

# Legal Problems of Law No 20 of 2003 Concerning the National Education System, Indonesia

Yuliatin<sup>1</sup>

<sup>1</sup> *University of Mataram*

Jl. Majapahit No 62 Mataram, Nusa Tenggara Barat, Indonesia

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Corresponding Author:

[hjyuliatin31@gmail.com](mailto:hjyuliatin31@gmail.com)

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**Abstract.** Law No 20 of 2003 concerning the National Education System ideally regulates all education system components to realise educational purpose. However, Law No 20 of 2003 still shows legal problems in handling various parts of the national education system. The issues in question are, of course, the focus of a critical study to immediately get a solution for improvement and refinement. Therefore, research on the legal problems of Law No 20 of 2003 concerning the National Education System is being conducted. This research is normative legal research with a statutory approach. The study results indicate legal problems with Law No 20 of 2003 in the form of ambiguity and conflict of norms.

**Keywords:** Legal Problems; National Education System; Law

## INTRODUCTION

Law No 20 of 2003 concerning the National Education System is a law established by the Government of the Republic of Indonesia to improve the previous Law, namely Law No 2 of 1989 concerning the National Education System. Law No 20 of 2003 is undoubtedly expected to be a more precise and comprehensive guideline in directing all components of the national education system to realise the goals of national education.

The purpose of national education is constitutionally emphasised in Article 31, § 3 of the 1945 Constitution of the Republic of Indonesia, namely increasing faith and piety and noble character in the context of the nation's intellectual life. In this case, Law No 20 of 2003 ideally regulates all education system components to realise these educational purposes. However, Law No 20 of 2003 still shows legal problems in handling various parts of the national education system.

Legal problems of Law No 20 of 2003 can be void, unclear, or conflicting norms. One example of the ambiguity of models can be found in the standards regarding the curriculum, namely Article 37, §§ 2-3, which regulates the compulsory content of the curriculum at the levels of primary education, secondary education, and higher edu-

cation. In this provision, it is stated that one of the mandatory contents of the curriculum is language. It is not clear what language is meant. This, of course, can lead to multiple interpretations and legal uncertainty. Therefore, the study of the legal problems of Law No 20 of 2003 with the National Education System is essential to find a solution for its improvement and refinement immediately.

## METHOD

The study of legal problems of Law No 20 of 2003 concerning the National Education System is normative legal research. The author [1] suggests that normative legal analysis finds the rule of Law to answer legal problems. In this study, a search was conducted on Law No 20 of 2003 and other related laws and regulations to find legal issues related to Law No 20 of 2003 and provide a solution for improvement. The approach used is a statutory approach, which uses legislation and regulations [2].

## RESULTS AND DISCUSSION

Obscurity of Norms in Law No 20 of 2003. Based on the results of a study of Law No 20 of 2003 concerning the National Education System, it was

found that there were legal problems with it. One of the forms was the existence of a vague norm/blur norm, a situation where the model already exists but does not have a clear meaning or has more than one meaning that makes the standard vague or unclear. The norms referred to can be seen in Table 1.

Table 1 – Norms in Law No 20 of 2003 that Obscure

No	Chapter	Substance
1	Article 1, No 5	Definition of education personnel
2	Article 1, No 6	Definition of educators
3	Article 37, §§ 1-2	Compulsory content of the curriculum at the elementary, secondary, and higher education levels
4	Article 39, § 2	Educator's duties
5	Article 40, §§ 1-2	Rights and obligations of educators and education personnel
6	Articles 67-71	Criminal provisions

Table 1 above shows the existence of several norms in Law No 20 of 2003, which is obscure/unclear. *First*, Article 1 point 5 emphasises that "Educational personnel are members of the community who are devoted and appointed to support the implementation of education". The definition of educators in the article does not describe the ideal figure of educators who are the elements of the national education system that affect the achievement of national education goals.

As an element of the national education system, educators are not members of the general public who only support the implementation of education but are people with qualifications and competencies that support the performance and achievement of national education goals.

Confirmation of the ideal figure of educators in the formulation of the notion of educators is significant considering the current incompetence of educators, both in terms of professional competence, namely mastery of the field of science according to the type of work handled, as well as exemplary personal and social competencies by students. Therefore, suggestions for changes to

the formulation of Article 1 No 5 are "Educational personnel are people who have the qualifications and competencies to support the implementation and achievement of educational purposes".

*Second*, Article 1 point 6 states that: "Educators are educational personnel who are qualified as teachers, lecturers, counsellors, tutors, tutors, instructors, facilitators, and other designations according to their specificity, and participate in the administration of education".

