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The Existence of Provincial Regulations and Special Regional Regulations as Legal Products in Fulfilling Education Access for the Community in Papua

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Abstract: Education is a basic right of every human being that must be fulfilled by the state. Apart from being a basic right, education is also a basic aspect in ensuring the survival of the nation and state. The aim of this research is to determine the synchronization, both vertically and horizontally, of the existence of Perdasi Number 2 of 2013 and Perdasi Number 3 of 2013 and to determine the effectiveness (effectiveness) of implementing Perdasi Number 2 of 2013 and Perdasi Number 3 of 2013 in the community. The approach used in this research is a normative juridical approach, normative juridical is intended to examine problems related to Perdasi Number 2 of 2013, and Perdasi Number 3 of 2013, using document studies of statutory regulations and sharing policies related to the main issues related matters and reports on the results of various meetings including Focus Group Discussions (FGD). The results of this research reveal that the Provincial and Regency Governments provide the widest possible opportunities to religious institutions, non-governmental organizations and the business world that meet the requirements in accordance with statutory provisions to develop and provide quality education. To support the continuity of the implementation of education services provided by the community, the provincial and district governments are required to provide assistance and/or subsidies to the organizers. Provincial, Regency/City Governments have waived and reduced educational costs, especially for OAP, in the form of giving cash to students who are received every third of the month, as well as providing domestic and international scholarships, but this funding has not had a significant effect in increasing the quality of students, due to the absence of supervision/assistance from the local government, or supervision carried out but not optimally, so that there are students or students who fail in pursuing their education.

Keyword: Existence, Provincial Regional Regulations, Special Regional Regulations, Legal Products, Education in Papua.

INTRODUCTION

Education is a basic right of every human being that must be fulfilled by the state. Apart from being a basic right, education is also a basic aspect in ensuring the survival of the nation and state. For this reason, guaranteeing citizens' rights to education in a country is

an absolute need that must be fulfilled, therefore guarantees for citizens' rights to education are regulated in the constitution. Indonesia as a legal state is determined to make the lives of its citizens intelligent, providing guarantees for the fulfillment of citizen education in the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia).

In Article 31 of the 1945 Constitution of the Republic of Indonesia, it regulates the state's determination to guarantee the fulfillment of education that must be fulfilled by the state for its citizens, namely: every citizen has the right to receive education and is obliged to attend basic education and the Government, for this reason, the Government is obliged to pay for it. In order to fulfill these obligations, the state prioritizes an education budget of at least 20% (twenty percent) of the state revenue and expenditure budget as well as regional revenue and expenditure budgets.

The fourth amendment to Article 31 of the 1945 Constitution of the Republic of Indonesia is further elaborated in Law Number 20 of 2003 concerning the National Education System (UU Number 20 of 2003). Article 1 number 1 of Law Number 20 of 2003, states that education is a conscious and planned effort to create a learning atmosphere and learning process so that students actively develop their potential to have religious spiritual strength, self-control, personality, intelligence, noble morals, and skills needed by himself, society, nation and state.

It is hoped that the existence of Law Number 20 of 2003 will guarantee the development of education in Indonesia. Many hopes are pinned on this law, including the compulsory education program which was originally 9 (nine) years becoming 12 (twelve) years of compulsory education, improving teacher welfare, meeting the needs of teachers at the basic education level (Primary/Primary School, and School Junior High School (SMP) or equivalent up to secondary education (SMA) or equivalent, fulfillment of infrastructure and the existence of restrictions related to education budget allocation of 20% (twenty percent).

In the context of Papua, hopes are placed on Law Number 21 of 2001 concerning Special Autonomy for Papua Province (UU No. 21 of 2001). Law Number 21 of 2001 is a means for the Government to realize prosperity for the Papuan people, especially Indigenous Papuans. Welfare does not mean fulfilling their material and spiritual needs, but rather the empowerment aspect, namely that the Government is obliged to create opportunities for the Papuan people to shape their own future, in accordance with what they aspire to, as stated in the General Explanation section of Law no. 21 of 2001, that: "The granting of Special Autonomy to the Papua Province is intended to realize justice, uphold the supremacy of law, respect for human rights, accelerate economic development, increase the welfare and progress of the Papuan people, in the context of equality and balance with the progress of other provinces."

