
LOCAL GOVERNMENT'S POLICIES IN REGULATING FOUNDATION-BASED UPPER SECONDARY EDUCATION

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ARTICLE INFO

Article History:

received

revised

accepted

Keywords:

Local Government, Local Regulation, Education

ABSTRACT

Educational Foundation as public participation in implementing national education provides protection and warrant the achievement of national educational objectives based on 4th Amendment Article 31 of 1945 Constitution of Indonesia reinforced by Law No. 20/2003 and Law no. 28/2004 on Amendment to Law No. 16/2001. Nevertheless, the implementation of secondary education by foundations in Indonesia, especially in Cirebon faces obstacles such as low qualifications, unfulfilled educational goals, lacks of budget and requires a legal umbrella at the national level and local level. This study aims to: 1) explain the implementation of education by Yayasan Budi Arti Cirebon in legal perspective; and 2) the policy of the local government of Cirebon City as a legal umbrella at the local level in the implementation of upper secondary education by the community. This study uses normative legal research methods and interpret the law as a governance process to explain and analyze problems. The result of research shows that the implementation of secondary education by Budi Arti Foundation and Department of Education of Cirebon faces more complex problems after the enactment of Law Number 23 Year 2014 on Substitute Law Number 32 Year 2004 due to field unpreparedness in the responsibilities transition process, resulting in delays and miscoordination. This is particularly evident in the legal clash between Law no. 23/2014 with the Local Regulation and Mayor Regulation of Cirebon as legal umbrella at local level.

INTRODUCTION

One of National Education's vision of an education system as an authoritative and strong social institution to empower all Indonesian citizens to become quality human in order to be able and proactively respond to the various challenges. In order to achieve this vision, the mission itself is to expand and to provide equal opportunities to every Indonesian citizen while helping and facilitating the development of their potentials from early ages until seniors in achieving a learning nation striving for an optimal moral

and quality development of human beings.¹ The 1945 Constitution, 4th Amendment to Article 31 Paragraphs (1), (2), (3), (4), and (5) confirms that the government is obliged and responsible for organizing and striving in providing an education for every citizen to educate people's life, a goal of Indonesia as a nation stated in the 1945 constitution. This is also strengthened through UU No. 20/2003 concerning the National Education System which states that the government and local

¹ Angger Angelino Montolalu, "Peranan Pemerintah dalam Mewujudkan Pendidikan Wajib Belajar di Kecamatan Matuari Kota Bitung," *Jurnal Politico* 1, no. 7 (2015): 1-12.

governments are obliged to provide education services for all students without discrimination through Article 5 paragraph (1), Article 6 paragraph (1) and (2), and Article 11 paragraph (1).

The law mandates central and local governments to consequently provide educational services for all citizen without any discrimination. The delegation of rights and obligations in implementing the education mandate to local government is a form of policy decentralization as a part of strengthening and improvement process of regional autonomy system. Thus, the implementation of education in Indonesia is not centralized, it is greatly influenced by the regional government's policy and implementation program in realizing the vision and mission of national education. They are the forefront bureaucracy who directly involved with the community. Nevertheless, the current implementation of national education system conducted by Indonesian government still face several challenges. The impediment related to qualification and competency of teaching staff, low professionalism in educational management, limited access and availability of educational infrastructure, and low standard monitoring and evaluation system.²

This is where community participation becomes important in completing the education system implemented by the government, thus, their involvement in national development. Community participation in national development reflects their understanding in planning, carrying out, utilization, and evaluation process of development program.³ Within this context, involving the people of Indonesia in various development process especially education has become a consequence of the implementation of UU No. 22/1999 on Regional Government.⁴

Community participation has important role in implementing the national education system as stated in UU No. 20/2003 Article 8 and 9 which stresses the rights of the people to be involved in the implementation of national education. Korten argued that current development approach is shifting from pro-industry to pro-people.⁵ Citizen is not viewed as development object but rather has important role as an actor in setting the goals, controlling the resources, and driving the process of education.⁶ People-based development will stress the importance of local values and customs. One of the efforts to strengthen community's role is through foundation which is involved in education system, especially in Indonesia's national education system.

Education-based foundation as a form of community participation in national education system basically exist to complement government's education program. Educational foundation is basically a social institution that engages in education sector which aims to improve the quality of education and knowledge of students. In its operations, educational foundations provide protection and guarantees for the achievement of students' educational goals and provide assurance of comfort and safety of students in carrying out educational activities at the foundation. These kinds of activities are constitutionally based on UUD 1945 4th Amendment Article 31 which is complemented by UU No. 20/2003 and UU No. 28/2004.

Nevertheless, education services provided by educational foundations need special attention by the government. Challenges remain: low qualification and unmet educational targets, and classic issue related to educational foundation that is people's tendency to use educational foundation to refuge behind its legal status to profit themselves and foundation's authorities. Moreover, regional government's monitoring

² Rochmat Wahab, "Menegakkan Sistem Pendidikan Nasional Berdasarkan Pancasila" (Yogyakarta, 2010).