This provision belongs to the category of obscure norms because it does not clearly describe the ideal educator figure. In addition, it can also confuse educators because it defines educators as educational staff, which are two terms always distinguished in various other norms. For example, Article 39, §§ 1-2 of Law No 20 of 2003. Paragraph 1 stipulates the duties of educational staff, and § 2 defines the responsibilities of educators. In these provisions, it is clear that the two have different tasks.

In this regard, it is necessary to emphasise educators' understanding of the ideal and different educator figures from education staff. Therefore, suggestions for improving Article 1 § 6 are "Educators are people who have qualifications, competencies, and certifications as teachers, lecturers, counsellors, tutors, tutors, instructors, facilitators, and other designations according to their specificity, and participate in the implementation and achievement of educational purposes".

Confirmation of the notion of educators as above is significant because educators are one element of the education system that dramatically influences the achievement of educational goals. Authors [3] found that the teacher is the component that most determines the quality of education. In this case, educators are not people who only have qualifications and participate in implementing instruction but must have qualifications, competencies, and certifications to carry out their educational responsibilities. The author [4] suggests that educators are entrusted with educating.

*Third*, Article 37, §§ 1-2, which regulates the mandatory content of the curriculum, one of which is in sub c, namely language. The word language certainly has a general meaning and can be interpreted differently. It can be Indonesian, regional, or foreign languages. Therefore, in order not to cause multiple interpretations, it is essential to emphasise the language in question, namely, the Indonesian language. This is by the

principle of forming laws and regulations, as stated by [5] among others: the sentence chosen should be absolute, not relative, and the Law should not be argumentative/debatable.

*Fourth*, Article 39, § 2 affirms that "educators are professionals in charge of carrying out the learning process, assessing learning outcomes, conducting guidance and training, as well as conducting research and community service, especially for educators in higher education". The norm is blurred because of the sentence "especially for educators in higher education". This sentence gives educators an unclear task outside tertiary institutions to conduct research and service. This is not one of the principles of legislation put forward by [5]; namely, the Law should not confuse the subject matter with exceptions and limitations.

*Fifth*, Article 40, § 1-2. Paragraph 1 regulates the rights of educators and education personnel. Paragraph 2 governs the obligations of educators and education staff. These norms are vague because

1) their structure, which regulates rights and obligations, is not systematic and logical. Rights are held in § 1, and responsibilities are regulated in §2. It should handle duties first, then rights, because rights are a consequence of implementing obligations.

2) the difference between the obligations and rights of educators and education staff, even though educators and education staff have different tasks;

3) the use of words that are not systematically different but have the same meaning.

It is contained in §1 point e., "the opportunity to use educational means, infrastructure and facilities to support the smooth implementation of tasks". The use of the word's facilities, infrastructure and amenities should be systematised and simplified into the use of infrastructure and facilities because amenities have the same meaning as facilities.

The selection of words, as well as the sentence structure as suggested above, is a necessity in the formation of a statutory regulation because it is part of the principle of forming legislation, as stated by [5]; namely, the style of language must be solid (simple). This principle is a guide in developing Law in view [6].

*Sixth*, Articles 67–71 regulate the length of the sentence, the formulation of which uses one of the systems, as stated by [7], namely the indefinite sentence system in the form of threats of the length of the sentence to the maximum.

The regulation on the length of the sentence, which only regulates the maximum limit, also shows the ambiguity of the norm because it does not provide a clear minimum limit for judges in making decisions. This impacts arguments that lead to opportunities for judges to make very light decisions and not be punished because there is no minimum criminal limit setting. This certainly has an impact on the effectiveness of the Law. According to the legal system theory proposed by Friedman, Law is a system consisting of three elements that determine whether the Law is effective, one of which is the substance of the Law.

Conflict of Norms in Law No 20 of 2003. Based on the results of a study of Law No 20 of 2003 concerning the National Education System as well as other laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law No 12 of 2012 concerning Higher Education, Law No 14 of 2005 concerning Teachers and Lecturers, it was found that there were problems with Law No 20 of 2003 in the form of a conflict of norms, namely incompatibility/out of sync with other standards, both vertically and horizontally. The criteria referred to can be seen in Table 2 below.

