

## THE GUARANTEE MEASURES OF EDUCATIONAL RIGHTS ON THE TRADITIONAL COMMUNITIES OF SOUTHWEST PAPUA

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### **Abstract**

*This research aims to know the guarantee measures of educational rights, and analyse its from custom law. This research is empirical study that uses field data as primary data sources. Data collection techniques were carried out from interviews, observation and documentation. The result show that absorption of at least 30% of the budget income and expenditure areas that must be absorbed by education No appropriate target, the spelled out small if compare with budget income and to much expenditure area and must capable to accommodate cost of school for 203 Papuan children. This all based on government programs as well not yet appropriate and take the good target. It should check again on many factors and reason that show many separated Papuan school and different area, distance and difficult geological area which impact to the student and decide not to continue their education including economic factor.*

**Keywords:** Educational; Guarantees, Indigenous; Rights.

### **A. INTRODUCTION**

In the article 31 paragraph (2) of the 1945 Constitution stated, "Every citizen is obliged to attend basic education and the government is obliged to pay for it", based on the results of research conducted by Papua and West Papua Demographer Agus Sumule, currently there are 68,988 children in West Papua Province who are not attending school. This was conveyed in the Focus Group Discussion (FGD) forum in Sorong City, West Papua, on Friday, October 14 2022. The discussion was held with the ranks of the Education Service and Health Service within the West Papua

Provincial Government. Agus explained that as many as 68,988 children were not in school spread across 12 districts and 1 city in West Papua .

The root of the problem is the lack of educational facilities, the absence of a long-term vision from the regional government to improve education standards in Papua, as well as the provincial strategic plan which is not communicated effectively to the community, including civil society institutions, which also become obstacles so that Special Autonomy has not had a significant impact on improving quality of education for indigenous Papuans.<sup>1</sup> In fact, access to education is a form of guarantee of justice for society.<sup>2</sup> Education can be a useful step development of way abilities thinking so it's embedded values, morals, and beliefs that are in accordance with the values accepted in society, so that participants students can develop in present and future life.<sup>3</sup> Through formal education, including education ethics, can also form individuals who have awareness and sensitivity towards the environment so that environmental preservation can be carried out more effectively, not just being part of apathetic society<sup>4</sup>, considering that indigenous peoples are very connected closely related to the environment.

This fact can be used as a reason for the aim of expanding New Territories, as a form of maximization services to indigenous communities in Papua, if West Papua Province is felt to be too large so that services to the community are not optimal. According to Thontowi, getting service is a special or special right that is inherent and owned by a community indigenous people because common origin.<sup>5</sup> Gunnar Myrdai disclose lots the law does not accommodate interest marginalized groups.<sup>6</sup> As has been provided absorption of the Special Autonomy Fund, 30% is used to guarantee education indigenous communities in the Special Autonomous Region. The allocation budget of education is intended for continuously education, starting from elementary, junior & senior high school include university, as equally for Indigenous Papuans<sup>7</sup>.

Government Regulation of Republic of Indonesia Number 54 of 2004 concerning Papuan People's Assembly Article 5 paragraph (2) states "MRP is representation the culture of indigenous Papuans who have authority certain in frame protect right origin proposed by the Papuans", however Nor do

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- 1 Roni Sulistyanto Luhukay., *Perlindungan Hukum Bidang Pendidikan Hak Orang Asli Papua dalam Perspektif Otonomi Khusus*, *Juris Humanity*, Vol. 2, No. 1, 2023, page.82.
  - 2 Nadila Utami Putri, dkk., *Jaminan Keadilan bagi Masyarakat Adat Nusantara*. *Seminar Nasional Hukum dan Pancasila*, Vol. 1, No. 4, 2022, page.125.
  - 3 Putra Hanifan Graha, dkk., *Pendidikan Karakter Berbasis Budaya Lokal di Kampung Adat Cirendeu*, *Jurnal Inovasi Penelitian*, Vol. 3, No. 1, 2022, page.4659.
  - 4 Febrian Chandra., *Peran Masyarakat Hukum Adat dalam Mewujudkan Pelestarian Lingkungan Hidup*, *Jurnal Ekopendia*, Vol. 5, No. 1, 2020, page.108.
  - 5 Thontowi J., *Pengaturan MHA dan Implementasi Perlindungan Hak-hak Tradisionalnya*. *Pandecta*, Vol. 10, No. 1, 2015, page.2.
  - 6 Sulaiman E., *Hukum dan Kepentingan Masyarakat.*, *Diktum Hukum*. Vol. 11, No. 1, 2013, page. 106 .
  - 7 Rizal Rozzaka Adrianto dan Mahendra Wardhana., *Tinjauan Yuridis Perlindungan dan Pengakuan Hak Ulayat Masyarakat Hukum Adat di Papua*, *Novum*, 2023, page. 134.

