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The Legal Aspect of the National Education Budget Allocation

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Abstract

Education is part of the constitutional rights owned by the citizens and should be fulfilled by the State. Better proportion of educational budgetting will expand the access of education for the citizens. Article 31 Paragraph 4 of the 1945 Constitution explicitly states the number of 20 percent of the fulfillment of the education budget as a guarantee of citizens' educational rights. Nevertheless, the implementation of the aforementioned provision has been interpreted in various policies. This research answers the issue of law aspect regarding the implementation of educational budget allocation nationally. This is a doctrinal research with different approaches namely: statute, conceptual, and case. In this research, three important things are concluded: (1) The constitutional framers were lack of comprehend consideration in formulating provision related to educational budget. (2) The inconsistency of several principles such as the principle of Justice, Principle of Efficiency, Principle of Transparency, Principles of Public Accountability, and Principle of Effectiveness in the educational budget policy (3) Ineffectivity of administrative sanction since it has no significant effects to the substantial aspect of education equality and its improvement. The research offers several solutions (1) Constitutional amendment on the provision of educational budget allocation provided with reliable academic papers. (2) Designs effective supervision mechanism towards the local public budgeting (APBD) (3) Open the access for public participation.

Keywords: Education Budget; Constitutional Right; Amendments to the Constitution.

Introduction

Education budget are several factors in the form of money related to education, for example: teachers, books, buildings, land, equipment, and so on.¹ One of the concepts put forward in “*Vijf stellingen over Rechtsfilosofie*” is the concept of “*rechtsbeoefening*” which is here translated with the words “Legal Constitution”. Referred to as law enforcement is human activity with respect to the existence and enactment of law in the community. Such activities include the activities of establishing, implementing, implementing, discovering, researching, and systematically studying and teaching the applicable law. The legitimizing of the law can be distinguished into practical lawmaking and theoretical law enforcement.²

According to H.L.A. Hart, the law is justice and unjust law can be said is not a law. In addition, moral also affects the law because law without moral can also hamper law enforcement. It is said by Hilaire Mc Coubrey, that the application of the principles of justice:

*“these principles are then ‘lexically’ ordered in application, so that the first principle, that of liberty, always has priority, and liberty may be curtailed in order to defend liberties. The first principle will therefore always have over the second, but the second is always prior to ‘efficiency’, maximisation of advantage and the ‘difference principle (i.e, the acceptance of inequality)’.”*³

Budgeting is basically a matter of making various choices or priorities for doing something or not doing something or not doing something.⁴ Based on the above description it can be said that law, justice, morals and ethics must be an inseparable unity because without any of the four elements (law, justice, morals and

¹ Sri Hayati, ‘Pengembangan Model Manajemen Pembiayaan Sekolah Menengah Pertama (SMP) Rintisan Sekolah Bertaraf Internasional (RSBI) Di Kota Magelang’ (2011) 1 Journal of Economic Education <<https://media.neliti.com/media/publications/17881-ID-pengembangan-model-manajemen-pembiayaan-sekolah-menengah-pertama-smp-rintisan-se.pdf>>.[65].

² Arief Sidharta, *Meuwissen Tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum, Dan Filsafat Hukum* (Refika Aditama 2008).[vii].

³ Hilaire McCoubrey and Nigel D. White, *Textbook on Jurisprudence* (2rd edn, Blackstone Press Limited 1996).[267].

⁴ Triyastuti Setianingrum, ‘Komitmen Anggaran Pendidikan Di Kota Pendidikan Yogyakarta Masih Belum Mencapai 20 Persen’ (2017) 18 Populasi <

ethics) then law enforcement will be difficult to do well. Fulfilling the number of 20 percent of the education budget requires elements of law, justice, morals and ethics. Because without these elements, law enforcement in the implementation of the fulfillment of 20 percent education budget will be difficult to perform well, whereas this issue plays a very important role in the implementation of national education, especially in the service of equality and improvement of education quality.

Ontological studies on the norm aspect of the nomenclature of 20 percent of education budget in the 1945 Constitution of the Republic of Indonesia will be found through the effort to uncover the original intent traced through the treatises that describe the dynamics of the formulation of the 1945 Constitution of the Republic of Indonesia in connection with it. Therefore, the dynamic portrait of the formulation of the amendment of the 1945 Constitution of the Republic of Indonesia in 1945, especially by the Ad Hoc Committee I of the Working Body of the MPR RI which discussed this issue is the starting point must be explored and analyzed. Whereas the norm of Article 31 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia Year 1945 is as follows: “the State shall prioritize the education budget at least twenty percent of the state budget of income and expenditure as well as from the regional budget and income to fulfill the need of national education”.

