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TO EDUCATION AS THE CONSTITUTIONAL RIGHT OF  
CITIZENSHIP IN TERRITORIAL BORDER

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# THE MODEL OF LAW ON THE FULFILLMENT OF RIGHT TO EDUCATION AS THE CONSTITUTIONAL RIGHT OF CITIZENSHIP IN TERRITORIAL BORDER\*

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## Abstract

*Various weaknesses are still found in the protection of the rights of citizens, pertaining to the right to education in border area that resulted in the backwardness and poverty of its citizens. The government of Nunukan District has released a regulation in fulfilling the right to education of citizens that is regional regulation Number 05 of 2012 on the management and implementation of education. Legal model for the fulfillment of the right to education of citizens in the border area should refer to the constitutional rights of citizens and in accordance with the international covenant on ECOSOC rights and principles of national education.*

**Keywords:** constitutional, education rights, model of law.

## Intisari

Persoalan kebijakan perlindungan hak-hak warga negara khususnya terkait hak pendidikan di wilayah perbatasan selama ini masih terdapat berbagai macam kelemahan yang berakibat keterbelakangan, ketertinggalan dan kemiskinan warga negara di wilayah perbatasan. Kebijakan Pemda Kab. Nunukan dalam rangka pemenuhan hak atas pendidikan warga negara di wilayah perbatasan dituangkan ke dalam Peraturan Daerah Nomor 05 Tahun 2012 tentang Pengelolaan dan Penyelenggaraan Pendidikan. Model hukum Pemenuhan hak atas pendidikan warga negara di wilayah perbatasan harus mengacu pada hak konstitusional Warga Negara yang dijamin dalam konstitusi Indonesia dan sesuai dengan Konvenan Internasional Hak Ekosob dan prinsip-prinsip penyelenggaraan pendidikan nasional.

**Kata Kunci:** konstitusional, hak pendidikan, model hukum.

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## A. Research Background

Under the fourth paragraph of The 1945 Constitution of The Republic of Indonesia, elaborates that one the aims of the establishment of Indonesia's governance is to advance social welfare and educate the nations. According to that point, it is feasible that the right to education is understood as an inseparable part of the aims of the establishment of Indonesia's governance. Article 28C point (1) of The 1945 Constitution Chapter XA regarding Human Rights mentioned that "Everyone has the right to self-realization through the fulfillment of his basic needs, the right to education and to partake in the benefits of science and technology, art and culture so as to improve the quality of his life and the well-being of mankind." Every person refers to all Indonesian regardless their ethnicity, culture, religion and belief.<sup>1</sup>

During this time, a variety of the government policies, especially regarding policy on the fulfillment of the right to education in territorial border, has not been implemented and integrated well with all its related sectors, so that the existing instruments of law cannot fully provide protection and fulfillment of the right to education for society in territorial border, hence, some territorial areas cannot be reached by government policies which prioritizing on the citizenship rights, particularly within the border areas in North Kalimantan.<sup>2</sup>

The economic backwardness may lead to constraints and backwardness in education that has been experienced by the society in territorial border in North Kalimantan, is also triggered by its lack of infrastructure and accessibility of unworthy education, such as a lack of infrastructure and facility of the existing education and this has not been fulfilling the hopes yet. Such constraints

will be more obvious if it is compared with the infrastructure in Malaysia who has been fulfilling the principles of rights to education properly.<sup>3</sup>

According to the data of Statistic Center Body of Nunukan District in 2015, it showed that there was a lack of infrastructure and means for education in which the facility for education is recorded under Nunukan District comprehensively which consists of 133 Elementary Schools, 12 *Madrasah Ibtidaiyah*, 45 Junior High Schools, 6 *Madrasah Tsanawiyah* (MTs), 15 High Schools, 5 *Madrasah Aliyah*, 8 Vocational High School.<sup>4</sup> This issue is going to be related with the general standard which can be used to see the efficacy of education in a certain area that is the availability of means and facilities of education, either the building or teachers and the ratio between students and teachers.

The means and facility of education as stated in the data showed that it has not feasible yet, considering with the basic needs of education or the professional mentors in which according to the level of teaching and the facility of higher education, particularly such as high school, a child who wants to continue his/her study to high school has to go to the nearest place that is in Nunukan District or Tarakan City. As a consequence, a person who is able to continue his/her study to high school is only for those who has a strong financial background, so that this issue may cause some children who are born in Malaysia, keep their Malaysian nationality in order to going to school for free in Malaysia for children who are born in Malaysia.

Regarding the policy on the protection of citizenship rights<sup>5</sup> in particular pertaining the right to education in territorial area during this time still has some drawbacks, even this may be worsen in which the principles of justice and sustainable

<sup>1</sup> See Article 12 of Act Number 39 of 1999 regarding Human Rights, Article 13 paragraph (1) Act Number 11 of 2005 regarding The Ratification of The International Covenant on Economic, Social and Culture. Act Number 20 of 2003 regarding The National Education System.

