

**PROTECTION OF TEACHER PROFESSION ENCOUNTERED WITH THE
RULE OF CRIMINAL LAW ON CHILD PROTECTION****Oksidelfa Yanto¹, Muhamad Iqbal²**

¹Pamulang University
JL. Surya Kencana Satu Pamulang, South Tangerang, Tangerang, Banten, 15417, Indonesia
Telp./Fax: +62-21-7412566 Email: oksidelfay@gmail.com

²Pamulang University
JL. Surya Kencana Satu Pamulang, South Tangerang, Tangerang, Banten, 15417, Indonesia
Telp./Fax: +62-21-7412566 Email: muhamad.miqbal.iqbal1@gmail.com

Submitted: Aug 03, 2019; Reviewed: Aug 13, 2019; Accepted: Dec 29, 2019

Abstract

The purpose of this research is in order to know the legal protection to the profession of teacher who perform disciplinary punishment of learners during the teaching and learning process. In addition, this is also to know the legal protection against learners from acts of violence that occurred in the educational environment. The method applied is a normative legal research method that focuses on legal norms and some research results relevant to the existing problems. The result of research showed in the disciplinary effort for the students there is a pattern of relationship between teachers with learners. The relationship is sometimes confronted with child protection regulations that confront the teacher on existing legal processes, although the teaching profession in carrying out its educational activities is protected by law. The conclusion of this research is the enforcement of discipline by teachers to learners often does not mean anything when encountered with other regulations, namely law of child protection. It certainly raises concerns for educator professions in their efforts to enforce disciplinary rules when encountered with the context of learners who cannot be directed by way of advice.

Keywords: *Criminal Law; Protection; Teacher Profession*

INTRODUCTION

The challenge of the teaching profession is increasingly growing, not just clarity about the staffing status of a teacher at school, but has grown in the protection of law, profession, health to work safety. In this global era we often see the challenge to the profession of teachers very often occur in the pattern of student relationships with teachers who

nurture them. Often a teacher in a conventional school as well as in the form of modern boarding school, both private and public status, often encountered with disciplinary dilemma of students who violate the rules of the school either in the level of mild, moderate to severe.¹

¹ Miftachul Chusnah, Pelaksanaan Pendidikan Karakter Di Madrasah Tsanawiyah Negeri "X" Jakarta, *Jurnal Masalah-Masalah Sosial*, Vol. 4, No. 2, Desember Tahun 2013, h. 133.

Teachers often encounter the negative forms of student behavior. Ary Anshory's study of juvenile delinquency in South Jakarta for example, as many as 30 students who become samples, there are five students who are identified to do normal mischief, such as lying, wandering and fighting. Two students do mischief like speeding and stealing. And six students have committed special crimes such as drunk, sex and drugs.²

The context of teacher discipline in naughty learners followed by punishment for teachers is the object of the study of the author. The object of this study is to obtain legal formulation and clarity on the scope and limitations of disciplinary form so that it can be considered violate the regulation of child protection or not. We know the form of discipline is considered as a must in the world of education as a means of directing students who make mistakes and violations in school rules, of course the disciplinary form as long as in the scope and sphere to educate not to persecute. Discipline is not just to improve the achievement of learners only. But also to create the character of the nation.

The great agenda of nation character building is realized in the field of educa-

tion because education is considered to have important meaning to create qualified human resources as the filler of national development in the future.³ One of the parties responsible for disciplining in improving learning achievement is the teacher in the school.

Teacher profession is an active profession in science teaching activities to others, with the hope that the science provided can help the person to grow and be able to compete and be able to build life as aspired. Teachers must play themselves maximally in the three aspects of learning objectives. For that, if the teacher managed to improve student achievement, then the teacher has succeeded in carrying out the learning.⁴

Although in recent years the function of educational institutions as the formation of the character of learners is judged to decrease because he is more focused on the function of science learning. Learning science will improve performance in improving discipline. Performance can be influenced by leadership and motivation. In addition, work discipline also affects the

³Muchlas Samami, *et al.*, (2012), *Konsep dan Model Pendidikan Karakter*, Bandung: Remaja Rosdakarya, h. 7-9.

⁴ Achmad Muchaddam Fahham, Implementasi Pendidikan Agama Islam Berbasis Afeksi Di Kota Yogyakarta, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012, h. 53.

² *Ibid.*

performance itself, where the discipline of work is also caused by several factors such as time and target.⁵

In carrying out the task a teacher is required to have the performance and ability of learning are responsible. Teachers are required to coach to improve student achievement. If a teacher can demonstrate ability in duty then the teacher has performed during the performance of learning activities. Performance is a benchmark to produce good learners in learning achievement.

There are many children as learners who are less fortunate in terms of education. They fail not only because of systemic factors that do not place children as the center of attention, but many failures are shaped by teacher's inadequate weaknesses.⁶

When a person performs an assignment within an organization, then at that time, that person must show performance as a tangible achievement.⁷ When the teacher has a professional performance then the teacher

has been successful in his duties as an educator in supporting learning activities well.⁸ If a learner is active in learning activities, dare to express opinions and critical, then the learning process can be said to be effective. Optimal learning process will produce optimal learning achievement. Therefore, the principles and stages of learning should be taken into account by designing learning outcomes.⁹ The role of teachers in improving learning achievement and make a student has a clear job performance has a very high role and position in a country.