To accelerate the realization of the welfare of the Papuan people, in the preamble section considering letter g, it is regulated: "that in order to reduce the gap between Papua Province and other Provinces, and improve the standard of living of the people in Papua Province, as well as provide opportunities for the indigenous Papuan population, it is necessary to have policies specifically within the framework of the Unitary State of the Republic of Indonesia". This means that in implementing development and governance in Papua Province, opportunities are given for special policies or affirmative action (special treatment) for the Papuan people to increase their capacity so that in a short time they can be the same as other communities in Indonesia.

Legal principles are the main basis for forming legislative regulations, so that the resulting legislative regulations can be in accordance with legal ideals and community needs (Satjipto Raharjdo, 2007). Legal principles are not concrete legal norms, but rather the basic rules that form the background for the birth of concrete legal norms and the implementation of the law. Legal principles are generally used when there is a conflict or conflict of norms.

The position of principles in the process of forming legislative regulations is as a basis or guide/direction, as stated by Sudikno Mertokusumo that legal principles are not concrete laws but rather general and abstract basic thoughts or are the background of concrete regulations contained in and behind every legal system. as manifested in statutory regulations and judges' decisions (Sudikno Mertokusumo, 2007).

Regional Regulations are a form of statutory regulations and an integral part of the legal framework of laws and regulations in Indonesia. The term "legislative regulations" includes the substance of the meaning of the word legislation as a product of state legislature in Indonesia in the form of laws and regional regulations as well as regulations which have the equivalent meaning of implementing regulations. The character of legal norms contained in legislation is general in nature (*algemene strekking*) which regulates the relationship between the people and government institutions. The general nature of statutory regulations not only concerns the legal subjects subject to regulation which are indeed non-individual in nature, but also concerns the scope: space, time and legal facts.

Legal rules outlined in the form of regional regulations or decisions (such as Presidential Decrees, Ministerial Decrees, Governor Decrees or Regent/Mayor Decrees) can be categorized as statutory regulations, if the legal norms are at the *regeling* level and not *beschikking*.

The opportunity for this affirmative policy is regulated in Article 56 of Law Number 21 of 2001, which requires the Provincial Government to be responsible for the implementation of education at all levels, pathways and types of education in Papua Province, while the Government's obligation is only to establish general policies regarding higher education autonomy, core curriculum, and quality standards at all levels, pathways and types of education as implementation guidelines for higher education leaders and the Provincial Government.

As a follow-up to the affirmation policy in accordance with the mandate of Law no. 21 of 2001, the Papua Provincial Government promulgated Provincial Regulation Number 5 of 2006 concerning Educational Development in Papua Province (Perdasi Number 5 of 2006). This Perdasi regulates the implementation of secondary education as a level of education which is organized by the Provincial Government, while the Regency/City Government organizes basic education. This is different from the regulations in Law Number 20 of 2003 which gives the authority to administer primary and secondary education to the Regency/City Government, while the Provincial Government only carries out coordination.

Improvements to Perdasi Number 5 of 2006 were carried out through Provincial Regional Regulation Number 2 of 2013 concerning the Implementation of Education (Perdasi Number 2 of 2013) as well as promulgating Perdasus Number 3 of 2013 concerning Education Services for Remote Indigenous Communities (Perdasus Number 3 of 2013). Educational services based on Perdasi Number 2 of 2013 and Perdasus No. 3 of 2013 are primarily aimed at indigenous Papuans who live in areas that still experience high levels of geographic difficulty, so that the reach of educational services using normal standards is difficult (Misdyanti, 1993).

The legal instruments as stated above are government/regional government efforts to develop education in Papua Province, but even though many breakthroughs have been made, in reality Papua Province's Human Development Index (HDI) ranking is still the lowest compared to other provinces in Indonesia, namely from 34 provinces, Papua Province was ranked last, namely 34th with a score of 60.62 (Papua Province Central Statistics Agency, 2021).

METHOD

The approach used in this research is a normative juridical approach (Peter Mahmud Marzuki, 2005), normative juridical is intended to examine problems related to Perdasi Number 2 of 2013, and Perdasi Number 3 of 2013, using document studies of statutory regulations and sharing policies -policies relating to related issues and reports on the results of various meetings including Focus Group Discussions (FGD).

