LEGAL PROTECTION OF PROFESSIONAL TEACHER IN CRIMINAL LAW PERSPECTIVE

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ABSTRACT

In this day and age of education is no longer considered as a complement to human needs but has been positioned as a basic instrument. Legal protection expected by teachers in the broader sense as Article 41 (1) PP 74 Year 2008 on Teachers states that; Teachers are entitled to legal protection from acts of violence, threats, discriminatory treatment, intimidation, or unfair treatment on the part of students, parents of students, the public, bureaucracy, or other parties. However, Regulation 74 of 2008 and Article 39 Unang Law No. 14 Year 2005 on Teachers and Lecturers in the law are not strong enough to protect the teaching profession because it is related to enforcing the discipline of teacher students always clashing with Law Act 23 of 2002 on Child Protection. The formulation of the problem in this study are 1) How is the implementation of legal protection for the teaching profession According to criminal law? 2) What obstacles are faced in implementing legal protection for the teaching profession According to criminal law? 3) What solutions are faced in implementing legal protection for the teaching profession According to criminal law? The research method used is normative juridical approach seeks to synchronize the provisions of the applicable law with its implementation of the problem to be examined. Through this approach, the assessment of the data research is guided by mere juridical aspects items, namely the protection of the teaching profession, to Be Examined later on the implementation process, obstacles and solutions encountered in its operations. The results of this study using this Juridical normative concluded that: 1) The implementation of legal protection for the teaching profession According to criminal law Article 39 of Law Number 14 Year 2005 on Teachers and Lecturers and Government Regulation No. 74 Year 2008 on Teachers Article 40 and Article 41 and Regulations on Teacher Professional Protection in the PGRI MOU with Police No. No. B / 53 / XII / 2012 and No. 1003 / UM / PB / XX / 2012. 2) There are two kinds of obstacles faced in implementing legal protection for the teaching profession According to criminal law items, namely internal and external constraints. Honorary Council of Indonesian Teachers (DKGJ), and if the case is purely criminal then the police will be Followed up on.

Keywords: Legal Protection, Teacher Profession, Criminal Law Perspective

INTRODUCTION

Human consciousness of the importance of quality education in the fulfillment of his life growing along with the role - the strategic role of education in human life and the state / nation. With education, people can strengthen identity, timeliness and integrity itself to form qualified individuals, critical, innovative, humane and moral. Individuals who are qualified and immoral that will bring about change and progress of the nation and the country in various sectors of life. Given the importance of education for the advancement of a country, society and individuals, then the responsibility for the implementation of quality education per se is not merely an affair of state, but also the responsibility of all parties as a component of development.¹

Pursuant to Article 1 paragraph 1 and Article 2 paragraph 1 of Law No. 14 Year 2005 on Teachers and Lecturers, teachers are professional educators with the primary task of educating, teaching, guiding, directing, train, assess and evaluate students on the student's educational early childhood formal education, primary education and secondary education and teachers have a position as professionals in primary education, secondary education, and early childhood education students in formal education are appointed in accordance with the legislation. Therefore, teachers should implement duties and obligations in providing educational services as its function to enhance the dignity and role of teachers as agents of learning that aims to improve the quality of national education.

And legal protection that is expected of teachers in a wider sense, as Article 41 (1) PP 74 Year 2008 regarding Teachers stated that; Teachers are entitled to legal protection from violence, threats, discriminatory treatment, intimidation or unfair treatment on the part of students, parents of students, society, the bureaucracy, or the other party. However, Regulation 74 of 2008 has not provided a clear definition of the formulation of legal protection against the full power of the teaching profession at the school in enforcing school rules against things that interfere with the process of teaching and educating learners as desired where national education goals.²

RESEARCH METHODS

a) Method approach

The approach method is useful to approach the object of study or in collecting the necessary data, the approach used in this research is normative juridical approach, ie an approach that adhering of the aspects of judicial / law or its regulations in locating and collecting data. In a normative juridical approach is also trying to synchronize the legal provisions applicable to

the implementation of the issues to be investigated. The study was based on legal principles, norms or other applicable laws in the legal protection for the teaching profession to then sync in fact practice in the field. Through this approach means that the assessment of data research based on the juridical aspects alone.3

b) Specifications Research

Specifications research used in this research is descriptive analysis, which describes the state of the object under study and a number of factors that affect the data obtained was then collected, compiled, described and analyzed in accordance with Regulation Legislation governing and is associated with the theory -teori law and practice in criminal law concerning the problem.