In other contexts the teacher has a strategic role and the role of the profession is the role of the *Conditio Sine Quanon* factor that can not be replaced with anything from the past.¹⁰ Once the importance of the role of teachers, but teachers are also human, teachers also have rights that must be protected and respected. Various parties should provide protection to teachers in the execution of their duties.¹¹

⁵ Widya Gustia Wardani, Pengaruh Kepemimpinan, Motivasi dan Disiplin Kerja Terhadap Kinerja Karyawan, *Jurnal Pendidikan, Hukum dan Bisnis, EDUKA*, Vol. 2, No. IV, Juli Tahun 2017, h. 52.

⁶ Ahmad Baedowi, Nilai-Nilai Dasar Sukma Bangsa, *Sukma Jurnal Pendidikan*, Vol. 1, Issue 1, Jan-Jun Tahun 2017, h. 6.

⁷ Aden Prawiro Sudarso, Pengaruh Insentif Terhadap Kinerja Guru Pada SMK Mulia Buana Bogor, *Jurnal Mandiri Ilmu Pengetahuan, Seni dan Teknologi*, Vol. 1, No. 2, Desember Tahun 2017, h. 175.

⁸ Supardi, *Kinerja Guru*, (2014), Jakarta: Raja Grafindo, h. 54.

⁹ Alinurdin, *et al*, Hasil Belajar Pendidikan Kewarganegaraan dengan Metode Demonstrasi dan Metode Diskusi, *Jurnal Pendidikan Kewarganegaraan*, Vol. 4, No. 2, September Tahun 2017, h. 91.

¹⁰ Moh. Uzer Usma, *Menjadi Guru Profesional*, (1992), Bandung: Remaja Rosdakarya, h. 5.

¹¹ Dedi Supriyadi (1999), *Mengangkat Citra dan Martabat Guru*, Yogyakarta: Adicita Karya Nusa, h. 29.

In a study conducted by Endang Komara under the title of Professional Protection of Teachers in Indonesia, explaining the protection of children's rights as learners is indeed a very good thing. But sometimes there are often forgotten where teachers also have the right to educate children in ways that are educative. In many ways, the treatment of a teacher for a child with a view to "to educate" is often interpreted as an act that has violated the rights of the child. In practice there are cases where the teacher is prosecuted for being considered to have infringed the rights of the child. Ironically, the rights of teachers to get protection, both protection of the profession, law, safety, and intellectual property are neglected.¹²

This is a dilemma encountered by teachers who are currently encountered with the rights of children who must be protected with rigid interpretation, while on the other hand a teacher is required to educate and educate the nation's life by teaching good and polite things. However legal protection is certainly required by the teacher as a true educator to educate the learner. Therefore, this research is important to do because the protection of the law is an effort for teachers to protect

their rights when dealing with students who do not adhere to discipline in the school environment. However, such protection can be provided when a teacher who disciplines well, does not commit acts of violence, such as hitting or slapping learners. If this happens then it can be said to be a criminal offense which of course can be punished. Meanwhile, when learners commit acts of violence or lead to criminal acts, then the perpetrators may be subject to sanctions according to existing law. Based on the description above, it can be formulated problems in this research into two parts: 1) What is the form of legal protection for the teaching profession, if the teacher disciplining?

Research Method

In this paper the method used is a normative research method by focusing on the delivery of secondary data which is the results of research and scientific work of scholars.¹³ Furthermore, secondary data, especially matters concerning the legal protection of teachers' profession in upholding the discipline in the students and also the legal protection of the students from all acts of violence in the school environment. The data has been

¹²Endang Komara, *Perlindungan Profesi Guru di Indonesia, Jurnal Indonesia untuk Kajian Pendidikan*, Vol. 1, No 2, September Tahun 2016, h. 157.

¹³ Suratman, *et al*, (2014), *Metode Penelitian Hukum*, Bandung: Alfabeta, h. 51.

collected processed and analyzed to answer the existing problems.

RESEARCH RESULTS AND DISCUSSION

Protection of Teacher Profession in Enforcing Discipline

In a modern phenomenon when the times have changed and changed in the world of teacher education that implements disciplinary action to violent learners, it tends to be interpreted to have committed violation of law against learners. The perception in interpreting the punishment done by the teacher has led to the form of unlawful acts, it is because the disciplinary punishment by the teacher to the learner is now equalized with the action that does not respect or respect the dignity of the child and is declared to violate the criminal law, hence in this case teacher education students become not maximal and tend to not dare even silence in dealing with disciplinary action to students who violate the discipline.