RESULTS AND DISCUSSION

The authority for education management is in accordance with national laws and regulations which are constantly changing, and in their implementation this creates problems, especially in the administrative aspects of implementation (such as employees and assets that have not yet been organized/included as part of the regional employees/assets concerned, but have changed management). Changes in the management of this authority can be seen in the implementation of secondary education, which was originally the authority of the district/city government in accordance with Law Number 20 of 2003, but with the promulgation of Law Number 23 of 2014 it moved to provincial authority. The implementation of this authority in Papua Province only became effective in 2018, this is also carried out by districts/cities through co-administration tasks.

The population's right to obtain quality education and training in accordance with their interests, talents and abilities, up to the level of higher education has not been fully realized, as the results of FGD activities show, there are still residents who have not had access to education, especially quality education. This is due to the fact that there are still many obstacles found, including incomplete textbooks, the existing books, especially for the early classes, are not yet based on local wisdom, the absence of teaching staff (the number is insufficient, and teachers are absent), the competence of teaching staff and educational staff has not been fulfilled, limited infrastructure (incomplete school space for teaching staff and educational staff, lack of adequate laboratories, libraries and other supporting infrastructure), and there are still differences regarding the appropriate curriculum, especially in Merauke Regency. Likewise, scholarships for students have not been fully implemented, due to budget limitations.

Perdasi Number 2 of 2013, and Perdasus Number 3 of 2013 are legal instruments formed within the framework of implementing special authority based on Law Number 21 of 2001, which aims to provide guidelines regarding educational development for provinces and districts/cities in Papua Province.

Law Number 32 of 2014 was subsequently revoked and replaced with Law Number 23 of 2014 concerning Regional Government which actually placed the authority for managing secondary education under provincial authority. Apart from that, until now Law Number 20 of 2003 has not been revoked, so regarding matters that do not conflict with the substance of Law Number 23 of 2014, Law Number 20 of 2003 is still used as a reference. Meanwhile, national education standards have also undergone several changes, namely Government Regulation Number 19 of 2005 concerning National Education Standards, Government Regulation Number 32 of 2013 concerning Amendments to Government Regulation Number 19 of 2005 concerning National Education Standards, Government Regulation Number 13 of 2005 2015 concerning the Second Amendment to Government Regulation Number 19 of 2005 concerning National Education Standards.

The Government Regulation concerning National Education Standards was subsequently revoked and replaced with Government Regulation Number 57 of 2021 concerning National Education Standards, which was amended by Government Regulation Number 4 of 2022 concerning amendments to Government Regulation Number 57 of 2021 concerning National Education Standards.

The rapid development of education management has of course had an impact on Perdasi Number 2 of 2013, and Perdasus Number 3 of 2013, which were drafted during the enactment of Law Number 20 of 2003, Law Number 32 of 2004 Jo. PP Number 38 of 2007. Apart from these statutory regulations, other statutory regulations which form the legal basis for the formation of Perdasi/Perdasus have undergone changes, namely Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua which has been most recently amended by Law -Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 which has also been elaborated in Government Regulation Number 106 of 2021 concerning Authority and Institutions for Implementing the Special Autonomy Policy for the Province of Papua and Government Regulation Number 107 concerning Acceptance, Management, Supervision, and the Master Plan for the Acceleration of Development in the Context of Implementing Special Autonomy for Papua Province.

Other laws that have also undergone changes are Law Number 12 of 2011 concerning the Establishment of Legislative Regulations which have been amended, most recently with Law Number 13 of 2022 concerning the Second Amendment to Law Number 21 of 2001, Law Law Number 12 of 2011 concerning the Formation of Legislation. Thus, many legal instruments above the Perdasi/Perdasus are subject to change or are revoked, which will of course have implications for the substance of the Perdasi/Perdasus.

The goal to be achieved through educational arrangements is to develop and prepare indigenous Papuans and Papuans who are qualified in science and faith, as well as capable, creative, independent and healthy. This means that the targets are not only native Papuans, but also residents of Papua Province. This is in line with the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 20 of 2003, Law Number 23 of 2014 and other related laws and regulations which provide educational guarantees for citizens of the Republic of Indonesia. There are regulations aimed at indigenous Papuans, because it is realized that there are still many indigenous Papuans who do not have access to education.

