 1977).

specific institutional settings.⁶⁷ Rights are thus not treated as fixed or universal truths, but as contingent outcomes of articulatory practices that reflect particular social, historical, and political conditions.

This viewpoint, which focuses on the right to education, shows how constitutional interpretation can either increase or decrease access depending on the precise interpretations the Court sets and articulates. Emancipation-focused interpretations of educational rights change the foundation for seeing claims to education as legally legitimate, but they do not automatically resolve issues of inequality or exclusion.⁶⁸ For example, identifying education as a social right associated with equality and governmental responsibility allows for debates about access, affordability, and nondiscrimination, but it does not ensure that these claims will be completely realized in practice.

This view reimagines rights as potent tools of social change, going beyond the conventional liberal understanding of rights as merely individual guarantees or protections against governmental authority.⁶⁹ According to this approach, rights are active claims rather than passive legal protections. As powerful tools to demand political, economic, and cultural change, these claims enable people and communities to exercise their agency and contest unjust power dynamics. As a result, communities actively shape, use, and assert their rights in their continuous fight for justice rather than just having the state award them.

The emancipatory interpretation of rights aims to contest and dismantle systemic forms of domination—be they political, economic, or cultural. Emancipation, in this context, signifies liberation from these entrenched structures.⁷⁰ Interpreting constitutional rights through this lens is made possible

⁶⁷ Ingolfur Blühdorn, Felix Butzlaff, and Margaret Haderer, "Emancipatory Politics at its Limits? An Introduction," *European Journal of Social Theory* 25, no. 1 (September 2022): 3–25.

⁶⁸ Allan Hutchinson, "The Politics of Constitutional Law: A Critical Approach," in *The Oxford Handbook of the Canadian Constitution*, ed. Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers (Oxford: Oxford University Press, 2017), 989–1006.

⁶⁹ Marco Perolini, "Limited Tools for Emancipation?," *Sociology* 58, no. 2 (July 2024): 386–402, Saori Murakami, "Emancipation Through Human Rights Practice: New Epistemology From Rural West Bengal," in *Human Rights Strategies: Benefits and Drawbacks*, ed. Ingrid Westendorp (London: Edward Elgar, 2024), 197–218; Bertus de Villiers, "Breathing Life into the Constitution: the Transformative Role of Courts to Give a Unique Identity to a Constitution," *Constitutional Review* 9, no. 1 (May 2023): 109–141.

⁷⁰ Mark Tushnet, "Constitution as Recommendation," *Philosophy & Social Criticism* 50, no. 7 (June 2024): 1023–1033.

in part by the role of constitutional courts.⁷¹ The concept of judicial activism, for example, can be understood as a form of counter-hegemonic practice. Through their interpretive authority, courts have the power to reshape the meaning and scope of rights. From this perspective, constitutional courts function not as agents of emancipation per se, but as institutional arenas in which competing articulations of rights are selectively incorporated. Different interpretations of the right to education can be temporarily favored by judicial interpretation, which simultaneously leads to the marginalization of other possible understandings.

However, this study focuses on how the Constitutional Court's interpretation of the right to education determines the boundaries of constitutional legitimacy rather than emancipatory interpretation as a normative goal attained by judicial activism. In particular, it examines which demands are accepted as constitutional claims, which are not, and how the limits of governmental authority are established. This approach accurately demonstrates how constitutional interpretation impacts the arena of battle over access to education in Indonesia by focusing on the discursive creation of educational rights, without exaggerating the real influence of the court.

2.5.2. Exploitative Interpretation of Rights

An exploitative interpretation of constitutional rights is one that corrupts the original intent of these rights to benefit powerful, dominant groups, frequently harming vulnerable or marginalized communities.⁷² This method twists the language of rights to solidify existing hierarchies and justify actions that sustain injustice and oppression. For example, when considering economic rights, exploitation often happens when they are narrowly defined as purely individual duties, instead of collective responsibilities that the state must ensure. Such a perspective serves to perpetuate wealth disparity and undercuts efforts to confront

⁷¹ Mark Tushnet, "Forms of Judicial Review as Expressions of Constitutional Patriotism," *Law and Philosophy* 22, no. 3/4 (July 2003): 353–79.

⁷² Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford: Oxford University Press, 2021), 56–80; Michal Kovalčík, "The Instrumental Abuse of Constitutional Courts: How Populists Can Use Constitutional Courts Against the Opposition," *The International Journal of Human Rights* 26, no. 7 (August 2022): 1160–80; Kevin Y. L. Tan, "Interpreting the Constitution: The Use and Abuse of History," *International Journal of Constitutional Law* 20, no. 5 (December 2022): 1958–81.

systemic oppression and economic injustice. In this light, economic rights lose their power as tools for liberation and are instead transformed into instruments for validating structural inequality.