³ Michael X. Carpini, Fay Lomax Cook Delli, dan Lawrence R. Jacobs, "Public deliberation, discursive participation, and citizen engagement: A review of the empirical literature," *Annu. Rev. Polit. Sci.* 7 (2004): 315–44.

⁴ Sugi Hermanto, "Peran Serta Masyarakat dalam Pendidikan: Suatu Bahasan Kebijakan

Pendidikan," *Jurnal Online JPIPS* 2, no. 2 (2014).

⁵ David C. Korten, "Community Organization and Rural Development: A Learning Process Approach," *Public Administration Review*, 1980, 480–511.

⁶ Hermanto, "Peran Serta Masyarakat dalam Pendidikan: Suatu Bahasan Kebijakan Pendidikan."

on the issue is still considered lack, despite its importance in improving local's education quality, in accordance with Article 31 of UUD 1945 4th Amendment. Therefore, educational services provided by foundations need not only legal protection on national level but also on local level as a form of decentralization and regional autonomy.

Based on these backgrounds, this research starts from research question on how local government's policy related to secondary education services provided by foundations by using Yayasan Budi Arti's activities as a case study. This study aims to: (1) explore the legal basis and implementation of education by educational foundations in Cirebon from legal perspective; (2) to understand local government's policies in implementation of secondary education by the community (using the case study of the local government of Cirebon); and (3) explore the efforts made by local government in order to achieve national targets in providing secondary education.

This research will be divided into five parts. The first part is the introduction. The second part is literature study that examines previous studies and outlines the theoretical framework used in the study. The third part is the methodology. The fourth part is result and discussion by examining legal aspects related to the implementation of education by foundations starting from the law to regional regulations, including the dynamics of regulations and how this affects the implementation in the issue. The fifth part is conclusion.

LITERATURE FRAMEWORK

A. Previous Study

This study examines several previous studies which have similarities on research focus, such as legal aspects review of local government policies in secondary education by the community. Previous literature study was conducted and resulted that the study of normative legal aspects related to the above focus still lack or even **nonexistent** which has similar focus to this research. However, this section will describe any similarity, however small, between this research and previous researches.

The first review is a research conducted by Heningtyas, Sjamsuddin & Hadi titled "*Peran Pemerintah dan Masyarakat dalam Upaya Pengembangan Pendidikan Nonformal:*

Studi Kasus Eksistensi Kampung Inggris Kabupaten Kediri".⁷ The research focuses on informal education development in English Village, Kediri Regency. The village consists of 131 course institution as an implementation of informal education program. This research found that the government's role tends to take a supportive role for the community-run institutions' programs. The difference was in the theory utilized on this research that is public administration study, instead of legal study. The object of study which focuses on informal education was also different from this study which focuses on secondary education.

The second research was Saepudin Mashuri's research entitled "*Penguatan Kebijakan Pemerintah Daerah dan Implementasi Otonomi Daerah*".⁸ This study explains that autonomy in education through the concept of decentralization is a national agenda that requires serious attention from the local government. The results of the research explained that the quality of education at local level is very dependent on policy motives and the ability of the Regional Government to partner with educational institutions. Regional leaders must have good political will to improve and advance the quality of education in their regions. Emphasis on policy motives and the ability of the Regional Government in partnering with educational institutions both state and under education (private) can be used as a reference for this research.

The third study was conducted by Sugi Hermanto with the title "*Peran Serta Masyarakat dalam Pendidikan: Suatu Bahasan Kebijakan Pendidikan*".⁹ This research was conducted against the background of low quality of community participation in developing the quality of education in Indonesia. This study found that

⁷ Murdiana Asih Heningtyas, Sjamsiar Sjamsuddin, dan Minto Hadi, "Peran Pemerintah dan Masyarakat dalam Upaya Pengembangan Pendidikan Nonformal: Studi Kasus Eksistensi 'Kampung Inggris' Kabupaten Kediri," *Jurnal Administrasi Publik (JAP)* 2, no. 2 (2014): 264–68.

⁸ Saepudin Mashuri, "Penguatan Kebijakan Pemerintah Daerah dan Implementasi Otonomi Pendidikan," *Jurnal Hunafa* 6, no. 3 (2009): 347–58.

⁹ Hermanto, "Peran Serta Masyarakat dalam Pendidikan: Suatu Bahasan Kebijakan Pendidikan."

the role of other community groups (including educational foundations) is to assist the development of individuals and to positively involved in their process to mature as members of groups in a society. The drawback of this study is the concept of "community participation" which is utilized is too broad and not narrowly defined thus unusable as a basis for this research.

