
The Role of Constitutional Law in the Regulation of Higher Education in Indonesia: Between Academic Freedom and State Control

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Abstract: This research aims to analyse the role of Constitutional Law (HTN) in regulating higher education in Indonesia, especially in maintaining the balance between academic freedom and state supervision. The method used in this research is the normative juridical method, which focuses on the study of legislation related to higher education as well as legal practices applied in Indonesia. The analysis is conducted on Law No. 12/2012 on Higher Education and Law No. 20/2003 on the National Education System, as well as other implementing regulations. The results show that HTN has two main roles in higher education in Indonesia. First, HTN acts as an instrument that regulates and supervises higher education institutions to ensure education remains in accordance with national goals and the basic principles of the state. Second, HTN also serves to protect academic freedom, which is a fundamental right guaranteed by the constitution. However, tensions often arise between the academic freedom that must be protected and state supervision aimed at maintaining the quality of education. In the discussion, it was found that while state supervision is essential to maintain the relevance and quality of higher education, overly restricted academic freedom can stifle innovation and creativity in education. Therefore, wise policies are needed to create a healthy balance between state oversight and academic freedom. Thus, higher education in Indonesia can serve as a means for the nation's progress without sacrificing the freedom of thought that is essential for the development of science.

Keywords: Constitutional Law, Higher Education, Academic Freedom, State Supervision, Education Regulation.

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Introduction

Higher education in Indonesia is regulated by several legal instruments, including Law No. 12/2012 on Higher Education, Law No. 20/2003 on the National Education System, as well as various other implementing regulations (Astomo, 2021). Constitutional Law has an important role in ensuring that higher education policies remain in a corridor that is in accordance with the constitution and basic principles of the state (Asshiddiqie, 2006). One of the issues that most often arises is how to regulate academic freedom guaranteed by the constitution, while on the other hand, the state has an obligation to supervise and control higher education so that it does not deviate from the direction that has been set.

Higher education in Indonesia has a very strategic role in nation building (Humiaty & Budiarti, 2020). As a centre for the development of science, technology, and culture, higher education not only functions as a place to educate the nation's next generation but also as a means to produce solutions to problems faced by society and the state. In this case, Constitutional Law (HTN) plays an equally important role in ensuring that the higher education system in Indonesia can run well, in accordance with the values of Pancasila and the 1945 Constitution of the Republic of Indonesia (Rosidin, 2022).

This research explores the importance of Constitutional Law (HTN) in regulating higher education in Indonesia. Higher education plays a strategic role in building the nation, becoming a centre for the development of science, technology and culture. However, in the context of the Indonesian legal system, the state's role in regulating higher education must maintain a balance between academic freedom and state supervision. These two are often in tension, which demands a cautious approach in the implementation of education policy.

Along with the times, higher education in Indonesia not only functions as an institution to educate the next generation of the nation, but also as a place to produce solutions to problems faced by society and the country (Maryam, 2023). The state, through legal instruments, has a huge role in ensuring that higher education institutions can operate in accordance with the basic principles of the state, as stated in the 1945 Constitution.

Higher education in Indonesia is regulated by various legal instruments, such as Law No. 12/2012 on Higher Education and Law No. 20/2003 on the National Education System. Constitutional Law is present to regulate and supervise higher education institutions in a broader framework, namely to ensure that higher education remains in accordance with the values stated in the constitution, such as Pancasila and the 1945 Constitution (Tutik, 2017). Therefore, the role of HTN in regulating higher education is not only limited to the formation of educational policies, but also involves supervision to ensure the quality of education produced can contribute to the progress of the nation.

On the other hand, academic freedom is a fundamental principle in higher education (Adam & Lanontji, 2021). In this context, academic freedom encompasses the right for lecturers and students to explore, teach, and develop knowledge without any adverse intervention. Academic freedom is key to creating an educational atmosphere that enables intellectual growth and the development of innovative ideas. However, although academic freedom is guaranteed by law, state oversight is still necessary to maintain the quality and relevance of higher education to the needs of society and the state.

At this point, a complex conflict arises between the two principles: academic freedom and state oversight. The state needs to ensure that higher education institutions operate within the proper corridors, but should not intervene excessively so as to limit the scope of academic freedom. This tension is reflected in various policies issued by the government, which sometimes have the potential to threaten academic freedom with restrictions on teaching materials or spaces for academic expression.