Actually, the discussion of Article 31 of the 1945 Constitution of the Republic of Indonesia in 1945 coincided with the first amendment of the 1945 Constitution of the Republic of Indonesia. However, due to the many articles to be changed, the article on education was only made in the fourth change of 2002. Alternative education formulation has actually existed since the discussion in Year 2000, and always included within MPR RI Stipulation of each Annual Session before the 2002 Annual Session. The formulation of Article 31 of the 1945 Constitution of the Republic of Indonesia is as follows:

Article 31

- (1) Every citizens shall be entitled to education
- (2) Primary education shall be followed by every citizens and the government shall be obliged to finance it.

Discussion of Article 31 Chapter XIII is not separated from the preamble of the preamble of the 1945 Constitution of the State of the Republic of Indonesia. One of the national goals is that the state protects the nation and the land spills, then promotes the general welfare and the intellectual life of the nation. Education must be free, at least for the low school level and basic education.⁵ Some of the issues raised in the discussion of educational issues are the replacement of educational terms with teaching; government obligations to finance basic education; loading of faith, piety and noble character as the objective of national education system; science and technology in relation to religion and civilization; as well as education budget priorities of at least 20 percent.

Ontologically, the emergence of the number 20 Percent of education budget is motivated by several things, namely:

1. Comparison with the lack of education budget in the previous government (New Order);
2. Feasibility based on Gross Domestic Product (GDP), following the UNESCO standard on the feasibility of education budget percentage 4 percent of GDP;
3. Comparative effort with the constitution of Taiwan that regulate the education fund as much as 15% of the state budget, while at the provincial level of 25%.

GDP is a measure of economic activity. GDP is a calculation used by a country as a primary measure for its national economic activity, but basically GDP measures the entire volume of production from a region (country) geographically. Here it appears that the constitutional reformers associate between education and economic growth. The feasibility standards for the fulfillment of the community's right to education and/or state obligations to provide educational services for its citizens are then measured as a matter of economic feasibility. This is understandable, because there is a positive relationship between GDP per capita and social welfare. Generally the measure of the level of welfare employed is the level of education, health and nutrition, freedom of choice of employment and guarantee a better future.

⁵ Virgayani Fattah, 'Hak Asasi Manusia Sebagai Jus Cogens Dan Kaitannya Dengan Hak Atas Pendidikan' (2017) 32 Yuridika <<https://e-journal.unair.ac.id/YDK/article/view/4775/pdf>>.[369].

Aspects of the legal epistemology of the inclusion of norms of 20 percent of education budget in Article 31 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia is intended as an attempt to interpret the rules conceptually. Included will be seen to the extent that the norm of 'education budget of at least 20 percent' can be run operationally by considering the reality of society in a certain period of time. In addition to the education budget of 20 percent there are several issues raised in the discussion of education issues, among others:

- 1) Replacement of educational terms with teaching;
- 2) Government obligations to finance basic education;
- 3) The strengthening of faith, piety and noble character as the objective of national education system;
- 4) Science and technology in relation to religion and civilization.

Education seems to be heavier on moral, ethical, religious, and character building issues. Instead teaching emphasizes more on science and technology, academics, and skills. The purpose of education should reflect the faith and piety, because of the two things that noble character and character of the nation built. The life between people in society, nation and state can only work well if the purpose of education can be realized. Building science and technology without regard to the value of religion, civilization, and human welfare will backfire that will destroy the values of humanity itself.

The axiological aspect of the constitutional norm of the inclusion of 20 percent of the education budget in Article 31 paragraph 4 of the 1945 Constitution of the Republic of Indonesia is intended to explore how far the norms are able to function operatively and implementatively in a series of government decisions and policies to serve the public in education. In the perspective of the constitutional review, constitutional norms consent to a constitutional obligation, in which the constitution has a special function and is the embodiment or manifestation of the supremacy of law which must be obeyed not only by the people but by the government and the authorities though.

The derivation of the norms of Article 31 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia (NRI) is directly referred to in Article 49 paragraph

1 of Law No. 20/2003. At this point axiologically, the elucidation of the 'gradual fulfillment' of Article 49 Paragraph 1 of Law No. 20/2003 as derived norm from the norm of Article 31 Paragraph 4 of the 1945 Constitution of the Republic of Indonesia also becomes the point of problem. There is a problem of interpretation of norms on the 1945 Constitution of the Republic of Indonesia with the norms below. At the same time, the salaries of educators who are excluded from education funds are judged as an imbalance.

Legal Principles of Allocation of Education Budget in the Implementation of National Education

Pleminary report (1999) within Commission on Human Rights United Nations establishes four features that considered essential to be implemented within primary education, secondary education, or higher education. Crystallized within Point 6 of the *General Comment E/C.12/1999/10*, 8 December 1999 these four features are:

1) Availability

Various educational institutions and programs should be available in sufficient quantities, such as buildings and physical protection, sanitation facilities for men and women, healthy drinking water, highly trained teachers with competitive salaries, teaching materials, library facilities, computer laboratory and information technology.

