

**LEGAL PROBLEMS OF EDUCATION EQUALITY IN
REMOTE AREAS**

Nancy Prema

Department of Constitutional Law (Siyasah) Faculty of Sharia and Law,
Universitas Islam Negeri Sumatera Utara
e-mail: nancyprema36@gmail.com

ABSTRACT

Indonesia is the country that has the most population in the world, this is certainly inseparable from all legal problems in society. The existence of government prosecutions of the public to understand the law (presumption iures de iure) is certainly compared to limited education, material limitations, the unevenness of development or education services, and regional remoteness. This journal aims to provide an explanation regarding why all Indonesians are required to understand the law while the government has not met the needs/services in the community in an effort to achieve a state based on law. The research steps taken use qualitative methods where the contents of this journal contain data and the results of direct observations. Based on the results of direct research into the community that there are still many Indonesian citizens who do not understand the law due to limited education due to the remoteness of the area.

Keywords: *Legal fiction, education, isolated*

Journal History

Received : May 23, 2023;
Reviewed : May 26, 2023;
Accepted : May 30, 2023;
Published : May 30, 2023.

Copyright @2022 NLR. All right reserved.

INTRODUCTION

Indonesia is a state of law, while law is the norms or regulations that exist in society. A country cannot progress if its people just violate the existing rules. Education and law greatly affect the state of the country. The existence of a legal fiction theory aims to make people obligated and must know the law (*presumption iures de iure*). These provisions are binding so that a person's ignorance of the law cannot free/benefit him from lawsuits (*ignorantiajurist non excusat*). However, the problem raised in this journal is whether the existence of this principle seems to assume that the community already knows it, then what about isolated communities where even access to vehicle transportation does not exist, is this considered justice for all Indonesian people. The existence of this principle of legal fiction is contained in Law no. 12 of 2011 concerning Legislation, namely "with the promulgation of

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v%vi%i.14942

statutory regulations in the official state gazette, everyone is considered to have known them". The following are some issues regarding the principle of legal fiction:

1. Unequal distribution throughout the Indonesian people
2. The language in the articles is too stiff so that it is difficult for the general public to understand
3. Limited education
4. Remote area
5. Limited access to the internet network
6. Transportation
7. The lack of public interest in knowing the law

The problem solving that can be done is firstly the development and service of educational facilities to the community so as to encourage public awareness to understand how important law is for the nation and the state. Then secondly, there is equal distribution of electricity availability, construction of road access and the internet with the hope of facilitating the government in the dissemination process through social media. Thus socialization through social media, print media, seminar press conference workshops or other activities is easy. With access to roads and the internet, it will greatly facilitate the process of disseminating this information, because in this digital era it is very easy to access the latest news information, so that later there will be no more gaps in society to refuse to understand the law.

Handling of remote villages, underdeveloped and small islands should be given more attention, this national development also has an impact on the economic conditions of the community to minimize the poverty rate of the community. Based on the research conducted by the author, it is evident that there are still many remote areas, for example Siligawan Gadang Village, Gunung Tuleh District, West Pasaman Regency, West Sumatra Province where there is still little government development in this village, based on local community interview data that road construction in 2017 and for Internet network access until now still does not exist. This is an example of an imbalance between provisions that society is deemed obligated to know about the law while government service facilities are uneven, for this reason it is necessary to socialize the condition of the population and the provisions of the principle of legal fiction.

In terms of education in remote areas, from the results of direct research on the field that education in the village of Siligawan Gadang is still said to be inadequate, the elementary school and junior high school (junior high school) are very far away, due to limited roads and transportation, students walk every day with long distances. 2 kilos. As for their high school level (Siligawan Gadang students) they have to leave their village to a more developed area with a distance of 12 kilos.

Based on direct research into the community, the author gives the opinion that there is a need for more government attention to remote communities, small

islands and various areas that are classified as isolated. So that it is hoped that the principle of legal fiction is fair for all Indonesian people.

METHOD

The method used in this research is qualitative where this method or method emphasizes analysis or descriptive in accordance with facts based on facts encountered in the field when conducting research.¹

This qualitative method aims to explain circumstances or events by collecting data in as much detail as possible. This method will focus more on the facts that occur based on the results of direct research data both on human interests, both objects, institutions and understanding events or behavior of a phenomenon in society. The author's goal in choosing this method is also to understand how communities or individuals accept certain issues regarding law.