In an effort to maintain this balance, this research aims to analyse the role of Constitutional Law in regulating higher education in Indonesia. The main focus of this research is to examine how the state can maintain the quality of higher education without damaging academic freedom, which is an important basis for the development of science and innovation in education. Through the study of various existing education regulations and policies, it is hoped that a wise solution can be found to create a higher education system that is more balanced, fair, and beneficial for the progress of the nation and state. Academic freedom is a basic principle that gives students and lecturers the right to explore, teach, and develop knowledge without any intervention that is not in accordance with the purpose of education itself. However, state supervision is important to maintain the quality of higher education, ensuring that educational institutions are not used for purposes that are contrary to the noble values of the nation. There is an obvious tension between the academic freedom that must be guaranteed in higher education and the state supervision that must be implemented to ensure that higher education does not deviate from the goals of the state. Therefore, this research aims to examine the role of Constitutional Law in regulating higher education in Indonesia, particularly in addressing the conflict between academic freedom and state oversight.

Method

The research method used in this study is the normative juridical method (Nugroho et al., 2020), which focuses on the study of legislation and legal practices related to the regulation of higher education in Indonesia. This approach will be used to explore various existing regulations, and analyse how Constitutional Law plays a role in creating a balance between academic freedom and state supervision. In this research, the data collected will be analysed using a qualitative analysis method based on a normative juridical approach (Tan, 2021). This approach focuses on the study of laws, regulations, and policies related to the regulation of higher education in Indonesia, as well as how Constitutional Law plays its role in creating a balance between academic freedom and state supervision.

Results and Discussion

Results

Constitutional Law and Higher Education in Indonesia

Higher education in Indonesia is part of the national education system regulated by the 1945 Constitution of the Republic of Indonesia, specifically in Article 31 which states that every citizen has the right to education. In addition, Article 28C paragraph (1) of the 1945 Constitution also affirms the right of every person to develop themselves through the fulfilment of basic needs, including higher education.

The role of Constitutional Law in higher education is related to two main aspects: first, as an instrument that regulates and supervises higher education institutions, and second, as a mechanism that ensures academic freedom is maintained (Asshiddiqie, 2006). Constitutional Law in this case serves to establish educational policies that are in line with national goals, guarantee equal access for every citizen, and protect individual rights in the higher education system.

The role of Constitutional Law in higher education in Indonesia is very important, considering that higher education is one of the elements that support nation building through the development of science, technology and culture. Higher education in Indonesia is within the framework of the national education system regulated by the state constitution, especially in the 1945 Constitution of the Republic of Indonesia. Article 31 of the 1945 Constitution stipulates that every citizen has the right to education, which is an important basis for the formation of education policies, including higher education. This reflects the state's commitment to equal access to education for all levels of society.

In addition, Article 28C paragraph (1) of the 1945 Constitution also affirms the right of everyone to develop themselves, including the fulfilment of basic needs, one of which is higher education (Affandi, 2017). In this context, Constitutional Law (HTN) plays a key role in regulating and supervising the implementation of higher education in Indonesia. With clear regulation and strict supervision, HTN ensures that higher education not only benefits individuals, but also makes a significant contribution to the progress of the nation and state.

The first role of HTN in higher education is as an instrument that regulates and supervises higher education institutions. The state through Constitutional Law has the authority to formulate educational policies that refer to broader national goals, such as improving the quality of human resources that can support national development. In this case, existing higher education regulations, such as Law No. 12/2012 on Higher Education, are one concrete example of the application of HTN to regulate the implementation of higher education. This regulation regulates various aspects, ranging from governance, funding, to accreditation of higher education institutions, with the aim of ensuring that the education provided is in accordance with predetermined standards.

In addition, education policies governed by HTN also play a role in ensuring equal access to higher education for all citizens. In this context, HTN serves to address educational disparities

between regions, social and economic groups. Affirmative policies or educational assistance programmes such as scholarships for underprivileged students are examples of the application of HTN that seek to ensure that higher education is accessible to all, without exception. The state is responsible for ensuring that higher education is not only a right for some, but can be enjoyed by all levels of society.