Table 2 – Norms in Law No 20 of 2003, which is not in sync with other norms

No	Law No 20/2003	Other Norms	Description
1	Article 37, § 1 Regarding the mandatory content of the curriculum at the elementary and secondary education levels	Article 31, § 3 of the 1945 Constitution About national education goals	Not sync vertically
		Article 1 point 1, and Article 3 of Law No 20 of 2003	Not sync horizontally
2	Article 37, §2 About the compulsory content of the	Article 31, § 3 of the 1945 Constitution About	Not sync vertically

No	Law No 20/2003	Other Norms	Description
	curriculum in higher education	national education goals	
		Article 1 point 1 and Article 3 of Law No 20 of 2003	Not sync horizontally
		Article 35, § 3 of Law No 12 Year 2012	Not sync horizontally
3	Article 39, §2	Article 10 of Law No 12 year 2012	Not sync horizontally
4	Article 42, §1	Article 10 of Law No 12 year 2012	Not sync horizontally

Table 2 above shows the existence of several norms in Law No 20 of 2003 concerning the National Education System that are not in line with other standards, both vertically and horizontally. *First*, Article 37 §1 is not vertically synchronised with Article 31 §3 of the 1945 Constitution of the Republic of Indonesia.

In Article 31, § 3 of the 1945 Constitution of the Republic of Indonesia, it is emphasised that "The government seeks and organises a national education system that increases faith and piety as well as noble character in the context of educating the nation's life which is regulated by law". In the implementation of these provisions, the government stipulates Law No 20 of 2003 concerning the National Education System. The consequence is that all components of the national education system regulated in the Law must be oriented towards achieving the educational goals mandated in Article 31 § 3, namely increasing faith and purity as well as noble character in the context of the nation's intellectual life.

As mentioned above, the purpose of national education is to strengthen the distinctive character of the Indonesian nation by the values of Pancasila. This goal should be a direction in regulating all education system components, including the curriculum. This follows the opinion of [8], who argues that the values in formulating educational goals are a fundamental reference in Curto. However, the provisions of Article 37 §1 of Law No 20 of 2003 confirm that "primary and secondary education curriculum must contain: a) religious

education, b) citizenship education, c) language, d) mathematics, e) natural sciences, f) social sciences, g) arts and culture, h) physical education and sports, i) skills/vocational education, and (j) local content".

In the provisions of Article 37 §1 of Law No 20 of 2003 concerning the National Education System, as shown above, Pancasila is not mandatory in the primary and secondary education curriculum. This certainly does not follow the objectives of national education as mandated in Article 31, §3 of the 1945 Constitution of the Republic of Indonesia, which is oriented towards strengthening the distinctive character of the Indonesian nation, namely the nature of Pancasila. Meanwhile, Pancasila is not a mandatory curriculum content.

Pancasila should be a mandatory content of the primary and secondary education curriculum, which is affirmed in Article 37, §1 of Law No 20 of 2003 because it is the nation's ideology, which is the direction of the development of the distinctive character of the Indonesian government so that it is in sync with the provisions in the Indonesian constitution, namely Article 31, §3 of the 1945 Constitution of the Republic of Indonesia which requires that education be directed at efforts to build the distinctive character of the Indonesian nation following Pancasila.

The provisions of Article 37, §1 of Law No 20 of 2003, apart from being out of sync vertically, are also out of sync horizontally between articles in Law No 20 of 2003, namely Article 1 number 2 and Article 3. Article 1 number 2 emphasises that "National education is education based on Pancasila and the 1945 Constitution of the Republic of Indonesia which is rooted in religious values, Indonesian national culture, and is responsive to the demands of changing times". Furthermore, Article 3 emphasises that "National education functions to develop capabilities and shape the character and civilisation of a dignified nation in the context of educating the nation's life, aiming at developing the potential of students to become human beings who believe and fear God Almighty, have noble character, are healthy, knowledgeable, capable, creative, independent, and become a democratic and responsible citizen".

The provisions of Article 1 point 2 and Article 3 of Law No 20 of 2003, as above, place Pancasila as the fundamental foundation in education administration. However, Pancasila is not made a mandatory curriculum content at all levels of ed-

ucation. This certainly impacts the unclear direction of education development and the failure to achieve educational purposes.

*Second*, Article 37 § 2 of Law No 20 of 2003 is not in sync vertically with Article 31 § 3 of the 1945 Constitution of the Republic of Indonesia, and also horizontally out of sync with Article 1 No 1, 3 as well as Article 35 § 3 of Law No 12 of 2012 concerning Higher Education.

Article 37, § 2 of Law No 20 of 2003 stated that "the curriculum for higher education must include: a) Religious education, b) Civic education, c) language". This provision does not contain Pancasila as a mandatory curriculum content at the higher education level, so it is not vertically synchronous with Article 31 § 3 of the 1945 Constitution of the Republic of Indonesia, which shows the direction of education development to strengthen the distinctive character of the Indonesian nation by the values of Pancasila – namely increasing faith and purity, as well as noble feeling in educating the nation's life.

