

## Legal Consequences of Obligations for Counseling Guidance Services on Campus

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### Abstract

Counseling services for all students, including students, are in fact a fundamental educational service that must be provided by every campus. In essence, counseling services on campus are an obligation that must be provided by the campus as part of the national education standards based on the mandate of Article 38 of the Regulation of the Minister of Education, Culture, Research, and Technology Number 53 of 2023 concerning Quality Assurance of Higher Education. As of this writing, there has been no research related to the legal consequences of this regulation. Concerning that, the researcher tries to examine the legal consequences of the regulation of the campus's obligation to provide counseling services for students. The purpose of this article is to examine the legal consequences that arise from the obligation of counseling services on campus for stakeholders. In this case, the researcher will examine the legal consequences related to the obligation of counseling services on campus using the doctrinal legal research method using the statutory regulatory approach and the conceptual approach. The results of the study indicate that the legal consequences that arise as a result of the obligation to provide guidance and counseling services on campus require the campus to immediately form a special counseling service unit in each faculty, proactively provide counseling related to counseling services for students, and determine planning and budgeting that is oriented towards fulfilling guidance and counseling services on campus.

**Keywords:** Guidance Counseling, Students, Campus, National Standards of Higher Education.

### 1. Introduction

Quality education is truly a necessity, where this is truly a joint consensus based on the constitutional mandate contained in Article 31 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). One of the things that is a national education standard is the presence of guidance and counseling services in education services. In essence, guidance and counseling is not explicitly stated in Law Number 20 of 2003 concerning the National Education System (hereinafter referred to as Law Number 20 of 2003). However, implicitly, counselors, as implementers of guidance and counseling services, are classified as educators who are an important part of national education standards based on Article 1 of Law Number 20 of 2003. Furthermore, Article 39 Paragraph (2) of Law 20 of 2003 reaffirms the role of educators, one of which is to provide guidance and training, which is one

of the tasks carried out by counselors in counseling services. So it can be said that in reality, guidance and counseling services are an inseparable part of national education standards. As for the conditions when this article was written, the role of guidance and counseling services was reaffirmed that their presence must be present in all higher education, as part of fulfilling the higher education standards stipulated in the Regulation of the Minister of Education, Culture, Research, and Technology Number 53 of 2023 concerning Quality Assurance of Higher Education (hereinafter referred to as Permendikbudristek Number 53 of 2023). Furthermore, this is as mandated by Article 38 of Permendikbudristek Number 53 of 2023 where the Campus is required to facilitate guidance and counseling as a minimum service for students.

However, the conditions are now different, with the presence of Permendikbudristek Number 53 of 2023 explicitly positioning counseling services as an inseparable part of higher education standards that must be applied in all Campuses in Indonesia. This mandatory order in legal scientific theory actually means that there are significant legal consequences for all stakeholders in the implementation of the Campus. Related to this, based on the Researcher's search, it turns out that no one has researched this and the Researcher in this case tries to provide a view on this which will later become a renewal of legal theory in the field of higher education administration.

The Researcher found several similar studies related to the focus of this article such as an article written by (Ade Herdian Putra et al., 2023) and (Nursalim, 2022). In (Ade Herdian Putra et al., 2023), The research focuses on the technical implementation of guidance and counseling services related to fulfilling student needs in the era of society 5.0, where the author also recommends the use of information technology in it. Whereas in (Nursalim, 2022), focusing on the implementation of the independent learning and independent campus policy which targets the mandate of guidance and counseling services in educational institutions. The difference with this research is that the researcher focuses on the technical formulation of implementation as a result of the legal consequences of Article 38 of Permendikbudristek Number 53 of 2023 concerning the obligation of guidance and counseling services on campus.

Based on this background, the Researcher intends to research what are the legal consequences of regulating the Campus' obligation to provide guidance and counseling services for students. The purpose of this article is to examine what are the legal consequences that arise from the obligation of guidance and counseling services on campus for stakeholders. This study aims to formulate what needs to be prepared as a legal consequence of the mandate

of Permendikbudristek Number 53 of 2023 concerning the obligation of guidance and counseling services on campus as part of good campus governance.

## **2. Materials and methods**

This study uses a doctrinal legal research method which will have a slight significant difference when associated with research methods in general. The most significant difference is that in the doctrinal legal research method, the most important thing is the constructivism of argumentation built on the basis of the legal system being studied. If analogized, then doctrinal legal research can actually be equated with library research (Qamar & Rezah, 2020), but the difference is the data source (ed: source of legal material, referring to the editorial in the doctrinal legal research method) used in relation to laws and regulations, non-law legal sources, and other sources relevant to the formation or implementation of the laws and regulations being studied.