2) Accessibility

Educational institutions and programs must be accessible to all without discrimination. Accessibility has three common character dimensions, namely: a). without discrimination; b). Physical accessibility; c). Economic accessibility;

3) Acceptability

Related to economic access and financing of education, education finance can not be separated from the way to see the education of public goods or private. Education as a public good means the fulfillment of state responsibility.

4) Adaptability

In the welfare state, state revenues to finance education, health, state defense, administration, and basic infrastructure. The other sectors are as a source of income.

The right to education is a necessity for every citizen to be fulfilled by his government. The right to education is not only in Indonesia but in the whole country. That is with bearing in mind that education is a part of the fulfillment of human rights. Article 28 C Paragraph 1, Article 31 of the 1945 Constitution of the Republic of Indonesia, Article 12 of Law No. 39 of 1999 on Human Rights (Law No. 39/1999), Article 1 Number 18 of Law No. 20/2003, Law Child Left Behind Law of 2001 in the United States, Article 13 of Law No. 11 of 2005 on the Ratification of the International Covenant on Economic and Social Economic Rights (Law No. 11/2005), Article 26 paragraph 1 of the Universal Declaration of Human Rights (DUHAM), International Covenant on Economic, Social and Cultural Rights 1966. is part of the existing legislation to regulate the fulfillment of basic rights of education.

Related to the management of education fund, several principles according to Article 48 of Law No. 20/2003 and Article 59 of Government Regulation No. 48 Year 2008 on Education Funding (PP No. 48/2008), among others:

1. Principle of Justice.

This principle is done by providing access to education services as broad and equitable to learners, regardless of ethnic background, race, religion, gender, and socioeconomic capacity or status.

2. Principle of Efficiency.

Economic principles are carried out by optimizing the access, quality, relevance, and competitiveness of educational services.

3. Principles of Transparency

This principle is carried out by fulfilling the principles of decency and good governance by the Central Government, Local Government, the establishment of community-based education and educational units so as follows: a). Can be audited on the basis of applicable audit standards, and produces a reasonable audit opinion without exception; b). Be accountable transparently to education stakeholders.

4. Public Accountability Principle.

This principle is undertaken with accountability for activities undertaken by the organizer or educational unit to education, parent, and government stakeholders. There are three main pillars that become the requirement of accountability: a). Transparency of education implementation by receiving input and involving various components in managing education; b). The existence of performance standards in each institution that can be measured in carrying out its duties, functions and authority; c). There is participation to create a conducive atmosphere in creating community service with easy procedures, low cost and fast service.

5. Principle of Effectiveness.

This principle is often interpreted as the achievement of a predetermined goal. Effectiveness is more emphasis on output quality. Financial management is said to meet the principle of effectiveness if the activities undertaken to regulate finance to finance activities in order to achieve educational objectives and quality of its output in accordance with the plans that have been set.

Implementation of educational development is a process that requires the involvement of all elements and layers of society and position the obligation for the government in performing the financial management of education so that the role of government is as a catalyst and facilitator, because the government is more aware of the goals and objectives of education development to be achieved.

Principles of Management of Education Budget in the State Financial System

The provision of Article 3 Paragraph 1 of Law Number 17 Year 2003 regarding State Finance (Law No. 17/2003) stipulates that “State Finance is managed in an orderly manner, obeying the laws and regulations with due regard to the sense of justice and propriety”. Furthermore, in the Elucidation of that article, it is mentioned that the said management covers all activities of planning, control, use, supervision and accountability. Accordingly, the management of state finances, including the management of the education budget, constitutes a series

of activities undertaken by state financial management officials in accordance with their positions and authorities, including planning, implementation, oversight and accountability to state finances.⁶

With regard to government responsibility, then what is meant by government responsibility, according to F.A.M Stroink is:

*“wat is een overheidsbevoegdheid? De overheidsbevoegdheid is de bevoegdheid positiefrecht vast te stellen en te handhaven. Om positiefrecht te kunnen vaststellen en handhaven is een bevoegdheid noodzakelijk. Zonder bevoegdheid kunnen geen juridisch correcte besluiten genomen worden. Het begrip bevoegdheid is dan ook een kernbegrip in het staats-en administratief recht”.*⁷

What is the responsibility of the government in the power of the state is the right of positive power to build and nurture. To build and maintain the required competencies. Without authority it can not be held as a decision that is legally taken. The concept of competence is a central concept in state law and administration. The principles of state financial management become the reference of education management budget management reform, as well as to strengthen the foundation of decentralization and regional autonomy in the Unitary State of the Republic of Indonesia. Prior to Law Number 17 Year 2003 regarding State Finance, there have been several principles used in budget management and recognized its applicability in the management of state finances in the future, namely:

1. The principle of unity, which requires all state revenues and expenditures to be presented in a budget document;
2. The principle of universality, which requires that every financial transaction be displayed in full in the budget document;
3. The annual principle limits the life of the budget for a given year; and
4. The principle of specialism, which requires that the budget credits provided in detail clearly intended.⁸

With the enactment of Law No. 17/2003 there are again new principles in the management of state finances, among others, as follows:

1. The principle of results-oriented accountability is the decisive principle that

⁶ Muhammad Djafar Saidi, *Hukum Keuangan Negara* (Raja Grafindo Persada 2008).[15].