On the other hand, HTN also serves as a mechanism that ensures academic freedom is maintained. Academic freedom is a fundamental right guaranteed by the constitution, which provides space for students and lecturers to explore, teach, and develop knowledge without any unauthorised intervention or restrictions that are not in accordance with the purpose of education itself. In this case, HTN plays a role in ensuring that the education policy implemented does not interfere with the academic freedom that has become the right of every individual in the world of higher education.

The importance of academic freedom is seen in practice, where lecturers and students are given the freedom to think, argue, and work scientifically. This freedom is very important because it will produce innovative and fact-based research and scientific principles that can support the advancement of science and technology. However, this academic freedom must be balanced with supervision by the state to ensure that the world of higher education continues to run in accordance with the values contained in Pancasila and the Constitution of the Republic of Indonesia.

In this context, Constitutional Law serves not only to regulate and supervise higher education institutions, but also to safeguard academic freedom. The state must regulate how this academic freedom is implemented in a corridor that is in accordance with the objectives of national education, without neglecting the supervision needed to maintain the quality and integrity of higher education. Thus, Constitutional Law acts as a bridge between individual freedoms in education and the state's obligation to ensure that higher education continues to operate in accordance with larger national norms and goals.

Therefore, the role of Constitutional Law in higher education in Indonesia is vital, both as an instrument that regulates and supervises higher education institutions, as well as a mechanism that ensures academic freedom is maintained. Through clear regulations and proper supervision, Constitutional Law contributes to creating a higher education system that is quality, inclusive, and in accordance with the basic values of the state.

Academic Freedom in Higher Education

Academic freedom is a fundamental principle in the world of higher education that gives lecturers and students the right to be free in searching, disseminating, and teaching science (Nur, 2022). Academic freedom is reflected in the right to think, argue, and write scientific works in accordance with scientific principles without any threat or pressure from any party. The importance of academic freedom is recognised in various state constitutions, including Indonesia. In the Indonesian context, academic freedom is guaranteed by the 1945 Constitution, which gives citizens the right to obtain quality education free from unauthorised intervention. However, in reality, academic freedom is often in tension with state oversight that wants higher education not to deviate from the outlines of national policy.

Academic freedom is not just the right to express ideas or opinions freely, but also the right to access, study, and advance knowledge without dependence or influence from outside forces, be it the state, political forces, or groups with specific interests (Hidayat, 2022). This is a key cornerstone in the creation of an environment conducive to innovation, scientific discovery, and deep and sustained technological development. In higher education, this freedom allows lecturers and students to criticise various views, conduct in-depth research, and express findings that may contradict prevailing opinions or policies at the time. In addition, academic freedom also means there is room for academics to explore without fear of reprisals or sanctions from the authorities. This provides a foundation for the

development of knowledge and critical thinking that is indispensable in the face of evolving global challenges, such as social change, technological change, and political dynamics.

As part of the government's efforts to direct higher education to remain relevant to the needs of the country, national policies often require supervision of higher education provision. The state, through various regulations and policies, tries to ensure that higher education does not deviate from the corridors set out in national development policies. This is where the tension between academic freedom and state supervision arises. For example, government policies that are too strict in regulating teaching materials, restrictions on the curriculum, or excessive supervision of research conducted in universities, can be considered a threat to academic freedom. Academics, who should be free to develop new ideas and criticise existing policies, often feel constrained by regulations that limit their space.

This is more evident when academic freedom is confronted with political pressure or dominating government interests. In some cases, some higher education institutions even face threats to their academic freedom when the material they teach or the research they publish is deemed to conflict with dominant political or ideological interests. For example, when students or lecturers express criticism of government policies, they often face both direct and indirect pressure, which can take the form of threats to their security or restrictions on their right to freedom of expression.

While academic freedom is important, oversight by the state is equally vital. The state is obliged to ensure that higher education remains directed towards the larger goal of the nation's social, economic and political progress. Therefore, the state must keep higher education institutions operating within legal boundaries, not deviating from national goals, and maintaining the quality of education in accordance with set standards.