In many cases, there is a glimmer of hope that is *Yurisprudence* MA. 1554 K/PID/2013 an adjudication of Free to a teacher Aop Saepudin (Honorary Teacher) an accused of violating Law No. 35/2014 on Children, Article 80 paragraph (1) & Article 335 paragraph (1) of the Criminal Code for disciplining students

with haircut, The Supreme Court considered that what Aop Saepudin did was not a violation of criminal law but a form of educative effort in the form of disciplining students. Moreover, in other provisions, the Profession of Teacher in carrying out his profession has been protected in detail in Part Seven and PP (Government Regulation) Number 74 of 2008 to the ninth chapter article 40, article 41 and article 42. But in practice the regulation seems not to be used maximally by the parties related to protect the profession of the teacher, so in giving sanctions in order to discipline students who violate, the profession of teachers is collided by not explaining clearly related patterns of relationship between educators with learners in the scope of education. This is the real and real condition that we meet in education field.

In Wajo district, South Sulawesi in 2017 a teacher has to deal with the police for pinching his students. The event begins when the teacher accompanies the students in the entrepreneurship class, but when delivering the material one of the students get to play the phone, then the teacher reminded by pinching the legs of his students.¹⁴

¹⁴ Anas Baidowi, *Guru Dipolisikan Karena Cubit Siswinya Saat Main HP*, Berita Center, 30 November 2017, diakses 4 Juni 2018.

The crippling of teachers in legal matters is very unfortunate. This is because the teacher is not an easy profession. In response to an offense committed by the students, whether in mild, moderate to severe, a teacher is required to be silent but must act by expressing it, especially the mistakes made by the students is a serious mistake. Often in some cases a teacher punishes a child's learner by shouting roughly, standing in front of the class, telling students to clean or wipe the toilet, being pinched, put on a water pump, bossing the flag, scot jump, and even running around the field.

What teachers do in the teaching and learning process to discipline the learners is then getting conflicted from the students or from the family of learners. Master was then charged according to the law. The teacher then did not get any protection. Though the process of teaching and learning is a process that contains a series of actions of teachers and learners on the basis of direct reciprocal relationships in educative situations to achieve certain goals, and mutual relationships between teachers and learners is a key condition for the ongoing learning process.¹⁵ The process of interaction of

¹⁵Berita Center Nunuk Sri Murbaetty, Penggunaan Strategi Pembelajaran Kooperatif Learning Untuk Meningkatkan Hasil Belajar Metode Pekerjaan Sosial,

learners with educators is an aid given by educators in order to gain knowledge and knowledge and formation of attitudes.¹⁶

In the disciplinary process of the learners, teachers should be protected, as long as the disciplinary means are not against the law, it is clearly permissible. The form of professional protection of teachers in this context feels very important in the effort to support and support the role of teachers to educate the nation in the world of education. The presence of the teacher is like a candle that becomes an infinite light and without distinguishing who it describes. His ideas will be realized for the benefit of his students, develop and apply the virtues concerning religion, culture, science, character and seeks to educate the life of the nation in all aspects, both spiritual and emotional.¹⁷ The teacher is the spearhead of the formation of character and mastery of science. All teachers everywhere can understand the characteristics of learners

Jurnal Pendidikan Kewarganegaraan, Vol. 4, No. 1, Maret Tahun 2016, h. 66.

¹⁶Ichwani Siti Utami, Nilai-Nilai Multikultural Dalam Membentuk Sikap Toleransi Peserta Didik, *Jurnal Pendidikan Kewarganegaraan*, Vol. 5, No. 1, Maret Tahun 2017, h. 113.

¹⁷ Alinurdin, *et al*, Pengaruh Orang Tua Terhadap Minat Mahasiswa Menjadi Guru, *Jurnal Pendidikan Kewarganegaraan*, Vol. 4, No. 1, Maret Tahun 2016, h. 4-5.

as well as deft in choosing learning methods.¹⁸

If you look at the various anomalies of the cases that occur often the public perception of making punishment educated *bersamaartikan* as punishment in writing alone regardless of the form and level of mistakes of learners. Though learners are considered punishable, in case of certain cases such as the destruction of school facilities, tauran between students bullying action in the school environment among fellow learners. In many cases it requires the teacher profession to act a little harder in the context of educating beyond just giving advice such as; scolded, strap, push ups, haircuts, run around the field, seizure of objects that are considered dangerous to the learners.

In such condition often parents of learners easily *terprofokasi* with perception of disciplinary action. The parent of the learner considers it to be a violation of the right to the child so that many cases of teachers are persecuted and punished for it. In response to this, teachers are sometimes difficult to get self-defense because of the fact the field shows still many teachers who do not

know and understand the child protection legislation.

Thus if the teacher punishes the learner in non-violent ways, and aims to discipline the learner, the teacher's actions cannot be categorized as accountable criminal acts. For children who are indicted or caught performing acts contrary to the law, such children may be held accountable in person or in groups.

Legal Protection against Learners in Learning Process

In the realm of law, the Indonesian nation already has laws on child protection. Although child protection legislation already exists, violent acts in relation to education are still common. Violent acts against protégés clearly contradict child protection legislation. 35 year 2014, as mentioned in Article 13 paragraph (1), that every child during the upbringing of a parent, guardian or any other person responsible for care shall be entitled to protection from such treatment as protection from acts of cruelty, violence and ill-treatment.