In addition, Article 37, § 2 of Law No 20 of 2003 is also not in sync vertically with Article 35, § 3 of Law No 12 of 2012 concerning Higher Education, which confirms that "the higher education curriculum as referred to in §1) must contain the following subjects: a) religion, b) Pancasila, c) citizenship, d) Indonesian language". In Law No 20 of 2003, Article 37 § 2 does not contain Pancasila as a mandatory content of the higher education curriculum, but in Law No 12 of 2012, Article 35 § 3 obliges Pancasila as a compulsory content of the higher education curriculum. Thus, the two are out of sync.

The absence of Pancasila as a mandatory curriculum content, as stipulated in Article 37, §§ 1-2, is not in line with the theory of legislation stated by [9], that the bill in a country is a tiered arrangement. The implementation of this theory in Indonesian laws and regulations can be found in the provisions of Law No 12 of 2011 concerning the Establishment of Legislation, Article 7, § 1, which places the 1945 Constitution of the Republic of Indonesia as the highest legislation in Indonesia and the Act as legislation which is under the 1945 Constitution of the Republic of Indonesia No 20 of 2003 concerning the National Education System which is a law that further regulates the provisions of Article 31 § 3 of the 1945 Constitution of the Republic of Indonesia, must contain substances that are in sync with the article by

including Pancasila as a compulsory curriculum content at all levels of education.

*Third*, Article 39 § 2 of Law No 20 of 2003 is not horizontally synchronised with Article 10 of Law No 14 of 2005 concerning Teachers and Lecturers. Article 39 § 2 of Law No 20 of 2003 confirms that "educators are professionals who are tasked with planning and implementing the learning process, assessing learning outcomes, conducting guidance and training, as well as conducting research and community service, especially for educators in higher education". These provisions are not in sync with the requirements of Law No 14 of 2005 concerning teachers and lecturers, Article 10 which confirms that "the competence of teachers as referred to in Article 8 includes pedagogic competence, personality competence, social competence, and professional competence obtained through professional education".

The provisions of Article 10 of Law No 14 of 2005, as above, emphasise that professional competence is only one part of the competency's teachers must possess. Thus, it is incomplete to mention that educators are professionals. It is necessary to emphasise that educators are personnel who have qualifications and competencies.

*Fourth*, Article 42 § 1 of Law No 20 of 2003 is not horizontally synchronised with Article 10 of Law No 14 2005 concerning teachers and lecturers. Article 42, § 2 of Law No 20 of 2003 emphasised that "educators must have minimum qualifications and certification by the authority to teach, be physically and mentally healthy and have the ability to realise national education goals". These provisions only require educators to have qualifications and certification, while in Law No 14 of 2005 concerning teachers and lecturers, Article 8 states that "teachers are required to have academic qualifications, competencies, educator certificates, physically and mentally healthy, and have the ability to implement national education goals.

The provisions of Article 8 of Law No 14 of 2005, as above, confirm that teachers must also have qualifications, certification, and competence. Thus, the provisions of Article 42 § 1 of Law No 20 of 2003, which only requires educators to have qualifications and certification, are not in sync with Article 8 of Law No 14 of 2005. Therefore, it is necessary to amend Article 42 § 1 of Law No 20 of 2003 by adding the requirement for educators to have competence, qualifications,

and certification to be in sync with the provisions of Article 8 of Law No 14 of 2005.

Various legal problems in Law No 20 of 2003 must be the concern of all parties, especially the legislators, to immediately make changes and improvements to provide certainty, as stated by [10]. In addition, to function as a means of community change, the theory of legal function proposed by [11], namely Law as a tool of social engineering (Law as a means of community engineering),

Legal problems of Law No 20 of 2003 in regulating the elements of the national education system, as mentioned above, certainly affect the efforts to achieve educational goals. This is the opinion of [12], who argues that the system is a set of interrelated components that together function to accomplish an objective. In addition, the author [13] argues that education is a linked process and includes elements closely related to one piece and another. Components of education in [14] view include educational purposes, students, educators, educational interactions, educational materials, educational tools and methods, and the educational environment. Therefore, regarding the legal problems of Law No 20 of 2003 regarding curriculum, educators, and education staff that are not in sync vertically or horizontally, improvements can be made immediately to synchronise and implement the national education goals as expected.