Through this approach means that the assessment of data research guided by purely juridical aspects, namely the application of criminal sanctions against perpetrators of the crime of gambling, then examined the implementation process and the obstacles encountered in their operations. Descriptive meaning is the study aims to provide a detailed description, comprehensive, and systematic research on this object and all things related to it. In this case the object of investigation at issue is the application of criminal sanctions against legal protection for the teaching profession. While analytical implies categorizing, linking, and compare.4

c) Data source

The data used in this study are primary data and secondary data. The primary data of the interview, while secondary data in this study include:

a. Primary legal materials are materials that have the binding force of law as legislation or the decision of a follow pidama gambling. In this study used is the primary legal materials in the form of regulations within the scope normma or rules, among others: the Code of Penal (Penal Code), Act No. 14 of 2005 on Teachers and Lecturers, Law Number 35 Year 2014 About Child protection; Law Number 20 Year 2003 on National Education System, Government Regulation No. 74 Year 2008 on Teachers; Regulation of the Minister of Education and Culture No. 10 of 2017 on the Protection of Teachers and Education Personnel.

b. Secondary law, which provides an explanation of the primary legal materials eg research, scientific work of scholars, articles, web pages, books that are closely related to the subject matter in this study.

c. Tertiary legal materials, ie materials that provide guidance and clarification on the primary and secondary legal materials such example is the Great Dictionary of Indonesian, Law Dictionary, English dictionary, and the dictionary Dutch.

d) Method of collecting data

To obtain the necessary data in this study adapted to the normative juridical research and the type of data used in this study, from the primary data and secondary data, the data collection methods used performance of this research are:

1) Literature study obtained by collecting data through library research by studying the books of literature relating to the title and the issues discussed in this study, and study documents in the form of data obtained through legal materials in the form of enactment legislation or regulations related to this research. Data collection techniques to study this library using the catalog search is a list that provides information on the collection owned by a library.

2) Interviews were obtained from the collection of material from several informants.

DISCUSSION

a. Implementation of Legal Protection for Professional Teacher According to the Criminal Law

This thesis discusses the teacher reported and violate the rights of child protection when penalizing breaches of discipline against students. In this case the measures taken a teacher with a reasonable limit within the world of education. However, when considered no longer to educate and even violating the Child Protection Act.

In this case the implementation of legal protection for the teaching profession under criminal law refers to Article 39 of Law No. 14 of 2005 on Teachers and Lecturers Section 7 of the Protection, mentioned that many parties are required to provide protection to the teachers, and follows the realm of protection such as the following:

1) Government, Local Government, community, professional organizations, and / or education units must provide protection against teachers in the implementation of tasks.

2) Protection as referred to in paragraph (1) shall include legal protection, the protection of the profession, as well as occupational safety and health protection.

3) Legal protection as described in paragraph (2). Includes legal protection against acts of violence, threats, discriminatory treatment, intimidation or unfair treatment on the part of students, parents of students, the community, the bureaucracy, or the other party.

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4) Protection profession referred to in paragraph (2) includes protection against dismissal that is not in accordance with the legislation, the payments are not reasonable, restrictions in their views, harassment of the profession, and restrictions / other violations can hamper teachers in implementing Duty.

5) Occupational safety and health protection as described in paragraph (2) includes protection against the risk of disruption of work safety, occupational accidents, fires at work, natural disasters, health, work environment, and / or other risks.

Protection against teachers in Law Number 23 Year 2003 on National Education System, in Unang law is not set explicitly on the issue of protection for Teachers and Education Personnel in general and teachers in particular. In this Act regulates what rights and obligations by the Teachers and other education personnel. It is contained in article 40 of Law No. 20 of 2003, which states:

i) Teachers and Education Personnel are entitled to:
   a) Income and social welfare are appropriate and adequate;
   b) The award is in accordance with the duties and job performance;
   c) Career coaching accordance with the demands of quality development;
   d) Legal protection in carrying out the duties and rights to the results of intellectual property; and
   e) Keempanut to use the facilities, infrastructure and facilities

In the exercise of the profession teacher too protect government to provide policy regarding the protection of teachers in Government Regulation No. 74 Year 2008 on the protection of Teachers in the ninth part in implementing the tasks it listed in Article 40 and Article 41.