However, this supervision must be done very carefully so as not to inhibit academic freedom (Rohmah, 2023). The state must ensure that surveillance does not turn into an excessive form of control, which will ultimately limit academic freedom and kill creativity and the ability to innovate in higher education. Excessive state oversight of academic freedom can also affect the quality of education, hinder the creation of free and open discussion spaces on campus, and reduce the ability of educational institutions to produce critical and creative thinkers. Therefore, a wise policy is needed so that academic freedom can go hand in hand with healthy and constructive supervision.

Academic freedom in Indonesia has a strong legal foundation, but in practice, it still faces challenges in the form of tensions with state supervision (Tampubolon et al., 2023). To keep these two principles in balance, a wise policy is needed, where academic freedom is protected, while the state can also conduct supervision to maintain the quality of higher education. Prudent oversight will not only protect academic freedom, but also ensure that higher education can make a positive contribution to national development and the advancement of science. Academic freedom is recognised in many constitutions and international documents. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has recognised the importance of academic freedom as part of fundamental human rights. In this regard, academic freedom is protected to support free and honest scientific progress, which in turn enriches the intellectual, social and political life of society.

In Indonesia, academic freedom is guaranteed in the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (3) states that "Everyone has the right to develop themselves through the fulfilment of their basic needs, including the right to obtain education (Hsb, 2021)". Meanwhile, Article 31 of the 1945 Constitution affirms the right of every citizen to obtain quality education, which includes the freedom to develop knowledge. Thus, academic freedom is part of the basic rights of every citizen who obtains higher education. However, although academic freedom is guaranteed by the constitution, the reality on the ground often shows a tension between this freedom and the control or

supervision exercised by the state. This particularly arises when academic freedom is deemed to potentially conflict with national interests or prevailing government policies.

State Oversight of Higher Education

State oversight of higher education in Indonesia is not only seen as an administrative endeavour, but also as a means to ensure that the higher education system functions properly, not only for the benefit of certain individuals or educational institutions, but also for the benefit of nation building as a whole (Mustari, 2022). Higher education is a vital sector that is directly related to the social, economic and political progress of a country. Therefore, state oversight has a very important role in maintaining the quality of higher education so that it remains relevant and can contribute to the progress of the country. Normatively, state oversight of higher education is regulated in various laws and regulations, which require higher education institutions to follow established standards and procedures. One of the main objectives of this oversight is to ensure that higher education institutions fulfil the quality standards set by the state. These standards cover various aspects, ranging from the quality of the curriculum, teaching methods, adequate facilities and infrastructure, to the quality of human resources involved in the education process, both lecturers and teaching staff.

State oversight also serves to ensure that higher education is transparent and accountable. This involves oversight of the use of the education budget, management of education facilities, as well as oversight of policies issued by higher education institutions. The state has an obligation to ensure that education funds are used as efficiently as possible and are not misused for the benefit of certain individuals or groups (Melawat, 2022). This oversight is also intended to prevent academic fraud, such as plagiarism or manipulation of exam results, which can undermine the integrity of the higher education system itself. In addition, state oversight is also needed to ensure that higher education can make a positive contribution to national development. The state must ensure that higher education does not only focus on individual development, but also on national development needs, such as the development of science and technology, strengthening global competitiveness, and providing quality human resources who are ready to face global challenges. Therefore, the state's supervision must lead to the achievement of greater educational goals, namely making higher education an effective tool for the progress of the nation and state.

However, state supervision of higher education must be implemented with the precautionary principle and must not be excessive, as this could lead to restrictions on academic freedom. Academic freedom is a fundamental right that must be safeguarded in higher education. Every individual in higher education, be it lecturers or students, has the right to express opinions, explore new ideas, and develop knowledge without unauthorised intervention or restrictions that are not in accordance with scientific principles. Excessive or too strict supervision from the state can have negative effects, one of which is the restriction of space for academic opinion and expression. In the world of higher education, freedom of thought, speech, and scientific action is very important for the advancement of science (Rosnawati et al., 2021). If state surveillance is excessive, especially in terms of restrictions on teaching materials or restrictions on ideas that develop among academics, this can lead to fear of expressing opinions or ideas that differ from government policies or views.

