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Equitable Education Services for Society

Agus Triono

agus.triono@fh.unila.ac.id

Doctoral of Law, Universitas Lampung.

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Abstract

This article aims to explain how justice should be fulfilled in the context of educational services. In particular, the authors analyzed the charges for school funding that are currently rife—based on the analysis, that the collection of levies from the community for school funding is permitted according to statutory regulations with various restrictions. As a government legal action, the collection of these levies can have legal consequences. It can be declared invalid, invalid and not legally binding because they have violated applicable laws, thus causing an injustice to the community. Therefore, the collection of levies must be carried out legally, transparently and accountably. Thus the community can obtain legal certainty and justice and can actively participate in the development process and improve the quality of education. Withdrawal of donations can generally be requested but must fulfil the essence of a sense of justice. As a legal action the government, in this case, is the education unit or school management, it must still be held



accountable if it results in injustice. This injustice can be in the form of an act of abuse of authority, confusing authority or acting arbitrarily, which is included in the criteria of maladministration. The research method used in this article is normative and qualitative data management. The suggestion that can be conveyed is that the government must optimize the applicable laws and provide even stricter sanctions for justice for society.

A. Introduction

Justice is the ideal truth concerning people or goods. Most people believe that injustice should be fought and punished so that many movements and politicians around the world are fighting for justice. One of the justice fought for by the community is the right to obtain an education. The right to education is a human right, which has been stated in the Constitution and Laws as a guarantee provided by the state to its citizens.¹ A rule of law country is a state administration system based on a legal rule. Law is a word that is still abstract, so as its manifestation, a law is codified into regulations. The statutory regulations in each country have their hierarchy. As the precision of the *stufenbau* theory pioneered by Hans Kelsen, that law has its derivative in statutory regulations.² The essence of education itself is more oriented to the formation of a person's character (personality/identity). Each stage of education is carefully evaluated and monitored so that it becomes clear what a person's positive potential should be developed and what are negative factors that need to be addressed.³ Education is a process that is needed to obtain balance and perfection in individual and community development.⁴ To find out whether the laws and regulations of the Indonesian state have guaranteed and regulated efforts to protect the law for the rights of every citizen to obtain primary education, we should first discuss what is necessary education according to Law No. 20/2003 on the National Education System, on Article 17 Paragraph (1) and (2) that stated as follows:⁵

1. Primary education is the level of education that forms the secondary education. Primary education consists of elementary school and Madrasah.
2. Ibtidaiyah (MI) or other equivalent forms, junior high school, madrasah tsanawiyah (MT's), and other equivalent forms.

¹Sefa Martinesya, "BENTUK PEMENUHAN PEMERINTAH PROVINSI DKI JAKARTA TERHADAP HAK ATAS PENDIDIKAN DASAR ANAK TERLANTAR," *Jurnal Ilmiah Hukum Dan Keadilan*, vol. 6, September 2, 2019: 139-154, <https://ejurnal.stih-painan.ac.id/index.php/jihk/article/view/68>. pg 139.

²Shandi Patria Airlangga, "Hakikat Penguasa Dalam Negara Hukum Demokratis," *Cepalo* 3, no. 1, 2019: 1–10, <https://doi.org/10.25041/cepalo.v3no1.1783>. pg 2.

³LAILI ARFANI, "MENGURAI HAKIKAT PENDIDIKAN, BELAJAR DAN PEMBELAJARAN," *Pelita Bangsa Pelestari Pancasila*, vol. 11, April 4, 2018: 81-97, <https://pbpp.ejournal.unri.ac.id/index.php/JPB/article/view/5160>. pg 83.

⁴Dede, "Perbandingan Hak Pendidikan Dalam Konstitusi Negara Indonesia Dengan Konstitusi Beberapa Negara Di Asia Tenggara PERBANDINGAN HAK PENDIDIKAN DALAM KONSTITUSI NEGARA INDONESIA DENGAN KONSTITUSI BEBERAPA NEGARA DI ASIA TENGGARA," *JURNAL NALAR PENDIDIKAN* 8, no. 1, June 10, 2020: 55–62, <https://ojs.unm.ac.id/nalar/article/view/55-62>, pg 7.