DISCUSSION

Principles of legal fiction

Usep in Eka NAM Sihombing and Irwansyah argue that State Law is another term used as a equivalent of the term Constitutional Law. Both terms are translations of the Dutch term "*staatrecht*". In Dutch literature, *staatrecht* has 2 (two) meanings, namely *staatrecht in ruimere zin* (in the broad sense) and *staatrecht in engere zin* (in a narrow sense). *Staatrecht in engere zin* or constitutional law in a narrow sense is usually called State Administrative Law, while *staatrecht in ruimere zin* or constitutional law in a broad sense includes State Administrative Law and State Administrative Law.²

The Principle of Legal Fiction assumes that when a statutory regulation has been promulgated, at that time everyone is deemed to know (*presumption iures de iure*) and these provisions are binding so that a person's ignorance of the law cannot free/forgive him from lawsuits (*ignorantia jurist non excusat*). The existence of the principle of legal fiction has been normalized in the elucidation of Article 81 of the provisions of Law Number 12 of 2011 concerning Legislation, namely "By the promulgation of Legislation in the official document referred to in this provision, everyone is deemed to have known it".³

¹ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

² Eka N.A.M Sihombing, Irwansyah, *Hukum Tata Negara*, (Medan: Enam Media, 2019), p. 1.

³ Annurdi, "Penerapan Fiksi Hukum" *Jurnal Hukum*, Vol 7, No.3, (October, 2021), Hal 61-62.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v%vi%i.14942

The official sheets referred to in the provisions of Article 81 consist of 7 types, namely:

- a. State Gazette of the Republic of Indonesia
- b. Supplement to the State Gazette of the Republic of Indonesia
- c. State Gazette of the Republic of Indonesia
- d. Supplement to the State Gazette of the Republic of Indonesia
- e. Regional Gazette
- f. Additional Regional Gazette, or Regional Gazette

One of the laws and regulations promulgated in the State Gazette of the Republic of Indonesia is the Supreme Court Regulation, abbreviated as PERMA. PERMA is a regulation that contains procedural provisions as referred to in the Appendix to the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 57/KMA/SK/1V/2016 concerning Amendments to the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 271/KMA/SK/X/2013 concerning Guidelines for Preparation Policy of the Supreme Court of the Republic of Indonesia. Legal fiction is one of principle that everyone must to know about the law.

Limited Education in remote areas

Jimly Asshidique stated that the laws that have been enacted and promulgated must have gone through a very long process until they were finally passed into public property which are open, binding to the public. If a law that has been prepared, discussed and debated in such a way is finally enacted and promulgated accordingly.⁴

Law Number 2 of 1989 concerning the National Education System was replaced and refined by Law Number 20 of 2003 concerning the National Education system and Law Number 14 of 2005 concerning Teachers and Lecturers. In article 31 paragraph 1 to paragraph 5 of Law Number 20 of 2003 concerning the National Education System states the following:

1. Every citizen has the right to education
2. Every citizen is obliged to attend basic education and the government is obliged to finance it
3. The government seeks and organizes a national education system, which increases faith and piety as well as noble character in the context of educating the nation's life, which is regulated by law.

⁴ Jimly Asshidique in Eka NAM Sihombing, Dani Sintara, Cynthia Hadita, "Limitations Of Revision The Legislations In The Process Of Formulating The Legislations In Indonesia", *Nomoi Law Review*, 3, no. November (2022): 116–124.

4. The state prioritizes the education budget of at least twenty percent of the state revenue and expenditure budget and from the regional revenue and expenditure budget to meet the needs of implementing national education.
5. The government advances science and technology by upholding religious values and national unity for the advancement of civilization and the welfare of mankind.

Constitutionally, it is clear that all educational affairs are the obligation and responsibility of the government, but that does not mean that the community cannot escape responsibility. Community participation and responsibility is needed in making changes, developing and organizing education. Article 3 of Law number 20 of 2003 concerning the National Education System states that national education functions to develop capabilities and form dignified national character and civilization in the context of educating the nation's life, aiming at developing the potential of students to become human beings who believe and fear God Almighty, have a noble character, be healthy, knowledgeable, capable, creative, independent, and be a democratic and responsible citizen.⁵

Education is a container for humanizing humans. Where all people in a country have the right and obligation to pursue education without exception. Education itself is very important for everyone, because education itself aims to educate and develop one's potential. However, if you look back, the education provided by our country is still far from perfect. We can judge for ourselves how low the quality and quality of education in our country is. Many problems arise, such as a lack of infrastructure, an uncertain curriculum, a lack of professional teachers, a lack of schools in remote areas, and so on.