Further related to the functions and authority of the professionalism of teachers in performing their duties at the school have been given the authority to impose sanctions for students who are considered to have violated the norms of decency, norms of decency, religious norms or legal norms relating to the rules set by the school or rules that have been established in general by the government in the creation of a learning process that is orderly, safe and comfortable as defined in Article 39 of government Regulation No. 74 Year 2008 concerning teachers.

Then the punishment students not on teachers in excess of what is also done by parents to their children and not teachers are often also referred to as surrogate parents in school. Understanding the legal protection of the teaching profession is as follows:5

1) Legal Protection Professional Teacher
2) Reason Justifiers and Forgiving

b. Obstacles Faced in the Implementation of Legal Protection for Professional Teacher of Criminal Law

Legal protection of a recognized teacher is still weak. When the teacher in legal problems in particular that related with duties as a teacher he had to fight themselves. Undang as Law Number 14 Year 2005 on Teachers and Lecturers Article 7 paragraph (1) letter h mandates that teachers should have legal protection in carrying out the task of professionalism. Furthermore, in Article 39 in detail stated:

1) Government, local governments, communities, professional organizations, and / or education units must provide protection against teachers in the implementation of tasks.
2) Protection as referred to in paragraph (1) shall include legal protection, the protection of the profession, as well as occupational safety and health protection.
3) Legal protection as described in paragraph (2) includes legal protection against acts of violence, threats, discriminatory treatment, intimidation or unfair treatment on the part of students, parents of students, the community, the bureaucracy, or the other party.
4) Protection profession referred to in paragraph (2) includes protection against dismissal that is not in accordance with the laws and regulations, the payments are not reasonable, restrictions in conveying the views, harassment of the profession, and the restriction / prohibition else that could hinder the teacher in performing the task.
5) Occupational safety and health protection as described in paragraph (2) includes protection against the risk of interruption of work safety, occupational accidents, fires at work, natural disasters, health, work environment, and / or other risks.

Based on the above understanding, protection for teachers is essential. But unfortunately, many of the teachers who work in good uncertainties relating to the employment, welfare, professional development, or even legal advocacy when exposed to legal problems. Organization of the teaching profession in its staff appears necessary to complete its staff by personnel whose job doing legal advocacy. And teachers also need to be encouraged to become members of the teaching profession so that when there is a problem, he could have recourse to the parent organization for guidance or legal assistance.

In terms of obstacles encountered in the implementation of legal protection for the teaching profession are difficult in handling

so that the teacher concerned must undergo dealings with the law in handling it appears a limiting factor of internal and external factors that exist in the body of the institution in government and law enforcement agencies (police). \(^6\)

Internal constraints in the implementation of legal protection for the teaching profession:

1) Arrangements regarding the protection of teachers contained in the Criminal Code itself, namely concerning the legal protection of the lack of clarity of the teaching profession and as a teacher in trouble with the law that is intended to enforce discipline is always contrary to Law No. 23 of 2002 on Child Protection.

2) Lack of knowledge of the law enforcement authorities (police) in cases of legal protection for the teaching profession because most police today only educated from school at the State Police or mostly just to graduate high school, but in dealing with legal protection for the teaching profession required police yan experienced in this field.

3) PGRI organization which guarantees legal protection for the teaching profession less active role in this regard. So often teachers who are experiencing legal problems often losing his profession as a teacher.

4) Lack of understanding of teachers in legislation on education. The weakness is the case today, making the teachers who have problems with the law always has a dilemma in carrying out the task.

External constraints in the implementation of legal protection for the teaching profession:

1) Until now, the issue of legal protection for the teaching profession is still difficult to be monitored by the government and law enforcement agencies (police) because of the location where the teacher stints away from urban areas (corners).

2) Lack of cost, infrastructure of the police itself because in this investigation process always bring legal expert witness who understand this case.