regulations accommodate interest public custom law in matter education.<sup>8</sup> Djohermansyah Djohan, that expansion region in Indonesia at the moment not enough Healthy Because majority expansion driven by factors political.<sup>9</sup> Chairman of the DPR RI, Puan Maharani , said that the expansion of Papua is part from support legislative For realize equality and justice in the field development as well as ensure fulfillment rights Papuan people.<sup>10</sup> In the New Autonomous Region (DOB) of Southwest Papua, Indigenous Peoples, Community Institutions and all layer communities in the New Autonomous Region (DOB) of Southwest Papua, regarding the importance of guaranteeing legal certainty regarding education which is the right of indigenous communities.

These differences in regulations and data have given rise to various speculations in the community about Education guarantees are promised in the constitution especially in the regulations regarding the absorption of West Papua's special autonomy funds. On the one hand, it is realized that education must be capable touching all aspects of life in the frame nationality and statehood, so it is hoped that all parties related parties can be active in the implementation and improvement education, both formal and non-formal, throughout Indonesia even reaches remote areas archipelago, according to trust Constitution of the 1945 Constitution<sup>11</sup>. If the educational aspect develops, law and national development will also develop.<sup>12</sup>

This research aims to provide knowledge to the Government in the New Autonomous Region (DOB) of Southwest Papua, Indigenous Communities, Community Institutions and all layer communities in the New Autonomous Region (DOB) of Southwest Papua, regarding the importance of guaranteeing legal certainty regarding education which is the right of indigenous communities.

## B. RESEARCH METHODS

The type of this research used is empirical research, that uses social sciences as a tool (interdisciplinary). This research uses field data as a primary data source, such as the results of interviews, observations and documentation. Then supported by secondary data, namely articles, journals, laws and books.<sup>13</sup>

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8 Rengen Y. *Kelembagaan* Majelis Rakyat Papua Barat (MRP-PB) Dalam Otonomi Khusus 2017, *Pemerintahan dan Kebijakan Publik*, Vol. 4, No. 3, 2017, page.506 .

9 Yuhandra E , Akhmaddhian S , Budiman H , Rifa'I IJ , Ramadhan G. Urgensi Pembentukan Daerah Otonomi Baru di Jawa Barat, *Penelitian Universitas Kuningan*, Vol. 13, No. 2, 2022, page.152 .

10 Maisar R. Problematika Pemekaran Daerah: Tinjauan dari Pembentukan Undang-Undang Daerah Otonomi Baru di Papua, *Lex Renaisans*, Vol. 4, No. 1, 2022, page.2.

11 Jasardi Gunawan. Pendidikan Masyarakat Hukum Adat Pusu melalui Sekolah Adat (Studi terhadap Pengelolaan Sekolah Adat melalui Kurikulum Berbasis Adat), *JISIP*, Vol. 7, No. 3, 2023, page.2848.

12 Ida Musofiana, dkk. Peranan Hukum dalam Strategi Peningkatan Pertumbuhan Ekonomi Era Digital Society 5.0, *Jurnal Purnama Media*, Vol. 2, No. 1, 2023, page.5.

13 Muhammad Chairul Huda, *Metode Penelitian Hukum (Pendekatan Yuridis Sosiologis)*, The Mahfud Ridwan Institute, Semarang, 2021, page.21

## C. RESULTS AND DISCUSSION

### 1. The Legal Certainty of Educational Guarantees For Indigenous Communities

Based on the Government Regulation of the Republic of Indonesia Number 106 of 2021 concerning the Authority and Institutions for Implementing Special Autonomy Policies for the Papua Province, Article 10 (1) states "The Regional Government of Papua Province and the Regency/City Regional Government can provide assistance to the public providing quality education in accordance with statutory provisions. And Article (2) states "Providing assistance to the education provider community as referred to in paragraph (1) takes into account the status and domicile of the education provider, and prioritizes the education provider and students in the education provider community, the majority of whom come from OAP. "<sup>14</sup>

Education budget guarantees for indigenous Papuans are also clearly stated in Papua Province Regional Regulation Number 2 of 2013 concerning the Implementation of Education, Part One Funding Article 39 (1) "Provincial and Regency/City Governments are obliged to allocate funds intended for the implementation of education in the Revenue Budget and Regional Expenditures". And (2) "The allocation of funds as intended in paragraph (1) intended for the provision of education comes from at least 30% (thirty percent) of income within the framework of special autonomy which is equivalent to 2%. (two percent) of the national general allocation fund ceiling."<sup>15</sup> This regional regulation is an effort to guarantee the right to education for indigenous peoples.