<sup>2</sup> See Wahyuni Kartika Sari, 2010, *Mengelola Perbatasan Indonesia di Dunia Tanpa Batas*, Graha Ilmu, Yogyakarta, pp. 105-110

<sup>3</sup> See Awang Faouk Ishak, 2009, *Strategi Pembangunan Kawasan Perbatasan Kalimantan Timur*, Government of East Kalimantan, Samarinda, p. 6.

<sup>4</sup> Statistic Center Body of Nunukan District, 2016, *Nunukan Dalam Angka Tahun 2016*, Statistic Center Body of Nunukan District, Nunukan, pp. 90-99.

<sup>5</sup> Legal protection for citizens consist of 2 (two), there are preventive legal protection and repressive. For further details see Philipus M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat Indonesia (Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum & Pembentukan Peradilan Administrasi)*, Bina Ilmu, Surabaya, pp. 1-3.

development in resources management has been neglected that has the aims for the fulfillment of the right to education, precisely there was a conflict caused by the backwardness and citizen's poverty in territorial border if it compares with the neighboring countries.<sup>6</sup>

Surely, this issue will be in contradiction with what has been enshrined under The International Covenant regarding Economic Rights, Social and Culture mentioning that the recognition of dignity and rights attached to it cannot be separated from all human beings, that constitutes the basis of freedom, justice and world peace.<sup>7</sup> Thus, every state that has ratified The International Covenant on Economic Rights, Social and Culture is legally bound for implementing such covenant.<sup>8</sup>

In relation with this issue, it is important to see and assess in what extent the state has implemented its obligations in accomplishing economics rights, social and culture, that is willingness and the capacity of government for protecting and empowering rights. The distinction between the willingness and capacity is necessary for assessing the performance of government. Moreover, this distinction aims for assessing the government just in case if the government does not fulfill their duties in implementing rights with excuses such as a lack of resources, however, in fact what actually happened is a lack of commitment. Along with the applicable regional autonomy, it is also necessary for measuring the commitment and capacity of local government, particularly in this case is North Kalimantan government, specifically Nunukan District in satisfying the right to education for citizens in border area. Based on such background, the author will discuss on what is the local government's policy on fulfilling the right to education of citizens in territorial border and how

the model of law in satisfying the right to education as constitutional rights of citizenship in territorial border in Nunukan District, North Kalimantan.

## B. Research Method

This legal research method used normative research that has been complemented with empirical research. Primary legal sources are some acts and regulations in relation with the existing issue (Act Number 43 of 2008 regarding State's Territory, Act Number 20 of 2003 regarding National Educational System and Nunukan District Regulation Number 5 of 2012 regarding Management and Implementation of Education), whereas for secondary legal sources are textbooks, research, journals, magazines/newspaper, seminar reports, dissertation and other relevant books.

## C. Research Results and Analysis

### 1. Local Government's Policy within the framework of Fulfilling the Right to Education for Citizens in Territorial Border

Territorial Border as a part of state's sovereignty, in principal, constitutes an important issue for indicating the existence of a state. Sovereignty means the highest power over state's governance, local governance and etc.<sup>9</sup> State's sovereignty, according to Mochtar Kusumatmadja, is a nature or character of a state, in which a state has the highest sovereign power, however, it has its limitations that is the application of the highest power is limited to regional boundaries of such state, outside of state's boundary there is no such sovereignty power.<sup>10</sup>

Various kind of government policy particularly in policy regarding management territorial border, in the implementation of its management during

<sup>6</sup> See also Mustafa Lutfi, Prolog, "Keadilan Di Tanah-Tanah Perbatasan", as cited by Mahendra Putra Karunia, *et al.*, "Keadilan di Tanah-Tanah Perbatasan", *Jurnal Transisi Intrans Institute*, Vol. VII, No. 7, 2011.

<sup>7</sup> Elucidation of Act Number 11 of 2005 regarding The Ratification of International Covenant on Human Rights, Economics, Social and Culture (ECOSOC) elaborated that Indonesia affirms its international commitments in advancing and protection human rights particularly in rights of ECOSOC.

<sup>8</sup> Enacted by The General Assembly 2200 A (XXI) on 16 December 1966.

<sup>9</sup> Language Management and Development Center, 2010, *Kamus Besar Bahasa Indonesia*, Ministry of Education and Culture, Jakarta, p. 160.

<sup>10</sup> Mochtar Kusumatmadja, 1982, *Pengantar Hukum Internasional, Buku-I-Bagian Umum*, Bina Cipta, Bandung, p. 15.

this time has not been integrated well yet with all the related sectors.<sup>11</sup> One of the errors of the policy of new order in overcoming border's problem is that, using security approach solely, without using welfare approach so that there are so many citizens in borders have financial dependent on neighboring states, even on the other hand regional autonomy regime became one of the drawbacks for manifesting the development of society in border area as a consequence of law instruments of regional autonomy that is overlapping each other and poor implementation in order to provide protection and fulfillment of the right to education, health and houses for border area. As a consequence, some villages experienced the backwardness in border area. They are more untouchable with the policy which prioritizing to the rights of citizenship, particularly the right to education and health.