B. Theoretical Framework

The essence of education is entrenched in its process to humanize human beings to be independent and to attain freedom. An independent and free human is embodied in their cultures, their chance to live the culture and to reconstruct it. This means that education is a process of empowering students to be independent, creative and responsible for their existence.¹⁰ The essence of humanity and education is manifested in Pancasila as the basis of the Indonesian state to create a just and civilized human being, as outlined in the Article 31, 4th Amendment to the 1945 Constitution. Paragraph (1) emphasizes the right of education for all Indonesian citizens, which is obliged to be realized by the Government of Indonesia, including financing basic education in Indonesia, the 9-year compulsory education in accordance with paragraph (2). Paragraph (3) then becomes the legal basis for the Government of Indonesia to realize the legal framework that covers the national education system, which is manifested in UU No. 20/2003 concerning the National Education System. Paragraph (4) emphasizes the importance of the education sector which requires the government to allocate 20% of the APBN and APBD budget for financing education sector. Paragraph (5) shows that education in Indonesia is based on two principles, namely religion and unity.

Local governments also have an important role in education within local context, thus decentralizing the education process and system, as stated in UU No. 20/2003 Article 11 paragraph (1). In addition to the government, the rights and obligations of community participation in carrying out national education are also guaranteed in the same legislation.

¹⁰ Aminuddin Bakry, "Kebijakan Pendidikan Sebagai Kebijakan Publik," *Jurnal MEDTEK* 2, no. 1 (2010): 1–13.

Historically, the operational complexity of administering education by the community, especially by foundations engaged in education in Indonesia, was only based on certain habits and customs in the community and jurisprudence of the Supreme Court. This then led to various problems, such as the tendency of people to take refuge behind the status of legal entities to benefit the foundation's organization. The arising problems and challenges thus prompted the enactment of UU No. 16/2001 on Foundation which was later amended through UU No. 28/2004. The Foundation Law (*UU Yayasan*) clearly regulates both the legal and operational basis for foundation as a form of community participation in development, especially the education sector.

Whereas the definition of secondary education which is the focus of this research is the level of education in formal education which is the continuation of basic education, in the form of senior high school and vocational secondary schools or other equivalent forms.

C. Legal Basis

Education is a wholly human society activities which aims to restore, improve, and elevate human's life. The parameters of "human's quality" lie in several aspects such as awareness, knowledge, and skills; all of which must be balanced, mutually supportive, and sustainable. The equilibrium of the three aspects will shape a human's "character" that is the traits owned and characterized each human to be individually unique.¹¹ Based on this, UU No. 20/2003 was formulated and ratified. In addition, the enactment of this law is also an improvement of the 1998's SPN Law which is considered necessary to be updated to keep up with the changing times.¹²

Article 8 of UU No. 20/2003 states that the community also has rights in the administration of education. In accordance with what was expressed by Korten, people in a country are no longer seen as objects of

¹¹ Mohammad Sohib, "Mengembalikan Pendidikan Sebagai Hak Asasi Manusia," *Jurnal Konstitusi* 3, no. 1 (2006): 35–54.

¹² Djohar, "Analisis Undang-Undang Sisdiknas Ditinjau dari Segi Praksis Pendidikan dan Anggaran Pendidikan," *Jurnal Konstitusi* 3, no. 1 (2006): 15–34.

development (in this case education development), but have more roles as actors who determine goals, control resources, and direct processes that affect their own lives.¹³ Thus, the position of foundation as one element of society becomes clear with the existence of the National Education System Law, because it is included in Articles 8 and 9.

The Foundations Law is intended to provide a correct understanding to the community regarding the rules of law and other circumstances around foundation, to establish legal certainty and order and returning the function of foundation as a legal institution in order to achieve certain objectives in the social, religious and humanitarian fields. This law confirms that a foundation is a legal entity that has a social, religious and humanitarian purpose and objective, established by observing the formal requirements specified in the law.¹⁴

UU No. 16/2001 as amended by UU No. 28/2004 regulates the implementation of foundations by the community. Pursuant to the Foundation's Law that several provisions need to be further regulated by Government Regulation (*Peraturan Pemerintah*): 1) Article 9 paragraph (4) concerning the cost of making a notary deed for foundation's establishment; 2) Article 9 paragraph (5) concerning the establishment of the Foundation by foreigners or co-established with foreigners and regarding the conditions and procedures for the establishment of foundation; 3) Article 14 paragraph (4) concerning the minimum amount of initial assets separated from the personal wealth of the founder of a foundation; 4) Article 15 paragraph (4) concerning the use of the name of foundation; 5) Article 27 paragraph (2) concerning the requirements and procedures for granting State's assistance to foundation; 6) Article 61 concerning the procedures for merging foundation; and 7) Article 69 paragraph (2) concerning the

requirements and procedures for foreign foundations to conduct activities in Indonesia. Based on these premises, the regulation's implementation is legally based on Government Regulation on the Implementation of Foundation's Law. The regulation was implemented to be easily understood by public, as well as related stakeholders, in addition to providing convenience to the public in relation to the establishment and/or amendment of the foundation's Articles of Association related to the existence of the Foundation Law.

METHOD

This research utilizes normative law research which studies written law from various aspects such as theoretical, historical, philosophical, comparative, structures and compositions, scope and materials, consistency, general explanations, and articles by articles. Normative law method is utilized to explain and analyze the previously identified problems.