Looking at the current facts, it turns out that the absorption of education funds is not on target.<sup>16</sup> If you look at the number of Papuan children who do not go to school or have dropped out of school, based on the results of research conducted by a demographer. Papua and West Papua Agus Sumule, currently there are 68,988 children in West Papua Province who are not in school.<sup>17</sup> The discussion was held with the ranks of the Education Service and Health Service within the West Papua Provincial Government. Agus explained that as many as 68,988 children were not in school spread across 12 districts and 1 city in West Papua. As has become a provision for the absorption of the Special Autonomy Fund, 30% must be used to ensure the education of indigenous communities in the Special Autonomous Region. However, in reality there are still 68,988 children in West Papua who do not have the right to receive education.

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14 Government Regulation Number 106 of 2021 concerning the Authority and Institutions for Implementing the Special Autonomy Policy for Papua Province.

15 Governor's Regulation Number Papua Province Regional Regulation Number 2 of 2013 concerning the Implementation of Education with the Grace of God Almighty, Governor of Papua.

16 Korin FX. Implementasi Kebijakan Dana Otonomi Khusus Bidang Pendidikan di Kota Sorong Provinsi Papua Barat, *Jurnal Administrasi Publik*, Vol. 5, No. 86, 2019, page.107.

17 Delivered by Agus Sumule, Demographer of Papua & West Papua in a Focus Group Discussion (FGD) in Sorong City, on Friday, October 14 2022, at 14.00 WIB.

Based on data from the Sorong City Education Office, which is currently the capital of Southwest Papua Province, there are 254 children who have dropped out of school due to various factors such as illness, pregnancy, marriage, not having a birth certificate, and rarely going to school. Based on data taken from 13 sub-districts in Sorong City, 203 children dropped out of school due to economic problems. This figure shows that 80% of these factors are caused by financing problems.<sup>18</sup> This situation can strengthen the statement that a minimum of 30% of the regional budget must be absorbed by education. Still not on target, the figure says small if we compare it with the regional budget which is certainly not small, and must be able to afford it accommodate the school fee needs of 203 Papuan children.

This requires clearer attention and regulations in providing educational guarantees in the form of scholarship assistance must also be clearly regulated. The form of guarantee of the right to education provided so far has been in the form of school uniforms and textbooks, not in the form of assistance in paying school fees (SPP), even though SPP is the most targeted form of assistance. Currently, the only educational assistance provided is in the form of School Operational Assistance (BOS), which is a national education assistance program. As for optimization efforts education indigenous communities in the New Autonomous Region (DOB), the Government has prepared directions to realize the guarantee of the right to education indigenous communities by developing policies and strategies *smart* Papua as follows:

- a. Increase quality teaching and learning ;
- b. Increase Equalization Access Educational Services in All Levels and Acceleration Must Studying 12 Years ;
- c. Ensure Strengthening Lifelong Education Life and Skills Life (Hp Skills) Based on Community Institutions (Religious Institutions, Traditional Institutions , and Social Institutions Other);
- d. Increase Competence , Management , Fulfillment, and Distribution Educators and Education Personnel ;
- e. Enhancement Quality Research and Innovation ; And
- f. Increase Guarantee Quality and Governance Maintenance Education Services.<sup>19</sup>

Direction realization guarantee education naturally must supported with regulation definite law, such as exists Current Special Regional Regulations (Perdasus). This Not yet there is , urgency own Special Regional Regulations (Perdasus) are For capable become umbrella more laws wide for Autonomous Regional Government Special in follow up plan realization that , and can become base strong law for public custom

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18 Data Source Sorong City Education Office

19 Delivered by Dr. Henrikus Renjaan SH, LL.M., CLA, Expert Staff at the Legal Bureau of the Regional Secretariat of Southwest Papua Province, in a Focus Group Discussion (FGD) on the 2nd floor of the Rectorate Building, Muhammadiyah University, Sorong, on Saturday, December 2 2023, at 14.00 WIB .

in ensure implementation budget education must in accordance with rule the law is not Again become policy.<sup>20</sup> Remember benefit on education is means realization well-being and prosperity, which is part from Indonesian nation<sup>21</sup>.