Along with such issues, the authority of management on state's border area under Act Number 23 of 2014 regarding Local Government specifically governed under Chapter XVI Part Two regarding State's Border Area,<sup>12</sup> in which border area of state refers to outer layers of sub-districts where it is directly adjacent with other states and it is related to the management of borders area. It affirms that the authority of central government in border area covers all the authority pertaining management and utilization of border area in accordance with the applicable regulations regarding state region.

The authority of local government is limited to delegation of authority provided by Central Government to a Governor as the representative of Central Government within the framework of coordinating the implementation of the development of border area based on regulation enacted by the Central Government. The role of a Mayor in management of border area is for

assisting the Governor as the representative of central government. This is affirmed by Article 361 point (5) that mentioned: "*In coordinating the implementation of border's area development, a Governor as a representative of central government assisted by Mayor*". In principal, the Mayor is able to assign head of sub-district to perform the implementation of development in border area.

Act Number 23 of 2014 regarding Local Government provides an elaboration that the management and development of border area is the responsibility of Central Government in order to avoid backwardness between the surroundings. Other authorities besides governed under such regulations constitutes the authority of regional authority in accordance with applicable laws, in which Act Number 43 of 2008 regarding State's region (Act of State's Region) elaborates that the authority of local government are:<sup>13</sup>

- 1) Provincial Government, with regards of State's region management and border area, has the authority to: a. implementing the government policy and enacting other policies within the framework of regional autonomy and assistance duty; b. conducting development coordination in border area; c. developing the border area inter regional government and/or between regional government with third party; and d. conducting surveillance toward the development in border area which is conducted by the Government. Provincial Government, within the framework of its authority, has the duty to determine the development cost in the Territorial Border.
- 2) The Government, in managing State's Region and Territorial Border, has duties to:
  - a) Implement government policy and enacting other policies within the

<sup>11</sup> The management of territorial border is only for security approach. However, in some neighboring countries, it has used prosperity approach. Based on Research Report of *Kewenangan Pemerintah Daerah dalam Pengelolaan Kawasan Perbatasan di Era Otonomi Daerah (Study Kasus di Kalimantan Barat)*, 2009, Regional Councils of the Republic of Indonesia in cooperation with Universitas Tanjung Pura, Pontianak, 2009, p. 2.

<sup>12</sup> See Provision of Article 361 paragraph (1) up to (8) Act Number 23 of 2014 regarding Regional Government (State Gazette of the Republic of Indonesia Year 2014 Number 244, Supplement to State Gazette of the Republic of Indonesia Number 5587).

<sup>13</sup> See Article 11 and 12 of Act Number 43 of 2008 regarding State's Region (State Gazette of the Republic of Indonesia Year 2008 Number 177, Supplement to State Gazette of the Republic of Indonesia Number 4925).

- framework of regional autonomy and assistance duty;
- b) Keep and preserve border;
  - c) Perform coordination in implementing development duty in Territorial Border in his area; and
  - d) Conduct development in the border intergovernmental region and/or inter local government with third party.

The government, in the framework performing its authority as stated under State's Region Act, has the obligation to determine development cost in border area.

The efforts of local government, particularly Nunukan District government, North Kalimantan in order to provide service and easy access, as well as ensuring the best quality of education for each citizen without any discrimination has been manifested under Local Government Regulation of Nunukan Number 05 of 2012 regarding the Management and Implementation of Education, in which the background of the enactment of this Local Government Regulation:<sup>14</sup>

*First*, that the philosophy of local government implementation, in which the district has the authority for implementing the basic education and intermediate education, constitutes the basic need of society that is important for the quality of human resources, global competition, educate the people, so that the implementation of education need to be performed well for whole society in Nunukan District; *Second*, that the education is a system that consists of participants, teachers and educational staffs, curriculum, facilities, social environment funds, economics, social, politics, technology and society's participation. Thus, in order to ensure the education is evenly distributed, advancing the quality of education and advancing human resources, so that they can face globalization, it needs regulation to ensure the implementation of education in Nunukan District.

*Third*, that the infrastructure development and globalization, encourage the importance of education which has a good quality and even, for all the society in Nunukan District.

The scope of Local Government regulation, regarding education in Nunukan District, covers: a) Early childhood education by way of formal education; b) Primary education and intermediate education by way of formal education; and c) Non-Formal education that become the authority of the district.

The aims of management and principal of the implementation of education governs under Local Government regulation of Nunukan District. It is basically in line with the principles of the fulfillment of right to education. The education management aims to ensure:<sup>15</sup>

- a. The access of education service for society has to be affordable, even and reachable;
- b. The quality and competitiveness of education that comply with the needs of society;
- c. Effectiveness, efficiency and accountability of the management of education.

