

Desperate needs of teacher's law protection as a professional educator in Indonesia

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Abstract

The position of teachers is very important in the constellation of the education system especially in developing countries such as Indonesia, but in fact many teachers are involved in criminal cases with respect to Law no. 23 of 2002 on Child Protection as amended by Act no. 35 Year 2014, especially in schools as seen in a case study data from the Central Java Teachers' Consultation and Legal Aid Institute (LKBH PGRI) obtained by the authors in the Pre-Research stage, within the period of 2011 to 2016 there are quite a number of criminal cases Involving teachers as defendants. It was noted that in Central Java alone LKBH PGRI handled 11 cases with teachers as defendants and 1 case with suspect status.

The reasearch showed that Legal protection of teacher as professional educator as mandated by Law no. Law No. 14 Year 2005 on Teachers and Lecturers has not been able to protect teachers because when teachers are faced with Law no. 23 of 2002 on Child Protection as amended by Act no. 35. 2014. Teachers who take "certain" physical actions on students in their duties as educators may be legally questioned if they are violating the provisions of the Child Protection Act. there has been many teachers who have to deal with the police, face trial in court or even incarcerated because of this.

To overcome this, suggestions that can be given in addition to organizational strengthening (teacher organization) is the need for socialization of the rights of teachers owned both to teachers and the community as well as the need for immunity (legal immunity) rights regulated by Law, which aims to ensure that teachers get protection when disciplining their students in implementing national educational goals set in the National Education System Year 2003, Teachers and Lecturers Law No. 14 of 2005, and Government Regulation No. 74 of 2008 on teachers.

Keywords: Teacher, Law Protection, Professional Educator, Indonesia

1. Introduction

Teachers as professional Educator in general means that the profession of teachers is a job in the field of science and technology with the characteristics of the professional work of teachers is to have a philosophical profession and wise responsiveness with the competence he has in carrying out daily work, with precision and accuracy in determining the steps As well as attitudes when dealing with learners (E. Sumaryono, 1995) ^[6].

The position of teachers is very important in the constellation of the education system (Sharon Cook & Joel Westheimer, 2006) especially in developing countries such as Indonesia, but in fact many teachers are involved in criminal cases involving children protection found in Law no. 23 of 2002 on Child Protection as amended by Act no. 35 Year 2014, especially in schools.

Currently the tendency of students parent or communities to question the teacher's liability is also increasing. The community has a tendency to prosecute teacher's actions in carrying out their profession, because the teacher provides physical, non-physical sanction, gives grades / does not increase the class / does not pass the students, and others who can deliver the teacher to prison and threaten the status of their employment if it relates to criminal law.

For example, the case in Makassar where the teacher accused of violence against his child. The teacher of SMA Negeri 2 Makassar was reportedly beaten by the parents of the students who did not receive the teacher's way of teaching their children at school.

Despite all the accuse, teachers are required to produce smart and virtuous students. Even though in Law no. 14 Year 2005 explicitly stated that the teachers get protection during their professional duties as seen in Part Seven Article 39 paragraph (1) to (3) mention that: (1) Government, local government, community, professional organization, and / or educational unit Shall provide protection to teachers in the execution of duties. (2) The protection referred to in paragraph (1) covers legal protection, professional protection, safety and health protection. (3) Legal protection as referred to in paragraph (2) includes legal protection against acts of violence, threats, discriminatory treatment, intimidation, or unfair treatment of learners, parents, community, bureaucracy or other parties. (See Also Australian Capital Territory, 2008) ^[2].

Teachers' policies and professions are an indivisible component. Teacher is the main goal of the nation in bringing the bridge of nation progress as well as a bridge that brings the nation's intelligence into the ideals of the Indonesian state. Teachers have a close relationship in the process of educating the underlying community. Teachers as professions have many problems in the case of the law that affects the teacher's work effectively and efficiently.