Law research method is basically divided into two big categories: normative legal research and empirical legal research.¹⁵ Empirical legal research is a law research method which functions to observe how law in reality and it works in society.¹⁶ It is a law research method which attempts to focus on human and community aspects and by doing so empirical legal research methods can be said as sociological legal research.

Normative legal research can be understood as a research method on regulatory rules which attempt to analyze legislations both hierarchically (vertical) and harmonious relations between legislations (horizontal).¹⁷ Normative legal research includes the principles of law, legal systematics, the level of legal synchronization, legal history, and the effectiveness of law. The focus of normative jurisprudence attention as a practical science is to change the situation and offer solutions to

¹³ Korten, "Community Organization and Rural Development: A Learning Process Approach"; Hermanto, "Peran Serta Masyarakat dalam Pendidikan: Suatu Bahasan Kebijakan Pendidikan."

¹⁴ Didik Purwadi, "Model Yayasan Pendidikan dalam Perspektif Perlindungan Hukum Terhadap Peserta Didik," *Jurisprudence* 1, no. 1 (2012): 10–24.

¹⁵ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2006).

¹⁶ Amiruddin dan Asikin, 118–20.

¹⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2012), 2–10.

concrete and potential social problems.¹⁸ Based on this description, this study uses normative legal research methods to explain and analyze problems that have been previously identified.

Emphasis made on this research starts from the research object concerning the policy problems of government as apparatus in administration of foundation's secondary education services and then analyzed through legal discipline's theories.

The analytical method used is qualitative descriptive. The paradigm in a study is used in two different meanings. First, paradigm means the whole constellation of beliefs, values, and techniques shared by certain members of society. Second, the paradigm also means using an element in the constellation which, if used as an example, can replace explicit rules as the basis for solving the puzzle of science under study.¹⁹ The paradigm change can cause differences in looking at reality. Reality is constructed by a certain mode of thought or a mode of inquiry, which produces a specific mode of knowing.²⁰ This problem is what drives one of the causes of legal discussion and its research methods to be interesting, because it requires academics and practitioners in the legal field to continue to be logical, critical, analytical and realistic.²¹

Soekanto & Purbacaraka stated that there were several legal meanings: 1) knowledge; 2) discipline or teaching system about reality; 3) rules or norms; 4) legal order or written positive law; 5) official decision; 6) legal officials; 7) government process; 8) regular behavior; and 9) network of values.²² Legal research is a scientific activity that must always be associated with the meanings given to the law. Based on this meaning, this

research will interpret the law as a **government process** to analyze local government policies in the implementation of education by the community, namely educational foundation.²³

Bogdan & Taylor state that methodology is the process, principles and procedures that are carried out to approach the problem and seek answers to the research question.²⁴ This study uses a normative legal research paradigm with a descriptive perspective. This study uses descriptive qualitative analysis method based on research needs to examine in depth the related issue. Descriptive qualitative research will be able to help explain phenomena that occur both explicitly and explanatively.

This research was conducted in Cirebon and related agencies to find out how the city government policies related to the implementation of secondary education by educational foundations as elements of society, by using Windu Wacana High School under Yayasan Budi Arti in Cirebon as the location and object of research.

RESULT AND DISCUSSION

A. Legal Basis in Education Services at Windu Wacana High School by Yayasan Budi Arti

One of the activities of foundation in the social field is to organize senior secondary education which can take the form of Vocational High Schools (SMK). Although a foundation has a stake in the administration of vocational education services, based on Law No. 28/2004 and Government Regulation No. 63/2008, the management of the foundation as an organ that is directly related to the organization is prohibited from interfering in the daily life of an educational institution. But what happens in reality is a tendency to ignore this rule of law, given that in general, many of the founders participate in regulating the policies of educational institutions in general administration, finance, and even academics. This practice can potentially create conflict

¹⁸ Johnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia, 2005), 33.

¹⁹ Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 3rd ed. (Chicago, IL: University of Chicago Press, 1996), 43–47.

²⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2008), 43.

²¹ Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum," *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 1 (2014): 15–35.

²² Soerjono Soekanto dan Purnadi Purbacaraka, *Perihal Kaedah Hukum* (Bandung: Penerbit Alumni, 1979), 141.

²³ Soekanto dan Purbacaraka, 141.

²⁴ Robert C. Bogdan dan Steven J. Taylor, *Introduction to Qualitative Research Methods: A Phenomenological Approach in the Social Sciences*, trans. oleh Arief Furchan (Surabaya: Usaha Nasional, 1992).

between the management and managers of educational institutions.²⁵

Cirebon Municipal Regulation No. 6/2007 serves as the basis for several management aspect for local government on educational foundations' activities. First, related to the establishment and implementation of education. The role of local government in this aspect is to approve/reject and establish guidelines for the submission of the establishment of private education units (under the foundation) through the Mayor, as mentioned in Article 5 paragraph (2) and paragraph (3) and Article 6 paragraph (4). Second, is the closure of the education unit carried out if (Article 80): a) the education unit no longer meets the requirements for the establishment of an education unit; b) education units no longer hold learning activities. This closure is local government's authority through the Mayor in accordance with Article 8 paragraph 4. Third, foundation's management by the regional government is also carried out through guaranteeing the participation of the community in the administration of education through the existence of School/Madrasah Committees, where this participation can take the form of financial and facilities support, controls, and mediation to improve quality, equity, and management's efficiency based on deliberation and consensus, in accordance with Article 36 paragraph (4). Fourth, the management of educational foundations by the regional government also pays attention to aspects of guidance and supervision as stated in Article 42.