In the context of the relationship between teacher and learner sometimes a teacher who, when confronted with naughty learners, often commits or punishes a learner as in the case of a

¹⁸ Djemari Mardapi, (2012), *Strategi Meningkatkan Profesionalisme Guru*, Yogyakarta: Diva Press, h. 23.

student who does not follow school rules, does not do homework or some students commit acts of violence to other students. So that the teacher must take disciplinary action in order to straighten the learner so as not to get worse, then this is where the physical punishment from the teacher to the students in the form of shaving the learner's hair, punch, jeweran until the verbal shriek, of course the punishment is a punishment for the purpose educate, so that learners do not continue to violate the rules of school. In that case a teacher can not punish a student who violates the rules of school in violent ways. The teacher's violent ways are clearly contrary to the protection law. Teachers should not again give punishment to children who are opposed to the legal norm. Because the sanction for the teacher is very severe that is punishable by imprisonment for a maximum of 3 (three) years 6 (six) months and / or a fine of not more than Rp 72.000.000,00 (seventy two million rupiah).

In the context of punishment to learners, there are 5 (five) categories that can be classified as a violation of discipline. First, physical aggression in the form of beatings, fights, destruction. Second, busy friends in the form of talking, whispering, visiting the place of

friends without permission. Third, seek attention in the form of circulating writings, drawings with the intention of distracting from the lesson. Fourth, challenging the authority of teachers in the form of not willing to participate, rebel, protest. Fifth, smoking in school, arriving late, ditching and running away, stealing and cheating, using drugs and alcohol.¹⁹

When learners do one of the things mentioned above, then in young learners who are young with high emotional levels, they must be controlled in ways that educate and lovingly. Discipline can not be done in ways that can excite the learner's emotions. When the emotion is not muted in soft and warm ways. It can cause other problems between the teacher and the learner. Research conducted by Khoiruddin Bashori that students will have good internal control if raised in a school environment with a teacher full of warmth and love. Not educated with harsh physical punishments.²⁰

In extreme cases there are even teachers who are persecuted by students and / or parents of students, until the teacher is permanently injured, this occurs

¹⁹Soetarlinah Sukadji, (2000), *Psikologi Pendidikan dan Psikologi Sekolah*, Depok: Lembaga Pengembangan Sarana Pengukuran dan Pendidikan Psikologi Fakultas Psikologi Universitas Indonesia, h. 95.

²⁰Khoiruddin Bashori, Menyemai Perilaku Prosocial Di Sekolah, *Sukma Jurnal Pendidikan*, Vol. 1, Issue 1, Jan-Jun Tahun 2017, h. 90.

in many high schools where students have been able to express their attitude and personality, students have begun to dare to fight his teacher and to exaggerate the disciplinary efforts of the teacher who did not like it, in the end a misunderstanding that led to the act of violence to the profession of the teacher. In many cases students as confused teenagers experience emotional upheaval and vent in the form of aggression.

According to Baron and Byrne aggression is a behavior that is meant to harm others, both physically and psychologically. Aggressive behavior is usually shown to attack, harm or fight against others, both physically and verbally. It can take the form of punches, kicks and other physical behaviors, or in the form of insults, insults, ridicule, rebuttal and such.²¹ Meanwhile Myers states that aggressive is a deliberate physical or verbal behavior with the intention to harm or harm others.²²

In other contexts we agree to protect the learners from all sorts of acts of violence. Because violence against children is any form of policy, actions and actions carried out by individuals,

families, corporations, institutions or countries that result in physical, mental and social suffering for children. If the violence is done by the teacher in an effort to discipline the learner, then the act can not be justified.

According to Nasution, there are 4 (four) forms of violence against children. First, in the form of done hurt slapping, kicking. Second, namely the exploitation of children for the benefit of sex by adults, such as commercial sexual coercion. Third, emotional or verbal actions that cause feelings or emotions of depressed children, such as snarling, cursing, or issuing inappropriate or ethical words. Fourth, neglect, ie violence in the form of neglect, such as allowing a child to become a beggar or drop out of school.²³

The distribution of these 4 forms of violence constitutes a violation of the law on the rights of the child. In many cases we can see, there are acts of teachers with the reasons to enforce discipline or give lessons and punishments to children is done by slapping, twisting, or hitting with rollers or rattan. Whereas such actions can be classified as violent acts so that, teachers may be subject to punishment as stipulated in the criminal law in the

²¹ Elga Andina, Tawuran dalam Tinjauan Gangguan Kejiwaan, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012, h. 25.

²² Sarwono, *et al*, *Teori-Teori Psikologi Sosial*, (2010), Jakarta: Rajawali Press, h. 297.

²³ Syamsir Alam Nasution, (2009), *Guru Versus Perlindungan Anak*, Medan: Mingguan Pilar Indonesia, h. 7.

country of Indonesia, for having committed violence against the students.²⁴

Then for the learners themselves, the punishment imposed by the teachers on themselves is seen as an act that has violated their rights as protégés protected by law. Laws provide protection to students wherever they are, because students are the subject of law that must be protected in any situation and conditions, in order to become a human who will become the leader of the Indonesian nation.²⁵

It is clear that in carrying out its duties, teachers not only function as a lecturer, but also as an educator in fostering the character and personality of learners, in order to have a noble character. The formation of the character and personality of the students, ideally done by the teacher profession by giving a good example to be imitated by the students, because the formation of character and personality and exemplary sometimes unfruitful to become internalized awareness in the students, then the teacher is given educational tools, in the form of reward or punishment. In addition to impose internalization in order to uphold noble morals, punishment can also be given to be wary for learners not

to repeat wrongdoing or not allowed. Of course, with penalties that do not lead to criminal acts or fall into the category of crime.