Based on the introduction explained above, then the main problem that will be discussed in this article is:

1. How are the Indonesia's current teacher's law protection as professional educator ?
2. What are the suggestion that can be given to build a better Indonesia's law protection system as a professional educator ?

2. Discussion

The Understanding of the Indonesia's provision of Law no. 23 of 2002 on Child Protection as amended by Act no. 35 Year 2014 is very important for the educational process for students to run optimally and teachers are also protected from legal issues that may occur. Teachers must understand that the teacher's actions such as pinching, twisting, slapping, punching, kicking, shouting and other physical punishments that were considered fair in the past as an attempt to educate students, are now the same action can be legally questioned or at least teachers may be reported to Honorary board of professions as deemed to violate teacher code of education of ethics. Furthermore, Arthur (Arthur Rionaldi, 2014) ^[1] said that physical violence committed by teachers to learners should be completed by the council of honor Teachers because they are related to the code of ethics of professional organizations such as the Decision of Congress XXI PGRI No: VI / KONGRES / XXI / PGRI / 2013 which is the code of ethics issued by the Teachers Association of the Republic of Indonesia, instead of submitting it to the police.

On the child protection side, as regulated in Article 4 of Law No. 23 of 2002 concerning Child Protection as amended by Act no. 35 Year 2014, every child shall have the right to live, grow, develop and participate fairly according to the dignity and dignity of humanity, and to be protected from violence and discrimination, as mentioned in Article 16 paragraph (1) of Law Number 35 Year 2014.

Law no. 23 of 2002 on Child Protection as amended by Act no. 35 of 2014 provides an obligations for the stakeholders in the protection of the child, as mentioned in Article 54 where "every child within the school environment shall be protected from acts of violence perpetrated by the teacher, school manager or his or her friends within the school concerned Or other educational institutions".

The threat of punishment to perpetrators of violence against children is explicitly stated in Articles 77 and 80 in which "Every person who deliberately undertakes actions: a) discrimination against a child resulting in a loss of children, both material and moral, hinders his social function; Or b) neglect of a child causing a child to be ill or suffering, whether physical, mental, or social, shall be subject to imprisonment of 5 (five) years and / or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). "Article 80 provides for criminal penalties and fines for perpetrators of violence against children, which mention that: (1) Anyone who commits atrocities, violence or threat of violence or abuse of a child shall be punished with imprisonment of at most 3 (three) years (6) Month and / or a fine of at most Rp 72,000,000.00 (seventy two million rupiah). (2) If the child as referred to in paragraph (1) is seriously injured, the offender shall be punished with a maximum imprisonment of 5 (five) years and / or a fine at most Rp 100,000,000.00 (one hundred million rupiah). (3) If the child as referred to in paragraph (2) is dead, then the offender shall be punished with imprisonment for a maximum of 10 (ten) years and / or a fine of at most Rp 200,000,000.00 (two hundred million rupiah).

In addition to stipulated in Law no. 23 of 2002 on Child Protection as amended by Act no. 35 of 2014 is also mandated by the Criminal Code (KUHP). The actions of the teacher in giving punishment may be considered or constituted as a crime. The action is like; A) punishes (including hitting, pinching, tweaking, standing in front of a classroom,

confinement in a rest room, etc.), b) scolding or giving a loud warning to the students, c) assigning tasks that are considered heavy for the students (eg cleaning up the classroom, toilet, or blackboard, telling to bring something that is difficult, writing a few sentences in one book or copying the book, excessively, etc.).

based from above it can be concluded that the main problem that actually happens is the number of weaknesses found in Law no. 14 Year 2005, especially on the part of protection efforts that must be given to the teacher in carrying out his professional duties. The legal protection contained in the Act does not clearly provide the provisions on what forms of legal protection are provided in the context of teachers as professionals, then how are the mechanisms for providing legal protection and which related parties should be involved in legal protection Which are commonly known as immunity rights.

