

Research Article

## **Legal Protection of Teachers in Education Providers Based on Law No. 14 of 2005 concerning Teachers and Lecturers**

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### **Abstract**

Protect teacher/lecturer educators in carrying out their noble duties, the development of Indonesian national education gained new strength and enthusiasm with the enactment of Law of the Republic of Indonesia Number 20 of 2003 concerning the National Education System. The ratification of Law of the Republic of Indonesia Number 20 of 2003 also has consequences or implementation for education, including that teachers and education staff have the right to obtain legal protection in carrying out their duties and rights to intellectual property results. The aim is to find out and analyze how legal protection is and what factors influence legal protection for teachers in education providers based on Law no. 14 of 2005 concerning Teachers and Lecturers The research method used is a qualitative sociological juridical approach. The sociological juridical research used in this study was to see how the community's understanding of teacher protection. Therefore the sociological juridical approach has a very big role to see the community's understanding of teacher protection. The results of this study 1. The protection of teachers in carrying out their duties as educators has been regulated in Law Number 14 of 2005 concerning Teachers and Lecturers Regulation of the Minister of Education and Culture Number 10 of 2017 concerning Protection for Educators and Education Personnel. 2. The factors that affect the legal protection of teachers in the administration of education based on law no. 14 of 2005 About Teachers and Lecturers is a factor of legal culture, factors of the rule of law, and factors of legal structure.

**Keywords:** Protection, Law, Education, Teachers, Lecturers



## INTRODUCTION

The teacher is a hero figure whose merits are peerless, the role of a teacher in the process of educational progress is very important. Teachers are one of the main factors for the creation of a quality generation of the nation, not only in terms of intellect but also behavioral procedures in society. Therefore, the task carried by the teacher is not easy. The heavy burden carried by a teacher as mandated by article 3 Number 20 of 2003 concerning the national education system is that national education functions to develop the ability and shape the character and civilization of a dignified nation in order to educate the nation's life, aims to develop students to become human beings who believe and are devoted to God Almighty, have noble qualities, healthy, knowledgeable, capable, creative, independent to be a democratic and responsible citizen.

To protect educators, teachers / lecturers in carrying out their noble duties, the development of Indonesian national education gained new strength and enthusiasm with the enactment of Law of the Republic of Indonesia Number 20 of 2003 concerning the National Education System. The enactment of Law of the Republic of Indonesia Number 20 of 2003 also has consequences or implementation of education, including teachers and education personnel entitled to legal protection in carrying out duties and rights to intellectual property results.

Sincere struggle, like the sun tirelessly shining on the earth, digugulan imitated is a symbol of the teacher imitating his behavior and always having his words heard. But all that is now just a memory. The phenomenon of teachers who have authority and charisma, is now declining and gradually fading. To criminalize teachers now is not difficult. Many things give teachers the most likely entry into it. Call it the result of the act of trapping students, which according to the teacher is not disciplined and deserves to be jewered so that after that it can be more disciplined. In fact, now many parents and certain parties disagree with the unscrupulous policies of teachers when punishing students using physical touch.

Even a teacher just because he shaved the head of one of his students, in Majalengka, West Java had to sit in a hospital chair. During the trial, the teacher was found guilty and sentenced to three months in prison with six months probation.

According to the author, it is very exaggerated that the intention of the teacher is not to commit insults but so that the student is more disciplined.

Basically, the teacher wanted to educate his students to be more disciplined but instead was complained to the police station under the pretext that the teacher committed an unpleasant act. According to Mr. Trisetyo Miseno in an interview in Ponorogo itself, there have also been cases of criminalization at school X which just by patting the student's shoulder, with the intention of giving this reprimand is considered criminal by the parents and guardians of the students.

## **METHOD**

The type used is a sociological juridical approach method that is qualitative. This study looked at how the community understands teacher protection. Therefore, this approach plays a huge role in seeing the community's understanding of teacher protection.

## **RESULT AND DISCUSSION**

Protection is all efforts aimed at providing a sense of security to victims carried out by families, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on court determinations.