From the perception that discipline is done by the profession of teachers to learners are not physically justified in school. When educator Profession is confronted with regulations that provide protection to children or learners, it is necessary to have wisdom in interpreting the conditions of each other. About the pattern of discipline between teachers to learners. If the teacher wants to impose a physical punishment, think first before acting, because there are fears that his actions will be clarified as an act of violence. The condition is somewhat ironic when the effort to forge students into a good person as the forerunner of the nation's leaders who have noble character by the profession of teachers, should be encountered with concerns about the regulation that actually has the potential to ensnare the law for the effort to forge the learners.

If students are violent within the scope of the school. So learners can be convicted. In the case of children facing the law, of course there is already a law that regulates it in accordance with child protection legislation. Violent children

²⁴ *Ibid.*

²⁵ *Ibid.*

may be charged with criminal justice system law. But more important than all that, if there are children who are involved in legal cases then diversi just so that then can return to live in the midst of society, it is expected that the community around the child can provide a good example, in the form of commendable behaviors important in growing adult of the child. So the child does not repeat the crime again. Attention to children should be given by all parties, not enough teachers only in school.

Therefore, it is proper that the best interests for the child are lived for the survival of humanity. This consequence should be followed up with a policy that protects the child.²⁶ Such protection is preferable to the protection of children from criminal acts. Criminal acts must be given special attention, not only by religious teachings and also gain serious attention from philosophers or scholars, since evil is seen as a form of social gait that is constantly being studied and observed in order for the people to avoid crime victims²⁷

²⁶ Nandang Sambes, (2010), *Pembaharuan Sistem Pendidikan Anak di Indonesia*, Yogyakarta: Graha Ilmu, Yogyakarta, h. 103.

²⁷ Amrizal Siagian, (2015), *Pengantar Studi Kriminologi Perkembangan Pemikiran dan Teori Kriminologi*, Jakarta: UIN Press, h. 17.

The role of such a society must be instilled. Parties who can do so are law enforcement officers. They can make a training, or meetings as a socialization of the restorative justice approach in the community. Where to be highlighted in this case is the value contained in restorative justice by carrying deliberations in solving existing problems.

Professionalism that became one of the principles of professionalism has not been able to provide legal protection for teachers who in carrying out the task of performing or punish physically educate for the learners. So also with the code of ethics of Indonesian teachers, has not been able to provide protection, let alone the code does not contain such positions as the Council of Teachers Code Ethics or Honorary Council of Profession or the like who can assess whether the teacher's actions in the education process that he did have violated the code of ethics or not.

As well as agreeing, every punishment has an educating effect, school education inculcates the spirit of school discipline to instill respect for the rules. Indeed, for students to obey rules and rules can feel the existence of something valuable and respectable, where the rule was inculcated only through the teacher. Students can understand the rules and only

the teachers convey to the students in the application of discipline law in schools. But not all learners respect their teacher as they respect their parents. Although in other word in the polite attitude procedure in Indonesia mutual respect is a very obligatory applied especially to a considered older, but still there are learners who violate. Like sleeping, eating, chatting while the teacher is explaining, talking. Yet behaving disrespectfully towards teachers are some examples of deeds that do not respect teachers. However, if the actions of learners lead to crime, then it is appropriate that the action is given punishment sanctions in accordance with existing regulations.

Analysis of Research Results

School areas where teachers devote themselves as educators have made the school a land where children spend most of their time studying. School is one of the right rides to pursue good habits culture. Seeking such habits is related to educational activities. A process of forming the human person who is expected to know the ability of self, know honor, knowledgeable, polite and so on. For the formation of attitude is very important in learning. Carrying out the task, is not easy. The world of education is

always challenged by the phenomenon of degradation of the minds of some of the student community. With the increasing and sophisticated development of science and technology has resulted in system changes in education.²⁸

Sometimes teachers have to provide disciplinary education to their students by providing some sort of punishment. All of that is aimed, so that learners become better human by obeying and obey all the rules and regulations that lead to the development of quality and integrity of learners.