⁵Emmanuel Sujatmoko, "Hak Warga Negara Dalam Memperoleh Pendidikan," *Jurnal Konstitusi*, vol. 7, May 20, 2016, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/208>. pg 184.

Education can be defined as a conscious effort that is deliberate, planned, patterned, and can be evaluated, which is given to students by educators in order to achieve optimal abilities. Education aims to grow and develop the innate potentials that exist in students. These potentials are expected to grow and develop following the values that exist in society and the nation's culture. Education is a human investment, namely an effort or capital that is spent to produce educated, intelligent and superior human beings to fill the future needs of the Indonesian nation.⁶ Education is also defined as a planned effort in developing the potential of students so that they have a system of thinking, values, morals, and beliefs that have been inherited by their society and develop this legacy in a direction that is suitable for present and future life (Depdiknas 2010).⁷ In simple and general terms, education means an effort to cultivate and develop innate potentials, both physically and spiritually, following the values that exist in society and culture.⁸

Therefore education for humans is an absolute necessity that must be fulfilled throughout life. Without education, humans cannot live and develop in line with the aspirations for progress, prosperity and happiness.⁹ The values and principles of the right to education also depend on the mechanism and technical quality. Technical efforts are the side that must be present, in guarding the values you aspire to. James A Griffin argues that primary responsibility is related to the fulfilment of the content of rights which always requires a secondary side, namely responsibilities that correlate with the way the content of the rights is fulfilled.¹⁰ In terms of educational administration as part of public affairs, it is an important aspect that needs more attention from the government.¹¹ Educational administration, as a part of public affairs, is an important aspect that needs more attention from the government. This is because the education aspect is a mandatory affair that must be carried out by the government, both central and local governments.¹² The current dynamics of society, primarily supported by technology and fast access to information, demand that the state administration be able to follow the dynamics of the society.¹³

The rapid development and advancement of technology today have encouraged educational institutions to participate in improving and striving to improve the quality of each alumni. The central and regional governments have also allocated a sizable amount of funds from the State and Regional Budget for the education sector and rolled out various supporting programs such as the School Operational Assistance or *Bantuan Operasional Sekolah* (BOS)

⁶Suryanti, "Efektivitas Pelaksanaan Sistem Zonasi Dalam Penerimaan Peserta Didik Baru (PPDB) Serta Pengaruhnya Terhadap Upaya Manajemen Mutu Pendidikan Berdasarkan Asas Keadilan Di SMA Negeri Kabupaten Klaten Tahun Ajaran," *Jurnal CANDI*, vol. 20, no. 1, 2020: 111-126, <https://jurnal.uns.ac.id/candi/article/view/41335/27058>. pg 112.

⁷Chusnul Muali, "RASIONALITAS KONSEPSI BUDAYA NUSANTARA DALAM MENGGAGAS PENDIDIKAN KARAKTER BANGSA MULTIKULTURAL," *Jurnal Islam Nusantara*, vol. 01, no. 1, 2017: 105-117. [ok_105_Rasionalitas_Konsepsi_Budaya.pdf](https://doi.org/10.30605/ok_105-Rasionalitas_Konsepsi_Budaya.pdf). pg 107..

⁸Adelina Yuristia et al., "PENDIDIKAN SEBAGAI TRANSFORMASI KEBUDAYAAN," *IJTIMAIYAH Jurnal Ilmu Sosial Dan Budaya*, vol. 2, June 29, 2018, <http://jurnal.uinsu.ac.id/index.php/ijtimaiyah/article/view/5714>.

⁹Supardi, "ARAH PENDIDIKAN DI INDONESIA DALAM TATARAN KEBIJAKAN DAN IMPLEMENTASI," *Formatif: Jurnal Ilmiah Pendidikan MIPA*, vol. 2, August 5, 2015, <https://journal.lppmunindra.ac.id/index.php/Formatif/article/view/92>. pg 114.

¹⁰James Reinaldo Rumpia and H S Tisnanta, "PEMENUHAN HAK ATAS PENDIDIKAN DALAM TRANSISI: POLEMIK PENYELENGGARAAN URUSAN PENDIDIKAN SMA/SMK BERDASARKAN UU NO 23 TAHUN 2014," *Jurnal Pusham Unimed*, vol. VII, 2016: 55-74, <https://jurnal.unimed.ac.id/2012/index.php/jh/article/view/10891>. pg 61.