Basically, the basic principals of education management constitutes basic reference in education management plan in Nunukan District, such principles cover:<sup>16</sup>

- a. Non-profit, is one of educational principal that aims not to look for profit, thus all the benefits of education's activities must be distributed for advancing the capacity and/or the quality of educational institution;
- b. Accountability, is a capability and commitment of educational institution for being liable all activities that are conducted by stakeholders in accordance with the applicable law;
- c. Quality Assurance, is systemic activity of educational institution in providing

<sup>14</sup> See The Basis of Considering Nunukan Local Government Regulation Number 5 of 2012 regarding the Management and Implementation of Education.

<sup>15</sup> See Article 3 point (1) Local Government of Nunukan District Number 5 of 2012 regarding Management and the Implementation of Education.

<sup>16</sup> See Article 4 of Local Government Regulation Number 5 of 2012 regarding the Management and Implementation of Education.

- formal educational service that comply or exceed the Education National Standard sustainably;
- d. Transparency, is a openness and an ability of educational institution to provide relevant information properly in accordance with the applicable laws and the standard of report that is valid for stakeholders; and
  - e. Access to Justice, is to provide formal educational service to potential participants (students) and applicants, without exception.

Along with the principal of educational institution, the principal of educational implementation as one of the basis to question the efforts of local government of Nunukan District for providing rights to education normatively also lies under Local Government Regulation that is:<sup>17</sup>

- a. Education is held democratically and equitably as well as in line with non-discrimination principle, by way of upholding human rights, religious values, cultural value and diversity;
- b. Education is organized as a unity that is systematic along with the principal of openness, transparent, democratic, justice and accountable;
- c. Education is performed as a process of civilizing and sustainable empowerment of potential participants (students);
- d. Education is conducted by providing exemplary in developing the willingness and advancing the creativity of the students in teaching process;
- e. Education is held by way of developing cultures to read, write and calculate for all the society; and
- f. Education is manifested with developing all the components of society by way of taking a part in implementing and controlling the quality of educational services.

The responsibility of educational management by local government of Nunukan district, in principal, is in the hand of Governor particularly in the framework of management of educational system in its district, formulating as well as enacting local government policy in education in compliance with its authority based on applicable laws.

Basically, local government has to direct, guide, supervise, coordinate, evaluate and control the organizer, institution, and the type of education. Governor enacts the policy on educational management for ensuring the efficiency, effectiveness and accountability for managing the educational program. With regards to implementing and managing the educational system in district, the local government develop and conduct education information system within the basis of technology of information and communication, which the education information system in such area remains to be the subsystem of education information system of national and conducted in accordance with applicable laws.<sup>18</sup>

The duty of Local Government of Nunukan District with regards to the fulfillment of rights to education is expressed under Local Government Regulation that is:<sup>19</sup>

- a. to govern, organize, guide and control the implementation of education;
- b. to enact the minimum standard of service in education implementation for children, elementary school, and intermediate school in accordance with the applicable laws;
- c. to provide service and ease, and ensure good quality of education for citizens without any discrimination;
- d. to provide budgetary for accomplishing schooling period;
- e. to provide budgetary for requiring the children, who are not capable to pay the school fee, and waifs to remain enjoying their right to education;

<sup>17</sup> See Article 5 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding the Management and Implementation of Education.

<sup>18</sup> See Article 7 and Article 8 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>19</sup> See Article 17 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

- f. to provide scholarships for those who have a good academic skill;
  - g. to provide chances for society to obtain education;
  - h. to facilitate the education institution with teachers and their professional staffs, based on the development of science and technology for ensuring the implementation of worthy education;
  - i. to facilitate the availability of literature centers for society;
  - j. to encourage the culture to read more and learn more;
  - k. to build and develop educators and educational workers within an institution that is held by the local government and society;
  - l. to develop the educational resource sustainably for manifesting the best quality of education;
  - m. to facilitate means and facilities the development of science and technology for supporting the quality of education;
  - n. to provide supports for universities in order to cooperate with government for developing science and technology;
  - o. to grow motivations, stimulate and provide facilities, as well as creating conducive conditions for the development of science and technology in implementing education;
  - p. to boost the industrial sector for actively participating in enhancing the quality of education;
  - q. to provide place and facilities for establishing an education institution.
- b. Temporary worker in an educational institution held by Local Government; c. Permanent worker in others legal entity; and d. Temporary worker in institutions or other legal entity.<sup>20</sup> Regarding the Qualified Educators and its competency does not govern specifically, however, it refers to the applicable laws.

With regards to the welfare assurance for educators and educational workers, basically, Nunukan District Government has guaranteed such issues under Local Government Regulation Number 5 of 2012 regarding Management and Implementation of Education Article 20 stated that: “Educators and educational workers in educational institution which is held by Local Government is entitled for income and social welfare assurance and other rights in accordance with applicable laws.”