But teachers are encountered with the existence of child protection legislation. Article 54 of child protection legislation is an article that is often used to denounce teachers who are suspected of committing violence to their students. It seems that this law will make teachers suffer in performing their duties. When teachers have to impose punishment on their students, teachers will encounter a dilemmatic problem in the education and coaching process of their students. This means that when encountered with discipline, teachers are also dealing with

²⁸ Utami Munandar, Analisis dan Evaluasi Hukum Tertulis tentang Silabus Pendidikan Hukum di dalam Kurikulum SD dalam Rangka Menumbuhkan Kesadaran Hukum Masyarakat Sedingin Mungkin, *Majalah Badan Pembinaan Hukum Nasional Departemen Kehakiman*. Jakarta, Tahun 1995, h. 4-5.

child protection laws, which at any time can pounce on them and then put them in jail. This can be seen from the rampant legal problems that befall the educators when performing professional duties. From the various cases that occurred, proving the protection of the teacher profession has not gone well. Many teachers are reported by students or parents to the police. It is ironic if it is associated with the protection specifically granted by law No. 14 of 2005 on Teachers and Lecturers, particularly those contained in Article 39 paragraph (1).

Whereas in the case of disciplinary enforcement, if there is a learner who commits an offense, then the teacher may impose disciplinary punishment as long as the punishment has no criminal charges, then it is clearly permissible. Because in school there is an inner relationship between teachers and students. Where teachers have a great responsibility for their students in order to become a man who has noble character, responsible and discipline and good character. It is the teacher's job to create it all to the learners. Thus, if the act of punishment from the teacher to the learners is still in a natural case and there is no violence or criminal acts, it is clear the teacher can not be sought for criminal responsibility.

When examined more deeply then we will understand that the purpose of punishment is for deterrent criminals to do it again. But it would be a contradiction if the form of disciplinary education is also interpreted as a criminal act, because the disciplinary action has a purpose to direct learners in behaving in order not to continue to deviate with the values of norms that exist in the community. Therefore the purpose of punishment in this context to the teaching profession in carrying out its duties will be unclear at all. Because punishment can be given to teachers who commit acts categorized as crimes. As long as disciplinary punishment is within reasonable limits, then the teacher must be protected in carrying out his profession. Because the teacher is the spearhead of the formation of manners.

It is a mistake to believe that criminal law is only viewed from a mere angle of punishment, without relating it to the social effects it causes. Efforts to realize welfare (welfare) can not be realized by imposing on someone who is unwelfare. Stigmatization, Prisonisation is an unwelfare effort, therefore the use of criminal sanction should still be viewed as an *ultimum remedium*, meaning it is only used in a very urgent or in an orderly

state. At present it is not impossible that what has happened with the commodification of crime which in the surface on the surface is called criminalization is the effort made to criminalize a person or a certain group.²⁹

In the context of law enforcement it applies a guilty principle that can be punished. For those who have wrong there must first be the deed done and the act contains a criminal element. However, not all acts containing criminal elements can be held accountable to the perpetrator. In the event that the abuser is incompetent or physically and spiritually handicapped, then he cannot be held criminally liable. This is where the law actually protects everyone. All of them are aimed to fulfill the name of certainty, justice and legal benefit. Basically, in criminal law the problem of responsibility cannot be transferred. Meanwhile, in the realm of civil law, other parties may be transferred to him or her accountability. However, in the provisions of the criminal code domain it is not so, including the transfer to the family though. That is, every individual must be responsible for what he does.

The state's obligation to protect the citizens or the community is the

implementation of the goal of the establishment of a state law within the framework of Pancasila Bhineka Tunggal Ika. Every citizen, especially citizens who are still educated at both the elementary school and university level, the appreciation of Pancasila values should always be put forward, so that moral and ethical crises can shift to the virtues of good as contained in the points Pancasila. This is what should be the duty and responsibility of the leaders of this country.

Moral crisis occurs in all age groups and all lines of the nation. The problem occurs because of the unopened Pancasila values, the limitations of integrated policy tools in realizing the values of Pancasila, the shift of ethical values in the life of nation and state, the waning of the awareness of the nation's cultural values, the threat of national disintegration and the weakening of the nation's independence. One of the government's efforts in overcoming the problem is through national policy of nation character building, where education becomes one of the sectors in achieving it.³⁰ Therefore, with the changes in the rapidly changing society, what is the future demand in the practice of

²⁹ M. Ali Zaidan, Pidana Denda: Perspektif Kebijakan Kriminal, *Proceedings, Munasena Mahupiki*, Surakarta 8-9, Tahun 2013, h. 393.

³⁰ Faridah Alawiyah, Kebijakan dan Pengembangan Pembangunan Karakter Melalui Pendidikan di Indonesia, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012, h. 100.

education and the learning process in schools must be adjusted to the demands of real life without neglecting the national educational objectives of the realization of a fully Indonesian man based on the Law - The Basic Society of 1945.³¹

Dreaming to get the best for this country is something very natural, when you see so many problems that wrapped around this nation. Of course dreaming in the hope of seeing Indonesia more prosperous, safe and peacefull. We are not willing this country is led by people who only want power and do not care about the fate of the people, what we need is a leader who cares about the fate of his people.³²

To that end, leaders who care about the fate of their people are leaders who protect their people with good laws and favor the sense of justice. Good law can only be enforced by law enforcement officers and equipment. For example how does the state protect teachers in performing their duties as educators so as not to lead to punishable acts. Good law must protect all the children of the nation.