¹¹Setiyawan and Eko, "Implementasi Kebijakan Bantuan Pendidikan (Studi Tentang Kebijakan Bantuan Pendidikan Masyarakat Kota Surakarta Yang Termuat Dalam Peraturan Walikota Surakarta Nomor 11A Tahun 2012)," *Jurnal Administrasi Publik* 2, no. 1, 2014: 122-28. <http://administrasipublik.studentjournal.ub.ac.id/index.php/jap/article/view/350>. pg 123, <http://administrasipublik.studentjournal.ub.ac.id/index.php/jap/article/view/350/192>.

¹²Setiyawan and Eko.

¹³Herman, "PERLINDUNGAN HUKUM WARGA NEGARA TERHADAP TINDAKAN PEMERINTAH DALAM MEMBUAT KEPUTUSAN ADMINISTRASI NEGARA," *Jurnal Komunikasi Hukum (JKH)* 1, no. 1, February 6, 2015: 43-54, <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/5012>. pg 44.

and regional (BOSDA) programs.¹⁴ Currently, this operational assistance is not only intended for equitable distribution of education and improving the quality of education at the primary level, but has been distributed to senior secondary education (High School/Vocational School/Madrasah Aliah) both public and private. However, these funds are deemed insufficient for various school operational needs and other educational quality improvement programs. The use of these costs illustrates the pattern of financing in education.¹⁵ Thus, at all levels, the provision of financial education is significant to help ensure the implementation of education. Education will not run without money. Therefore, many academic units take strategic and innovative steps by raising funds in the form of withdrawing contributions or levies to parents/guardians of students as happened in several schools.

The phenomenon of collecting donation and levies has become a classic problem that continues to be repeated and has attracted the attention of various parties, including the public, government officials, and law enforcement officials. If it is not handled immediately, it will not only be a prolonged polemic, but it can become a legal problem. Indeed, it can harm the community as the recipient of the fundamental right to education. It is permissible to withdraw donations or levies from the community as a form of participation in the educational process. However, it must be based on applicable legal provisions and implemented reasonably, efficiently, transparently and accountably.

However, the facts it does not represent the provision. Some cases, such as those that occurred in several schools, show that there are levies which are actually prohibited but are still being carried out. Often the collection of these levies is constructed as a donation, but with a determined amount and period and is imposed on all students, even those classified as economically disadvantaged. On the pretext of improving the quality of education, it is not uncommon for school management to use school committees to legitimize fundraising, which violates applicable regulations. The big question is, is it permissible to charge for school funding? To answer this question, it is necessary to study the role of the community in school funding and how the legality of legal actions by academic units concerning school funding (collection of fees), including the legal implications for other actions that occur due to these legal actions.

B. Discussion

1. Community Participation in School Funding

Education is a necessity for the Indonesian nation for the development of development because the basis for strategic development is education. Education must be used to educate all the people, not only for certain groups. Therefore, it is the duty of the state that must regulate this for the nation's intelligence process.¹⁶ Educational management is regulated in Law No. 20/2003 on the National Education System is based on minimum service standards with the principles of school/madrasah-based management.¹⁷ This provision forms the basis for the authority of the education unit or school management to carry out the educational process. To achieve this minimum service standard, it is not enough to rely solely on the allocation of funds from the government. However, it is necessary to involve various parties,

¹⁴Penyesuaian Dana BOS Tetap Perhatikan Operasional Sekolah Dan Tunjangan Guru' <<https://www.kemenkeu.go.id/publikasi/berita/penyesuaian-dana-bos-tetap-perhatikan-operasional-sekolah-dan-tunjangan-guru/>> [accessed 24 April 2020].

¹⁵Rida Fironika K, "PEMBIAYAAN PENDIDIKAN DI INDONESIA," *Jurnal Ilmiah Pendidikan Dasar*, vol. 2, July 9, 2018: 41-64, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/pendas/article/view/755>. pg 44.