In addition, overly strict supervision can also potentially lead to higher education institutions' dependence on state policies, which in turn can curb creativity and innovation. Higher education should be a free space to experiment, develop new ideas, and address the grand challenges faced by society and the state. Excessive oversight can limit the space for higher education institutions to innovate and be creative in solving society's problems, and hinder the development of research and knowledge orientated towards global progress. For this reason, the state needs to find a balance point in carrying out supervision of higher education. Effective supervision must be able to maintain the quality

of education, prevent abuse of authority, and ensure that higher education can play a maximum role in national development, without sacrificing academic freedom which is the core of the success of the higher education system. The state needs to develop supervisory policies that support and encourage innovation, not limit the space for academics and educational institutions (Girsang et al., 2022) .

Ultimately, state oversight of higher education must be exercised judiciously, while respecting the principle of academic freedom. The state should act as a facilitator that provides space for higher education institutions to develop, while still ensuring that higher education does not deviate from the great goals of the nation, such as creating a smart, creative and globally competitive generation. Thus, proper and proportional state oversight will result in a higher education system that is quality, useful, and able to contribute positively to the progress of the Indonesian nation.

The Conflict Between Academic Freedom and State Surveillance

Higher education regulation in Indonesia faces quite complex challenges in creating a balance between academic freedom and state oversight (Gusti et al., 2023) . These two aspects, despite having seemingly compatible goals, often conflict in their implementation, creating a conflict that needs to be addressed wisely. On the one hand, the state has the right and obligation to oversee that higher education remains on the right track, in accordance with the vision and mission of national development. On the other hand, academic freedom is a fundamental right that must be safeguarded so that higher education is not trapped in interventions that damage the process of developing knowledge.

Academic freedom, which includes the freedom of lecturers and students to access, develop, and disseminate knowledge without pressure or unauthorised interference, is a basic principle in higher education. This concept involves the freedom to think, write, discuss and criticise various phenomena, both in the academic realm and in the socio-political life of society. This freedom is internationally recognised as one of the essential components in creating a healthy and productive educational climate. Academic freedom allows for an open environment for the development of ideas, innovation and creativity, which in turn contributes to the advancement of science and technology. However, the state, as a key stakeholder in educational settings, has a responsibility to ensure that higher education functions within a broader framework, namely for the advancement of the nation and state. The state has an obligation to ensure that educational institutions not only produce quality graduates but also produce knowledge that is relevant to the needs of national development. In this context, state supervision is important to maintain the quality of education and prevent deviations or abuses in the academic world that can harm society or the state.

This is where conflicts often arise. The state needs to supervise the implementation of higher education to keep it on track with national goals. However, excessive or inappropriate supervision can curb academic freedom and damage the academic climate. One obvious example of this conflict is policies that seek to regulate or even restrict teaching materials in the higher education curriculum. The state may try to filter or control certain topics that are deemed controversial or against national policy. While the intention may be to maintain socio-political stability, this move can curb the freedom of thought, discussion and expression that should be at the core of higher education. Furthermore, state intervention in the form of restrictions on academic expression and criticism can also potentially harm academic freedom. In this context, criticism of government policies or socio-political issues relevant to education may be seen as a threat to state power. This can create a fearful atmosphere for academics and students to argue or express ideas that differ from the mainstream view. Ultimately, this can reduce the function of higher education as a place to explore and develop critical ideas that are essential for the advancement of society.

In addition, policies implemented by the state to control academic freedom are sometimes motivated by political interests, which can limit the scope of freedom in various aspects. For example,

the state may restrict topics of research or discussion that are deemed sensitive or risk threatening political stability. These restrictions can create fear among academics to explore new ideas, especially those that may contradict dominant policies or narratives. Ultimately, such policies can hinder the development of knowledge, reduce the diversity of ideas, and narrow the space for innovation in academia.

On the other hand, it is important to remember that oversight intended to maintain the quality of education is not a negative thing if it is done wisely and transparently. The state has a huge role to play in creating high education standards and ensuring that every citizen has equal access to quality education. Appropriately conducted oversight can help improve education quality and create an inclusive and competitive education system. However, this oversight must be done by maintaining the principle of academic freedom so that higher education remains a safe and open space for the development of knowledge without fear of excessive intervention. Therefore, to resolve this conflict, a policy that is sensitive to the needs of both parties: academic freedom and state supervision is needed. The state must be able to create regulations that maintain the quality of education without compromising freedom of thought and opinion. The government also needs to encourage dialogue between educational institutions and related parties in order to create a better understanding of the limits and scope of academic freedom that must be maintained. Thus, higher education can continue to develop in accordance with the needs of the times and make a maximum contribution to the progress of the nation.