The law of a nation contains messages, and is an integral part of the whole

life of a nation.³³ On the other hand, law enforcement can also be viewed in the context of human involvement with all the complexities of its consciousness. On this side, law enforcement is seen not merely as a logical process of legislation and rules alone, but must be seen in the wider horizon, that is, the law as a system and its elements.³⁴

As a system, the law must be enforced by always upholding the supremacy of the law. When the rule of law cannot be upheld, then the implementation of the rule of law will only be a paper ornament. Because basically the supremacy of the law must lead to what is called with certainty, justice and expediency in law. All that will be done if the rule of law goes well. From that, it is very important that the state in this case law enforcement officers as a system and its elements to always uphold the existing laws in regulating the order, tranquility and goodness in people's lives. For in a life of law society must grow with dignity, so that law can regulate society life toward better or be good. Legal authority can be realized if law enforcers have good integrity to up-

³¹ Coni Semiawan, (1996), *Praktek Pendidikan Sekolah Menghadapi Tantangan Masa Depan, Dalam Nalar dan Naluri 70 Tahun Daoed Joesoef*, Jakarta: Centre for Strategic and International Studies, h. 95.

³² Oksidelfa Yanto, (2014), *Meneropong Indonesia Pasca Reformasi*, Universitas Pamulang, Tangerang Selatan, h. 147.

³³ Etty R. Agoes, (2013), *Peran Hukum Dalam Pembangunan di Indonesia*, Bandung: Remaja Rosdakarya, h. 58.

³⁴ Idris Rachminawati, et al, (2012), *Penemuan Hukum Nasional dan Internasional*, Bandung: Fikahat i Aneska, h. 185.

hold justice in every criminal justice process.

The just legal process and the criminal justice system cannot be separated. It is impossible for a person to obtain a just legal process without going through the judicial system. The judicial system is a place for fair justice, for justice seekers. While the just legal process is the spirit of the judicial system itself.³⁵

In the end, it cannot be denied that human life in society cannot be separated from other human life, there may be friction between human beings, therefore the law must be able to regulate it in one unity of criminal justice system. This is where the role of the state to play the law with the fairest, not one-sided and consistent. Especially in looking at the issue of teacher protection in enforcing discipline to learners at school.

CONCLUSION

1. When there are teachers who commit acts of violence, then it is equated with a crime, such as a teacher kicked or hit, the teacher's actions can be categorized as a criminal act and the teacher can be

threatened with the existing penalty. However, if the teacher punishes the learner in non-violent ways, and aims to discipline the learner, then the teacher's actions can not be categorized as accountable criminal acts. If a teacher who, due to his duties disciplining disciples to learners, is considered an act that must be punished, then that clearly contradicts the legality principle embraced by Indonesia's positive law. In principle it is explained that a person will only be subject to criminal sanction if for such person there has been a regulating article first. So if you want to punish the teacher, then it must be stated that the teacher is legally guilty in accordance with the crime he committed. During the teacher's actions aimed at disciplining learners, the teacher should not be judged legally.

2. If there are children who are seen in naughty attitudes, then parents should consult with teachers in school. Because if the children committed an offense or a crime, then left, then the children may be subject to criminal law sanctions. For children who are indicated or caught performing acts contrary to the law, such children may be held accountable in person or in

³⁵Heri Hartano, Hakim Komisaris Sebagai Upaya Menjaga Pemenuhan Hak-Hak Tersangka, *Proceedings Munasena Mahupiki*, Surakarta 8-10, September Tahun 2013, h. 76.

groups. Accountability in this case aims to enable children who are likely to commit offenses or crimes to be punished according to existing laws, so that it will affect other learners and then discourage them from committing violence or crime.

BIBLIOGRAPHY

Books

- Amrizal Siagian, (2015), *Pengantar Studi Kriminologi Perkembangan Pemikiran dan Teori Kriminologi*, Jakarta: UIN Press.
- Anas Baidowi, *Guru Dipolisikan Karena Cubit Siswinya Saat Main HP*, Berita Center, 30 November 2017, diakses 4 Juni 2018.
- Coni Semiawan, (1996), *Praktek Pendidikan Sekolah Menghadapi Tantangan Masa Depan, Dalam Nalar dan Naluri 70 Tahun Daoed Joesoef*, Jakarta: Centre for Strategic and International Studies.
- Djemari Mardapi, (2012), *Strategi Meningkatkan Profesionalisme Guru*, Yogyakarta: Diva Press,.
- Dedi Supriyadi (1999), *Mengangkat Citra dan Martabat Guru*, Yogyakarta: Adicita Karya Nusa.
- Etty R. Agoes, (2013), *Peran Hukum Dalam Pembangunan di Indonesia*, Bandung: Remaja Rosdakarya.
- Idris Rachminawati, *et al*, (2012), *Penemuan Hukum Nasional dan Internasional*, Bandung: Fikahati Aneska.
- Moh. Uzer Usma, *Menjadi Guru Profesional*, (1992), Bandung: Remaja Rosdakarya.
- M. Ali Zaidan, *Pidana Denda: Perspektif Kebijakan Kriminal, Proceedings, Munasena Mahupiki*, Surakarta 8-9, Tahun 2013.
- Muchlas Samami, *et al.*, (2012), *Konsep dan Model Pendidikan Karakter*, Bandung: Remaja Rosdakarya.
- Nandang Sambes, (2010), *Pembaharuan Sistem Pemidanaan Anak di Indonesia*, Yogyakarta: Graha Ilmu, Yogyakarta.
- OksidelfaYanto, (2014), *Meneropong Indonesia Pasca Reformasi*, Universitas Pamulang, Tangerang Selatan.
- Suratman, *et al*, (2014), *Metode Penelitian Hukum*, Bandung: Alfabeta.
- Supardi, *Kinerja Guru*, (2014), Jakarta: Raja Grafindo.
- Sarwono, *et al*, *Teori-Teori Psikologi Sosial*, (2010), Jakarta: Rajawali Press.