The regulatory principle of the Perdasi gives priority to indigenous Papuans, while still providing space for the population. This is in line with the regulatory objectives of the Perdasi as stated above. Favoring indigenous Papuans does not conflict with the guarantee of citizens' right to education as regulated in Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, that "every citizen has the right to education". This arrangement does not conflict with the principles of organizing education as regulated in Article 4 paragraph (1) of Law Number 20 of 2003, namely that education must be carried out in a non-discriminatory manner.

The existence of education that prioritizes native Papuans is in line with Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely "everyone has the right to receive convenience and special treatment to obtain the same opportunities and benefits, in order to achieve equality and justice". On this basis, Denny Indrayana stated that "in order to be fair, sometimes the law must be applied in a discriminatory manner" (Janedjri M. Gaffar, 2021).

In Article 56 paragraph (1) Law Number 21 of 2001 regulates that "The Provincial Government is responsible for the implementation of education at all levels, pathways and types of education in Papua Province". Paragraph (3) Every resident of Papua Province has the right to obtain quality education up to secondary school level with the lowest possible burden on society. Even the direction of paragraph (5) is that the implementation of this paragraph is further regulated by Perdasi.

The facilities and infrastructure in the Perdasi are a further elaboration of Law Number 20 of 2003, therefore they are in line. The brief explanation of infrastructure facilities above is based on the idea that the authority for education management lies with the district/city, so the authority to elaborate further in the legal instruments below is the district/city, unfortunately this is not delegated expressly.

However, with the stipulation of Government Regulation Number 57 of 2021 concerning National Education Standards (PP Number 57 of 2021 which is a follow-up to Law Number 23 of 2014, in Article 25, it regulates that: "Facilities and infrastructure standards are the minimum criteria for facilities and infrastructure that must be available to the Education Unit in the implementation of education." Facilities are defined as everything that can be used as tools and equipment to achieve learning objectives, while infrastructure is the basic facilities needed to carry out the functions of the Education Unit. Standard facilities and infrastructure must: 1) support the implementation active, creative, collaborative, fun and effective learning; 2) guarantee security, health and safety; 3) friendly towards people with disabilities; and 4) friendly towards environmental sustainability.

The authority to carry out evaluations in Law Number 20 of 2003 is not clearly divided, it only states that evaluations are carried out by the government and regional governments. This means that evaluations are carried out according to their respective authorities. This means that higher education is carried out by the central government, and primary and secondary education is carried out by district/city governments. If so, then the formulation of the *Perdasi* which places evaluations to be carried out by the provincial government is in conflict with Law Number 20 of 2003. If we look closely at the differences in regulations, this is due to the translation of provincial authority not only based on Law Number 20 of 2003, but also based on Law Number 21 of 2003. 2001 which placed authority in the provinces.

Another drawback is that evaluation is only translated to the curriculum, even though according to Law Number 20 of 2003, evaluation includes students, institutions and educational programs, and is carried out in formal and non-formal channels for all levels, units and types of education.

The provisions in the *Perdasi* above conflict with Law Number 20 of 2003 Jo. Regulation of the Minister of Education and Culture of the Republic of Indonesia Number 13 of 2018 concerning the National Accreditation Body for Schools/Madrasahs and the National Accreditation Body for Early Childhood Education and Non-formal Education (Permen Number 13 of 2018), because in accordance with Ministerial Regulation Number 13 of 2018, accreditation of programs and units education must be carried out by BAN-S/M (National Accreditation Board for Schools/Madrasahs, namely an independent evaluation body that determines the suitability of educational units at the basic education level and formal secondary education by referring to national education standards) assisted by the Provincial BAN-S/M (Accreditation Body National School/Madrasah Province, namely a non-structural evaluation body at the provincial level which assists BAN-S/M in implementing Accreditation); and BAN PAUD and PNF (National Accreditation Board for Early Childhood Education and Non-formal Education, namely an independent evaluation body that determines the suitability of early childhood education and non-formal education units by referring to national education standards) assisted by BAN PAUD and Provincial PNF (National Education Accreditation Board Early Childhood and Provincial Non-formal Education is a non-structural evaluation body at the provincial level that assists BAN PAUD and PNF in implementing Accreditation).