## CONCLUSIONS

Based on the discussion above, it can be concluded that the legal problems of Law No 20 of 2003 concerning the National Education System are:

1. There is a vagueness of norms in Law No 20 of 2003 concerning the National Education System, including

a) Article 1 point 5 concerning the definition of educators, and Article 1 point 6 concerning the definition of educators.

b) Article 37, §§ 1–2 regulates the compulsory content of the curriculum, including language. The norm is vague because it does not clearly and explicitly state the language in question, namely Indonesian,

c) Article 39 concerning the duties of educators. The norm is blurred because of the sentence "especially for educators in higher education". The sentence gives unclear duties for educators outside of tertiary institutions to conduct research and service,

d) Article 40 §§ 1–2 concerning the rights and obligations of educators and education personnel. The norm is vague because there is no apparent difference between the obligations of educators and education staff,

e) Article 67, Article 68, Article 69, Article 70, and Article 71 concern criminal provisions that only regulate the maximum criminal limit. The norm is vague because it does not regulate the minimum criminal limit other than setting the maximum limit.

2. The existence of conflicting/unsynchronised norms in Law No 20 of 2003 concerning the National Education System, namely:

a) Article 37 §§ 1-2 are not vertically synchronised with Article 31 § 3 of the 1945 Constitution of the Republic of Indonesia, not horizontally synchronised with Article 1 point 1 and also Article 3 of Law No 20 of 2003. Specifically, Article 37 § 2 is also not horizontally synchronised with Article 35 § 3 of Law No 12 of 2012 concerning Higher Education,

b) Article 39 § 2 and Article 42 § 2 are not horizontally synchronised with Article 10 of Law No 12 of 2012 concerning Higher Education.

## REFERENCES

1. Marzuki, P. M. (2005). *Penelitian Hukum* [Legal Research]. Jakarta: Kencana Prenada Media Group (in Indonesian).
2. Muhammad, A. K. (2004). *Hukum dan Penelitian Hukum* [Law and Legal Research]. Bandung: Citra Aditya Bakti (in Indonesian).
3. Supriadi, D. (1999). *Mengangkat Citra dan Martabat Guru* [Raising the Image and Dignity of Teachers]. Jakarta: Adicitra Karya Nusa (in Indonesian).
4. Sahertian, P. A. (1994). *Profil Pendidik Profesional* [Professional Educator Profile]. Jakarta: Andi Offset (in Indonesian).

5. Attamimi, A., & Hamid, S. (1992). *Pancasila. Cita Hukum Dalam Kehidupan Hukum Bangsa Indonesia* [Pancasila. Legal Ideals in the Legal Life of the Indonesian Nation]. N. d. (in Indonesian).
6. Syarifin, P. (1999). *Pengantar Ilmu Hukum* [Introduction to the Science of Law]. Bandung: Pustaka Setia (in Indonesian).
7. Mulyadi, L. (2007). *Putusan Hakim dalam Hukum Acara Pidana* [Judges' Decisions in Criminal Procedure]. Bandung: Citra Adtya Bakti (in Indonesian).
8. Arikunto, S. (2006). *Dasar-dasar Evaluasi Pendidikan* [Fundamentals of Educational Evaluation]. Jakarta: Bumi Aksara (in Indonesian).
9. Ebenstein, W. (1971). The Pure Theory of Law: Demythologizing Legal Thought. *California Law Review*, 59(3), 617. doi: [10.2307/3479595](https://doi.org/10.2307/3479595)
10. Sisworo, S. K. (1989). *Mempertimbangkan Beberapa Pokok Pikiran Pelbagai Aliran Filsafat Hukum Dalam Relasi dan Relevansinya Dengan Pembangunan/Pembinaan Hukum Indonesia* [Considering Some of the Main Thoughts of Various Schools of Legal Philosophy in Relation and Relevance to the Development / Development of Indonesian Law]. N. d.: Diponegoro University Press (in Indonesian).
11. Muhamad, D. (2007). *Sosiologi Hukum Kontemporer Interaksi Hukum, Kekuasaan, dan Masyarakat* [Sosiologi Hukum Kontemporer. Interaksi Hukum, Kekuasaan, dan Masyarakat]. Bandung: Citra (in Indonesian).
12. Amirin, T. M. (1992). *Pokok-pokok Teori Sistem* [Principles of Systems Theory]. Jakarta: Rajawali Press (in Indonesian).
13. Sutrisno, E. (2016). *Manajemen Sumber Daya Manusia* []. Jakarta: Kencana Prenada Media Group (in Indonesian).
14. Elfachmi, A. K. 2016. *Pengantar Pendidikan* [Introduction to Education]. Bandung: Erlangga (in Indonesian).