Inequality in education in Indonesia is an obstacle and the responsibility of the government. Due to the lack of attention from the government on the condition of education in Indonesia. Efforts that must be made to overcome the factors causing unequal education in Indonesia include increasing the quality and quantity of teachers, building schools in several remote areas, providing a foundation to guarantee, provide and protect the rights of citizens, especially in the world of education in accordance with Article 31 of the 1945 NRI Constitution and Law No. 39 of 1999. Based on these conclusions, the authors provide the following suggestions:

1. The government is expected to make a policy regarding one family card for one scholarship

⁵Muntoha, “ *Pendidikan dalam Perspektif Hukum (antara harapan dan realitas)* ”, Jurnal Madaniyah, Vol.1 , Civil Society Journal, Vol.1 (January, 2016), Pg. 91-92.

- up to university/graduate level
2. The government builds schools in remote areas that are easy to reach access.
 3. The government is expected to improve the quality and quantity of teachers in Indonesia
 4. The government is expected to frequently monitor remote areas that have not received proper education.

In addition, there are several factors that cause the quality of education in Indonesia to become increasingly apprehensive, resulting in educational inequality, namely ⁶:

- a. The difficulty of the internet and communication tools to find information
- b. Difficult road infrastructure and long distances to school, lots of traffic roads that are not worth taking and school buildings that are not suitable for use at various levels of education, ownership and use of facilities that are not utilized as well as low learning media, library books that are not complete so that there are not many who are interested in literacy on the part of students.
- c. The low quality of teachers , most teachers are not maximal or professional in carrying out their duties.
- d. Low teacher welfare, with low income, many teachers take side jobs to meet their needs because there is not enough income from the teacher alone.
- e. Low student achievement

The events above greatly impact students with low student achievement due to a teacher who is not optimal in carrying out his duties.

- f. Lack of equity in education to all corners of the village
This is becoming very common now among the education office, so that people in remote areas are less touched, less paid attention to and become commonplace.
- g. Low compatibility of education with the needs of the world of work
It often happens that when you have graduated from school, there is a mismatch between education and work requirements due to a curriculum that is less functional when studied at school with the expected work needs later when entering the world of work.
- h. The high cost of Education

⁶Anta Ibnu Falah and AgusHeruanto Hadna Hadna “*Problematika Pendidikan Masa Pandemi di Indonesia Pada Daerah T-3 (Terluar, Tertinggal dan Terdepan)*”, Jurnal Pendidikan dan kebudayaan , Vol 7, No.2, (December, 2022), P173-174.

The cost of quality education is expensive, this is what we always hear from the community, so that people cannot afford it due to the low economy⁷

Legal Problems Of Education In Remote Villages

Law can be interpreted as fundamental principles in people's lives. ⁸The definition of law in this perspective is seen in Salmond's view ⁹that "law is a set of principles recognized and applied by the state in court".

Power in relation to state affairs can be divided into two groups, namely state power and community power. State power relates to state authority to regulate people's lives in an orderly and peaceful manner. Community power is the power/ability of the community to manage and organize the interests of the individuals and community groups that are its members so that social interaction can run smoothly. The imbalance between the two will encourage hegemonic power where the state is very strong and society is very weak, thus creating dominative and exploitative patterns of relations. This has resulted in the state not only intervening in state and social affairs, but also intervening in all community actions which are not actually within the scope of its authority.

Even though power is law, power is not synonymous with law. Regarding this, Van Apeldorn argues that law is power, but this does not mean that law is nothing but power. Law is power, but power is not always law. "*Might is not right,*" the thief has authority over the goods he stole, but that does not mean that he is entitled to the goods.¹⁰

According to Lassalle, the essence of power that is the same as the law is physical power, especially the power of the military and police. However, according to Van Apeldorn, physical (material) power is not an essential element of law, let alone an essential element of it. Physical power is usually only an additional element: something accessoir, not part of the law. On the other hand, moral power is an essential element of law, namely the power derived by legal rules from the value assigned to them by society, and on the basis of which these rules can usually expect voluntary obedience by members of society.