¹⁶Lukman Hakim, "PEMERATAAN AKSES PENDIDIKAN BAGI RAKYAT SESUAI DENGAN AMANAT UNDANG-UNDANG NOMOR 20 TAHUN 2003 TENTANG SISTEM PENDIDIKAN NASIONAL," *Jurnal EduTech* 2, no. 1, March 30, 2016: 53-64, <http://jurnal.umsu.ac.id/index.php/edutech/article/view/575>. pg 53.

¹⁷UU No.20 Thn 2003 - Sistem Pendidikan Nasional' <http://hukum.unsrat.ac.id/uu/uu_20_03.htm> [accessed 24 April 2020].

including the community. Funding in education management as regulated in Article 2 of Government Regulation No. 48/2008 on Education Funding is the joint responsibility of the Government, Local Government and the community with the principle of cooperation.

The opening of public participation in school funding is to overcome the limitations of education funds through the formation of school committees regulated explicitly in the Regulation of the Minister of Education and Culture (Permendikbud) No. 75/2016 on School Committees.¹⁸ This Permendikbud regulates fundraising which the School Committee can and cannot undergo. In the Permendikbud, the School Committee is allowed to raise funds in the form of donations or assistance but does not allow levies. This is stipulated in Article 10 paragraph (1) and (2) that the School Committee conducts fundraising and other educational resources to carry out its function in providing support for personnel, facilities and infrastructure, as well as education supervision. The raising of funds and other educational resources is in the form of assistance and/or donations, no fees.

Educational assistance is the provision of money/goods/services by educational stakeholders outside of students or their parents or guardians, with the parties' consent. Education Contribution is a gift in the form of money/goods/services by students, their parents or guardians, either individually or collectively, the community or institutions voluntarily, and does not bind educationally. Whereas education levies are withdrawals of money by schools to students, their parents/guardians which are mandatory, binding, and the amount and period of the collection are determined (see Article 1 figures 3,4 and 5 Permendikbud No.75/2016).

Based on the provisions described above, different types of school funding can be distinguished according to their individual characteristics, as illustrated in the following table:

Table 1. School Funding Characteristics

<i>Type of Funding</i>	<i>Source</i>	<i>Characteristic</i>	<i>Amount and Periode</i>
<i>BOS</i>	<i>State Government</i>	<i>Obligated adjusting capability</i>	<i>Determined following regulation</i>
<i>BOSDA</i>	<i>Local/Regional Government</i>	<i>Obligated adjusting capability</i>	<i>Determined following regulation</i>
<i>Assitance</i>	<i>Stakeholders outside students and parents/guardians</i>	<i>Voluntarily the following agreement.</i>	<i>Determined following regulation</i>
<i>Donation</i>	<i>Students, parents/guardians, society, institution</i>	<i>Voluntarily the following agreement, unbinding.</i>	<i>Undetermined</i>
<i>Levies</i>	<i>Students and parents/guardians</i>	<i>Obligated and binding</i>	<i>Determined</i>

Source: Processed Data

¹⁸*Permendikbud75-2016KomiteSekolah.Pdf.

Regarding raising education funds in the form of fees, it is mandatory to fulfil all the provisions as stipulated explicitly in the provisions of Article 52 of Government Regulation No. 48/2008 on Education Funding, namely: ¹⁹

Levies by education in order to fulfil the responsibilities of students, parents and/or guardians must meet the following conditions:

- (1) Based on clear investment and/or operational planning and outlined in a strategic plan, annual work plan, and an annual budget that refers to the National Education Standards;
- (2) Investment and/or operation planning as referred to in letter a is announced transparently to education stakeholders;
- (3) The funds obtained are deposited in an account in the name of the educational unit;
- (4) The funds obtained are recorded explicitly by the education unit apart from the funds received from the educational unit administrators;
- (5) Funds are not collected from students or their parents/guardians who are economically incapable;
- (6) Implementing a cross-subsidy system which is regulated by the education unit;
- (7) Used following the planning as referred to in letter a;
- (8) Not linked to academic requirements for student admission, assessment of student learning outcomes, and/or student graduation from educational units;
- (9) At least 20% (twenty per cent) of the total levies of students or their parents/guardians are used for improving the quality of education.
- (10) Is not allocated directly or indirectly for the welfare of school/madrasah committee members or educational unit stakeholder representative;
- (11) The collection, storage, and use of funds shall be audited by a public accountant and reported to the minister if the amount is more than a certain amount stipulated by the minister.
- (12) Education unit shall account for the collection, storage, and use of funds transparently to education stakeholders, especially parent/guardians of students, and educational unit administrator; and
- (13) Under the regulation.