⁷ F.A.M. Stroink J.G. Steenbeek, *Inleiding in Het Staats-En Adinistratief Recht* (Alphen aan den Rijn 1983).[26].

⁸ Muhammad Djafar Saidi (n 6).*Op. Cit.*[16].

- any activity and outcome of the state financial management activities shall be accountable to the people as the supreme sovereigns of the state in accordance with the provisions of applicable laws and regulations;
2. The principle of proportionality is the principle that prioritizes the balance between rights and obligations of state financial management;
 3. The principle of professionalism is the principle that prioritizes the skills based on the code of ethics and applicable legislation;
 4. The principle of transparency and management of state finances is a principle that opens up the right of the public to obtain correct, honest and non-discriminatory information on the management of state finances while maintaining the protection of the private, state, and state privacy rights;
 5. The principle of a financial examination by a free and independent Auditing Agency is a principle which provides the freedom for a financial auditing body to undertake a state financial audit by not being influenced by anyone.⁹

With the enactment of these principles of state budget management, both before the enactment of Law No. 17/2003 and at the time of enactment of the Law, it was enough to guide the parties involved in the management of state finances, including the management of 20 percent education budget. Nevertheless, the management of the educational budget should not be separated from the principles of state financial management in order to produce the best jobs so as not to cause losses to the state. All governance matters in the form of public policies pertaining to public services should also apply the principle of accountability in relation to the outwards accountability and downwards accountability, and to the reliability existing government institutions. If the trust in the apparatus and financial administration is good within the outwards accountability, it will make all the activities carried out will run more effectively and more efficiently.¹⁰

The government's authority in establishing a regulation or policy is in the framework of public service to the public. Because Administrative Law in its development is a legal dimension that not only governs the government in the context of government law in the narrow sense (executive), but also there are parts of the dimension (*sphere*) governing interpersonal relationships between

⁹ *ibid.*[16-17].

¹⁰ Kabupaten Banjar, 'Pengelolaan Keuangan Daerah Yang Baik Merupakan Instrument' (*banjarkab*, 2018) <<http://banjarkab.go.id>> accessed 2 February 2018.

the government with citizens or other legal subjects¹¹ in order to carry out public service functions (*bestuurzorg*).¹²

Nowadays, public policy is the key to success for developing countries, but has been largely ignored.¹³ Therefore, political developments become more attractive and the political process transforms into a bad law-making process. The successes and failures of developing countries will increasingly depend on how successful developing countries are in developing superior public policies.¹⁴ Therefore, in the context of educational budget which in this case is part of the state financial system, then the government should immediately form a more comprehensive guidance through the establishment of independent policies related to the use of education budget that put forward the principles of state financial management.

Basis of Education Budget Allocation 20 Percent in APBD

The fulfillment of the 20 percent allocation of education budget to APBD will be fulfilled if regional finances are managed in an orderly, law-abiding, efficient, economical, effective, transparent and accountable manner with due regard to justice, decency, and benefit to the community. So there is no reason for the lack of finance in the region. On the other hand, the demand for transparency and accountability in the government system is increasing in the current era of reform, including transparency in local government financial management, as the implementation of Good Governance principles will actually be the trigger for the regions to prioritize the education budget as an effort to improve people's human resources.

Many basic things that must be improved, which will result in a Clean and Good Governance, especially in local financial management on fulfilling the

¹¹ Wirjono Projodikoro, *Asas-Asas Hukum Tata Negara Di Indonesia* (Dian Rakyat 1989).[2].

¹² In modern countries the state administration apparatus is entrusted with the task of conducting public welfare which is interpreted as *bestuurzorg*, see E.Utrecht, *Introduction to Administrative Law of the Republic of Indonesia* (Pustaka Tinta Mas 1986).[29]. Based on the 1945 Constitution of the People's Republic of Indonesia mandates the State to the operational activities of the government for the greatest purpose of people's prosperity. Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta 2015).[46].