Physical power is power that relies on violence or coercion to compel people's obedience to the rules of law and if it violates it, it will be subject to legal sanctions. Community compliance with the law is largely determined by the quality of the coercive apparatus (police and prosecutors) in carrying out their duties.

⁷Zulkarnaen and Ari Dwi Handoyo "*faktor-faktor Pendidikan tidak merata di Indonesia*", jurnal ilmu hukum, (December, 2018), pp. 21-23.

⁸LJ Van Apeldorn, *Pengantar Ilmu Hukum*, Jakarta, PT. Pradnya Pramita, 1986, p. 70

⁹LB Curzon, *Jurisprudence*, M&E Handbook, 1979, P.24.

¹⁰Satjipto Rahardjo, *Hukum dan Prilaku*, Jakarta, Kompas, 2009, Pg.20

Meanwhile, decency is an inner power that originates in human self-awareness regarding goodness, decency and a sense of justice. Community obedience to the rule of law is not due to coercion from law enforcement officials, but based on the self-awareness of community members who voluntarily comply with the rule of law.

According to Talcot Parsons¹¹, Power is the general ability to guarantee the implementation of binding obligations by collective organizational units in a system which are recognized obligations with reference to the achievement of their collective goals and when there is a waiver of obligations. may be subject to certain negative sanctions, whoever enforces them.¹²This understanding focuses on public power to enforce coercive societal rules in order to provide protection to the public.

While the problems discussed are viewed in terms of minimal education but the government seems to be imposing its will on people who are less educated and remote.¹³Education is the foundation pillar of a country, education is very important for human needs. The emphasis on law which solely enforces formal rules without linking the condition of the people with the spirit embodied in the rules will take place in a very mechanistic way. But what if education in a country is only obtained by people who live in cities and who can afford it, is it fair to say justice for all Indonesian people. The legal problems that occur in Indonesia are based on the state of education in remote areas, which makes it difficult for government regulations or policies to work properly. It is true that a regulation is made for the welfare of its people, but here the discussion being studied is lawsuits against rural communities who lack education. The government insists that all Indonesian citizens must know the law while the government itself does not facilitate it. The author has witnessed firsthand how the condition of rural people is that even road access infrastructure is not facilitated, how can rural communities understand the law if education is underestimated by the government.

The next problem is why rural communities do not understand laws or regulations because there are no outreach activities such as seminars, face-to-face conference workshops, so that ordinary people find it difficult to understand the intent and purpose of the law. The principle of legal fiction can be accepted by all Indonesian people if this principle is indeed equal for the population, for example, if a regulation is made by the government and enacted while remote rural residents

¹¹Talcott Parsons, October, *"The Distribution of Power in American Society."* *World Politics*, 1957, P.139.

¹²Miriam Budiardjo, *Aneka Pemikiran Tentang Kuasa dan Wibawa*, Jakarta, Sinar Harapan, 1991

¹³Salman Luthan, *"Hubungan Hukum dan Kekuasaan"*, *Jurnal Hukum*. Vol 4, No. 2 ,(April,2007), p. 179.

are not aware of the latest law due to limited access to networks and ignorance of science or education.

The government has indeed thought about the worst side of this situation in advance, as it is known that the government is also conducting outreach to various places for the dissemination of the latest laws and regulations, but from the results of direct research to the village of Siligawan Gadang, Gunung Tuleh District, West Pasaman Regency, West Sumatra Province that until Currently, legal socialization has never been carried out , and it is proven that the people do not understand the law. This is one of the reasons for the controversy as to why many Indonesian citizens do not understand the law.

According to Prof. Hikmahanto Juwana gave reasons related to the objectives of legal education not being seen significantly in the graduates produced by 14 law faculties, namely:

1. The core curriculum of legal education that has been in effect since the colonial era until now is still valid.
2. The majority of the subject matter in the core curriculum and teaching methods have not fundamentally changed since the Colonial rule to the present. Course substance and teaching methods have been perpetuated due to teaching factors. Teachers are resistant to change even though the goals of legal education have changed.
3. Preservation also occurs because of the teacher recruitment system.
4. The majority of law school graduates tend to want graduates who know laws and regulations, not those who know law in a broad sense. Laws have been reduced to statutory regulations.
5. Public perceptions have also affected the uniformity of graduates produced by law faculties. Society stereotypes law faculty graduates as highly legalistic, good at memorizing and obedient to doctrine. As a result, legal education providers, teachers and students have no choice but to follow the stereotypes perceived by society.

the conclusion that the basic objectives of legal education in legal education institutions do not have a significant influence and impact on graduates expected by society. When the community's need that legal children can resolve small-scale legal problems in the midst of society cannot be resolved properly, it tends to divert this assistance on the grounds that the student's education is not specialization.¹⁴

¹⁴Ahmad Iffan , “*Rekonseptualisasi Pendidikan hukum dalam Sistem Pendidikan Nasional*”, *Jurnal Karya Aparatur*, Vol 4. No. 2 (2020), p. 53.