Perdasi Number 3 of 2013 is specifically aimed at OAP, however its principles are in line with Law no. 20 of 2003, that the implementation of education is carried out according to the principles:

1. democratically and fairly and non-discriminatorily by upholding human rights, religious values, cultural values and national pluralism;
2. as a systemic unit with an open and multi-meaning system;
3. as a process of cultivating and empowering students that lasts throughout life;
4. by providing an example, building will, and developing students' creativity in the learning process;

5. by developing a culture of reading, writing and arithmetic for all members of society; And
6. by empowering all components of society through participation in the implementation and control of the quality of educational services.

Apart from that, according to Perdasus 48 of 2003, the Provincial Government and Regency/City Government are obliged to provide assistance and/or subsidies to education providers organized by the community. Furthermore, PP 106 of 2021 states the obligations of the provincial government and district/city governments:

1. allocate an education budget up to higher education level for Indigenous Papuans;
2. provide education units;
3. educational facilities and infrastructure; educators and education personnel;
4. as well as ensuring the welfare and safety of educators and education staff.

In developing and providing education, the Provincial Government and Regency Government provide the widest possible opportunities to religious institutions, non-governmental organizations and the business world that meet the requirements in accordance with the provisions of statutory regulations to develop and provide quality education. To support the continuity of the implementation of education services provided by the community, the provincial and district governments are required to provide assistance and/or subsidies to the organizers.

Education funding has been carried out in accordance with Perdasi directions, namely that it is not provided to finance official education. Meanwhile, for the implementation of education organized by the community, the Regional Government has provided assistance, especially for non-formal education.

Provincial, Regency/City Governments have waived and reduced education costs, especially for OAP, in the form of giving cash to students who are accepted every three months, as well as providing domestic and international scholarships, but this funding has not had a significant impact on improving the quality of students, due to the absence of supervision/assistance from the local government, or supervision carried out but not optimally, so that there are students or students who fail in pursuing their education.

Merauke Regency has issued Merauke Regent Regulation Number 9 of 2017 concerning Providing Scholarships and Educational Assistance for Merauke Regency Students, however its implementation as stated in the FGD is not yet in accordance with available job vacancies. Another district that also promulgated a Regional Regulation regarding reducing education costs is Teluk Bintuni Regency, through the Teluk Bintuni Regency Regional Regulation Number 3 of 2020 concerning Educational Operational Assistance, the allocation of funds provided by the Regional Government to public/private schools based on the number of students sourced from the APBD.

The welfare of educators and education staff in districts/cities is still inadequate, this can be seen by the shift in authority for managing secondary education from the province to the district/city, which has been protested by many educators and education staff. The reasons include that as provincial employees, they receive a large "Income Improvement Allowance (TPP)", compared to those in their home district/city.

Welfare guarantees for educators and education staff who work in special areas or remote and isolated areas have not been properly considered, especially the suitability of housing, internet, clean water, lighting, transportation costs to and from their place of duty when carrying out their duties, and the availability of materials. food. Moreover, the implementation of the Perdasi directive regarding assistance with education costs for teaching and education staff who are continuing their education to a higher level.

CONCLUSION

The existence of Perdasi Number 2 of 2013, and Perdasus Number 2013 is related to the development and dynamics of the laws and regulations that were issued after the

enactment of the Perdasi/Perdatus, which primarily has implications for the spirit of the Perdasi/Perdatus, namely the authority to manage education. This creates problems, namely on the one hand Law Number 20 of 2003, Law Number 32 of 2004 in conjunction with PP Number 38 of 2007 regulates that the authority to manage secondary education is the authority of the district/city, while the provisions of Law Number 23 of 2014 are the authority to manage secondary education. provincial authority. This has implications for the content of Perdasi/Perdatus, therefore it is recommended that Perdasi Number 2 of 2013, and Perdatus Number 3 of 2013 be revoked through the formation of a new Perdasi/Perdatus whose content accommodates and harmonizes with the content of Law Number 23 of 2014, Law Number 2 of 2022 Jo. PP Number 106 of 2021, and other related laws and regulations.

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