The right of immunity is a right of impunity provided to professionals when they take an action still relating to their profession. In the advocate profession, for example, in the process of law enforcement in the trial involving many institutions with one another have different authorities. The institutions in question include the Advocate, to provide legal services, whereby performing their duties and functions may serve as a companion, lawyer or legal counsel for and on behalf of his client in order to uphold law, justice and truth. Therefore, the Advocate must be able to identify an event using the science of material law and formal law so that an advocate must know what are the limits of his or her authority, what an advocate can do and can be said to be part of his or her immunity rights, including malpractice.

The Advocate law, for example, recognizes the right of immunity given to advocates on a very limited basis. There are 2 (two) kinds of immunity rights given by Advocate Law to Advocates namely: Immunity Rights outside court and Rights of immunity in court (every environment and court level).

For legal protection of teachers as professionals on the other hand, Substantially the legal products governing the provision of legal protection for teachers are still weak in their formulation because they do not clearly provide guidelines or provisions of legal protection as they should, although conceptually the status of teachers is the same as other professionals such as advocates as it can be seen from the fact that the provisions of the competence of teachers as well as advocates, has been regulated in detail through the Minister of Education Regulation (PERMEN) No. 16 of 2007 dated May 4, 2007. So if armed with the existing rules, then the teacher should have the same level of protection as advocate in carrying out their professional duties.

Teacher protection as regulated in Article 39 on Law No. 14 Year 2005 on Teachers and Lecturers in practice has not been fully able to protect teachers to realize the value of justice, especially in terms of legal protection. Until now there are still many teachers who had to face the threat of violence, intimidation, and unfair treatment (discriminatory) in doing their professional task.

Legal protection as mandated by Law no. 14 Year 2005 Teachers and Lecturers also have not been able to protect teachers when teachers are faced with Law no. 23 of 2002 on Child Protection as amended by Act no. 35. 2014. Teachers who take "certain" actions in their duties as educators may be legally questioned if they are deemed to violate the provisions

of the Child Protection Act. there had been lots of teacher that have to deal with the police, face trial in court or even incarcerated.

Teacher protection as mentioned in Law no. 14 of 2005 has actually been followed up by Government Regulation (PP) no. 74 of 2008 on Teachers, but not yet have sufficient ability to provide protection to teachers. This is only through changes to the Law, so its legal implications will be much more visible. Government Regulation no. 74 of 2008 clearly refers to the protection of teachers in Article 40, which states:

1. Teachers are given guaranteed protection in performing their duties in the form of security and safety assurance from the Government, Regional Government, educational unit, Professional Teacher Organization and / or Community in accordance with their respective authorities.
2. Teacher's Safety and its assurance of safety in carrying out their task are obtained by:
 - a) Law;
 - b) profession; and
 - c) work health and safety.
3. Society, Teacher Professional Organization, Government or Local Government can help each other in providing the protection.

In accordance to the protection of teachers as workforce, as comparative material with other countries the authors chose the Netherlands for example, although not as good as the Netherlands State which is one of the OECD (Organization for Economic Co-Operation and Development) members in addition to guaranteeing the quality of teachers because the profession of teachers in high schools Must have a "Grade" qualification or "Grade" qualification. 2. Grade 2 qualified teachers may teach at the first three year level in VWO and HAVO, and in MAVO, VBO, and MBO schools. Grade 1 qualified teachers may only teach in all age groups in all types of secondary schools (Stephan R. E. Klein, 2009). Equality between public and private schools (Eurydice Focus on the Structure of Higher Education in Europe 2006/07), the Dutch Government also zuses the highest percentage of its GNP (Gross National Products) for education (Barton, KC, & Levstik, LS, 2004). The Government of Indonesia has also sought to provide similar protection as enshrined in Article 41 of Government Regulation no. 74 of 2008 which states as follows:

1. Teachers are guaranteed a legal protection from acts of violence, threats, discriminatory treatment, intimidation or unfair treatment of learners, Learner's parents, society, bureaucracy or other parties.
2. Teachers are guaranteed a law protection on things such as termination of employment that is not in line with the provisions of legislation, improper remuneration, restrictions on conveying views, harassment of professions, and other restrictions or restrictions that may hinder the teacher in performing their duties.
3. Teachers are guaranteed a safety and health protection from educational units and education unit providers against risks of occupational safety, occupational accidents, workplace fires, natural disasters, occupational health and / or other risks.