The provisions above explain that before levies, the education unit or school is required to prepare an Annual Work Plan or *Rencana Kerja Tahunan* (RKT) and prepare a School Work Plan and Budget or *Rencana Kerja dan Anggaran Sekolah* (RKAS) and then announce it transparently for consideration and approval. In this case, the task of the School Committee is not only to raise funds but more than that the school committee can assist schools in designing the School Revenue and Expenditure Budget Plan or *Rencana Anggaran Pendapatan dan Belanja Sekolah* (RAPBS), RKT and RKAS. The role of the School Committee is also vital to supervise educational services including being a forum for aspirations, following up on suggestions and also criticism from the community, especially students and parents/guardians.

Because of the provisions above, the academic unit in collecting fees has been limited by terms that are limited in nature. All provisions in Article 52 also form the basis of Standard Operating Procedures (SOP) for academic units to raise funds in the form of fees. Besides, this provision means that every action, especially in terms of fundraising, must prioritize the principles of transparency and accountability. If there is an academic unit that does not meet one or even all of the stipulated conditions, such as not making an RKT or RKAS first to be discussed and approved or to collect fees from students or their parents/guardians who are

¹⁹Peraturan Pemerintah Republik Indonesia' <<https://jdih.kemenkeu.go.id/fullText/2008/48TAHUN2008PP.htm>> [accessed 24 April 2020].

economically disadvantaged (Article 52 letter e) then, of course, the levy violates the applicable provisions.

Government Regulation has also strengthened the provisions regarding the prerequisites for raising funds in the form of fees above No. 19/2005 on National Education Standards as amended by Government Regulation No. 32/2013 which states that:²⁰

Each education unit is managed based on an annual work plan which is a detailed description of the medium-term education work plan covering 4 (four) years. For the primary and secondary education levels, the work plan must be approved by an education board meeting after taking into account the considerations of the School Committee/Madrasah.

Government Regulation 48/2008, Government Regulation No. 32 /2013, and Permendikbud No. 75/2016 are intended to encourage public participation and clarify the role of the community or school committee in the education process. Although these rules have provided room for public participation in advancing education, they do not require the withdrawal of funds from students or parents/guardians. The meaning that must be understood from participation in volunteerism, so that understanding about the contribution or participation of the community in the education process, especially in terms of school funding, must be based on volunteerism, not obligation or coercion, let alone related to the rights of students to get their fundamental rights to education. Likewise with levies, although they are allowed, they must be based on the prerequisites and SOPs as stipulated in the prevailing statutory provisions.

2. The Legality of Legal Actions for Educational Units in School Funding

One of the root causes of education problems, in general, is financing. Parents do not have sufficient funds to pay for their children's education because the income is low, not proportional to the high cost of education that must be borne. Therefore, without increasing funding from the government, it is clear that education in Indonesia is challenging to get out of the crisis.²¹ Answering the question of the legality of legal actions by academic units in school funding in the form of donations or levies can be seen in two perspectives, namely according to public law in terms of collecting levies and according to private law in terms of donations.

a. Legal Action According to Public Law

In responding to the validity of an act /government legal action by an academic unit or school, in this case as a public institution that is subject to public law in terms of collecting fees, it is necessary to first understand what is meant by government action. Theoretically, there are two forms of governmental action (*bestuurhandeling*) in order to carry out government duties and functions, namely actions based on the law (*rechthandeling*) and actions based on facts or not based on the law (*feitelijkhandeling*). Furthermore, it will focus on government actions based on law only. This discussion is essential because action based on the law will have legal implications or consequences.

According to RJHM Huisman, as quoted by Ridwan HR, legal actions are actions which by their nature give rise to inevitable legal consequences in the form of rights and obligations such as creating or losing/eliminating the rights and obligations of certain legal subjects.²² One of the critical elements of government action is that it must be based on the prevailing laws and regulations (prioritizing the principle of legality or *wetmatigheid van bestuur*). The

²⁰PP0322013.Pdf <<http://lldikti3.ristekdikti.go.id/html/wp-content/uploads/2011/04/PP0322013.pdf>> [accessed 24 April 2020].