Cirebon Municipal Regulation No. 6/2007 states that private education unit organizers are a legal entity/foundation that is social in nature which means it is not intended for commercial purposes and focuses on the aspects of public benefit. Article 6 Paragraph (2) states that the limit for participation of educational foundations in the administration of education is only in the implementation of private schools and carried out by social (educational) foundations. Article 6 Paragraph (3) confirms that the management of educational foundation may not occupy an

operational/organizational position in the school organized by the foundation.

Windu Wacana reached its peak during 1980s with almost all seats were occupied and additional funding was directly under Municipal Government echoing what was stated in Cirebon Municipal Regulation No. 6/2007. However, the simple and sometimes lack of background research (including locus priority study) by local government body in order to issue educational institution establishment permit subsequently created competition between private secondary high school to achieve admission target. Several other regulations and local policies such as district-based admission also hamper Windu Wacana's progress to re-establish itself to its former situation.

This situation was also explained by Chairman of Budi Arti Foundation, Mr. Soemartono:

We are only concerned about the number of students where in the past four years there has been a decline. At present, there is only one class with only 20 students. We used to be able to reach 6-8 classes. This is in my opinion, one of them is due to the policies of the Education Office in previous years that continued to add new classrooms to state high schools without regard to student ratios. On the other hand, in the vicinity of Windu Wacana High School, the Education Office gave permission to open new private schools. It is as if our private school is fighting over new students. In the beginning, the intention of building this foundation was because they wanted to participate in helping the Cirebon City government so that school-age students could be accommodated entirely if state schools had reached their capacity.

In the past, Widya Utama and Kosgoro High Schools fluttered above the school we built. At present, Kosgoro High School has been closed for a while even though there may be other problems. Windu High School was very minimal to accept new students.

Another problem with the transfer of Regional School Operational

²⁵ Suryarama, "Peran Yayasan dalam Pengelolaan Bidang Pendidikan pada Perguruan Tinggi Swasta," *Jurnal Organisasi dan Manajemen* 5, no. 1 (2009): 55–62.

Assistance from the Cirebon City Government has stopped. Initially, with a very small number of students (1 thin class) we were still able to survive to pay teacher fees and school operations. But due to the transfer of management from the Cirebon City Government to West Java Province, there was something stagnant. This is burdensome to us, although fortunately we still have cooperatives that can lend a number of funds (short term), in addition to the personal funds of the foundation management that jointly lend them.

The transfer of responsibility for the management of secondary education to the provincial mentioned in accordance with Article 12 of Law No. 23 2014 paragraph (1) item a, where education is included in the concurrent government affairs division described in Article 13 paragraph (3) to the provincial government and (4) for the city/county. This division is explained more specifically through the Attachment to the Law in accordance with Article 15 paragraph (1), which states that for TK, SD to SMP (compulsory education), it is managed by the District/municipal government, while senior secondary education is managed by the Provincial Government.

This study found two laws (UU) and one Government Regulation (PP) relating to the implementation of education by educational foundations. They are UU No. 20/2003 concerning the National Education System, UU No. 16/2001 concerning the Foundation jo. UU No. 28/2004, and Government Regulation No. 63/2008 concerning the Implementation of the Law on Foundations.

In the General Explanation of Law No. 20 of 2003 concerning the National Education System, it is stated that national education has a vision of the realization of an education system as an established and authoritative social institution to empower all Indonesian citizens to develop into quality human beings so that they are capable and proactive in responding to the challenges of the changing times. This encourages the emergence of the idea in making the education unit into its own legal entity as an effort to strengthen the legal status of the education unit with the aim of making it more independent and autonomous. By becoming a legal entity, the education unit

will have rights and obligations such as a separate entity that can shape its own activities independently.

During its development, the National Education System Law imposed this obligation of legal entity status for all education providers and/or units, both at the primary, secondary and secondary levels. The law mandates the drafting of a regulation on Educational Legal Entity that was passed by the Indonesian House of Representatives into UU No. 9/2009 concerning Educational Legal Entities. However, this law was later canceled by the Constitutional Court in 2010. However, until now there has been no cancellation/amendment to Article 53 of UU No. 20/2003 concerning National Education System which became the basis of UU No. 9/2009.

As such, the Government and the House of Representatives are still obliged to re-regulate the replacement law on education legal entities.²⁶ Cancellation of UU No. 9/2009 then reaffirmed the role of the education foundation in carrying out education. Based on this, the management of Windu Wacana High School secondary education by Budi Arti Foundation has a strong legal status and is protected by law. This protection also encourages the obligation of the regional government to accommodate the implementation of education by the foundation, not in the sense of making it easier, but to clarify and monitor the implementation.