### *2.1 Materials*

The object of this research is the legal argument regarding the legal consequences related to the obligation of guidance and counseling services on campus as mandated in Article 38 of the Regulation of the Minister of Education, Culture, Research, and Technology Number 53 of 2023 concerning Quality Assurance of Higher Education.

### *2.2 Data collection procedures*

The primary legal sources used in this doctrinal legal research are: (1) Law Number 20 of 2003 concerning the National Education System; (2) Regulation of the Minister of Education and Culture Number 111 of 2014 concerning Guidance and Counseling in Primary and Secondary Education; and (3) Regulation of the Minister of Education, Culture, Research, and Technology Number 53 of 2023 concerning Quality Assurance in Higher Education. Meanwhile, the secondary legal sources used in this doctrinal legal research are theories and concepts related to the legal consequences related to the obligation of guidance and counseling services on campus.

### *2.3 Data analysis*

All sources of legal materials will be studied and analyzed using doctrinal legal research methods using a statutory regulatory approach and a conceptual approach.

## **3. Results and discussion**

### *3.1 Results and discussion*

### **The Nature of Guidance and Counseling Services in the National Education System**

As the researcher has stated in the background, Law Number 20 of 2003 implicitly positions guidance and counseling services as an inseparable part of national education standards. This can be seen in its legal construction, starting from facilitating the counselor profession as part of educators in the national education system in general provisions. In the legal theory of the formation of laws and regulations, matters regulated in the general provisions of a law and regulation can be interpreted as: (1) limits of understanding or definition; (2) abbreviations or acronyms used; and (3) other general matters that apply to the following articles, including provisions that reflect principles, intent, and objectives.

If contextualized into the condition of the phrase the counselor profession is interpreted as "educator" in the general provisions in Article 1 Number 6 of Law Number 20 of 2003, then it can be interpreted that all matters relating to "educators" regulated in Law Number 20 of 2003 also apply to counselors. However, in the opinion of the Researcher, the provisions contained in Article 1 Number 6 of Law Number 20 of 2003 are not interpreted cumulatively, but alternatively, because it contains various professions that carry out different roles. Of course, the roles carried out by counselors cannot be equated with lecturers, for example. However, what is meant in Article 1 Number 6 of Law Number 20 of 2003 is that counselors and lecturers are part or instruments in the "educator" organ in the national education system.

Furthermore, one of the parts of Law Number 20 of 2003 that specifically regulates educators is regulated in Articles 39 to 44. Related to this, Article 39 Paragraph (2) of Law Number 20 of 2003 states that, "Educators are professional staff who are tasked with planning and implementing the learning process, assessing learning outcomes, providing guidance and training, and conducting research and community service, especially for educators in higher education." It can be interpreted that this provision is actually the scope of the role and duties of educators in the national education system, including for counselors who play a role in "guidance" for students or recipients of guidance and counseling services, which are termed "counselees". Although it has been stated implicitly in Law Number 20 of 2003, a more rigid understanding of guidance and counseling has only been facilitated in the Regulation of the Minister of Education and Culture Number 111 of 2014 concerning Guidance and Counseling in Elementary and Secondary Education (hereinafter referred to as Permendikbud Number 111 of 2014), where Article 1 Number 1 states that, "Guidance and Counseling is a systematic, objective, logical, and sustainable and programmed effort carried out by counselors or Guidance and Counseling teachers to facilitate the development of students/Counselees to



achieve independence in their lives." Then further in Article 1 Number 3 of Permendikbud Number 111 of 2014, a more rigid understanding is also given regarding counselors, namely, "Counselors are professional educators who have a minimum academic qualification of Bachelor of Education (S-1) in the field of Guidance and Counseling and have graduated from professional education for Guidance and Counseling teachers/counselors."

The presence of Permendikbud Number 111 of 2014 in the opinion of the Researcher is one of the important instruments of the national education system. This can be seen in the considerations of Permendikbud Number 111 of 2014 which places Law Number 20 of 2003 as the basis for remembering. In legal scientific theory, this means that Permendikbud Number 111 of 2014 is actually a direct derivative of Law Number 20 of 2003 which relates to the regulation of "counselors" in the section of Law Number 20 of 2003 whose nomenclature regulates the national education system. So that legally, in fact matters relating to guidance and counseling services are important instruments or inseparable parts of the national education system. The problem is, the presence of Permendikbud Number 111 of 2014, the scope of its regulation is only limited to basic education and secondary education, as the nomenclature of the regulation. This is what created an issue of legal vacuum at that time where the essence of counseling services did not reach higher education which is actually also part of the national education system. However, in the researcher's investigation, several campuses in Indonesia, regardless of the legal conditions, took the initiative to organize guidance and counseling services. However, because this is not mandatory, it can be ascertained that the financing of operational activities does not come from the National Revenue and Expenditure Budget (APBN) provided for the campus each fiscal year, but from the campus's own cash. So it can be understood that on average at that time, campuses that could organize guidance and counseling services were limited to National Legal Entity Universities (PTN BH), National Public Service Agency Universities (PTN BLU), or Private Universities, considering that the three types of campuses have more flexibility in budgeting and procuring services that are not mandatory.

