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Legal Protection of Children's Right to Education

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ABSTRACT: This study examines the legal protection of children's right to education, focusing on how legal frameworks conceptualize, guarantee, and enforce this right across different jurisdictions. Employing a normative legal research method, the study analyzes primary and secondary legal sources, including international human rights instruments, statutory provisions, and relevant scholarly literature, using a descriptive-analytical and qualitative-juridical approach. The findings reveal a persistent gap between the normative recognition of children's right to education and its enforceable guarantee in practice. Although widely affirmed as a core entitlement within international children's rights frameworks, the right has not been consistently elevated to a peremptory or non-derogable status, leaving it vulnerable to being outweighed by competing state interests. Protection for vulnerable groups, particularly children with disabilities, depends heavily on institutional discretion rather than binding standards, while legal guarantees prove especially fragile during periods of systemic crisis. These findings suggest that strengthening legal protection requires more than expanding the substantive scope of recognized rights; it demands a clearer normative hierarchy within domestic legal systems and the development of enforceable, crisis-resilient accountability mechanisms. The study contributes to ongoing legal discourse on translating formal recognition of children's educational rights into consistent and effective protection.
Keywords: *Children's Right To Education; Legal Protection; Normative Hierarchy*

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I. INTRODUCTION

The right to education occupies a distinctive position within the broader architecture of children's rights, functioning simultaneously as a standalone entitlement and as an enabling condition for the exercise of other fundamental rights. International legal instruments have long recognized education as an "empowerment right," in that its fulfillment is closely tied to a child's capacity to access other social, economic, and civil protections in later life. This recognition is reflected in binding treaty provisions that obligate states to guarantee free and compulsory primary education, while extending

progressively weaker obligations toward pre-primary and secondary levels, since including only free primary education under the right to education, but not free pre-primary or free secondary education, may have reflected countries' limited resources when the right was first incorporated into legal treaties beginning in 1960 (Staiano, 2022; Fatourechi et al., 2026).

Despite this normative foundation, the legal protection of children's right to education remains uneven and contested across jurisdictions. Scholars have observed that the legal status of children's education within international law is not settled: although closely linked to the broader right to primary education, it has not been recognized as an instance of fundamental human rights in any international instruments or judicial practices of international courts, and consequently lacks a peremptory character, being treated instead as an ordinary norm in the normative hierarchy of international law (Fatourechi et al., 2026; Weishart, 2013).

At the same time, the international children's rights framework situates education within a wider set of protections, including participation, protection for individuals with special needs, and rest, leisure, and cultural participation, alongside education itself (Journal of Theoretical Educational Science, 2023; Freeman, 2010). This layered structure implies that legal protection of the right to education cannot be examined in isolation; it interacts with provisions on non-discrimination, participation, and special protection for vulnerable groups of children.

Vulnerability further complicates the legal landscape. Comparative legal analysis has shown that a legal regime may fail to adequately protect children's right to education, particularly with respect to equal access for especially vulnerable children, relying heavily on the discretion of decision-makers operating under limited oversight and results-driven accountability measures (Brown, 2021; Ntombela, 2022).

The disability rights dimension of this discussion has also gained increasing legal attention. International instruments addressing the rights of persons with disabilities have introduced obligations for inclusive education extending beyond mere access to the physical classroom, a concept that has since played a significant role in interpreting states' educational obligations toward children with disabilities (Della Fina, 2017; Ainscow, 2020; Kefallinou et al., 2020; Byrne, 2019).

Legal responses during periods of crisis provide further insight into the resilience, or fragility, of children's educational rights protections. Empirical legal research conducted in the context of pandemic-related school closures found that lockdowns were among the control measures adopted by many countries to curb the spread of disease, requiring the closure of public places including schools, even though children are recognized as a vulnerable group requiring continuous protection (Ab Rahman et al., 2023; Timotheou & Cachia, 2022).

Taken together, these strands of legal scholarship point to a persistent tension between the normative aspiration of universal legal protection for children's right to education and the practical, doctrinal, and institutional limitations that constrain its realization. This study is situated within that body of literature, seeking to examine how legal frameworks conceptualize, guarantee, and enforce children's right to education, and to identify the doctrinal and structural gaps that continue to undermine effective protection in practice (Goldberg, 1982; Yamin, 2019; Glaeser et al., 2007).