²¹Muhammad Tho'in, "Pembiayaan Pendidikan Melalui Sektor Zakat," *Al-Amwal: Jurnal Ekonomi Dan Perbankan Syari'ah*, vol. 9, August 8, 2017, <https://doi.org/10.24235/AMWAL.V9I2.1794.G1189>. pg162.

²²Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2006).

principle of legality includes three aspects, namely authority, procedure and substance. F.A.M Stroink and J.G Steenbeek concluded that authority as *het begrip bevoegheid* is and *alsook een klembergrip in het staatsen administratief* (authority is a core concept of constitutional law and state administrative law).²³ Therefore, any government legal action that is not based on legality principles or statutory regulations is an abuse of authority which results in juridical or illegitimate defects. Two measuring tools can be used to determine the legitimacy of government actions, namely statutory regulations and general principles of good governance or *Asas-Asas Umum Pemerintahan yang Baik* (AAUPB). The legislation is related to the legal basis that gives the government authority to act, while AAUPB becomes an assessment of morality government action.

Abuse of authority can occur in the types of binding authority or unbinding authority (discretion). In the type of binding authority, the parameter of the legality of government action is the legality principle, while the type of unbinding authority uses the AAUPB parameter. Officials who commit acts of abuse of discretionary power can be held personally accountable for their actions. In particular, in Law No. 30/2014 on Government Administration describes acts of abuse of authority along with the legal consequences and accountability as shown in the following table:²⁴

Table 2. Discretionary Abuse

<i>Discretionary Abuse</i>	<i>Criteria</i>	<i>Impact of Law</i>	<i>Responsibility</i>
<i>Overcome Authority</i>	<ul style="list-style-type: none"> • <i>Acts beyond time and territorial limit of authority's validity.</i> • <i>Procedural flaws.</i> 	<i>illegal</i>	<i>Officials</i>
<i>Integrate Authority</i>	<ul style="list-style-type: none"> • <i>Against the authority's purpose</i> • <i>Against AAUPB</i> • <i>Procedural flaws</i> 	<i>invalidated</i>	<i>Official's institution and position</i>
<i>Arbitrary</i>	<i>Established by unauthorized officials</i>	<i>illegal</i>	<i>Officials</i>
<i>Article 31, Article 32, Article 33</i>			<i>Pasal 20 ayat (5), (6)</i>

Source: UUAAP Annotation

Abuse of discretionary authority as in Table 2 above consists of acts of transgressing authority, confusing authority, and arbitrarily with each of the criteria as described in the second column. The legal consequence of an abuse of authority is declared illegal if the act exceeds the authority and is arbitrary, and the person responsible is the official. In contrast, the act of abuse of discretionary authority in the form of integrating authorization of legal consequence is invalid by imposing responsibility on the agency/position of the official.

Government action which is usually accompanied by a legal product whose decision (*beschikking*) or State Administrative Decree or *Keputusan Tata Usaha Negara* (KTUN) often experiences a juridical shortage so that it is invalid or can be canceled and has

²³F.A.M. Stroink dan J.G. Steenbeek, *Inleiding in Het Staats-En. Administratief Recht* (Alphen aan den Rijn: Samsom H.D. Tjeenk Willink, 1985).

²⁴UU-NOMOR-30-TAHUN-2014-ADMINISTRASI-PEMERINTAHAN.Pdf <<https://www.bkn.go.id/wp-content/uploads/2015/06/UU-NOMOR-30-TAHUN-2014-ADMINISTRASI-PEMERINTAHAN.pdf>> [accessed 24 April 2020].

consequences since the time of publication (*Ex Tunc*). According to Muchsan,²⁵ State administrative decisions are said to be valid if they meet 2 (two) requirements, namely the material requirements and formal requirements. Substantive requirements are requirements related to content. The material requirements are divided into 3 (three), namely:

- 1) Must be published by authorized enforcers.
- 2) KTUN is not juridically flawed, juridically flawed occurs when the establishment is oversight (*dwaling*), fraud (*bedrog*), and force (*dwang*).
- 3) Decisions' purposes are aligned with the underlying purposes.