In general, providers of education at the education unit level, in this case the implementation of education by the Budi Asih Foundation, requires adequate space to develop.²⁷ This is to support the achievement of the values aspired by the National Education System Law to achieve better education. Even so, the phenomenon that occurred in reality, especially related to Windu Wacana High School is a competition between education providers by granting permits to new schools within a radius very close to Windu Wacana High School. This competition, especially in recruiting

²⁶ M. Kholid Fathoni, "Badan Hukum di Langit Pendidikan: Studi Evaluasi Kebutuhan Satuan Pendidikan," *Jurnal Pendidikan dan Kebudayaan* 17, no. 3 (2011): 299–305.

²⁷ Fathoni.

prospective students so that it contradicts the reason for the cancellation of the BHP Law which is considered to be market-oriented and releases the state's obligation to guarantee the implementation of education.

In addition, related to the law, since the enactment of UU No. 23/2014 in lieu of UU No. 32/2004 there is complexity in terms of operational implementation of secondary education because of unpreparedness in the field in terms of transition of responsibilities resulting in delays and miscoordination. The transfer of responsibility for the administration of secondary education from the municipal to the provincial level actually made it difficult for Windu Wacana High School in terms of new student admission, teacher allowances, and operational funding assistance which, despite being eliminated from the Municipal budget, could not be disbursed by the Provincial SKPD Cirebon City. The implementation of this law also collided / overlapped with the Regional Regulations that had previously regulated the implementation of secondary education in Cirebon.

B. Local Government's Policies in Private-based Education Provision

Soerjono Soekanto and Sri Mamudji stated that normative law research is done based on the indicators of characters and scope of legal studies. Legal Studies, according to Soekanto and Mamudji's argument, can be categorized as prescriptive discipline if legal is viewed only from its normative aspect. However, their next argument stated that legal studies can also be viewed as an analytic discipline, that is, a branch of study on legal aspect as a norm and a dynamic reality, even owns a general and specific element with research topics such as: a) legal principles; b) legal systematics; c) vertical-horizontal synchronization degree; d) comparative legal studies; and e) legal history.²⁸ Normative legal research method then refer to what is commonly known as IRAC (*Issue, Rule, Analysis/Application, and Conclusion*). Based on identification result, the issue of this research is Cirebon Municipal's policy regarding secondary education in Windu Wacana High School. Legal basis related to this research in UU No. 20/2003, UU No.

16/2001 jo. UU No. 28/2004, Government Regulation No. 63/2008, Cirebon Municipal Regulation No. 6/2007, Cirebon Mayor Regulation No. 14/2014, Cirebon Mayor Regulation No. 446/2016, UU No. 23/2014, and West Java Provincial Regulation No. 5/2017. The subsequent section will explore the analysis/application element of IRAC Method on this research.

Interview with Adin Imanuddin Nur, Secretary of Department of Education Cirebon Municipality with emphasis on how is the implementation of secondary education in Cirebon in relation with senior high school and vocational school revealed that;

Currently, the implementation on education sector is transferred under provincial government, in accordance with UU No. 23/2014. Indeed, there was a suggestion that development and services should be drawn under provincial jurisdiction, perhaps that's one of the reasons. The transfer made the responsibilities fall under Balai Pengawasan dan Pelayanan Pendidikan Menengah (BP3M), which automatically stops what the municipalities around Indonesia have been implementing including stopping the services and support budget. It is currently on transition period. In the past, welfare assistance to schools was provided through Delays (Regional allowances) given by each region with different amounts depending on the ability of the APBD.

The interview also reveals the difference between the implementation before and after the transfer to BP3M:

It should be smooth, but because it has only been transferred since October 2016, it requires adaptation. However, it seems that the BP3M cannot fully serve, because it is still carrying out activities according to provincial duties. For example, when carrying out the National Education Day ceremony in Cirebon, the BP3M carried out itself separately, even though we hoped that there was a relationship that would complement each other so that it was not rigid. Furthermore, even though recently there were community brawls related to the problem of registering new

²⁸ Soekanto dan Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 2–6.

students (PPDB), regarding zoning issues, we also came to the demonstrators even though it was not our duty, but we still served. BP3M should have to face them well and explain their conditions clearly, but perhaps the demonstrators were not satisfied so that the BP3M workspace was damaged which until now has not been repaired. (according to Windu Wacana High School head, when he visited BP3M there were still police lines)

The legal foundation for the implementation of Windu Wacana High School in Cirebon by the Budi Arti Foundation is the existence of the Cirebon Municipal Regulation No. 6/2007. This local regulation was issued in 2007 based on Article 14 of UU No. 32/2004 which determines mandatory affairs which are the authority of the Regency/Municipal Government. Written on this local regulation, it is stated that the implementation of education in Cirebon is realized as the responsibility of the Cirebon Municipal Government, parents and all components of society, especially through its role in the implementation and quality control of education services.