The role of Local Government can be in the form of subsidization for education institution held by society for enhancing the welfare of educators and educational workers based on the local financial ability.<sup>21</sup> With regards to foreign educational institution that employ Indonesians educators, obliges to provide social welfare assurance based on applicable regulation in the state concerned. Such welfare assurance has to express under employment agreement or occupational agreement.

The rights of participants is expressed under Local Government Regulation Number 5 of 2012 regarding Management and Implementation of Education under Article 38 point (1) and (2) stated that every participants in every educational institution under formal and informal education is entitled to:

The government policy of Nunukan District in fulfilling right to education can be seen and measured from the regulation on educators and educational workers, in which the educators must have academic qualification and competency as an agent of learning, must have a good mental and physical health as well as having an ability to embody the aims of national education. The status of educational workers consists of: a. Civil Servant;

<sup>20</sup> See Article 18 point (1) and point (2) of Local Government Education of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>21</sup> See Article 21 of Local Government of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.



**Table. 1**  
**Rights of Participants in Nunukan District**

Educational Path	Formal Education	Informal Education
<b>Rights of Participants</b>	<ul style="list-style-type: none"> <li>a. Obtain religious education according to their beliefs and taught by an educator who has the same religion;</li> <li>b. Obtain education's service that is based on their passion, interest and their ability;</li> <li>c. Obtain scholarship for those who achieve a good academic record;</li> <li>d. Obtain education assurance from State Budget Revenue and Expenditure and or from Regional Budget Revenue and Expenditure for those coming from poor family and having a local citizen status;</li> <li>e. Move to education program in the same education institution;</li> <li>f. Accomplish education program based on the promptness of every participants and not exceeding from the time that that has been set; and</li> <li>g. Obtain guidance, learning and training that is feasible according to national standard;</li> <li>h. Submit advices and take part in enhancing the quality of education.</li> </ul>	<ul style="list-style-type: none"> <li>a. Obtain education service according to interest, passion and their ability;</li> <li>b. Accomplish education program according to the promptness learning of every participant and not exceeding from the time has been set;</li> <li>c. Obtain guidance, learning and training that is feasible according to national education standard;</li> <li>d. Submit advices and take part in enhancing the quality of education</li> </ul>

**Source:** Research of Local Government of Nunukan District Number 5 of 2012 regarding Management and Education Implementation

Besides such provisions, for participants who has mental disabilities and for Indonesians who study in foreign education institution are entitled to educational service based on their needs. For Indonesian participants who study in foreign education institution have the right to obtain religious education and citizenship education.

Government policy of Nunukan District in fulfilling right to education, basically, right to education refers also to people who need 'special' education and 'special' service in which special education will deliver to those who get difficulties in following the process of learning due to their physical, emotional, mental, social disabilities and/

or having special talent and intelligence.<sup>22</sup>

One of the most important things in seeing the fulfillment of right to education for citizen in border area is, the existence of policy in education institution within the basis of local value. It constitutes education institution that fulfills the national education standard and it is enriched by the competitiveness and/or region comparative. The local government manages and implements at least one education institution in elementary school and intermediate level with the basis of local value. The local government should be able to facilitate the implementation of education for an education institution in elementary level and intermediate

<sup>22</sup> See Article 48 of Local Government of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

level held by the society.<sup>23</sup>

An education institution with the basis of local value develops with comparative excellences region in art, gardening, farm, forest and service. Such education institution must be enriched with vocational education related to economics potential, social and/or local culture that constitutes the competitive advantages and/or comparative of region.<sup>24</sup> An education institution related to local excellences will be surely related to the education funds.<sup>25</sup> Based on article 53, it is obvious that local government has the duty to provide assistance in implementing education program and obliges to provide budgetary for education at the minimum 20 % (twenty percent) from Regional Budgetary Revenue and Expenditure, excluding the salary of educators, educational workers and local education department gradually in Nunukan District. Basically,

regarding the funds for international school, it earns from central government, provincial government and local government, society and parents. The financial aid for international school should have a separate bank account in order to provide easy access to be controlled.<sup>26</sup>

The rights and obligations of society has affirmed under Local Government Regulation Number 5 of 2012 regarding Management and Implementation of Education that stated the role of society in enhancing the quality of education service which covers planning, controlling and evaluation program of education through school committee and society as well as industrial sectors are able to take part in funding the implementation of education based on their capabilities and needs.