Legal assistance at the examination level is the right of a person involved in a criminal case to be able to make preparations for his defense or to get counseling on the path he can take in upholding his rights as a suspect or defendant. For this reason, the suspect or accused is given the opportunity to enter into contact with a person who can provide legal assistance from the moment he is arrested or arrested or detained at all levels of questioning.

The relationship is free in the sense that the suspect / defendant can express everything in the context of preparing his defense without being supervised and heard by officers. To establish a balance between the interests of individuals and society, between the interests of suspects / defendants and the interests of examination. Although the relationship with his legal counsel may be given restrictions for the purposes of examination, if there has been an official notification by the public

prosecutor to the defendant that the case has been transferred to the court, the relationship between the suspect and his legal counsel is no longer known as restrictions.

According to the Law of the National Education System No. 20 of 2003, teachers are professional educators with the main task of educating, teaching, guiding, directing, training, assessing, and evaluating, learners in early childhood education formal education pathways, primary education and secondary education.

While educators are education personnel who are qualified as teachers, lecturers, counselors, civil servants, widyaiswara, tutors, instructors, facilitators, and other designations in accordance with their specificity, and participate in organizing education.

Educators who teach in primary and secondary education units are called teachers and educators who teach in higher education units are called lecturers. Professional is a job or activity carried out by a person and becomes a source of living income that requires skills, skills, or abilities that meet certain quality standards or norms and require professional education. The teaching profession is considered one of the most noble professions that needs protection from the government, society and the entire Indonesian nation. Please note that the obligations of a teacher include:

1. Planning learning, evaluation process
2. Improve and develop academic qualifications
3. Act objectively and non-discriminatory
4. Upholding the law
5. Preserving associations and unions

In addition, please note that teachers not only have obligations contained in their professional ethics but teachers also have rights that must be fulfilled, as for the rights of teachers regulated in existing laws and regulations in Indonesia, namely:

1. Income of living necessities and social welfare.
2. Promotions and awards.
3. Protection performs the task.
4. The opportunity to increase his competence.

5. Utilizing facilities and infrastructure.
6. Freedom of assessment and determination of approval, appreciation and others.
7. A sense of security and a guarantee of safety.
8. Freedom of association in professional organizations.
9. opportunities to play a role in Education policy

In carrying out their duties and developing their tough profession, teachers must receive legal protection and its implementation in daily life in order to carry out safely and comfortably to achieve the goals of national education. Without protection from the government, the wider community could not have succeeded well.

Law Number 14 of 2005 concerning teachers and lecturers states that teachers are professional educators with the main task of educating, teaching, guiding, directing, training, assessing, and evaluating students in early childhood education through formal education, primary education, and secondary education.

Indonesian Republic Law Number 20 of 2003 article 1 paragraph 1, educators are education personnel who are qualified as teachers, lecturers, counselors, civil servants, widyaiswara, tutors, instructors, facilitators, and other designations according to specificity, and participate in organizing education. There are various professions that exist in society, for example: doctors, pharmacists, nurses, psychologists, accountants, lawyers, researchers, police, photographers, architects, and teachers. Teachers as a profession also need and demand such things, especially in today's era the teaching profession is required to be more professional. In this case, teacher professionalism has the following professional principles:

1. That the teaching profession is a profession based on talents, interests, vocations and ideals.
2. Demands a high commitment to improving the quality of education, imantaqwa and ahklak mulia.
3. The presence of relevant academic qualifications and educational background.
4. Have competencies in accordance with the field of duty at school
5. Demanding high responsibility for their professional duties for the progress of the nation.

Child Protection is for those who commit violence against children other than teachers and Regulation of the Minister of Education and Culture Number 10 of 2017 concerning Protection for Educators and Education Personnel is one of the efforts to protect teachers (educators) and Education Personnel in carrying out their duties.