This study found two Mayor Regulations (Perwalkot) which regulate the implementation of education in Cirebon Municipality: Cirebon Mayor Regulation No. 14/2014 and Cirebon Mayor Regulation No. 46/2016. Cirebon Mayor Regulation No. 14/2014 can be seen as a vertical synchronization of the Cirebon Municipal Regulation No. 6/2007 Article 6 paragraph (4) which confirms that the Mayor has the responsibility to develop education units in accordance with national and/or international standards. If this was to be linked with the compaction of educational unit locations such as those experienced by Windu Wacana High School, this is contrary to the principle of efficiency and effectiveness of basic education services set in Perwalkot.

Another problem with the enactment of UU No. 23/2014 which collided with several Regional Regulations that had been previously drafted by the region, such as the Cirebon Municipal Regulation No. 6/2007. The transfer of authority of the upper secondary education level to the provincial level collides with Articles 5 and 6, by transferring the role of the

mayor on the establishment of an education unit to the BP3M, automatically made Regulation No. 6/2007 to be invalid because of its legal force was under UU No. 32/2004 which has been replaced by UU No. 23/2014. Until now, there are no regional regulations that have replaced Municipal Regulation No. 6 of 2007 so that the authority under is still divided between under the UU and the mayor's regulations.

The existence of the Cirebon Municipal Regulation No. 6/2007 was then faced with the enactment of UU No. 23/2014 which was previously explained. It was then followed up by the West Java Provincial Government by enacting the West Java Provincial Regulation No. 5 of 2017 concerning Implementation of Education, where Article 8 states:

Article 8

The implementation of education on the provincial level, includes:

- a. Management of secondary education units, special education units, and special service education.*
- b. Implementation of SNP in secondary education units, special education units, and special service education.*
- c. Development of local content-based curriculum in secondary education units, special education units, and special service education.*
- d. Guidance on cross-region language and literature; and*
- e. Facilitating the implementation of education in the Provincial Region in order to improve the quality of education.*

The establishment of Regional Educational Service and Monitoring Body (BP3W) was also based on this article, with their main task is to implement some operational and technical tasks on educational service and monitoring. The city of Cirebon belongs to the BP3 Region 5 Majalengka area. Based on this description, BP3 Region 5 is a government body that currently holds the responsibility of managing secondary education in the Municipality of Cirebon. However, based on the results of an interview with the Headmaster of Windu Wacana High School, he stated that:

It's not fully served, yet. Currently, if there is a need to go to the Province, there must be a recommendation from the Balai, but the head of Balai is hardly available, because he's not fully located to work in Cirebon office. Even at meetings, he's relatively rare to attend. Perhaps, he's not yet familiar with our headmasters here. Of course, it creates delays in service.

The interview result reveals that the problems became more problematic since the enactment of UU No. 23/2014. In reality, the implementation even the transfer of responsibilities process has not yet effectively published and socialized by BP3 and Department of Education thus creating complexities because of overlapping regulations. The management of high schools and vocational schools in 27 regencies/cities in West Java which are taken over by the provincial government has an impact on the West Java Provincial Government which will have an additional PNS teachers as many as 28,000 people so that it affects the increase in the West Java APBD 2017. Based on the calculations, the increase is around 13.93% of in 2016, it was IDR 30 trillion.

As the results of the above research, it can be analyzed that the West Java Provincial Government together with the West Java DPRD has ratified the Regional Regulation on the Regional Budget (APBD) of West Java for the 2017 fiscal year, and Cirebon Municipal APBD is the responsibility of the West Java Provincial Government and the Provincial APBD. This transfer made the allowance that was initially able to be paid by the City of Cirebon amounting to IDR1.5 million to only IDR600 thousand which was agreed by the provincial government through the Balai. This is due to the ability of the region to provide different benefits, but then generalized based on the provincial APBD calculation.

This allowance, even though it has been abolished from the Cirebon City APBD, has not yet been able to be disbursed by the Provincial Government, on the grounds of: 1) still being adapted; 2) BP3 region V Cirebon has only been operational in October 2016; 3) still in the process of re-registering the number of high school/vocational school, number of students, number of teachers, budget, especially teacher honorarium/allowance which is the responsibility of the city of

Cirebon as a result of deciding management by the province; and 4) even though they will still be paid but there are pauses during this transition, including payment for honorarium teachers who were originally paid by Cirebon City APBD to be transferred to BP3.

This transfer then overlaps with Regulation No. 6/2007, which raises other concerns, such as in the case of secondary school data recollection that requires operational assistance which originally came from the Municipal APBD to become Regional APBD. The problem arises because even though the regulation has been implemented and is still in the adaptation stage, the operational needs of Windu Wacana High School continue to run and become a problem because the operational assistance from this province cannot yet be finalized. This has made the Windu Wacana High School financial balance deficit in the past year, especially since the transfer of responsibilities to BP3 in October 2016 or the new 2016/2017 school year. Windu Wacana High School Budget Draft (RAB) in Academic Year 2016/2017 experienced a deficit of IDR1,265,500 in the Midterm Examination, IDR1,363,750 in the Final Semester Examination, IDR1,192,975 in the Final Semester Examination, and IDR3,752,244 in the National Examination.