Formal requirements are correlated with forms. Formal requirements are divided into 3 (three), such as:

- 1) Decision's form must be aligned with the decision's underlying regulation.
- 2) Procedure's form must be aligned with the decision's underlying regulation.
- 3) Specific requirements, according to the underlying regulation, must be represented in the decisions.

If the conditions above are not met, then a State Administrative Court can be declared cancelled. Cancel according to Muchsan there are 3 (three), namely:

- 1) Cancelled
Cancelled means that all the executed actions are considered to never exist. The apparatus which has the right to declare is the judge through his decision.
- 2) Cancelled by Law
Cancelled by law have 2 (two) alternatives, all acts that have been committed are considered: (1) never existed yet some acts are considered valid and (2) only part of which is cancelled. The officials who have the right to declare are the judiciary and the executive.
- 3) Could be Cancelled
Which means that all acts committed are considered valid, the cancellation is effective from the time it is declared cancelled. Officials who have the right to declare are general (executive, legislative and others).

In practice, a KTUN is deemed to remain valid even though it does not meet the above substantive and formal requirements if it fulfils 2 (two) cumulative requirements, first, the decision is invalid because it is vague, especially for the decision recipient; and second, the consequences of that decision are useful for the benefit of society.

In line with the theory above, the legal consequences of illegal action and/or decision have been regulated in detail in Articles 70 and 71 of the AP Law, namely:

Article 70 states that:

- (1) Decision and/or action is not valid if:
 - a Made by unauthorized government agencies and/or officials;
 - b Made by Government Agencies and/or Officials who exceed their authority; and/or
 - c It is made by Government Agencies and/or Officials acting arbitrarily.
- (2) The legal consequences of a decision and/or action as referred to in paragraph (1) become:
 - a. Unbound since the Decree and/or Action is stipulated; and
 - b. All the legal consequences that arise are considered non-existent.

²⁵UU-NOMOR-30-TAHUN-2014-ADMINISTRASI-PEMERINTAHAN.Pdf
content/uploads/2015/06/UU-NOMOR-30-TAHUN-2014-ADMINISTRASI-PEMERINTAHAN.pdf> [accessed 24 April 2020].

<<https://www.bkn.go.id/wp-content/uploads/2015/06/UU-NOMOR-30-TAHUN-2014-ADMINISTRASI-PEMERINTAHAN.pdf>> [accessed 24 April 2020].

- c. If a decision results in a payment of state money being declared invalid, the Agency and/or Government Official are obliged to return the money to the state treasury.

Article 71 states as follows:

- (1) Decisions and/or Actions can be cancelled if:
 - a. There is a procedural error; or
 - b. There is a substance error.
- (2) The legal consequences of a decision and/or action as referred to in paragraph (1):
 - a. Unbound from the time it is cancelled or remains valid until the cancellation occurs; and
 - b. Ended after a cancellation.
- (3) A decision to cancel is made by a government official and/or a superior official by stipulating and/or making a new decision and/or action by a government official or based on a court order.
- (4) The stipulation of a new Decree as referred to in paragraph (3) shall become the obligation of the Government Official.
- (5) Losses arising from the cancelled Decision and/or Action shall be the responsibility of the Government Agency and/or Official.

Based on the explanation above, it can be concluded that a levy can be declared valid if it is based on applicable law and is collected by an authorized person/officer. Likewise, if a levy has no legal basis or is not following the laws and regulations and is collected by an unauthorized person/officer, then the levy is illegal. This occurs with the procedures that must be met. If a levy does not comply with existing procedures, the decision can be cancelled. Furthermore, related to the substance of the basis for the collection, such as a decree or circular by a government agency or school as a public institution to collect levies from the community. If the substance is partially or entirely contrary to the general provisions, then the levy can also be cancelled.