¹³ Riant Nugroho, *Kebijakan Publik Di Negara-Negara Berkembang* (Pustaka Pelajar 2014).[41]

¹⁴ *ibid.*

allocation of education budget 20 percent in APBD, including:¹⁵

- 1) Integrity of Government Actors, The role of government is very influential, the integrity of the government players is high enough will not be affected even if there is an opportunity to perform irregularities such as corruption;
- 2) Political Conditions in the Country, Do not become commonly regarded every obstacles and problems presented by politics. For the realization of Good Governance political concepts that are not/less democratic that have implications on various problems in the field. Then of course must be done immediately;
- 3) Economic Condition of Society, Economic crisis can give birth to various social problems which if not resolved will disrupt the overall government performance;
- 4) Societal Societal Condition, A solid society and active participation will greatly determine the various government policies. Especially in the process of governance which is the realization of the real Good Governance. The community also carries out an effective oversight function in the implementation of governance. But if people who have not been empowered before the state, and there are still many social problems in it such as conflict and group anarchism, will be very small possibility Good Governance can be enforced;
- 5) Legal System, become an integral part in every state administration. Law is an important factor in the enforcement of Good Governance. The weakness of the legal system will greatly affect the performance of the government as a whole. Good Governance will not work well on a weak legal system. Therefore, strengthening the legal system or legal reform is an absolute necessity for the realization of Good Governance.

Implementation of the Law on Regional Autonomy and Fiscal Decentralization has consequences for regional autonomy in optimizing the regional government. Optimization of local government is very important for the region in order to support the financing of development independently and sustainably. Sources of local government that can ensure the sustainability of development in the region can be realized in the form of revenue Original Region (PAD).¹⁶

The main objective of fulfilling the 20 percent allocation of education budget to APBD as an important part of local financial management, that is responsibility, fulfill the financial obligation, honesty, results, and control. In an effort to empower local government today, the perspective of the desired changes in the fulfillment of

¹⁵ Suryansyah Murhami, *Aspek Hukum Pemengawasan Pemerintah Daerah* (Laksbang Mediatama 2008).[52].

¹⁶ Adrian Siutet, *Implementasi Hukum Atas Sumber Pembiayaan Daerah Dalam Kerangka Otonomi Daerah* (Penerbit Sinar Grafika 2009).[70].

education budget 20 percent in the APBD is as follows:¹⁷

1. The management of education budget should be based on public interest (public oriented). This is reflected not only in the amount of budget allocation for public interest, but also by the large participation of the people (DPRD) in the planning, implementation and supervision of the regions;
2. Clarity about the mission, orientation and distribution of 20 percent specific education budget allocation;
3. Decentralization of financial management and clarity of participation of related participation in fulfillment of 20 percent education budget allocation, such as DPRD, Regional Head, Regional Secretary and other regional apparatus;
4. Legal and administrative framework for financing, investment and fulfillment of education budget allocation 20 percent of regional financial management context based on transparency and accountability rules;
5. The clarity on the financial position of the DPRD, the Regional Head, and the civil servants, both the ratio and the basis of their considerations on the division of tasks and the taking of roles in the 20 percent education budget allocation program;
6. Provisions on budget forms and structures, performance budgets and multi-year budgets;
7. The principle of procurement and management of regional goods more professional;
8. Local government accounting principles, financial statements, DPRD roles, the role of public accountants in oversight, giving opinion and rating of budget performance, and transparency of budget information to the public;
9. Aspects of guidance and supervision that include the limits of coaching, the role of associations and the role of community members for the development of professionalism of local government apparatus; and
10. Development of regional financial information systems to provide accurate budget information and local government commitments to disseminate information, facilitating reporting and control, and facilitating information.

Central Government Supervision Model in Fulfilling the Education Budget 20 Percent in APBD

Supervision (*toezicht*) is a form of relationship with an independent legal entity, not an internal relationship of the same entity. The form and content of supervision shall be conducted solely in accordance with or under the provisions of law. A supervisory relationship shall only be undertaken on matters explicitly

¹⁷ Toto Suharto, *Pendidikan Berbasis Masyarakat: Relasi Negara Dan Masyarakat Dalam Pendidikan* (LKIS 2012).[24].

prescribed by law. Supervision is neither applicable nor applied to unspecified or statutory matters.¹⁸ In general, supervision is one of the control management functions, hereinafter referred to as oversight in a broad sense.¹⁹ Supervision is called 'controlling' which also means the control function. Supervision is all things or activities to know and assess the actual reality of the service task or job whether appropriate or not. This supervision can be distinguished from internal and external controls.

Internal control means that supervision is carried out by a body that is organically or structurally still within the government itself. This form of control can be classified in technical-administrative or built-in control types. The second type of supervision is external control, that is, control is done indirectly through judicial bodies when a dispute arises or concerns the government. Supervision can also be distinguished from two sides: supervision from the side of the implementation and supervision of the object.²⁰

There are two supervisory models related to autonomous government, namely preventive control (*preventief toezicht*) and repressive control (*repressief toezicht*).²¹ Both of these supervisory models are directed to the legal products produced by the region, and the oversight of certain acts of local government organizations conducted through the authority of *goedkeuring* in preventive or *vernietiging* or *schorsing* controls in repressive supervision. If the above supervisory model is associated with the implementation of local regulatory oversight as one of the products of autonomous governance, the preventive supervision model is carried out by granting approval or rejection of regional legislation compiled by the Regional Government. Supervision by the Central Government to the region is an internal control that is only in the realm of the executive only. In preventive monitoring, the resulting regulation can

¹⁸ Jazim Hamidi and Mustafa Lui, *Dekonstruksi Hukum Pengawasan Pemerintahan Daerah* (UB Press 2011).[42].