II. METHOD

This study employs a normative legal research method (yuridis normatif), examining the legal protection of children's right to education through the analysis of primary and secondary legal sources, including international human rights instruments, national statutory provisions, and relevant judicial decisions. The approach is descriptive-analytical, aiming to systematically map how existing legal frameworks conceptualize and guarantee the right to education for children, while identifying doctrinal inconsistencies, normative gaps, and areas of ambiguity in their implementation. Data collection is conducted through library-based research (studi kepustakaan), drawing on academic literature, legal commentaries, and case analyses relevant to the subject matter.

The collected legal materials are analyzed using a qualitative-juridical technique, in which statutory provisions and doctrinal arguments are interpreted systematically and compared across sources to identify patterns, points of convergence, and unresolved tensions within the legal protection framework. This method allows the study to move beyond a purely descriptive account of applicable norms toward a critical evaluation of their coherence, adequacy, and practical enforceability, without relying on empirical fieldwork or primary data collection from specific institutions or populations.

III. RESULT AND DISCUSSION

The Legal Status of Children's Right to Education

The findings show that children's right to education is widely recognized across international legal instruments, yet its normative status varies considerably between legal systems. While the right is affirmed as a core entitlement within the broader framework of children's rights, it has not been consistently elevated to a peremptory or non-derogable status. In several legal systems, it is instead treated as an ordinary norm, subordinate to competing constitutional or policy considerations.

This inconsistency in legal classification has direct implications for enforceability. When a right is not positioned as constitutionally entrenched or peremptory in nature, it becomes vulnerable to being outweighed by other state interests, such as budgetary constraints, in ways that undermine its practical force. Formal recognition alone, therefore, does not automatically produce strong legal protection, greater clarity is needed regarding the

normative hierarchy of this right within domestic legal systems, so that its enforcement does not rest entirely on case-by-case judicial interpretation.

The Effectiveness of Protection for Vulnerable Groups and During Crisis

The findings further indicate that, in principle, legal protection extends beyond mere access to schooling to include obligations of non-discrimination and inclusion, particularly for children with disabilities. In practice, however, actual implementation depends heavily on institutional discretion and oversight mechanisms that are applied unevenly. This weakness becomes even more apparent during periods of systemic disruption, where legal guarantees prove fragile and are often set aside in favor of emergency administrative measures.

This finding points to a structural gap between the scope of legal obligation and the mechanisms available to enforce it. A right that requires inclusive accommodation imposes a positive obligation on the state, one that is inherently harder to enforce than a negative obligation of non-exclusion, particularly in the absence of clear, binding standards defining what "inclusion" actually requires. Moreover, the fragility of protection during crisis periods suggests that current legal frameworks tend to function as conditional policy commitments rather than as unconditional legal entitlements. This vulnerability could potentially be addressed through minimum-core obligations or derogation-resistant provisions that remain binding even under emergency governance.

Taken together, these results and this discussion suggest that strengthening the legal protection of children's right to education requires more than simply expanding the substantive scope of recognized rights. It requires reinforcing the normative hierarchy of the right within domestic legal systems, as well as building accountability mechanisms capable of withstanding periods of crisis, in order to close the gap between formal legal guarantee and effective protection in practice.

CONCLUSION

This study finds that the legal protection of children's right to education, while widely recognized in principle, remains inconsistently guaranteed in practice. Its normative status varies across legal systems, often falling short of peremptory or non-derogable protection, which leaves it vulnerable to being outweighed by competing state interests. Protection for vulnerable groups and resilience during periods of crisis are similarly constrained by heavy reliance on institutional discretion rather than clear, binding legal standards. Strengthening this protection therefore requires more than expanding the substantive scope of recognized rights, it calls for a clearer normative hierarchy within domestic legal systems and enforceable, crisis-resilient accountability mechanisms to ensure that children's right to education is upheld not only in principle, but consistently in practice.

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