The Role of Regulation in Governing Higher Education

The role of regulations in governing higher education in Indonesia is very important because it serves to maintain the direction and quality of education, as well as ensuring that higher education institutions operate in accordance with the basic principles set by the state (Mustari, 2022). These regulations not only aim to provide guidelines for the implementation of education, but also to monitor and ensure that higher education remains relevant to the times and national needs. Some of the main regulations governing higher education in Indonesia include Law No. 12/2012 on Higher Education and Law No. 20/2003 on the National Education System. These two laws provide a clear legal framework for the purpose, structure and implementation of higher education in Indonesia. Law No. 12/2012, for example, regulates various important aspects, ranging from the rights and obligations of learners, educators, to the implementation of higher education which includes regulations on higher education providers, study programmes, accreditation, and the quality of education that must be maintained. Law No. 20 Year 2003, on the other hand, provides a broader legal basis for the national education system, of which higher education is a part.

In addition to these two main laws, there are also various implementing regulations such as Government Regulations, Presidential Decrees, and policies issued by the Ministry of Education and Culture that specifically regulate the implementation details of these laws. For example, Government Regulation No. 4/2014 on the Implementation of Higher Education regulates matters related to the implementation of education, the opening of new study programmes, and provisions regarding higher education institutions. Presidential Decrees and policies from the Ministry of Education and Culture also provide more technical direction regarding the implementation of higher education in Indonesia, such as accreditation policies, lecturer certification, and higher education financing. However, while these regulations are important for maintaining quality and transparency in higher education, there are major challenges associated with the implementation of overly restrictive regulations. Strict restrictions, although designed to ensure the quality of education and prevent irregularities, often have a negative impact on academic freedom, which is a fundamental principle in higher education. For example, overly strict regulation of the curriculum or the material that can be taught can limit the space

for lecturers and students to develop new ideas or explore topics that are critical and relevant to the needs of the times. This can reduce creativity and innovation in higher education, which is actually very important for the development of science and technology.

On the other hand, excessive academic freedom without adequate supervision could also risk reducing the quality of education, by allowing irregularities to emerge that could harm the national interest. Therefore, regulation in higher education must be carefully managed to create a balance between healthy oversight and unfettered academic freedom. Regulations also need to include flexible restrictions, which not only view education as a mere administrative process, but also as a space for scientific development and intellectual progress. For example, regulations on the evaluation and accreditation of higher education institutions should be designed in such a way that they encourage educational institutions to continuously improve their quality without getting bogged down in burdensome administrative routines.

Therefore, it is important for the government and related institutions to continuously evaluate and adjust existing regulations in order to create a higher education system that is responsive to global challenges and community needs. Higher education policy in Indonesia must be able to maintain quality standards, but also provide sufficient space for lecturers, students and educational institutions to develop and innovate. In order for higher education regulation not to limit academic freedom, there needs to be a deep understanding of the concept of education that is oriented towards the development of individual potential. Thus, the regulation of higher education in Indonesia can serve to ensure higher education that is quality, inclusive, and can contribute significantly to the progress of the nation, without sacrificing academic freedom, which is one of the basic principles that cannot be negotiated

Conclusion

Constitutional Law (HTN) plays an important role in regulating higher education in Indonesia. HTN serves as an instrument to supervise higher education institutions, ensure academic freedom is maintained, and guarantee the quality of education in accordance with the values of the state constitution. While academic freedom is a fundamental right that must be safeguarded, state oversight is still needed to ensure higher education can contribute to national development. However, there is a tension between these two aspects, where excessive state policy risks limiting academic freedom. Therefore, prudent policies are needed to maintain the balance between academic freedom and state oversight. The government should develop regulations that are flexible and responsive to global challenges, allowing room for innovation without compromising the quality of education. Through this approach, higher education in Indonesia can remain an effective tool in achieving the nation's social, economic and political progress.

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