¹⁹ Suyanto, *Beberapa Aspek Pengawasan Di Indonesia* (Sinar Grafika 1994).[58].

²⁰ Widodo Ekatjahjana, *Pengujian Peraturan Perundang-Undangan Dan Sistem Peradilan-nya Di Indonesia* (Pustaka Sutra 2008).[41].

²¹ *ibid.*[43].

only be valid if it has been first authorized by a competent authority authorized. This preventive supervision model is in principle only made to the local regulation which regulates certain materials specified previously through legislation.

Repressive control is carried out in two forms, namely to suspend the enactment of a law or to cancel a law. This repressive supervision model can be run against all local regulations that are deemed to be contrary to higher levels of legislation or contrary to the public interest. Especially for suspension, this instrument is actually a preparation of the cancellation process, there is a suspension of the rules that occur because of consideration to cancel the law. However, not all cancellations have to go through the suspension process, since it is possible that the officer with this authority may immediately revoke the Regional Regulation that is deemed to be contradictory to the higher level of legislation or against the public interest.

Therefore, for the local government to consistently implement the fulfillment of 20 percent of education budget in the draft APBD which later used as Perda APBD, the Central Government must be absolutely consistent to uphold the rules of constitution and rule of law. This means that if APBD is in conflict with higher legislation, in the context of the fulfillment of 20 percent education budget in accordance with UUDN Article 31 Paragraph 1 and Article 49 Paragraph 1 of Law Number 20 Year 2003 concerning National Education System, the administrative sanction shall be liable to sanctions in accordance with the provisions of law, namely in accordance with Article 250 Paragraph 1 “1 of the Regional Regulations and Procedures as referred to in Article 249 Paragraph 1 and Paragraph 3 are prohibited from contradicting the provisions of higher legislation, public interest and/or decency”.

Subsequent to Article 251 Paragraph 1 and Paragraph 2 which reads:

“1 Provincial regulations and regulations governing the provisions of higher legislation, public interest, and/or morals shall be canceled by the Minister.
2 Bylaws of Regency/Municipal and regent/mayoral regulation in contradiction to the provisions of higher legislation, public interest, and / or decency are annulled by the governor as the representative of the Central Government”.

But at the moment, the goodwill and desire of the government is not without obstacles. On April 5, 2017, the Constitutional Court through Decision Number 137/PUU-XIII/2015 states that the authority to annul the district/city regulation by the governor/minister as stipulated in Article 251 Paragraph 2 and Paragraph 3 of Law 23/2014 are declared contradictory (unconstitutional) with the 1945 Constitution of the Republic of Indonesia. This Constitutional Court's verdict must be a severe blow to the main government of the Ministry of Trade which has been given a mandate to fix legislation relating to improving the quality of education in relation to education budget allocation of 20 percent in APBD and investment climate development in area. If we see and understand the judges' consideration in Decision No. 137/PUU-XIII/2015, there appears to be substantive and significant dissenting opinion, in which there are four constitutional judges expressing their dissent in respect of Decision No. 137/PUU-XIII/2015.

In its consideration, the Constitutional Court declares that Article 251 Paragraph 2 and Paragraph 3 of the Regional Government Law have negated the role and function of the Supreme Court as an institution authorized to examine laws and regulations under the law, in which case the cancellation of district/governor/minister, as affirmed in Article 24A Paragraph 1 of the 1945 Constitution of the Republic of Indonesia. Furthermore, the Constitutional Court declares that the Governor Decision is not part of the order in the hierarchy of laws and regulations, so it can not be used as legal product to cancel district/In other words, regencial/regencial regencies can not be annulled by a decision of the governor's decree (*beschikking*). The decision of the Constitutional Court will certainly bring some problems, mainly to the mandate of the constitution related to the allocation of education budget 20 percent in the APBD and the potential birth of new problems in the region. Therefore, a real solution is needed to anticipate the loss of control of the Ministry of Home Affairs against local government in the formation of *perda* that is not pro to education in the region which in fact most of the regions have inconsistency to the provision of education budget allocation of 20 percent in APBD.