- Syamsir Alam Nasution, (2009), *Guru Versus Perlindungan Anak*, Medan: Mingguan Pilar Indonesia.
- Soetarlinah Sukadji, (2000), *Psikologi Pendidikan dan Psikologi Sekolah*, Depok: Lembaga Pengembangan Sarana Pengukuran dan Pendidikan Psikologi Fakultas Psikologi Universitas Indonesia.
- Regulation**
- Undang-Undang Dasar Negara Republik Indonesia tahun 1945.
- Undang-Undang Nomor 14 tahun 2005 Tentang Guru dan Dosen.
- Undang-Undang Perlindungan Anak No. 35 tahun 2014.
- Journal / Magazine / Proceeding**
- Alinurdin, *et al*, Pengaruh Orang Tua Terhadap Minat Mahasiswa Menjadi Guru, *Jurnal Pendidikan Kewarganegaraan*, Vol. 4, No. 1, Maret Tahun 2016.
-, *et al*, Hasil Belajar Pendidikan Kewarganegaraan dengan Metode Demonstrasi dan Metode Diskusi, *Jurnal Pendidikan Kewarganegaraan*, Vol. 4, No. 2, September Tahun 2017.
- Anas Baidowi, *Guru Dipolisikan Karena Cubit Siswinya Saat Main HP*, Berita Center, 30 November 2017, diakses 4 Juni 2018.
-, Nilai-Nilai Dasar Sukma Bangsa, *Sukma Jurnal Pendidikan*, Vol. 1, Issue 1, Jan-Jun Tahun 2017.
- Aden Prawiro Sudarso, Pengaruh Insentif Terhadap Kinerja Guru Pada SMK Mulia Buana Bogor, *Jurnal Mandiri Ilmu Pengetahuan, Seni dan Teknologi*, Vol. 1, No. 2, Desember Tahun 2017.
- Achmad Muchaddam Fahham, Implementasi Pendidikan Agama Islam Berbasis Afeksi Di Kota Yogyakarta, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012.
- Berita Center Nunuk Sri Murbaetty, Penggunaan Strategi Pembelajaran Kooperatif Learning Untuk Meningkatkan Hasil Belajar Metode Pekerjaan Sosial, *Jurnal Pendidikan Kewarganegaraan*, Vol. 4, No. 1, Maret Tahun 2016.
- Elga Andina, Tawuran dalam Tinjauan Gangguan Kejiwaan, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012.
- Endang Komara, Perlindungan Profesi Guru di Indonesia, *Jurnal Indonesia*

- untuk Kajian Pendidikan, Vol. 1, No 2, September Tahun 2016.
- Faridah Alawiyah, Kebijakan dan Pengembangan Pembangunan Karakter Melalui Pendidikan di Indonesia, *Jurnal Aspirasi*, Vol. 3, No. 1, Juni Tahun 2012.
- Heri Hartano, Hakim Komisaris Sebagai Upaya Menjaga Pemenuhan Hak-Hak Tersangka, *Proceedings Munasena Mahupiki*, Surakarta 8-10, September Tahun 2013.
- Ichwani Siti Utami, Nilai-Nilai Multikultural Dalam Membentuk Sikap Toleransi Peserta Didik, *Jurnal Pendidikan Kewarganeraan*, Vol. 5, No. 1, Maret Tahun 2017.
- Khoiruddin Bashori, Menyemai Perilaku Prososial Di Sekolah, *Sukma Jurnal Pendidikan*, Vol. 1, Issue 1, Jan-Jun Tahun 2017.
- Miftachul Chusnah, Pelaksanaan Pendidikan Karakter Di Madrasah Tsanawiyah Negeri "X" Jakarta, *Jurnal Masalah-Masalah Sosial*, Vol. 4, No. 2, Desember Tahun 2013.
- Utami Munandar, Analisis dan Evaluasi Hukum Tertulis tentang Silabus Pendidikan Hukum di dalam Kurikulum SD dalam Rangka Menumbuhkan Kesadaran Hukum Masyarakat Sedini Mungkin, *Majalah Badan Pembinaan Hukum Nasional Departemen Kehakiman*. Jakarta, Tahun 1995.
- Widya Gustia Wardani, Pengaruh Kepemimpinan, Motivasi dan Disiplin Kerja Terhadap Kinerja Karyawan, *Jurnal Pendidikan, Hukum dan Bisnis, EDUKA*, Vol. 2, No, IV, Juli Tahun 2017.