The protection obtained by educators and staff will be felt to be unfair, if someone is not an innocent educator. includes, legal protection, profession, occupational safety and health, and intellectual property rights. With this Permendikbud, it will provide more protection guarantees for educators and education personnel who face problems related to the implementation of their duties.

Legal protection for educators (teachers) and education personnel, including protection against acts of violence; threat; discriminatory treatment; intimidation; and treat not sister. Both carried out by students, parents of students, society, bureaucracy, and other parties. Professional Protection Professional protection for teachers (educators) and education staff, includes protection against:

1. Disconnection of working relationships that do not correspond to the provisions of the rules of law;
2. Unreasonable rewarding;
3. Restrictions on expressing views;
4. Harassment of the profession;
5. Other restrictions or prohibitions that may hinder Educators and Education Personnel in carrying out their duties.

The safety protection and risk protection received by teachers according to the Regulation of the Minister of Education and Culture Number 10 of 2017 concerning Protection for Educators and Education Personnel include:

1. disruption of job security;
2. work accidents;
3. fire at work time;
4. natural disasters;
5. health of the working environment;
6. Other risks

In addition, teachers also get Protection of Intellectual Property Rights. Protection of intellectual property rights for educators and education staff includes protection of copyright and industrial property rights.

Currently, the profession of teachers, educators, lecturers and others is faced with increasingly complex challenges, along with changes in the perspective of society that is consciously influenced by the doctrine of legal protection for children, including students. But on the other hand, legal protection of the teaching profession must also be considered. The problem is that until now there have been no technically operational implementing regulations governing various kinds of protection for teachers, including legal protection. As a result, when faced with certain legal cases, the position of teachers often becomes very weak. In certain cases, teachers in addition to being complained of being perpetrators of violence against students, in some cases actually make teachers victims of violence from students and / or parents of students.

Law Number 14 of 2005 concerning Teachers and Lecturers article 7 paragraph (1) letter h mandates that teachers must have legal protection guarantees in carrying out professional duties. Furthermore, article 39 in detail states:

1. The government, local governments, communities, professional organizations, and/or education units are obliged to provide protection to teachers in the implementation of their duties.
2. Protection as referred to in paragraph (1) includes legal protection, professional protection, and occupational 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 on the part of students, parents, society, bureaucracy, or other parties.
4. Professional protection as referred to in paragraph (2) includes protection against termination of employment that is not in accordance with laws and regulations, provision of unreasonable rewards, restrictions on expressing views, harassment of the profession, and other restrictions / prohibitions that can hinder teachers in carrying out their duties.

5. Occupational safety and health protection as referred to in paragraph (2) includes protection against the risk of occupational safety disturbances, work accidents, fires during work time, natural disasters, occupational environmental health, and/or other risks.

Recognizing the deviant behavior of students at school begins, from how the students are educated by their parents at home. How parental guidance instills the morals or ethics of their children at home, how the association of children in their home and school environment that shapes the child to be brutal. The lack of moral cultivation of parents towards their children affects children's behavior at home, and in the community and how teachers provide examples of behavior at school. Violent behavior formed by students in schools certainly has no balance between intellectual education and ethics or ahlak. The lack of ahlak or ethics education in the teaching and learning process at school and the lack of parenting that shapes the character of students with methods of mutual love, nurturing and mutual respect allow children's brutal behavior.

The persecution of teachers by students is certainly not a short process. The absence of teacher authority in the eyes of their students and the formation of individuals who do not have respect for their teachers because learning orientation only leads to the formation of mere intelligence will encourage children to have no respect for their teachers, especially children often see teacher behavior that is not praiseworthy and often harasses their students certainly adds to student hatred towards teachers. Although the responsibility of education is on Guru's shoulders, after all, people play an important role in educating their children at home, because the interaction between children and parents at home is more frequency. The formation of children's character into smart children and have noble ahlak is very dependent once parents set an example at home, many parents do not realize that school education only increases academic grades, while the formation of attitudes, mentality and morals of children is very tangy, the lack of this field should be completed by parents at home.



