

## FULFILLMENT OF EDUCATIONAL RIGHTS FOR INDONESIAN CITIZENS WHO ARE IN THE BORDER AREAS WITH NEIGHBORHOODS

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### ABSTRACT

*The implementation of the fulfillment of the right to primary and secondary education in the border region from 2005 to 2007 has been gradually fulfilled by the government. The gradual fulfillment is the implementation of state sovereignty as a form of responsibility to respect the implementation of the global agenda in fulfilling the right to education which has been used to contest the agenda in the making of laws, policies, programs and funding. Implementation of the fulfillment of the right to primary and secondary education in the border region Indonesia has problems, obstacles and special challenges. All caused by certain situations and conditions in the border region. In many border areas, many have not obtained educational rights due to the lack of facilities and infrastructure, jealousy due to differences in facilities with neighboring countries, geographical factors that make reluctant education actors perform tasks and functions of educators and the low allocation of education funds has led to underdevelopment and inequality education in border areas.*

Keywords: fulfillment of the right to education, border areas, human rights

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### Introduction

The existence of the right to education has undoubtedly existed both at national and international levels (Beiter; 2005). Especially in Indonesia, the political dynamics of national law affect the implementation of the right to education originating from the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution) and the main provisions of international human rights as in the Universal Declaration on Human Rights (UDHR) 1949, The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and at the Convention on The Rights of The Child 1989.

In the Preamble of the 1945 Constitution it was emphasized that one of the objectives of the establishment of the government of the State of Indonesia was "to educate the life of the nation". This objective is then manifested through Article 28C Paragraph (1) and Article 31 of the 1945 Constitution and further elaborated in various laws and regulations including Law No. 20 of 2003 concerning the National Education System as *lex specialis*. In connection with the ICESCR, Indonesia has ratified the covenant on September 30, 2005 through Law No. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights. In the ICESCR itself the right to education is specifically regulated in Article 13 and Article 14 (International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966).

The nature of the right to education at the basic education level, as confirmed in ICESCR, is a certain condition that must be created by the ratifying state (M. Freeman; 1992). The substance of education and managerial aspects of administering education is a basic element in Article 13 of the ICESCR for countries to provide basic education for everyone. Aspects of availability and ease of educational facilities and infrastructure, and aspects of acceptance, and power of adjustment are legal segments (indicators) that must be gradually fulfilled by the state to be achieved at any time and increased compliance in the education sector, especially primary and secondary education (Katarina ; 1995).

Indonesia as a party to the ICESCR is bound to implement these provisions based on the international obligations contained therein (Santos Pais). The Bonanza Perwira Taihitu provides an argumentative framework that the politics of Indonesian national law towards the implementation of the above international human rights law provisions between 1990 and the end of 2005 is more likely to be a national image in international forums (Bonanza; 2003). Thus, the basic obligations in these provisions are implemented to attract more foreign sympathy rather than their use for national interests.

It becomes interesting to study whether the nature and purpose of national legal politics in Indonesia towards the fulfillment of the right to education, especially primary and secondary education after the amendment to the 1945 Constitution. Is the motivation for animating the implementation of ICESCR a meaningful juridical study. The juridical study is related to 11 clusters of findings regarding the issue of the fulfillment of the right to education by the Ministry of Education and Culture of the Republic of Indonesia (Ministry of Education and Culture, 2012; 10). One cluster of these problems is the issue of fulfilling children's rights to primary and secondary education in Indonesia's border areas with other regions such as Malaysia, Papua New Guinea (PNG) and the Democratic Republic of Timor Leste (RDTL).

West Kalimantan Province (West Kalimantan) has been used as a study review and initiation of increasing the fulfillment of the right to education by the Ministry of Education and Culture since 2009, especially in the border region with Malaysia. The lack of facilities and infrastructure, the low desire to go to school, the reluctance of education actors to carry out the duties and functions of educators and the low allocation of education funds have led to underdevelopment and inequality in accessing education in these border areas (Marzuki).

### Research Methods

Based on the features of legal research, Soekarno (1986; 10) categorizes it into three types, namely:

1. Exploratory research is conducted if knowledge about a phenomenon that will be investigated is none or still lacking.
2. Descriptive study is done to provide accurate data about people, circumstances, or other symptoms.
3. Explanatory research is research that is intended to test specific hypotheses.

Viewing from the objectives, legal research is divided into two categories (Soekarno & Mamudji, 2003; 14) they are:

1. The literature research is done by researching library materials or secondary data.
2. The empirical or sociological legal research is conducted primarily by examining primary data.