Regarding rights and obligations can be seen in the following table:<sup>27</sup>

<sup>23</sup> See Article 50-51 Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>24</sup> Article 52 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>25</sup> More details see Article 53 of Local Government of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>26</sup> Article 54 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

<sup>27</sup> Article 66 and 69 of Local Government Regulation of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

**Table 2.****Rights and Obligations of Citizen on Education in Nunukan District**

<b>Citizen's Rights on Education</b>	<b>Citizen's Obligation on Education</b>
a. Participating and obtaining qualified education based on interest and ability;	a. Citizens oblige to follow the formal education until its accomplishment;
b. Obtaining elementary education;	b. Citizens oblige to provide supports in the form of education source for the sustainable education implementation;
c. Organizing education in the basis of society;	c. Citizens oblige to create and support the implementation of reading culture and learning culture in their environment.
d. Having the opportunity to advance the education level in a lifetime;	d. Parents oblige to provide chances to their children for enjoying right to education;
e. For those who have physical, mental and emotional disabilities and having social obstacles are entitled to obtain special education;	e. Parents oblige to provide chances to their children to think and express based on their intellectuality and age;
f. Citizens who has a potential intelligence and or special talent are entitled to special education;	f. Parents oblige to educate and assist their children to study at home; and
g. The citizens who experience natural disaster and or social disaster are entitled to special educational service;	g. Parents oblige to finance the education of their children based on their capability.
h. Citizens take part in controlling, benefitting, developing science and technology, art and culture for enhancing personal welfare, family, nation and mankind;	
i. Taking part in planning, implementing, controlling and evaluating of educational program; and	
j. The role of society can be conducted in accordance with the applicable laws	

**Source:** Local Government of Nunukan District Number 5 of 2012 regarding Management and Implementation of Education.

Based on applicable laws, it is obvious that the local government obliges to provide assistance in implementation of education at the minimum 20% (twenty percent) from Regional Budgetary Revenue and Expenditure outside of the salary of educators, local education gradually in Nunukan District.

According to law instruments of Local Government Regulation, the duty of government and local government, especially in Nunukan District, the government obliges to fulfill right to education for citizens. There is no reason for not doing so, particularly with regards to education for Indonesians in territorial border. Hence, this

fulfillment of right to education constitutes the main effort to enhance better future for citizens in the border area.

## **2. The Model of Law in Fulfillment of Right to Education as Constitutional Rights of Citizenship in Territorial Border in Nunukan District, North Kalimantan**

Constitutional Rights can be seen reciprocally with the obligation of state constitutional.<sup>28</sup> Every constitutional state obligation that is mentioned in The 1945 Constitution, concludes that constitutional rights as a part of rights that cannot be apart from or that is attached on such state's obligation. For instance, state's obligation for allocating education funds as much as 20% of State Budgetary Revenue

<sup>28</sup> Maruarar Siahaan, "Hak Konstitusional dalam UUD NRI 1945", Salatiga, 3 December 2011.

and Expenditure, and obligation to study, all these things may lead to constitutional rights of citizens for the State's Purpose.

Model of law in fulfilling right to education of citizenship in the border area, we need to see directly how the applicable laws can be shaped, applied or even neglected.<sup>29</sup> There are 2 (two) model of law, by Black, called *Jurisprudentie Model* and *Sociological Model*, that is:

*Jurisprudentie Model*, this model of law more focuses on policy's products (rules). Rules as this product can be codified rules or non-codified rules. Whereas, *Sociological Model*, focuses on more critical of model of law and more lead to actual legal science, since *Sociological Model* does not lead to abstract rules and stereotype, however, it is more on what the fact is, thus, it focuses more on social structure.<sup>30</sup>

The efforts of fulfillment on education for citizens in the border area must be conducted by way of systematic programs and it must be sustainable. The International Covenant on Economic, Social and Cultural Rights that is ratified by Indonesian government on 28 October 2005 by Act Number 11 of 2005 constitutes a standard guideline for fulfilling right to education.

The fulfillment of right to education for citizens in border area has to comply with some principle things as stipulated under the International Covenant on ECOSOC that is:<sup>31</sup>

- a. Elementary school is mandatory and available freely for all the people;
- b. Continuing education in any form, including engineering education and intermediate vocational school, has to be available generally and open for all citizens and any proper way and especially for determining education for free sustainably;
- c. Higher education has to be reached by any person, based on their capacity, by proper ways and especially implementing free education sustainably;
- d. Elementary school has to be encouraged and intensified for all citizens for those who have never got or accomplish all their educational levels;
- e. The development of a system in all stages has to be actively endeavored, a scholarship system that has to be advanced sustainably.

The basic principles of Human Rights' obligation in model of law on the fulfillment of right to education for citizens in territorial border can be seen under the following table down below:

<sup>29</sup> Eugen Erlich mentioned that what makes it different between the law that has been used for considering the decisions and the law as a rule of behavior that is used by society for interacting each other in this case is the concept "living law" becoming relevant up until today. Satjipto, 2000, *Ilmu Hukum*, Citra Aditya, Bandung, p. 297.

<sup>30</sup> Yesmil Anwar & Sadang, 2008, *Pengantar Sosiologi Hukum*, RajaGrafindo, Jakarta, p. 227.