Moral education and the formation of attitudes as educated people are certainly needed in school education, such as discipline, obeying rules, respecting teachers and forming a person with *mulya* character, not forming a wild character. Likewise, teachers must be able to exemplify the value of existing educational values, so that what is taught is in line with their behavior so that they can always be a role model for their students. And *tenunya* in the educational process there is reward and punishment in education. For those who commit violations, of course, they must get punishment for the mistakes they committed.

If there is violence or mistreatment of teachers committed by students, then the violence against students must be resolved through legal channels. This is done so as not to be repeated in the future by others. If the student who commits violence against his teacher is still less than 18 years old but more than 12 years old so that he is still classified as a child as referred to in Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

The actions of these students/students who commit violence against their teachers are hereby subject to criminal charges on the basis of persecution. However, imprisonment that can be imposed on children, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is at most 1/2 (one half) of the maximum threat of imprisonment for adults.

But sometimes what is done by teachers, educators and lecturers and others in carrying out their duties to carry out education and teaching and their professional demands often experience dilemma. On the one hand, they are required to be able to deliver students to achieve educational goals. But on the other hand, when educators try to enforce discipline, they are confronted by the Child Protection Law and the Indonesian Child Protection Commission. If they fail to enforce the discipline of their students and fail to deliver students to the achievement of educational goals, as educators are often accused of being the cause of these failures. The most crucial problem faced is when they have to punish students who violate school rules and regulations in order to enforce discipline, often parents and the community judge it

as violating human rights or violating the Child Protection Law. They easily report the teacher's actions to law enforcement (read: police or KPAI). As a result, in carrying out their professional duties, teachers are often in a dilemmatic position and even vulnerable to criminalization.

Protection of the teaching profession itself has actually been recognized in PP (Government Regulation) Number 74 of 2008. The following articles related to teacher protection:

1. Article 39 paragraphs 1 and 2: "Teachers have the freedom to sanction their students who violate religious norms, moral norms, polite norms, written and unwritten regulations set by teachers, education unit level regulations, and laws and regulations in the learning process under their authority." "These sanctions can be in the form of reprimands and/or warnings, both oral and written, as well as educational punishments in accordance with educational principles, teacher codes of ethics, and laws and regulations."
2. Article 40: "Teachers are entitled to protection in carrying out their duties in the form of a sense of security and safety guarantees from the government, local governments, education units, teacher professional organizations, and/or the community in accordance with their respective authorities."
3. Article 41: "Teachers have the right to legal protection from acts of violence, threats, discriminatory treatment, intimidation, or unfair treatment on the part of students, parents, society, bureaucracy, or other parties."

Conversely, children in the school environment must get protection from violence in any form from educators, education staff, fellow students, and / or other parties. if the violence occurs against students / students / children, based on Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and has been amended both times by Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which has been stipulated to law by Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of

2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

Article 54 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states:

1. Children in and within the education unit must receive protection from physical, psychological, sexual crimes, and other crimes committed by educators, education staff, fellow students, and/or other parties.
2. Protection as referred to in paragraph (1) is carried out by educators, education staff, government officials, and/or the community.

That means, children in the school environment must get protection from violence in any form from educators, education staff, fellow students, and / or other parties. So teachers as educators should not commit acts of violence against children at school.

Law 35/2014 has stipulated that everyone is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children. Those who violate it will be punished with a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp72 million.

The following reads in full Article 80 jo. Article 76C Law 35/2014: Article 80 Law 35/2014:

- 1) Any Person who violates the provisions as referred to in Article 76C shall be punished with a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp.72,000,000.00 (seventy-two million rupiah).
- 2) In the event that the Child as referred to in paragraph (1) is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
- 3) In the event that the Child as referred to in paragraph (2) dies, the perpetrator shall be sentenced to a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of IDR 3,000,000,000.00 (three billion rupiah).

4) The penalty is added to one-third of the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) if the perpetrator of the abuse is his parents."

Based on the rules we explained above, the act of physical violence as described in this case is an act that is absolutely not allowed, and is an act that is contrary to applicable laws and regulations.