The selective implementation of constitutional rights, which frequently ignores the intricate historical, social, and cultural realities that determine communities' ability to use them, is an example of an exploitative pattern.⁷³ Interpretations that prioritize rights that support economic interests—such as the right to property or freedom of enterprise—at the expense of social and economic rights, like housing, health care, or education, are blatantly biased. This tendency neglects underprivileged populations in favor of politically and economically dominant elite groups. One obvious example is the privatization of public resources, where the transfer of public assets to private companies is sometimes justified by citing the right to property, hence restricting the general public's access to necessary services.

Discourse theory by Laclau and Mouffe holds that interpretations of rights that favor dominant social groups serve as tactics for upholding hegemony. These exploitative readings effectively repress or marginalize counter-hegemonic calls for justice and equality by purposefully reinforcing a certain "chain of equivalency" that suits the interests of those in positions of power. As a result, rights are conditional tools that can be used to maintain current power arrangements rather than being intrinsically liberated or progressive. As a result, the debate over rights is a contentious arena where different societal forces compete to define the extent and meaning of constitutional provisions. These narratives are usually successfully shaped by people in positions of authority, guaranteeing that the rights framework upholds their authority and advances their own agendas.

Rights are frequently severed from the real, lived experiences of communities, especially the most disadvantaged, by exploitative interpretations. People's material needs and realities are separated from their rights, making them formal

⁷³ Siri Gloppen and Rachel Sieder, "Courts and the Marginalized: Comparative Perspectives," *International Journal of Constitutional Law* 5, no. 2 (April 2007): 183–86.

and abstract. The right to health, for instance, is a fundamental guarantee that often contrasts with the social reality in which unfair policies, such as the commercialization of healthcare, undermine access to care. Due to this discrepancy between the constitution's promise and social reality, rights are reduced to meaningless platitudes and lose their true significance. As a result, the law becomes a tool that legitimizes policies that exacerbate inequality rather than a means of resolving social problems.⁷⁴

It has not been noted that the Indonesian Constitutional Court has officially adopted an exploitative interpretation of constitutional rights. However, there is still room for these interpretations, especially when it comes to indirect or latent judicial reasoning. Essentially, the Indonesian Constitution's normative foundation is based on meeting fundamental human needs and preserving human dignity; it does not support exploitative interpretations. This fundamental idea upholds the Constitution's function as a legal guarantee for the equality and well-being of all people, thereby avoiding the manipulation of rights for the advantage of strong actors. Sukarno, powerfully summarized this ethos with the rhetorical question: "What is the use of a groundwet if it cannot fill the stomachs of those on the verge of starvation?" [*apa guna grondwet itu kalau ia tak dapat mengisi perut orang jang hendak mati kelaparan*].⁷⁵

Constitutional rights, including the right to education, are susceptible to being appropriated by influential parties due to their interpretation as "floating signifiers." This vulnerability is demonstrated by current discussions in which dominant parties employ discursive hegemony to impose their agendas—which frequently coincide with neoliberal or capitalist frameworks—into the definition of the right to education. As a result, these prevailing narratives provide the impression that there is widespread support for constitutional rights, even if they actively uphold exploitative systems.

⁷⁴ Evan Rosevear and Ran Hirschl, "Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities," in *The Legal Protection of Human Rights: Sceptical Essays*, ed. Tom Campbell, K. D. Ewing, and Adam Tomkins (Oxford: Oxford University Press, 2011), 207–28; Rosalind Dixon and Julie Suk, "Liberal Constitutionalism and Economic Inequality," *The University of Chicago Law Review* 85, no. 2 (2018): 369–402.

⁷⁵ Sekretariat Negara Republik Indonesia [Cabinet Secretariat of the Republic of Indonesia], *Himpunan Risalah Sidang-Sidang*, 230–31.

III. CONCLUSION

As demonstrated by the Constitutional Court's interpretations in several decisions, the meaning of the right to education in Indonesian constitutional law is not exclusively determined by the text of the constitution. According to Laclau's discourse theory, this right serves as a floating signifier, with the Court's judicial articulations serving to temporarily stabilize its meaning despite conflicting interpretations in constitutional adjudication. According to this viewpoint, the differences seen in the Court's rulings do not indicate doctrinal failure or inconsistency. Rather, they represent the contingency that is inherent in the meaning of the constitution. Instead of ending contestation, these judicial articulations temporarily define the meaning of the right in certain sociopolitical settings.

This study contends that the Constitutional Court's main responsibility is to define the limits of constitutional intelligibility by considering constitutional interpretation as a site of discursive conflict. This entails figuring out which claims, and under what circumstances, are constitutional rights. Rather than being a normative assessment of the Court's intentions, the analytical distinction between "emancipatory" and "exploitative" readings is a tool to analyze how various judicial articulations either broaden or narrow the scope of potential constitutional claims. Therefore, Indonesian constitutional rights, especially the right to education, are best understood through the prism of Laclau's discourse theory as dynamic results of an ongoing constitutional struggle shaped by judicial articulation within larger political and social dynamics rather than as permanent, static guarantees.

DECLARATION

During the preparation of this manuscript, Grammarly was used exclusively to review and improve the languages in this manuscript. All AI-assisted output was reviewed and revised by the authors. The authors remain fully responsible for the originality, accuracy, and scientific integrity of the manuscript.

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