Another problem that arises with the existence of U No. 23/2014 is regarding the transfer of tasks, responsibilities, and programs that have been implemented by the Regional Government through the Cirebon Department of Education to BP3. Some important things related to the implementation of education such as teacher training which was previously a program of the Department of Education became the task of BP3, so it was abolished from the City APBD. This transition has not yet been properly prepared and implemented by the province considering that the BP3 was only established at the end of October 2016, very close to the deadline set by law. Even so, this unpreparedness then resulted in programs that were eventually abandoned due to reasons not yet ready/not yet transferred. In addition, often other programs overlap.

The research then explored on the existence of Regional Allowance, a part of teachers' rights which was revealed to be sometimes postponed and paid in sum because

of BP3's delay. The Secretary of Department of Education stated that:

It seems that all rights are given only when it's too late, because it is currently on adaptation period which is currently on preparing data and the number of students in each school. For some things that are not the main program, such as the commemoration of National Education Day, there is no coordination. This can be seen from what happened when the Cirebon Department of Education held a ceremony, the BP3 also held its own ceremony, so that it seemed to lack coordination.

In addition, this coordination problem was also felt in the communication between the BP3 and the Cirebon City Education Office which seemed stiff and tended to be closed, as revealed by interviewees:

The BP3 should have been based on concurrent principles, maintain friendship, do not have stiffness between BP3, Department, TK, SD, SMP, and education providers from the community (foundations).

This was emphasized by the interviewees, because currently the Provincial Government does not accept the recommendation of the principal from local foundation without any recommendation from the BP3, whereas, according to the informant, this is difficult to implement if there is no good communication.

The Cirebon Mayor's Regulation No. 46/2016 was passed as an effort to synchronize the Cirebon Municipal Government towards the enactment of UU No. 23/2014 by changing the duties and responsibilities of the Cirebon Department of Education, thus annulling the previous Perwalkot that regulates similar matters. Whereas regarding the Cirebon Mayor Regulation No. 14/2014 is not affected by UU No. 23/2014 because Perwalkot regulates basic education SPM.

Based on this elaboration, basically Law No. 23 of 2014 has been synchronized vertically by the West Java Provincial Government through Regional Regulation No. 5/2017 concerning the Implementation of Education. However, the annulment of Municipal Regulation No. 6/2007 which specifically regulates the implementation of education, including secondary education, in Cirebon has not been properly replaced by the

West Java Provincial Regulation No. 5 of 2017, because it actually creates new problems during implementation, such as miscoordination, overlapping responsibilities, accumulation of burdens to the province and delays in disbursement of funds, both salaries and grants, which greatly affect the implementation of secondary education by the Budi Arti Foundation which is helped by the existence of these funds.

Although the legal provisions of UU have a higher legal force, basically the regions have not been able to harmonize regional regulations which also directly affect the implementation of education by the foundation as a community legal entity. In addition, this overlap also needs to be regulated in a local regulation or Perwalkot in relation to the foundation, to avoid future complications.

CONCLUSION

Regional policies related to the implementation of senior secondary education which were previously handled by the Cirebon Department of Education currently handled by the West Java Provincial Education Office by delegating it to the Cirebon Region BP3M based on Governor Regulation No. 89/2016, should be able to help, enrich, encourage, and financing the implementation of secondary education. This reinforcement is not only based on the UU, Ministerial Regulation, Regional Regulation, but also must be elaborated by the Governor of West Java Regulations, if, before October 20116 government affairs in senior secondary education were still by the Mayor's Regulation (Perwalkot) given a more specific translation still needed to explain these regulations at local level, so that the implementation of secondary education will be acceptable to all levels of society and has a monitoring & evaluation mechanism. Between BP3M and the Regional Regulation of the Province of West Java must emphasize the implementation strategy implemented by BP3M because it not only determines the performance of foundations, education providers, and offices, but also the BP3M itself.

Meanwhile, the obstacles found in the implementation of secondary education include lack of socialization of the West Java Province Regional Regulation specifically related to the implementation of secondary education, the lack of coordination of the

newly-established BP3M and Cirebon's Department of Education, which is felt in teacher's training program implementation and is hampering progress by the high school in Cirebon, especially Windu Wacana High School. The next obstacle is the Governor of West Java Regulation which in its enforcement seems to have not been adjusted and does not side with the smooth operation of secondary education, as well as the low HR capability of implementation that is not yet in line with needs. The Governor of West Java Regulation which in its enforcement seems to have not been adjusted and does not favor the smooth running of secondary education. Because supervision and secondary education services have switched status by the Secondary Education supervision center (BP3M) under the auspices of the West Java Provincial Government, and the low HR capability of implementation is not yet in line with needs.

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