### **Legal Consequences of Guidance and Counseling Service Obligations on Campus**

Based on the previous discussion sub-chapter, it can be seen that guidance and counseling services are instrumental in the national education system but are still not mandatory for their implementation on campus. The discourse regarding the legal vacuum officially ended in August 2023, when Permendikbudristek Number 53 of 2023 was officially enacted and required all campuses to provide guidance and counseling services as an instrumental part of

the higher education system. This means that in terms of current legal construction, official guidance and counseling services are fully integrated into the national education system because this has finally become mandatory for campuses. Then the next question is what are the consequences of this mandatory, considering that Permendikbudristek Number 53 of 2023 can be said to disrupt the conditions of higher education which were previously not given the obligation to provide guidance and counseling services. Legal consequences are actually related to what logically arises in order to realize what is mandated by laws and regulations, or in this case related to the effectiveness of the law itself. In theory, the effectiveness of law can actually be measured based on the condition of the legal system itself as explained by Lawrence M. Friedman, which includes 3 main aspects, namely: substance, structure, and legal culture.

Related to the aspect of legal substance, namely related to the quality of the wording of the norm in the article, whether it is clear and does not cause multiple interpretations or whether it causes confusion in its implementation. Then related to the aspect of legal structure, namely related to whether there are law enforcement officers who ensure the implementation of the mandate of the norm in the article, or related to the quality of law enforcement carried out by the officers whether it runs consistently or not. Then the last one is related to legal culture, namely related to how society in this case as the subject and object in a legal system interprets the norm in the article, whether there is non-compliance there, or there is ignorance in the community. In its development, the theory of legal effectiveness actually has additional more technical aspects, as explained by Soerjono Soekanto, namely related to the legal aspect, the law enforcement aspect, the legal means or facilities aspect, the community aspect, and the cultural aspect. If examined, what was explained by Soerjono Soekanto was actually a more specific breakdown of the theory of legal system effectiveness explained by Lawrence M. Friedman. This can be seen from the legal aspect which is editorially the same as the substance aspect, as well as the law enforcement aspect which is the same as the legal structure aspect. As for the aspect of legal facilities or means, it is actually a more technical solution to the legal structure aspect, where logically the facilities or means are the main support in implementing the legal structure aspect, but Soerjono Soekanto chooses to separate the two theoretically. And finally, Soerjono Soekanto in his theory specifically separates the legal culture aspect which is divided into the societal aspect and the cultural aspect, which is also logically culture and society are actually inseparable parts of the legal culture aspect initiated in Lawrence M. Friedman's Theory. Based on the results of the theoretical discourse, in this case the researcher has a tendency to examine the legal consequences using Soerjono Soekanto's Theory of Legal

Effectiveness, with the basis for considering putting forward more technical and specific legal consequences.

### **Legal Aspects Related to Guidance and Counseling Service Obligations on Campus**

If we look at the overall construction of the article related to the mandate of the obligation of guidance and counseling services that must be presented by the Campus, then in fact Article 38 of Permendikbudristek Number 53 of 2023 is very clear and does not give rise to multiple interpretations in it. Especially in Paragraph (1), where the choice of words used is the phrase "minimal", which grammatically means "must exist" or "mandatory", which in the opinion of the Researcher does not give rise to debate in grammatical interpretation. However, this does not mean that it is interpreted as free from substantial debate discourse. In the opinion of the Researcher, this in the legal aspect and also has a relationship with the following aspects has a legal issue that must be answered, namely related to the source of operational funding for the guidance and counseling services themselves. Furthermore, this matter at least needs to be regulated more technically in the statutes of each Campus, in this case at least the Chancellor's Regulation and Dean's Regulation, which must regulate the operational funding for this guidance and counseling service. Because in any case, for the sake of implementing good campus governance, all matters relating to operational financing sourced from the Campus Revenue and Expenditure Budget must be based on clear and accountable regulations.