<sup>31</sup> See International Covenant on ECOSOC Rights Article 13 point (2).

**Table 3.**

**Basic Principles of Human Right’s Obligation under the Model of Law on Right to Education for the citizens in Border Area**

<b>Availability</b>	<ul style="list-style-type: none"> <li>• The obligation for ensuring the basic schooling and education for free for all children in a state, until at least in within the legal age for having a job.</li> <li>• The obligation for appreciating freedom of parents to choose education for their children, considering the interest of their children.</li> </ul>
<b>Accessibility</b>	<ul style="list-style-type: none"> <li>• The obligation for abolishing exclusivity of education based on the prohibition of discrimination (race, skin color, gender, language, religion, opinion, origin, financial status, birth, social status, minority status or local citizens, disabilities) .</li> <li>• The obligation for abolishing gender discrimination and racial by way of ensuring the same chances in fulfilling human rights.</li> </ul>
<b>Acceptability</b>	<ul style="list-style-type: none"> <li>• The obligation for determining minimum standard of education, including language instruction, material, method of learning and ensuring the applicability on all educational institution.</li> <li>• The obligation for enhancing the quality of education by way of ensuring that all the education system in line with human rights</li> </ul>
<b>Adaptability</b>	<ul style="list-style-type: none"> <li>• The obligation for planning and implementing education for children those who do not have formal education (such as education for refugees or exile, education for children deprived their liberty, or education for children worker).</li> <li>• Obligation for adjusting education and the main interest of every child, especially for those with disabilities or minority and local habitants.</li> <li>• The obligation for applying human rights in a whole as a guideline by way of education, such as rights to marry and having family or freedom from threatened and being slaved.</li> </ul>

**Source:** Katarina Tomasevski, 2005, *Pendidikan Berbasis Hak Asasi*, UNESCO.

The Model of fulfillment of right to education for citizens in border area basically has to refer to the principles of education institution as stated under Act of National Educational System that is:

- a. Democratic and justice as well as not discriminative with taking into account human rights, religious value, cultural value and diversity;
- b. A unity of systematic with openness system and multi value, is held as a process of civilizing and empowerment of participants of education which will last for lifetime;
- c. Providing role model, constructing willingness and developing creativity

- d. of participants in the process of learning;
- d. Developing reading culture, writing and calculating for all citizens; and
- e. Education is held with the help of all society elements by way of participating in implementation and controlling the quality of education.

The model of fulfillment of right to education to citizens in border area by a state that relies on the provision of Act National Education System which has to fulfill the main issues which are:

*First*, the existence of feasible educational facilities and can be accessed by all the citizens, especially for those who are poor people. *Second*, the professional educational

workers must be able to reach remote areas and dedicate it to education and humanity. Third, commodities have to be reached by people in the border area, especially for those who are not capable to afford their daily needs. Fourth, the implementation of education has to be held sustainably, for instance, there is a program for cooperating to enhance education, prevention of children dropping out of school and foster dropped out school children.<sup>32</sup>

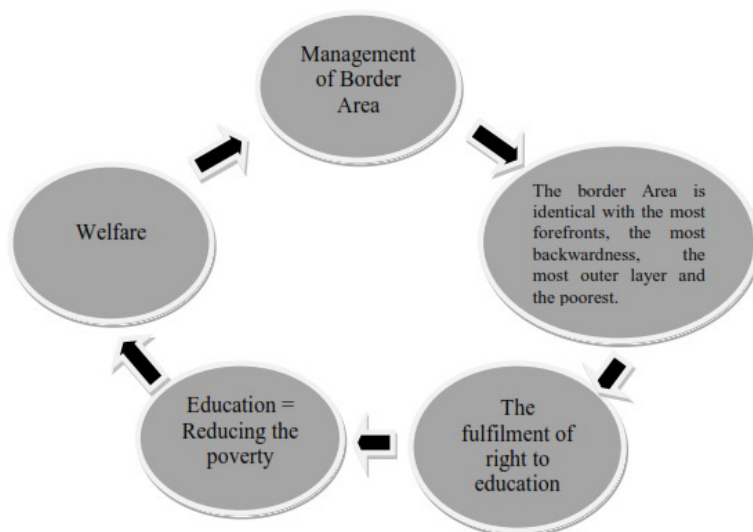
The framework of Human Rights places a state as the primary actor for carrying the duties and responsibility (duty holders) in compliance with human rights, whereas the society constitutes rights holder. Basically, citizens in

border area has the right to claim the fulfillment of human rights especially right to education since the state has the duty to do so. Such rights holders and duty holders are expressed under The 1945 Constitution. The management of border area that is not lean on right to education may lead to poverty. As consequence, children who are not be able to enjoy education due to lack of financial support, and having difficulties in accessing the education may end up being a worker to help their parents in satisfying daily needs.