Law Reform of the National Education Budget Allocation

Failure to fulfill the allocation of education budget 20 percent in APBD, known various legal issues, especially in the context of consistency in the implementation stage and simultaneously upholding the existing norms. This context, the administrative sanctions that have been granted to the Provincial Governments, both Provincial and District/City, through budget reduction and cancellation of the Regional Budget Law, do not necessarily encourage the Regional Government to implement the mandate of the 1945 Constitution of the Republic of Indonesia Article 31 Paragraph 4 and Law No. 20/2003 Article 49 Paragraph 1 on their APBD. This is due to a variety of procedural reasons and especially for reasons of local incapacity to meet the 20 per cent allocation.

This condition is in the perspective of legal reform, consequential to a review of existing norms. Because of the consequences of the ever-changing law, change, renewal, and legal reform. Progressive legal theory wants to reinforce the privilege of law in order to survive for a long time. Nonet and Selznick, proposed three developments in the legal order of society in a politically organized society in the form of a state. The three types of legal order are the repressive legal order, the autonomous legal order, and the responsive legal order.²²

Renewal of legal norms in the education sector, particularly in relation to the evaluation of the failure of the implementation of education budget of 20 percent in APBD, should be done to answer various education problems, so that the legal norm of education is no longer a burden, but a solution for the fulfillment of social rights in the field of education. Orientation of educational law reform departs from the spirit of equity and improvement of education quality as follows:

First, ensure the completeness of access to education, especially basic education. Obtaining access to education is a liability, as well as a necessity. The economic ability of Indonesia, whether the government or its citizens or the community, is not really a problem to guarantee quality education for all. The

²² Philippe Nonet and Philip Selznick, *Hukum Responsif* (Nusamedia 2007).[19].

nation's commitment has been established in various sources of law. Of great importance to be pursued is the need for an affirmative action policy that encourages the creation of an inclusive society which at the same time needs to be developed inclusive education, so that the opening of the door is wide for the society with all its limitations, whether physical, mental, social, emotional, economic, or cultural. have similarities in accessing quality education services.

Second, design and implement a quality and relevant curriculum and educational program. The educational orientation that leads to the formation of intact and well-adaptive people, presumably needs to be followed by a curriculum design built on the characteristics and needs of learners, community demands, and technological developments. Although the curriculum has been formulated well and comprehensively, but at the level of implementation needs to be supported with creative thinking, so the presence of curriculum still has a high relevance. That is why curriculum development in the field needs to be modified in such a way that the curriculum is always functional for a wide range of learners, including children with special needs.

Third, seek to improve the professionalism of educators and education personnel. One of the key keys to building schools and quality education is educators and education personnel. That's why the government's attention continues to increase and improve on the profession of educators and educational personnel. At the same time it is desirable that the government's efforts to achieve a unidirectional response from educators and education personnel, so that very positive efforts can produce something very valuable, namely improving the quality of education. To improve the professionalism of educators and educational personnel should get support from various stakeholders, especially stakeholders in various forms of support, thus enabling programs to increase the professionalism of educators and education personnel. Conversely educators and educational personnel themselves are also expected to proactively develop themselves in accordance with the demands of society, resulting in a significant increase in professionalism.

Fourth, to seek education funding in all educational programs in accordance with the priorities of education development, especially for the completion of compulsory education of twelve-year basic education. Aware of this demand, serious efforts in the financing of basic education as a whole need to be fought. It may also be a free educational step for basic education, so it can cope with every child who experiences various obstacles to access basic education with all background. One effort that is believed to be capable of supporting the success of basic education is the need for all teachers in public and private schools to be appointed civil servants while considering the ratio between teachers and learners, as well as the relevance of the teacher's study program with his teaching assignment. Recognizing the priorities of the program, basic education can be claimed as public goods, so that all the consequences of education financing for all education implementation needs in accordance with educational standards should be the responsibility of the government. Thus there is an open opportunity for educational financing that exceeds the standard gained from the community, insofar as it is accountable to the public.

Fifth, to organize and optimize education facilities and infrastructure while still considering educational values. The one hand that the physical condition of most of the most recent Impres Elementary Schools requires total rehabilitation to be a viable and conducive learning ground. On the other hand it is necessary to hold various educational facilities and infrastructures based on technological progress, especially informatics and communication technology, so that learning in this information age can take place openly and continuously. Similarly, which needs to be developed in all educational institutions is the existence of facilities and infrastructure that is accessible for all individuals, including those with special needs. Educational facilities and infrastructures need to be sought, so that their existence can encourage the growth and development of creativity of learners.