Next, the indonesia's teacher protection law is also explained in Article 42 of governmental regulations number 74 of 2008 that states that teachers obtain protection in the exercise of

intellectual property rights in accordance with the provisions of legislation.

Based on Article 40, 41 and 44 PP No. 74 of 2008, it can be summarized that the teacher is entitled to four types of protection: (1) legal protection, (2) professional protection, (3) occupational safety and health protection, (4)) Intellectual property rights.

Teachers in their positions as professional educators can perform their duties, obligations and responsibilities optimally for the creation of qualified human resources for the development of society, nation and state (Siswandari and Susilaningsih, 2013) then the teacher must obtain assurance and legal certainty to get their rights maximally. The weakness of the model of legal protection given to teachers as reflected in Law no. 14 of 2005 Teachers and Lecturers, following Government Regulation (PP), also bring further problems in the field.

The facts in the field as described above show absolutely no legal protection for teachers as they should. Sticking to case handling data from the Central Java Teachers' Consultation and Legal Aid Institute (LKBH PGRI) obtained by the authors in the Pre-Research stage, within the period of 2011 to 2016 there are quite a number of criminal cases involving teachers as defendants. It was noted that in Central Java alone LKBH PGRI handled 11 cases with teachers as defendants and 1 case with suspect status.

After seeing the facts of fact that exist then the fact is then clashed on the premise whether its true or not the teacher profession has not been protected legally? To find out it needs to be seen more comprehensively, not just in case that happened.

In Law Number 14 Year 2005 regarding Teachers and Lecturers Chapter I, article 1 (1) stated that "Teachers are professional educators with the main task of educating, evaluating, appraising". In paragraph (2) it is explained that "Professional is a work or activity undertaken by a person and becomes a living income source that requires expertise, skill or skill that meets certain quality or norm standards and requires professional education". From this Act, the derivatives are derived in the form of a Government Regulation.

In Government Regulation No. 74/2008 concerning Teachers governing the implementation of Law No. 14/2005 on Teachers and Lecturers, particularly Article 40 paragraph 1 states that "Teachers are entitled to protection in performing their duties in the form of security and safety of the government, Regions, educational units, professional organizations of teachers, and / or communities in accordance with their respective authorities.

It then states that "Teachers are entitled to legal protection from acts of violence, threats, discriminatory treatment or unfair treatment of learners, parents of learners, society, bureaucracy or other parties".

First, the teacher is a profession that in carrying out his work the teacher is entitled to protection. This means that as long as a person performs his or her job and in accordance with the standards of job implementation, the teaching profession must be legally protected. No single institution or an individual entity may and may intervene in its professional activities. As a profession, teachers have a quality standard of execution of their duties or called as a competence. Law Number 14 Year 2005 regarding Teachers and Lecturers article 10 paragraph

(1) stated that: "Teacher competence includes pedagogic, personality, social, and professional competence.

The above rules are then clarified in Government Regulation No. 32 of 2013 jo Governmental Regulation number 19 of 2005 on National Education Standards. the law are Then technically poured in to Indonesia's ministry of education regulation (Permendiknas) No. 16 of 2007 on Teacher Qualification and Competency Standards. So in actuality the teacher as a profession has been protected in accordance with a proper law as mentioned above although its enforcement is yet proper (Cronbach, Lee J. 1977) ^[4,5].

Secondly, the teacher is a human being-not just referring to their profession- means that in carrying out his activities always involves the soul (psychological, mental, spiritual) and body (body and all senses). Given that the work of teachers is not simple and that the object of his work is also a human who has a variety of emotional conditions, does not rule out the possibility of conflict between the subjects and object.