3) The school never convey to parents or guardians of students against the duties and responsibilities of teachers in the school, so the cause when the teacher gives to students who calculated sanction excessive unacceptable always cause people to the teacher concerned.

4) Lack of public understanding of the duties and obligations of teachers so often there is a dispute as teachers perform actions that approximately disciplining students.

5) A society that is still closed and not willing to help inform Kepolsian authorities, in the framework of the investigation in a way to shut up or he did not know anything about the violations of law related to protection of the law for the teaching profession.

6) Citizens do not want to be a witness in a criminal case because they do not want to be bothered.

In terms of educating, the teacher has the freedom to impose sanctions on learners who violate religious norms, moral norms, norms of decency, the written rules and unwritten set Teacher, regulation unit level of education, and legislation in the learning process that is under the authority. Penalties may include reprimand and / or warning, either orally or in writing, as well as penalties that are educational in accordance with method education, teacher ethics code, and legislation. But in the case of teachers often experience difficulties in performing their duties and responsibilities in school because people often implicate these problems with the Child Protection Act which makes the space for teachers in disciplining students experiencing barriers.

Here is this legislation is a constraint problem undangn teacher at the school in carrying out its duties and responsibilities:  
2) Article 76 C of Law No. 35 of 2014 on the Amendment of the Law Nomr 23 of 2002 on Child Protection
3) Then Article 80 of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 regarding Child Protection.

Article 80 paragraph (1) is an article that is used by parents to report teachers who give punishment to his students. As experienced by a teacher named Muhammad Samhudi. Muhammad Samhudi prosecuted by the Public Prosecutor six months in prison with probation of one year as judged guilty and violated Article 80 (1) of the Law on Child Protection.

Child protection laws have an impact on teachers to educate. Teachers are at a dilemma, between the noble task to distribute knowledge and treatment of parents. They are required to be able to make the students achieve educational goals. But when teachers attempt to enforce discipline, the teacher confronted by the Child Protection Act. Thus came the apathy and indifference of a teacher to the pupil's behavior because they are afraid of dealing with the law even though legislation has been providing shelter to him. \(^7\)

So in this case one for parents when their children enter into an educational institution with the passion and desire that their children smart and smart without creating a character education of their children to be good. School concept aimed at educating the nation virtuous vanished with the arrogance and intervention of one of the parents to look at things from a child's perspective. The role of parents should help in the educational process and to contribute in the growth of children. The participation of parents in educating fortress will change the paradigm of the legislation into force together in educating. \(^8\)

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c. Solutions Faced in Implementing Legal Protection for Professional Teacher

Teachers want their students succeed, its actions a form of caring and compassion. If a teacher does not care and affection, the teacher will not rebuke, would not even scold his students. In educating not all students who have a certain well, there is also in part the students were tempered rogue so need to be punished, but sometimes penalties will impact on the teachers themselves because parents cannot accept and report teachers to law enforcement bodies for committing violence against children so teachers berosus with the authorities.

Solution completion of teacher convicted by the parents to do several steps, namely:

1) Special committee formed Settlement Cases between Teachers, Students and Parents
2) Between the Local Government Must Cooperate With Police In The Settlement Education
3) Parents Must Make Statement Before Entering son to school
4) Seminar held Parenting
5) Improving Knowledge of Law Enforcement

In this case the police need to increase their knowledge about the law, especially the duties of teachers, teachers are given freedom based legislation to give sanctions and even penalties didactic regulated by Act No. 14 of 2005 on Teachers and Lecturers and Government Regulation No. 74 Year 2008 on Guru.

In addition, Article 50 of the draft penal code states "Anyone committing to implement the provisions of the law is not punished". Teachers in educating students is running the provisions of law. Therefore, if the actions of teachers or the punishment given by the teacher with the aim of educating his students could not be convicted.

In this case the practice of the teaching profession protection from the threat of criminalization, stipulated in the MOU between PGRI with the Police and so far the teaching profession to obtain protection from Legal Aid Consultancy Organization (LKBH) PGRI.