Based on the category of the types of research, this research employed descriptive design that is intended to provide a clear picture of a country's reasons to issue Fulfillment of Educational Rights for Indonesian Citizens Who are in The Border Areas With Neighborhoods. The objective of the present research is normative law, of which the data were obtained through the study of documents or literature by examining library materials, such as: books, international conventions, international agreements, papers, journals, articles, newspapers as well as internet sites related to the object under study.

### Result and Analysis

#### Human Rights as Fundamental and Universal Rights

The concept of human rights includes three main elements for human existence both as individual beings and social beings, namely human integrity, freedom and equality (Eide, Asbjorn, Catarina Krause, Allan Rosas, 1995 ; 21). These three elements are conceptualized into understandings and understanding of what human rights are.

Understanding of this understanding becomes clear when the recognition of these rights is given and is seen as a human process of humanization by other parties in a vertical context (individual with state) and horizontal (between individuals) both de facto and de jure. Thus, human rights values are fundamental and universal in the presence of recognition, protection and promotion of integrity, freedom and human equality in the main international human rights instruments, both at the international, regional and national levels. Even though its values are universal, human rights can be distinguished into several normative academic groupings namely, first, personal rights or "personal rights". Second, economic rights or the right to own something ("property rights"). Third, the right to get equal and equal treatment in law and government or "right of legal equality". Fourth, political rights or "political rights". Fifth, social and cultural rights or "social and cultural rights", such as obtaining and choosing education, develop the preferred culture. Sixth, the right to litigation and its protection or "procedural rights". Understanding and understanding of human rights in terms of these substances becomes complicated and complex based on developments, existing realities and the complexity of other determinant factors. The concept and values of human rights change and in line with time both through evolutionary and revolutionary processes from normative forces into the process of social and political change in the entire order of human life (Bonanza Perwira, 2003; 38).

Thus, understanding and understanding of the meaning of human rights in terms of substance must be returned to the basic concept of why human rights exist. Human rights exist and arise because these basic rights are very basic or fundamental in the sense that their implementation is absolutely necessary so that humans can develop according to their talents, ideals, and dignity as human beings regardless of differences that cause discrimination based on nation, race, religion and gender. The principles of understanding human rights must be used as the main foundation so that the understanding and understanding of human rights from the substantive aspect becomes applicable. These principles are the application of the concept of the indivisibility and the interdependence of human rights values themselves (UNICEF, 1998).

#### The International Covenant on Economic, Social, and Cultural Rights (ICESCR)1966

The World War II saw massive violations of human rights across the world. The period between the First and Second World Wars saw the rise of fascist forces that were responsible for large-scale genocide. The Second World War itself saw unprecedented number of casualties and destruction. In the period following the Second World War, many nations who were colonies of different European countries got their independence. The prevailing world scenario and as a result of the experiences of war, the world felt that there was a need for an international body to monitor the states to ensure violence of this magnitude is not repeated (Human Rights for all international Covenant on Economic, social and Cultural Rights a Handbook).

Consequently, the United Nations Organisation (UNO) was created on 24 October 1945 to curb violence, prevent the outbreak of a third world war and to restore peace and justice in the world. The UNO was a successor of the League of Nations that was

formulated at the end of First World War, with the objective of ensuring the world does not enter a large-scale war again. The failure of the League of Nations and the changed world scenario gave impetus to start a global body to protect, and promote human rights for all. The institution of UNO needed human rights understanding to be codified. The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. The UDHR is a comprehensive document detailing and articulating human rights. Being a declaration, it is not legally binding; however, it implores states to aspire towards moral obligations. The Declaration details all rights that are basic minimum and necessary to enjoy a dignified human life (Human Rights for all international Covenant on Economic, social and Cultural Rights a Handbook).

Article 1 and 2: Covers equality and non discrimination

Article 3 to 21: Details civil and political rights

Article 22-27: Details economic, social and cultural rights

UDHR has been translated in 379 languages and dialects and is one of the most translated documents in world translations.

International human rights law comprises the International Bill of Human Rights, which consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The separation in civil and political rights and economic, social and cultural rights took place as a result of the Cold War politics and dynamics between the two blocs. ICESCR is a multilateral treaty focusing on economic, social and cultural rights (ESCR), which was adopted by the General Assembly on 16 December 1966, but came into force only a decade later on 3 January 1976 (Human Rights for all international Covenant on Economic, social and Cultural Rights a Handbook).

#### **The Convention on The Rights of The Child 1989**

The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation (Office of the High Commissioner for Human Rights).

Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child, which is composed of members from countries around the world. Once a year, the Committee submits a report to the Third Committee of the United Nations General Assembly, which also hears a statement from the CRC Chair, and the Assembly adopts a Resolution on the Rights of the Child ([https://en.wikipedia.org/wiki/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child](https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child)).

Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention and the status of child rights in their country. Their reports and the committee's written views and concerns are available on the committee's website.

The UN General Assembly adopted the Convention and opened it for signature on 20 November 1989 (the 30th anniversary of its Declaration of the Rights of the Child). It came into force on 2 September 1990, after it was ratified by the required number of nations. Currently, 196 countries are party to it, including every member of the United Nations except the United States.

Two optional protocols were adopted on 25 May 2000. The First Optional Protocol restricts the involvement of children in military conflicts, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography. Both protocols have been ratified by more than 160 states. A third optional protocol relating to communication of complaints was adopted in December 2011 and opened for signature on 28 February 2012. It came into effect on 14 April 2014.

#### **Fulfillment of Educational Rights For Indonesian Citizens Who Are In The Border Areas With Neighborhoods**

Most of the West Kalimantan border region with Sarawak, Malaysia is also included as a Disadvantaged, Leading and Outermost Region (D3T) which is currently a development priority in accordance with Nawacita's vision of President Joko Widodo. In 2015, 122 districts were designated as disadvantaged areas and 43 leading and outermost areas based on Letter No. 2421 / Dt.7.2 / 04/2015 April 21, 2015 by the Ministry of National Development Planning / National Development Planning Agency (Kemen PPN / BAPPENAS). In the list Sambas Regency, Bengkayang Regency, Sintang Regency and Kapuas Hulu Regency are included in the D3T.

Under these conditions, it is relevant to review regulations, policies and programs as well as budget allocations set by the government, both central and regional, in the education sector to meet availability, accessibility, acceptability and adjustment principles ( adaptability) based on actual conditions, especially in the border areas included in the D3T.

These problems turned out to have similarities with the problems in Papua, especially in the border region with Papua New Guinea (PNG) and in East Nusa Tenggara, especially in the Atambua region which borders the Democratic Republic of Timor

Leste (RDTL). However, the borders of West Kalimantan and Malaysia are different from the borders with PNG and RDTL because Malaysia has a level of prosperity and progress that is above Indonesia, including in the education sector. This has more or less influenced the condition of education in the border region of West Kalimantan with Sarawak, Malaysia, where the phenomenon of children of Indonesian citizens who participate in enjoying Malaysian education facilities can be found in several regions. This phenomenon is a reflection of how the limited presence of countries in the border region is then addressed by the border community by seeking fulfillment of basic services including the right to education to neighboring countries.

At the normative level, to ensure the fulfillment of the community's need for proper education, the state has an obligation to ensure the provision of an adequate education system and curriculum, provision of scholarships, provision of adequate facilities and infrastructure, improving the quality of educators and teachers in the university on Economic, Social and Cultural Rights General Comment 13). According to the obligations contained in the ICESCR, the education system established by the government must be able to reach all citizens, be freely accessible without discrimination and economically and psychologically acceptable, and its nature can adjust to the times (Colin Wringe, 2006; 51).

Decision of the Constitutional Court in Case Number 012 / PUU-III / 2005 Concerning Testing of Law No. 36 of 2004 Concerning the National Budget on the recognition, promotion and protection of human rights in the education sector reinforces the old debate that does not end on the state's obligation to fulfill economic, social and cultural rights as contained in the Covenant (Heribertus; 2006; 27). Issues such as access to education, reduction of drop-out students, strengthening and support for existing and general basic education institutions and the handling of access to education in remote areas have not yet been addressed.

In the province of West Kalimantan, geographical constraints with disparities and natural contours in the form of forests and hills have made access to education less so that affordability is low, especially in areas directly adjacent to Malaysia such as Entikong and Sambas. Although at several levels it appears that there are efforts by the Central Government and the Regional Government of West Kalimantan Province to deal with these issues, however, the handling measures still have not focused on both the quality and quantity aspects of facilities and infrastructure.

The government is still not serious about addressing the problem of access to education in West Kalimantan, as we all know, West Kalimantan is a province that consists mainly of waters. Then access between regions in West Kalimantan mostly uses river transportation. Therefore, the government must be able to maximize transportation in West Kalimantan such as bridges, docks, and other supporting infrastructure. The point is the government must pay special attention to educational institutions domiciled in areas that have limited access to education. The best solution is to expand access to education and equal distribution of education services in both remote and urban areas.