CONCLUSION

Indonesia is a constitutional state, in accordance with the 1945 Constitution Article 1 paragraph (3) therefore, it is appropriate to uphold justice for all Indonesian people. Equal distribution of education, development and facilities for urban and rural communities, so that the principle of legal fiction can be accepted and realized by all Indonesian people. Meanwhile, the Law on Education regulated in Number 2 of 1989 concerning the National Education System was replaced and refined by Law Number 20 of 2003 concerning the National Education system and Law Number 14 of 2005 concerning Teachers and Lecturers.

Education and law greatly affect the state of the country. The handling of remote, underdeveloped villages and small islands, and national development will also have an impact on the economic conditions of the community to minimize the poverty rate. So it is hoped that with physical development, access to transportation and the internet in rural areas, the people will get equal educational rights so that This principle of legal fiction is accepted and enforced by all Indonesian people.

The state has physical power, namely power that relies on violence or coercion to compel people's obedience to the rules of law and if they violate it, they will be subject to legal sanctions. Community compliance with the law is largely determined by the quality of the coercive apparatus (police and prosecutors) in carrying out their duties. However, the emphasis on law which solely enforces formal rules without linking the condition of the people with the spirit embodied in the rules will take place in a very mechanistic way.

Therefore, because the state has coercive power over its people, it is legitimate for the government to make rules to force its citizens to understand the law on the grounds that the government also pays attention to the condition of its people by building adequate infrastructure so that these government regulations can run without any discrimination against social groups.

REFERENCES

- Annurdi, “*Penerapan Fiksi Hukum*” *Jurnal Hukum*. Vol 7, No.3 October, 2021.
- Apeldorn , LJ Van. *Pengantar Ilmu Hukum*, Jakarta, PT. Pradnya Pramita, 1986.
- Budiardjo, Miriam. *Aneka Pemikiran Tentang Kuasa dan Wibawa*, Jakarta, Sinar Harapan, 1991
- Eka NAM Sihombing, Dani Sintara, Cynthia Hadita, “Limitations Of Revision The Legislations In The Process Of Formulating The Legislations In Indonesia”, *Nomoi Law Review*, 3, no. November (2022): 116–124.
- Eka N.A.M Sihombing, Irwansyah, *Hukum Tata Negara*, Medan: Enam Media, 2019.
- Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum*, Malang: Setara Press, 2022.
- Falah Anta Ibnu. and Agus Heruanto Hadna Hadna “Problematika Pendidikan Masa Pandemi di Indonesia Pada Daerah T-3 (Terluar, Tertinggal dan Terdepan)”, *Jurnal Pendidikan dan kebudayaan* , Vol 7, No.2 December, 2022.
- Iffan, Ahmad. “Rekonseptualisasi Pendidikan hukum dalam Sistem Pendidikan Nasional”, *Jurnal Karya Aparatur*, Vol 4. No. 2 2020.
- LB Curzon, *Jurisprudence*, M&E Handbook, 1979.
- Luthan, Salman. “Hubungan Hukum dan Kekuasaan”, *Jurnal Hukum*. Vol 4, No. 2 ,April,2007.
- Muntoha. “ Pendidikan dalam Perspektif Hukum (antara harapan dan realitas)”. *Jurnal Madaniyah*, Vol.1 , *Civil Society Journal*, Vol.1 January, 2016.
- Parsons, Talcott. October. "The Distribution of Power in American Society." *World Politics*, 1957.
- Rahardjo, Satjipto. *Hukum dan Prilaku*, Jakarta, Kompas, 2009.
- Zulkarnaen and Ari Dwi Handoyo “Faktor-faktor Pendidikan tidak merata di Indonesia”, *Jurnal Ilmu Hukum*, December, 2018.