Sixth, encourage accountable and transparent management of education. Along with the public policy of regional autonomy, the management of education also principles of autonomy, so that nowadays that every policy and education program

tends decentralisasikan, either at the level of primary and secondary education, or higher education. The shift in educational management from centralization to decentralization does not go smoothly, meaning that the process of change requires a process. The speed of the change process depends on many things, especially depending on the readiness of its human resources. Even in certain areas there may be a bias of interpretation, so the principal should have sufficient authority because it is based on the principle of School Based Management, but in reality many school principals become “barren”, helpless, because the head of the county stays in power over the coverage limit tasks and functions. In this condition, political considerations are so prominent that the autonomy of education can not work effectively. Although decentralization is a necessity, but to maintain the integrity of the Indonesian state as a whole, it is necessary to orientate education based on the balance between centralization and decentralization or decentralization-centralization. It is hoped that two orientations can be realized in a balanced way, both to meet the needs of a region that has unique uniqueness and to meet national needs that require the mutual ownership of vision.

Seventh, seek a comprehensive education assessment. The purpose of national education that has been formulated is the commitment of the Indonesian nation towards the creation of a whole human being. Thus, the graduation criteria of an educational unit should not be limited only to the academic aspect, but other aspects, especially the moral aspect. In addition, the assessment system used in the educational process is more likely to be judgmental, whereas far more important is an appreciative assessment that is realized by giving recognition of any behavioral changes that occur in the learners themselves. In such situations judgment is used more motivating and encouraging, so that learners feel have dignity and meaning in life. Student’s obstacles in any aspect are expected not to affect the process of self-assessment, so that learners have a positive view of himself and have self esteem that should be a pride of himself as well.

Eighth, maintain, develop and interpret nonformal and informal education productively. In the pre-reform era, nonformal and informal educational positions

are unimportant. However, it is now after the reform era that the recognition of nonformal and informal education is getting better and improved, so that its position is parallel to formal education. This recognition should be addressed by nonformal and informal educational communities positively demonstrated by the reconstruction of the philosophy and concept of nonformal and informal education, followed by the formulation of educational policies and programs that can provide empowerment values, so that nonformal and informal educational products can be recognized equally, even for Certain fields may exceed formal education products.

Conclusion

The conclusions that can be drawn from the above studies and theories are as follows, *First*, the constitution makers have a comprehensive consideration related to the formulation of educational budget clauses. The 20 percent provision on the norms of the 1945 Constitution of Knowledge of 1945 is done in a hurry and is based on the weakness of reading on the detail of budgetary needs for national education. That the reading of the overall budgeting of education by the formulators of the 1945 Constitution of the Republic of Indonesia does not lead to a holistic reading of the masterplan of the national education budget. One of the fundamental principles for constitution to reflect the fundamental needs of a state and at the same time adapt to the existing reality (living constitution), then it must be abstract and not concrete. Abstract textuality in this constitution is an anticipative action against the occurrence of constitutional failure (constitutional failure).

Second, the principles of management of the education budget have been described in Law No. 20/2003 and more specifically described in Government Regulation No. 48/2008, namely: (1) Principles of Justice, (2) Principles of Efficiency, (3) Principles of Transparency, (3) Principles of Accountability Public, and (4) Principle of Effectiveness. Furthermore, the principle of management of education budget is done in order to give fulfillment of society right to education, covering: (1) availability, (2) accessibility, and (3) adaptability. *Third*, on the law enforcement of national education budget allocation, it is concluded that the

supervision of all actions of the Regional Government, especially the Regional Regulation of APBD and the Regional Head (Perkada), has been implemented since the first regional autonomy is enacted first, namely Law Number 1 Year 1945 on Regulation Regarding Position National Committee of the Region (Law No. 1/1945) to date the Law No. 23/2014. Under Law No. 23/2014, there are two categories of supervision, namely general supervision and technical supervision. In order for the Local Government to consistently implement the fulfillment of the education budget of 20 percent in the APBD, the Central Government must be absolutely consistent in upholding the rules of constitution and the rule of law. During this time, APBD in various regions have not implemented education budget 20 Percent. Considering the amount of budget allocation for education in Kabupaten/Kota APBD until 2016, the following problems are found: (a) Education budget allocation still has not fulfilled the constitutional mandate of the 1945 Constitution and No. 20/2003 at least 20 percent of APBN and APBD volume. (b) The proportion of inadequate budget of education sector becomes one of the obstacles of Acceleration of Achievement of 12 years. (c) The budget structure, especially the basic education program budget, there is an employee budget that affects the program budget size, thereby reducing direct cost in the education unit (school). Therefore, the budget allocation for education programs is reduced. (d) Services from aspects of structure, format, program and budget allocation, do not yet reflect the local government's preference for public interest in education services. Thus, APBD is contradictory to higher legislation, in the context of the fulfillment of 20 percent education budget according to the 1945 Constitution of the Republic of Indonesia Article 31 Paragraph 1 and Article 49 Paragraph 1 of Law No. 20/2003, the administrative sanction shall be liable to sanctions in accordance with the provisions of law, according to Article 250 to Article 252 of Law No. 23/2014. Enforcement of sanctions is constrained by the product of the Law itself, because the sanction has not touched the aspect of the equality of education and the improvement of the quality of education.

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