

THE LOSS OF LEGAL SECURITY IN THE ZONING POLICY OF INDONESIAN EDUCATION

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ABSTRACT: Since 2019, the student's enrollment system in Indonesia had referred to the zoning system based on the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student's enrollment. The zoning system was a rule in processing students' enrollment according to their living area. This policy raised the big cons from Indonesian people. It was considered to limit student's right for choosing public school based on their interest and achievements. This study aimed to discuss about the loss of legal security in the zoning policy of Indonesian Education by using normative research method. It had been analysed using content analysis to all collected data. The results of study conclude that zoning policy stated in the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student's enrollment did not prescribed by the Law number 20 in 2013 about the National Education System on article 51 which stated clearly that the management of education unit ran based on the standard of minimum services with the principle of school-based management. The zoning system in Ministry of Education and Culture Regulation number 14 in 2018 had not emerged the legal security that had to be present in every Indonesian regulation.

KEYWORDS: Legal Security, Zoning System in Indonesian Education

I. INTRODUCTION

Education is an important part of a country because it is a systematical process in producing human resources to set-up a nation. Education also contributes to the global index competitiveness of a nation. Many natural resources are possessed by a nation without sufficient human resources in it, make it is impossible to be developed. The percentage of Indonesian students' participation at school in 2015 up to 2019 at the age of 16 - 18 years old showed significant improvement. In 2015, it showed 70.61%. In 2016, it showed 70.83%. In 2017, it showed 71.42%. in 2018, it showed 71.99%, and in 2019 it showed 72.36%. Based on the data, it can be concluded that the 16 - 18 years old teenagers have big awareness and intention to attend schools. In relation to the enforcement agency's objective function, the focus of the literature has mostly been on the maximization of social welfare, and on the maximization of returns from legal activity. In the latter case, the enforcement agency considers only the legal benefits that society would receive from reducing crimes. However, illegal activities may contribute to the livelihood of people so there has been debate about whether some weight in the objective function should be assigned to illegally derived benefits. [1]

It has to be in line with the government policy that gives support from many points of view. However, the main problem is the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student's enrollment that had been released. Article 16 states that The schools under the local government have to accept registered students who live closest to it, at least 90% (ninety percent) of the total accepted students. The regulation raised many pros and cons because it was considered to limit students who had high-achievement to join a favorite school. In general, it was aimed to create equitable education and remove the concept of favorite school. However, it also deviated from the Law number 20 in 2013 about the National Education System on article 51 which stated the management of education unit in kindergarten, elementary, and high schools ran based on the standard of minimum services with the principle of school-based management. [2]

The student's enrollment system in Indonesia has to be referred to the Law number 20 in 2013 about the National Education System, in which the authority of quota allocation for registrant is controlled by school autonomy because the geographical, economical, and social conditions of every region are different. The implementation of legal role in the society starts to be unprogressive when zoning policy puts in the student's enrollment system. According to Plato, law has to be a regulation system that is well-ordered and able to manage the society. He also reveals that the object in the construction of the state is the greatest happiness of the whole, and not that of any class. In constitutional state, the temporary and the coming policies of the government have to be done based on the law and legal security. In creating constitutional state, well-arrangements are needed. One of them is used to create constitutional law. It has to be prepared from the

planning until the enactment of a law. To make a good constitutional law, some requirements related to its system, principles, methods of setting up and discussing, techniques of arranging and applying are needed. [3]

According to Kelsen, law was a norm system that emphasized the aspect of “must” or *das sollen*, by enclosing some regulations about what had to do. This regulations started to be a limitation for the society in taking action towards other people. The law that contained public rules has to be a guideline in changing human behavior, and the implementation of it created legal security. This study analyses the loss of legal security in the zoning policy of Indonesian Education. The results of it are expected to be references of education policy that are able to create legal security in giving opportunities for the society to fulfill their rights. It is used to obtain education for increasing their life qualities, human welfare, and Indonesian development. This study analyses the loss of legal security in the zoning policy of Indonesian Education, how it be? [4]

II. METHOD

This study is normative research or library research method. The primary data are the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student’s enrollment, the Law number 20 in 2013 about the National Education System. The secondary data are books, research report, journals, and all materials related to this study. The technique in collecting data is documentation by studying the books, research report, etc. The collected data is analysed using content analysis. The main point to be analysed is the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student’s enrollment that related to the zoning system for Indonesian education. [5]

III. RESULTS AND DISCUSSION

National education is the education based on the five basic principles of Indonesia (*Pancasila*) and the Indonesian Constitution 1945 based on theological, Indonesian culture, and the age changing. Education is an important part of a country because it is a systematical process in producing human resources to set-up a nation. Education also contributes to the global index competitiveness of a nation. Many natural resources are possessed by a nation without sufficient human resources in it, make it is impossible to be developed. The function and objective of education in Indonesia are stated in the Law number 20 in 2013 about the national education system in article 3, which states The national education has function to develop the ability, shape a character and civilization of a prestigious nation in enriching the national life; aims to develop students’ potential to be the faithful human, have a well-character, healthy, learned, capable, creative, independent, be a democratic and responsible society. [6]