The quality of education in West Kalimantan is still relatively low. This is evidenced by the output out of production in West Kalimantan, which has not yet shown the level of success of education. West Kalimantan annually releases thousands of new scholars, but has not yet had an impact on improving the quality of education in Indonesia. In addition, West Kalimantan has not been able to compete optimally both at national and international levels. The best solution is that the government must always strive to improve the quality of education and the competitiveness of graduates in West Kalimantan.

Table  
According to the highest education completed, February 2013–2015

Pendidikan Tertinggi yang Ditamatkan	2013	2014	2015
	Februari	Februari	Februari
(1)	(2)	(3)	(4)
SD Ke Bawah	1.364	1.352	1.189
Sekolah Menengah Pertama	354	364	375
Sekolah Menengah Atas	306	320	375
Sekolah Menengah Kejuruan	97	102	140
Diploma I/II/III	52	70	58

Universitas	103	101	121
<b>Jumlah</b>	<b>2.276</b>	<b>2.309</b>	<b>2.257</b>

Source: BPS of West Kalimantan Province, 2015.

Based on the table above stated that in West Kalimantan the highest education completed through data from February 2013 to 2015 showed a positive thing. However, with such results education in West Kalimantan still has problems that are immediately resolved.

The government is still not maximal in managing education in West Kalimantan. One of the strong evidence supporting the author's statement is that the government is not serious about balancing general education with religious education. Both in terms of facilities and infrastructure and in financial matters. The best solution is the government must be able to manage education to the maximum so that the results obtained are also maximized. The trick is to exclude discrimination between public education and religious education. Equitable scholarships for students, equal distribution of facilities and infrastructure to support education and intensive supervision of the distribution and use of funds, whether on target or misused.

Besides the three problems above, the author still feels awkward with the management of teaching staff in West Kalimantan. This is evidenced by the even distribution of educators who have not been optimal. Education in West Kalimantan Province is still far behind compared to other provinces in Indonesia. This is partly due to the inadequate number of educators in West Kalimantan. West Kalimantan still needs a lot of teaching staff, so that the number of educators is balanced with the number of educational institutions, population and area of West Kalimantan.

In addition, the dynamics of local politics with the implementation of decentralization policies in the form of delegating the authority to organize education from the Central Government to Regional Governments in response to equality and the effectiveness of the implementation of education does not automatically fulfill the right to basic and secondary education in the Malaysian border region. . On the contrary, this delegation of authority actually results in a retreat of the quality of education because not all district governments have the same capabilities, both in terms of personnel capacity and even budgeting. As a result, the disparity between regencies became apparent and became a daily sight. More specifically, there are many reports of collapsing school buildings and school facilities that are far from the need to support the teaching and learning process, including the lack of permanent teachers that every educational institution must have.

At the level of legislation, although there is already Law 20 of 2003 concerning the National Education System (National Education System Law), at the regional level both Province and Regency / City in West Kalimantan there are no regional regulations specifically regulating education issues. This is a consequence of the Regional Government law which emphasizes that education affairs are still a matter of the central government. Thus the regions do not regulate this further at the level of regional legislation.

With the current government policy that wants to start development from the border region and the outermost region, the conditions for fulfilling the right to education for the people in the border region should be a priority. Thus a study is needed to get an idea of the politics of law and state policies in fulfilling the right to basic and secondary education for people on the border of West Kalimantan with Sarawak. Analysis of the situation and needs for the fulfillment of the right to primary and secondary education in the border areas of West Kalimantan Province needs to be carried out thoroughly towards policies, programs, activities and funding in fulfilling the right to education.

The implementation of these indicators will result in acceptable accountability and legitimacy especially in the implementation of international legal instruments that have been ratified by Indonesia. Theoretically practical, the legal indicators of implementation mentioned above can be measured through systematization of legal culture; legal structure and legal substance towards efforts to fulfill the right to education. The force of enforceability of the law will obtain legal, social and political justification so that this enforcement can be used as a reference for fulfilling the right to primary and secondary education in the border areas of other countries, namely in Papua and in NTT.

### Conclusion

To ensure the fulfillment of community needs for proper education, the state has an obligation to ensure the provision of an adequate education system and curriculum, provision of scholarships, provision of adequate facilities and infrastructure,

improving the quality of teaching staff both teachers and lecturers in universities. According to the obligations contained in the ICESCR, the education system established by the government must be able to reach all citizens, be freely accessible without discrimination and be economically and psychologically acceptable, and can adapt to the times

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