M. Saekan Muchith (2007) in Contextual Learning book provides another example that can examine the conditions that occur in different angles for an objective view such as the incident in Magelang, where elementary students are slapped by his teacher just because students interrupt the teacher talk that is giving the announcement of a magic show. In Tanjung pinang there are unscrupulous sports teachers that kick their students while learning for educational reasons. In South Sulawesi's Takalar District the teachers went on strike for the reason that one of the religious teachers at the school was in jail for six months because hitting their students. The strike action was intended as a protest action to prevent imprisoned religious teachers from being freed. (M. Saekan Muchith, *Radicalism in Education*, ADDIN, Vol. 10, No. 1, February 2016) ^[11].

Teachers, on the one hand, their protection as professionals is still weak not only because of existing legal instruments but also from the teachers themselves, as can be seen in the example above. Therefore, it takes mutual understanding, mutual understanding, and of course emotional control, especially from the teacher as a human being more mature than learners as the goal of humanizing human education in a humane way so as to realize the order of mutual respect and appreciation. (Purwanto, M. Ngalm, 1995.) ^[10] In the standards of personality competence, teachers are required to have a mature person in action and mature in thinking. Likewise in the pedagogic competency standards teachers are required to understand the condition of each student.

From the above explanation, it is clear to distinguish teachers as professions and teachers as human beings. If we look at the case of maltreatment of teachers by parents of learners, we must study the chronology of the incident as a whole. Because the result must be objective. What the teacher does when reprimanding the learners by slapping 'if it is true then the action is done already out of the rules of his profession. Law No. 14 Year 2005 on Teachers and Lecturers does not justify the existence of violence, either verbally or non verbally in the education process. If there is violence committed in educational units, one of the threats is to revoke the school's operational license (I Gede Pantja Astawa, 2016) ^[7].

Raw between teachers and parents of learners is a criminal event with offense complaint. So the party who feels mistreated or harmed, can follow up according to criminal law process and when the legal process has started, anyone should

be ready to face it. This country is a state of law, so whoever has problems in the law is equal before the law without distinguishing their profession. (Padmo Wahjono. 1986) ^[9].

On the other hand, the physical violence done by the Teachers towards the learners if it is in accordance with the code of ethics given, that is, as regulated in the code of ethics of professional organizations such as the Teachers Association of the Republic of Indonesia, should be completed by the Honor Board of Teachers as it relates to the code of ethics of the organization Professions such as the Decision of Congress XXI PGRI No: VI / KONGRES / XXI / PGRI / 2013 which is the code of ethics issued by the Teachers' Association of the Republic of Indonesia instead of submitting it to the police (Arthur Rionaldi, 2014) ^[1].

The values of Pancasila must be obeyed by legal experts and educational experts, not just rules as a form of rule of the game in the life of nation and state. But also in favor of truth, professional development that requires accountability to the profession in order to carry out their duties properly (Washington, E. Y., Clark, M.A. and Dixon, A.L.. 2008.).

3. Conclusion

Based on the results of the above discussion it can be concluded that the protection of law as mandated by Law no. 14 Year 2005 Teachers and Lecturers have not been able to protect teachers when teachers are faced with Law no. 23 of 2002 on Child Protection as amended by Act no. 35. 2014. Teachers who take "certain" physical actions in their duties as educators on their students may be legally questioned if they are judged to violate the provisions of the Child Protection Act. Not a few teachers have to deal with the police, face trial in court or even incarcerated.

To overcome this, suggestions other than organizational strengthening (teacher organization) are the need for socialization of the rights of teachers to teachers as well as to the community and the need for immunity (legal immunity) rights governed by law, So that teachers get protection if they discipline their students in implementing the national education goals set in the National Education System Year 2003, the Law of Teachers and Lecturers Number 14 of 2005, and Government Regulation Number 74 of 2008 on teachers.

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