The government also through the National Education Law has guaranteed the protection of the teaching profession. Efforts to protect teachers and education personnel in Indonesia for the first time have been regulated in Law Number 2 of 1989 concerning the National Education System. The elaboration of the implementation of legal protection for teachers and other education personnel has been outlined in the Government Regulation of the Republic of Indonesia Number 38 of 1992 concerning Education Personnel. Regarding teacher protection, expressly Article 40 paragraph (1) letter d of Law Number 20 of 2003 concerning the National Education System states "Educators and education personnel are entitled to legal protection in carrying out duties and rights to intellectual property results". In line with that, Article 39 paragraph (1) of Law Number 14 of 2005. Well, how is the process of protecting the teaching profession in our country? Here we explain the explanation.

Based on Article 39 of Law Number 14 of 2005 concerning Teachers and Lecturers, states that the Government, local governments, communities, professional organizations, and/or education units are obliged to provide protection for teachers in carrying out their duties. The types of protection provided to education personnel include legal protection, professional protection, and occupational safety and health protection.

The types of legal protection include protection provided to education personnel as a result of arbitrary actions on the part of students, parents of students, society, bureaucracy or other rights, in the form of: (1) a. acts of violence; (2) physical and/or psychological threats; (3) discriminatory treatment; (4) intimidation; and (5) unfair treatment.

Based on Article 4 of Law Number 16 of 2011 concerning Legal Aid, states that Legal Aid is provided to Legal Aid Recipients who face legal problems, which include

civil, criminal, and state administrative legal issues both litigation and non-litigation. Such legal aid actions include exercising power, accompanying, representing, defending and/or carrying out other legal actions for the legal interests of the Legal Aid Recipient.

Efforts to protect teachers and education staff can be carried out in 2 (two) forms, namely by means of non-litigation advocacy and litigation advocacy. Non-litigation advocacy is legal assistance in the form of out-of-court defense provided in an effort to provide protection and/or resolution of legal problems experienced by educators and education staff. Protection by means of non-litigation advocacy consists of legal counseling, legal consultation, case investigation both electronically and nonelectronically, legal research, mediation, negotiation, community empowerment, out-of-court assistance and/or drafting legal documents.

While litigation advocacy is legal assistance in the form of defense in court which includes assistance, providing data, and testimony provided in an effort to provide protection and / or resolve legal problems experienced by educators and education staff.

Based on Article 4 of Law Number 16 of 2011 concerning Legal Aid, to obtain Legal Aid, applicants for Legal Aid must meet the following requirements: (1) submit a written application containing at least the identity of the applicant and a brief description of the subject matter requested for Legal Aid; (2) submit documents relating to the case; and (3) attach a certificate of poverty from the lurah, village head, or official at the same level at the place of residence of the Legal Aid applicant. (4) in the event that the Legal Aid applicant is unable to draft an application in writing, the application may be submitted orally.

Legal protection mechanisms for teachers and education staff, especially the legal aid process in the form of defense in court, include assistance, data provision, and testimony.

First, mentoring. Assistance to education staff by OBH partner legal representatives, and/or legal representatives appointed by the government/local

government/community/professional organizations/educational units is carried out starting from the investigation process, investigation, to the trial process.

Second, Data giving. The provision of data is carried out by the government, local governments, communities, professional organizations, and education units and other parties in the form of supporting data or documents needed to relieve and protect education personnel in investigations, investigations and court processes.

Third, testimony. Testimony is given by the government, local governments, communities, professional organizations, and education units and other parties needed to relieve and protect education personnel in the trial process.

## **CONCLUSION**

Based on the results concluded in this study is Professional protection for teachers in Law Number 14 of 2005 concerning Teachers and Lecturers, simply includes protection for termination of employment that is not in accordance with the provisions of laws and regulations, provision of unreasonable rewards, restrictions on expressing views, harassment of the profession, restrictions or other prohibitions that can hinder educators and education personnel in carrying out their duties.

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