Answering the problem of levies made by education units by using the term donation violates the provisions that the school has exceeded its authority because it is related to raising funds in the form of donations which is the domain of the school committee where the school is not allowed to enter it either by intervening or merely facilitating. Thus, the actions/decisions made are invalid and have non-binding consequences since they are stipulated, and all legal consequences that result are deemed to have never existed. If the decision results in payment, it must be returned. Besides, suppose there is a procedural error and/or substance error. In that case, the legal consequence is that the action and/or decision can be cancelled with the consequences of the loss arising from the action and/or decision borne by the government agency and/or official.

a. Legal action according to Civil Law

Involving the role of the community, especially in this case, students or their parents/guardians in raising funds can also be in the form of educational contributions. However, the facts in the field reveal that in order to pursue school programs, it is not uncommon for academic units to use school committees as a forum for community participation to collect donations which is a levy because the amount and period of payment are determined, is binding and enforced. Actions like this are contrary to the provisions of the prevailing laws and regulations. One of the cases that occurred was that the education unit instructed students or parents/guardians to pay a contribution which was a levy based on an agreement or a deliberation by a committee meeting with the parents of the student's guardian.

Legal action like this tends to lead to coercion efforts to legalize levies that are not permitted by constructing them as a contribution through the school committee. However, the facts on the ground reveal that these contributions are similar to levies such as being coercive, binding and in a determined amount. However, suppose the agreement is considered a private legal relationship, then to assess the validity of this legal action. In that case, it is necessary to study the validity of the agreement as stipulated in Article 1320 of the Civil Code/BW.²⁶ An agreement is considered valid if it meets the following elements:

- 1) Consent that binds the parties.
- 2) The ability to arrange an agreement.
- 3) A certain object.
- 4) A lawful cause/not against the law.

These requirements are differentiated into subjective conditions, namely the agreement of the parties and the ability to make an engagement, and objective conditions, namely a specific matter and a legal cause. An agreement is stated as a valid agreement if it fulfils all four conditions. However, the agreement is called invalid if some elements are not fulfilled. The legal consequence of not fulfilling the subjective conditions is that the agreement can be cancelled. This means that the agreement is not valid, but remains legally valid and binding on the parties if no one demands to be cancelled (*vernietigbaar heid/voidable*).

Meanwhile, the legal consequences that occur if the objective requirements are not met, the agreement is null and void. So that the agreement is deemed to have never existed and is not binding (*nietig / void*), thus if an agreement does not fulfil the conditions contained in Article 1320, it can be declared “illegal”. This illegal statement with 2 (two) definitions, namely:

- 1) Illegal, but still valid and legally binding if the invalidity is due to the subjective condition unfulfilled.
- 2) Illegal, invalid, and not legally binding, so it is considered there has never been a previous agreement if the objective conditions are not fulfilled.

In the context of a legal relationship like this, it can be said that the agreement regarding the amount of payment within a specified period between the school committee and the school management if it is deemed an agreement or agreement has violated the terms of the agreement as stipulated in Article 1320, both subjective and objective terms. Personal requirements are not met because there are still parents/guardians of students who disagree with this agreement. Meanwhile, regarding the objective conditions that are violated is that the payment agreement is contrary to the rules that the donation must be based on volunteerism, not coercion and the rules that stipulate those incapable students as identified in the criteria for BOS and BOSDA recipient students may not be burdened with any payment. The legal consequence of such a legal relationship is that the school's actions are illegal, invalid and not legally binding, especially for parties who disagree due to economic inability.

Concerning money that has been paid, there are 2 (two) alternatives as follows:

- 1) Returned, with the consideration that the action was invalid (payment that has already been used for school operational costs does not prevent the return of community rights to their original legal position);
- 2) Not returned, with the consideration that the consequences of these actions are useful for the community (but must ask for agreement and willingness).

²⁶“Kolonial_kuh_perdata.Pdf” <http://hukum.unsrat.ac.id/uu/kolonial_kuh_perdata.pdf> [accessed 24 April 2020].

C. Conclusion

It is permissible to collect donations or levies from the community as a form of participation in the education process. However, it must be based on applicable legal provisions and implemented reasonably, efficiently, transparently and accountably. Contribution of community participation in the education process, especially in terms of school funding, must be based on volunteerism, not obligation or coercion, especially if it is related to the rights of students to get justice or their fundamental rights to education.

As a government legal action, in this case, it is an academic unit or school management, it must still be held accountable if it results in injustice. This injustice can be in the form of an act of abuse of authority, confusing authority or acting arbitrarily, which is included in the criteria of maladministration. The legal consequence of this maladministration indicated that the government action could be declared invalid, invalid and not legally binding.

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