PGRI and the Police perform legal protection later MOU agreement, the content of the MOU dai is a collaboration between the Indonesian National Police with the Indonesian Teachers Association regarding matters mechanisms and safeguards the teaching profession. Background of the MOU with the National Police PGRI is legal protection and security for teachers in practicing a profession until now there has been no formulas or guidelines that comprehensively so avoid confusion and misunderstanding between teachers and police. It needs to be formulated guidelines that enable the realization of legal protection.

The purpose of the MoU PGRI and police according to him that, "The purpose of the MoU PGRI National Police so that the process of legal protection to the teaching profession can be implemented as well as possible by THE PARTIES". Here are the guidelines between the Indonesian National Police with the Indonesian Teachers Association, No. B / 53 / XII / 2012 and No. 1003 / UM / PB / XX / 2012 on Case Management and Security Mechanisms Against Profession Guru. Pada CHAPTER I Introduction which contains the background, Fundamentals, objectives, scope, sequence and layout pengertian Pada Chapter II of classification and position, then Chapter III on guidelines for the settlement of violations by guru. Pada Chapter IV of the guidelines for the implementation of legal protection and keamanan. Dan further in Chapter V to the administration and the budget, while in Chapter VI of the cover.9

1. Conclusion

a) Implementation of legal protection for the teaching profession under criminal law refers to Article 39 of Law Number 14 Year 2005 on Teachers and Lecturers Section 7 of Protection. In the implementation of the teaching profession in order to protect the government provides protection policies related to teachers in Government Regulation No. 74 Year 2008 on Protection of Teachers in the ninth part in implementing the tasks it listed in Article 40 and Article 41. Definition of legal protection for teachers is as follows:

1) The legal protection of professionalism of teachers
2) Justifying and forgiving

b) Obstacles encountered in the implementation of legal protection for the teaching profession are difficult in handling so that the teacher concerned must undergo dealings with the law in dealing with problems that arise factors internal and external factors that exist in the body establishing government institutions and law enforcement agencies (police):

Internal constraints in the implementation of legal protection for the teaching profession:

1) Arrangements regarding the protection of teachers contained in the Criminal Code itself, namely concerning the legal protection of the lack of clarity of the teaching profession and as a teacher in trouble with the law that is intended to enforce discipline is always contrary to Law No. 23 of 2002 on Child Protection.
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experienced in this field.
3) PGRI organization which guarantees legal protection for the teaching profession less active role in this regard. So often teachers who are experiencing legal problems often losing his profession as a teacher.
4) Lack of understanding of teachers in legislation on education. The weakness is the case today, making the teachers who have problems with the law always has a dilemma in carrying out the task.

External constraints in the implementation of legal protection for the teaching profession:
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2) Lack of cost, infrastructure of the police itself because in this investigation process always bring legal expert witness who understand this case.
3) The school never convey to parents or guardians of students against the duties and responsibilities of teachers in the school, so the cause when the teacher gives to students who calculated sanction excessive unacceptable always cause people to the teacher concerned.
4) Lack of public understanding of the duties and obligations of teachers so often there is a dispute as teachers perform actions that approximately disciplining students.
5) A society that is still closed and not willing to help inform Policy authorities, in the framework of the investigation in a way to shut up or he did not know anything about the violations of law related to protection of the law for the teaching profession.
6) Citizens do not want to be a witness in a criminal case because they do not want to be bothered.

c) The solution in handling the teaching profession if the teacher is simply unethical quite settled in PGRI through the Honorary Board of the Indonesian Teachers (DKGI), and if it was a purely criminal case then the follow up is the police - By looking at the above statement that the reality of the legal protection policies against the teaching practice of teachers at this time is already running in accordance with the Employment guidelines between the Indonesian National Police with the Indonesian Teachers Association. Then the teacher convicted settlement solutions parents can do several steps, namely:
1) Formed a special committee for resolving cases between teachers, pupils and parents
2) Between local government and police must work together in terms of completion of education
3) Parents should make a statement prior to sending their children to school
4) Hold a parenting seminar
5) Improving knowledge of law enforcement officers.

2. Suggestion
a) Creating monitoring or supervision of all educational activities through the forum of communication between the school and parents, thus increasing the confidence of parents overall, the guarantee of security for their children in school.
b) Respect the legal rights of every citizen to enforce discipline in all the elements, so expect no more teachers punish students by slapping and expected not students who commit acts that can provoke anger teacher.

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