## **2. The Model for Providing Educational Scholarship Guarantees to Indigenous Communities**

School financing needs are actually assessed more appropriately before moving on to providing educational facilities and infrastructure. According to the Sorong City Education Office, represented by Mrs. Eske Saartje Liondatu, efforts to provide assistance in the form of education costs to indigenous people who have dropped out of school have been proposed to the Regional People's Representative Council (DPRD), but the proposal for financial assistance was rejected on the grounds that the Regional Revenue Budget (APBD) The existing ones are not able to accommodate these needs, so the form of providing educational assistance from the government to indigenous communities is carried out in the form of providing facilities as has become the work program of the Sorong City Education Office.<sup>22</sup> The model for providing educational guarantees to indigenous communities is based on data obtained through the Sorong City Education Office in the form of:

- a. Elementary level
  - 1) Provision of Equipment School ;
  - 2) Book;
  - 3) Training;
  - 4) Instrument of traditional music.
- b. Middle (Junior) school level
  - 1) Uniform school
  - 2) Equipment school
  - 3) Book
  - 4) Training
  - 5) Student ADEM Affirmation ( Secondary Education Affirmation )
  - 6) Instrument of Traditional Music of Papua.
- c. Intermediate School (Senior) level
  - 1) Distribution of ADIK Affirmation Student Forms (Higher Education Affirmation) and Online Registration (photo scans, report cards, KK, student achievement letters)
  - 2) Providing pocket money for ADIK Affirmation Students (Affirmation Colleges).<sup>23</sup>

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20 Delivered by Demianus Aru, Head of the Legal Department of the Regional Government of Sorong Regency in a Focus Group Discussion (FGD) on the 2nd floor of the Rectorate Building, Muhammadiyah University, Sorong, on Saturday, December 2 2023, at 14.00 WIB.

21 Made Oka Cahyadi Wiguna. Pemikiran Hukum Progresif untuk Perlindungan Hukum dan Kesejahteraan Masyarakat Hukum Adat, *Jurnal Konstitusi*, Vol. 18, No. 1, 2021, page.126.

22 Disampaikan oleh Eske Saartje Liondatu, Dinas Pendidikan Kota Sorong Provinsi Papua Barat Daya, dalam *Focus Group Discussion (FGD)* di lt.2 Gedung Rektorat Universitas Muhammadiyah Sorong, Pada Hari Sabtu, Tanggal 2 Desember 2023, Pukul 14.00 WIB.

23 Sumber Data Dinas Pendidikan Kota Sorong.

This model of guaranteeing the right to education which is implemented based on a government program is in fact not well targeted if we look back at the factors causing the high dropout rate of Papuan children who do not continue their education. namely economic factors. School financing needs are actually more appropriate before moving on to providing educational facilities and infrastructure. Currently, the only educational assistance provided is in the form of School Operational Assistance (BOS), which is a national education assistance program.

According to Yoksan Mili, one of MOI's indigenous children who is a native of Sorong City, as a student who is actively involved in indigenous community activities, he feels that the model of guaranteeing the educational rights of indigenous communities is effective in tackling school dropout rates. from elementary school (SD) to university level, the provision of direct cash assistance to finance education is aimed directly at educational institutions, so that indigenous communities do not only depend on the provision of School Operational Assistance (BOS) from the center, especially if you look at the minimum absorption of funds. Papua's OTSUS is 30% which must be channeled to education, with this rule logically Papua should not be an area with a high school dropout rate.<sup>24</sup>

The education guarantee assistance model as suggested, apart from providing certainty of rights, is also more targeted than providing assistance as currently carried out by the Sorong City Education Office, especially if we are willing to accept the fact that there are still many illegal ones. levies in the government's efforts to organize educational programs, such as package C, which must be borne entirely by the government.<sup>25</sup> The education fund distribution scheme takes the form of providing assistance in paying school fees (SPP) and/or cash assistance to pupils/students and/or to parents/guardians or can also be handed over through educational institutions so that payment of tuition fees or education fees which is the initial access to education can be carried out and in line with the target of distribution of special autonomy funds.

#### **D. CONCLUSION**

There needs to be a clear budget mapping regarding the distribution of 30% of special autonomy funds in the education sector so that indigenous peoples and Indigenous Papuans (OAP) can feel the benefits. Outreach to indigenous communities is also needed. OAP also need to be encouraged so that the community can understand the forms of educational rights that can be accepted by indigenous peoples and Indigenous Papuans (OAP). The education guarantee assistance model such as School Operational Assistance (BOS) apart from providing certainty of rights, is also

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<sup>24</sup> Disampaikan oleh Yoksan Mili, Masyarakat Adat MOI, dalam *Focus Group Discussion ( FGD )* di Lt.2 Gedung Rektorat Universitas Muhammadiyah Sorong, Pada Hari Sabtu, Tanggal 2 Desember 2023, Pukul 14.00 WIT.

<sup>25</sup> *Ibid.*

more targeted than providing assistance as has been implemented by the Sorong City Education Office, especially if we are willing to accept this assistance. In fact, there are many illegal levies in the government's efforts to organize educational programs, such as Package C, which should be borne by the government.

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