Based on the result of *Programme for International Student Assessment (PISA)* 2018, the Indonesian rank was decreased when it was compared to the result of PISA in 2015. The study in 2018 assessed 600.000 children of 15 years old from 79 countries once in three years. It compared the children’s abilities in mathematics, reading, and science. In the category of reading skill, Indonesia got the 74th rank. The average score of Indonesia was 371, under Panama which had average score of 377. In the mathematics category, Indonesia got the 73th rank with the average score of 379. Indonesia was on the top of Arab Saudi which had average score of 373. In the science category, Indonesia got the 71th rank with the average score of 396. It was on the top of Arab Saudi which had average score of 386. [7]

The policy of curriculum should be referred to the result of PISA because the fundamental change of it was the change of curriculum itself. The government made serious efforts to provide education for all citizens through the equitable access to education. It made the Indonesian people had life skills so it lead to the totally human development and modern society based on *Pancasila*, as stated in the Law number 20 in 2013 about the national education system. The student’s enrollment, that was started from kindergarten until senior high school, had to be done by educational institution in the beginning of academic year. Since 2018, the realization of it had implemented the zoning system, in which it was based on the distance between the school and student’s home. This improvement of educational access and quality had been stated in Constitutional Law 1945 to provide chance for every people in fulfilling their fundamental right to get human welfare.[8]

The zoning policy was stated in the Ministry of Education and Culture Regulation number 14 in 2018 about the student’s enrollment. The percentage of registered students who lived closely to the school was at least 90% of the total accepted students. On the other hand, the percentage of students who registered through the performance appraisal was only 5%. It did not prescribed by the Law number 20 in 2013 about the National Education System on article 51 which stated clearly that the management of education unit ran based on the standard of minimum services with the principle of school-based management The results show that ambiguity in the language used in state laws, low rates of compliance with state law requirements in rural and underserved

areas, uncertainty of who is responsible for the enforcement of state concussion laws, and the use of ineffective educational materials are major barriers to the implementation of state law.[9]

The legal security in the Constitution was a guarantee to deliver legal law. The norms that supported justice had to be functioned as law abiding. According to Gustav Radbruch, justice and legal security could not be separated from the Law. Both of them had to be highlighted, the security and order of a country depended on the implementation of legal security. The existence of Ministry Regulation was not arranged in the Law number 12 in 2011 about the formation of Constitutional Regulation. It was arranged in article 8 (1) which explained that Types of Constitutional Regulation in article 7 (1) covered the regulations that set by Provisional People's Consultative Assembly, House of Representative, Councilor, Supreme Court, Court of Law, Board of Financial Examiner, Judicial Commission, Bank of Indonesia, Minister, Other Boards set by the Law, The Representative of Province, Governor, The Representative of Regency, Regent, Village Chief, etc.[10]

Although this rule was not clearly defined that the types of Constitutional Regulation were in forms of The Ministry Regulation, it clearly explained that the existence of Ministry Regulation was a type of Constitutional Regulation. It could be concluded that the existence of Ministry Regulation was occupied. Every Law Regulation always contained the principles of it as the foundation. Satjipto Rahardjo argued that the principle of it was the core of law regulation. To understand it, the legal principles were needed. Karl Larenz in his book entitled *Methodenlehre der Rechtswissenschaft* explained that the legal principles were the standards in Law creating. [11]

The zoning policy in Indonesian education that was arranged in the Ministry of Education and Culture Regulation number 14 in 2018 about the student's enrollment system was highlighted after it had been implemented. The freedom and independence in obtaining education based on one's intention and achievement were limited by this policy. William Twining in his book entitled "General Jurisprudence, Understanding Law from Global Perspective" stated that many people who believed in human rights grounded their conception and justifications in wider religious views. But other sought to advance conceptions and justifications that were both secular and universal, claiming to transcend belief system and cultures in this view rights were the rights that all human beings had by virtue of being human. The Law should create legal security that aimed to make well-regulated society. The written law could not be separated from the legal security. According to Fence M. Wantu, a law without legal security would loss its meaning because it could not be guidance for everyone's behavior. [12]

Mahadi (A professor of Legal Department in USU) stated that the source of Indonesian legal principle was *Pancasila*. It had been a source of all laws, so it was referred as the basic principle or *beginsel rechtsideologie* in Indonesian law. In fact, there was a contradiction between justice and legal society. It caused those elements of essential law were difficult to be realized. The contradiction was caused by the constitutional regulation which ignored the social reality and it was not relevant to the society development. [13]

IV. CONCLUSION

The zoning policy that was stated in the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student's enrollment did not prescribed by the Law number 20 in 2013 about the National Education System on article 51 which stated clearly that the management of education unit ran based on the standard of minimum services with the principle of school-based management. The zoning system in Ministry of Education and Culture Regulation number 14 in 2018 had not emerged the legal security that had to be present in every Indonesian regulation because it was one of legal principles that should be basic principles in creating constitutional regulation. The implementation of it was very important to be done in the Ministry of Education and Culture Regulation number 14 in 2018 about the system of student's enrollment especially the zoning policy.

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