Here is a figure of Model of Law in Managing the border are with the basis of the Fulfillment of Right to Education.

**Image 1.**

**Model of Law in Managing the Border with the Basis of the Fulfillment of Right to Education**



**Source:** Author’s Research Report, 2014

The succes of the fulfillment on right to education of citizens in the border area will bring consequences on reducing poverty and advancing the social welfare for citizens. There are some

indicators that the work of the fulfillment program on right to education in the border area can be seen in the following table below:

<sup>32</sup> Mimin Rukmini & Muhammad Mihradi, 2006, *Pegangan Ringkas Pemenuhan HAM Pendidikan dan Kesehatan di Daerah*, Pusat Telaah dan Informasi Regional & European Initiative Democracy and Human Rights (EIDHR) Uni Eropa, Jakarta, pp. 21-22

Table 4.

**The Indicators of the Achievement in Fulfilling Right to Education for Citizens in Border Area**

Indicators	Descriptons
<b>Benefits</b>	<ul style="list-style-type: none"> <li>a. Whether there is benefit for people in the border area;</li> <li>b. Whether all, particularly the citizens in the border area can enjoy the effect of such policy in education and health</li> </ul>
<b>Access</b>	<ul style="list-style-type: none"> <li>a. Whether all the society has the same chances for enjoying right to education and health.</li> <li>b. Whether poor people in the border area experience a discriminative treatment in enjoying right to education in the border area.</li> </ul>
<b>Participation</b>	<ul style="list-style-type: none"> <li>a. Whether education stakeholders and health are taking part within a discussion on what needs should be satisfied with regard to such rights.</li> <li>b. Whether all parties has the same chance for actively participating</li> </ul>
<b>Control</b>	<ul style="list-style-type: none"> <li>a. Whether all the society especially minority group has the same chance to make decision based on the available resource in fulfilling right to education and health.</li> </ul>

**Source:** Author's Research Result, 2016.

The management of territorial border that prioritize more on right to education, therefore the government should perform some actions:<sup>33</sup>

First, the enhancement of education quality. This can be done by providing elementary school for free gradually; prioritizing elementary school to be more focus on cognitive, affective and psychomotor skills, reducing the numbers of children dropping out of school in every stage of education; relocation the function of school that is not in line with regulation (regrouping). Second, participation and transparent. All the government policy and local government has to be encouraged for being bottom up. The role of society needs to be advanced in education. Besides, transparent and control involve stakeholders and society, particularly for budgetary, education, assistance and education policy. Third, the enhancement of educators' quality. The enhancement of quality can be conducted by way of ensuring

legal certainty of teachers who are in border area by bounding in a contract for private school teachers, ensuring the status of civil servant for those who are working in private school and enhancing the qualification of educators. Fourth, budget allocation. The allocation of budgetary must be prioritized on assistance for participants (students) from poor family. It must be distributed well and proportional. Besides, the enhancement of efficiency in allocating the educational budget in the form of facilities for schools and; Fifth, completing all the facilities and means for education and enhancing the welfare of teachers, daily incentive, distributed well and fair, so that the educators can enjoy their rights.

The model of development in border area consist of 3 (three) types, first, the strategy on developing infrastructure as the main priority before any king of economic activity has started,

<sup>33</sup> Mimin Rukmini and R. Muhammad Mahradi, *Op.cit.*, pp. 31-32.

second, prioritizing investment in private sector and third, prioritizing policy programs for facilitating the development of border area.<sup>34</sup>

Ensuring right to education may affect on reducing the numbers of poverty, thus it can strengthen the development in the border area and may enhance prosperity approach.

#### D. Conclusion

The policy of management in border area constitutes Central Government authority that covers the management and benefitting territorial border. The government authority is limited to the delegation of authority given by the Central Government to the Governor as a representative of Central Government in coordination the development of territorial border based on the guideline of Central Government. With regards to management of border area, the Mayor provides assistance to the Governor as the representative of Central Government. The efforts of Nunukan

District for ensuring qualified education have been enshrined under Local Government Regulation Number 5 of 2012 regarding Management and Implementation of Education.

The model of law in fulfilling right to education as a constitutional right of citizens in territorial border has to be based on Human Rights principles that is Availability, Accessibility, Acceptability and Adaptability

The model of law on the management of border area prioritize on the fulfillment of right to education so that the government has to perform: first, advancing the quality of education. Second, participation and transparent. Third, enhancing the quality of educators. It must be conducted by way of legal certainty for educators who are in the border area. Fourth, budgetary allocation for education should be distributed and proportional. Besides, enhancing the effectiveness and efficiency in allocation of budget of education must be distributed well.

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<sup>34</sup> Chung-Tong Wu, 2001, Cross-Border Development in a Changing World: Redefining Regional Development Policies. In Edgingtong, David W, et al., (eds), 2001, *New Regional Development Paradigms Vol. 2*, Greenwood Press, London, pp. 28 – 33.



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