### **Law Enforcement Aspects Related to Guidance and Counseling Service Obligations on Campus**

Normatively, campus organizers are the main regulatory objects in the direction and scope of the material of Permendikbudristek Number 53 of 2023. So that everything regulated in Permendikbudristek Number 53 of 2023 should emphasize the Campus as the bearer of the implementing role, including in terms of fulfilling the obligation of guidance and counseling services on Campus. The implication of this is that there are two main roles in this case: Kemendikbudristekdikti as the authority or policy maker, with the Campus as the object of policy whose actions are regulated in Permendikbudristek Number 53 of 2023. It can be described that the legal implications arising from this are the existence of a vertical-autonomous relationship, between Kemendikbudristekdikti as the superior and the Campus as the subordinate or implementer of the policy. Logically, the condition of such a relationship positions Kemendikbudristekdikti as the authority or direct supervisor of the implementation carried out by the Campus as the implementer. So in this case, it is clear that a periodic monitoring and evaluation (Monev) system is needed which is carried out by the Ministry of

Education, Culture, Research, Technology and Higher Education to the Campus as part of the policy object that arises due to the formation of Permendikbudristek Number 53 of 2023. Then also related to the discussion in the legal aspect, at the level of the Chancellor's Regulation and Dean's Regulation, the Chancellor and Dean in each work unit within the Campus are also an inseparable part in terms of periodic reporting regarding the implementation of guidance and counseling services in each unit.

### **Aspects of Legal Facilities or Facilities Related to Guidance and Counseling Service Obligations on Campus**

If the previous law enforcement aspect was explained regarding the role of stakeholders, this aspect section will describe instrumental matters used by the stakeholders, in this case the Ministry of Education, Culture, Research, Technology and Higher Education and the Campus. On the side of the Ministry of Education, Culture, Research, Technology and Higher Education as the authority that directly supervises the implementation of the policy of mandatory guidance and counseling services on Campus, then it is appropriate that the existing facilities or facilities must support its role as an authority over the Campus.

In the opinion of the Researcher, this can be realized in a concrete form such as a direct complaint channel from the community who enjoy Campus services, in this case the entire academic community including students and their families, as well as all workers on Campus. Regarding this, currently the complaint channel has been well facilitated online with the [lapor.go.id](http://lapor.go.id) channel and institutionally there are state institutions such as the Ombudsman which do have duties in this matter. Furthermore, supporting matters are also needed in monitoring and evaluation activities such as data collection that is integrated with the accreditation system, ideally all of which are carried out online.

Then on the technical side, of course the most important thing is the presence of guidance and counseling service facilities themselves, where at least they must be in the form of units as mandated by Article 38 of Permendikbudristek Number 53 of 2023. When talking about the nature of the implementing unit, of course it must also be supported by competent human resources in implementing guidance and counseling services on campus, which at least are managed by individuals with a background in Psychology or Guidance and Counseling. In addition to human resources, the condition of the room is also an inseparable aspect in the facilities. Of course, the room provided must also meet the eligibility standards in guidance and counseling services, at least comply with the health and safety standards of the work environment, and can ensure privacy for clients and counselors.



### **Community Aspects Related to Guidance and Counseling Service Obligations on Campus**

In fact, what is meant by "society" in this aspect is the target object of guidance and counseling services on campus, namely students. Furthermore, referring to the research (Susilawati et al., 2022), it can be seen that in fact guidance and counseling services on campus are something that is urgent and needed by students in carrying out academic activities. It is undeniable that academic activities are in fact very vulnerable to various external factors and internal factors experienced by all students. Therefore, guidance and counseling services have an important role in determining the success of students' academic processes. So based on this, in the opinion of the Researcher, in fact guidance and counseling services are the most basic rights for all students without exception.

### **Cultural Aspects Related to Guidance and Counseling Service Obligations on Campus**

In terms of culture, the presence of counseling services on campus before the enactment of Permendikbudristek Number 53 of 2023 was quite diverse, because in terms of "legal obligations" at that time the Campus was not burdened with the obligation to provide counseling services. However, in the Researcher's investigation, several Campuses in Indonesia, regardless of the legal conditions, some provided counseling services. The Researcher's hypothesis is that the diverse presence of counseling services is actually purely an initiative of each Campus related to good campus governance. This means that historically, the presence of guidance and counseling services is not something foreign and just appears with the presence of Permendikbudristek Number 53 of 2023. It's just that Permendikbudristek Number 53 of 2023 directly tries to engineer a positive culture by making the presence of guidance and counseling services on campus a basic national standardization. However, the problem is for campuses that are just going to implement this standardization, so this raises challenges for Campus managers regarding how to run guidance and counseling services on campus that are responsible and sustainable. One thing that can be done by campus managers is to always socialize and provide counseling related to the guidance and counseling services provided, and provide fiscal support in the form of special budgeting funds aimed at facilitating guidance and counseling services that specifically support the sustainability of programs run by guidance and counseling service units in each faculty.

## **4. Conclusion**

Based on the results of the study above, it can be seen that the legal consequences that arise as a result of the obligation of guidance and counseling services on campus require the

campus to immediately form a special counseling service unit in each faculty, proactively provide counseling related to counseling services for students, and determine planning and budgeting that is oriented towards the fulfillment of guidance and counseling services on campus. The researcher recommends to all stakeholders, especially campus managers in carrying out the obligation of guidance and counseling services to apply the principles of good campus governance, as referring to the results and findings of the researcher in this paper.

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### **Conflict of interest**

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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