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Juridical Review of Legal Protection for Teachers in Carrying out Obligations to Discipline Students

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ABSTRACT

The rise of various cases against teachers in carrying out their professional duties is proof that the legal protection of the teaching profession has not been running properly or as it should be. This study aims to understand, explain, and analyze the legal protection for teachers in carrying out their duties to discipline students. This research uses a normative legal research method. This study concludes that legal protection for teachers is one of the efforts to fulfill their rights, as mandated in Law No. 14 of 2005 on Teachers and Lecturers, Article 14. In the administration of education, the government has essentially made efforts to provide legal protection for teachers and other education personnel. However, these efforts are sometimes still inadequate and weak in their implementation. Teachers must perform their duties according to human rights principles (HAM). Teachers can discipline students firmly while still respecting human rights values, creating a positive learning environment, and shaping students' character without violating their fundamental rights. Several laws, such as Law No. 39 of 1999 on Human Rights, and Article 28B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, regulate the protection of students from the national legal perspective. The number of cases affecting teachers while carrying out their professional duties indicates that legal protection for the teaching profession has not been well implemented or as it should be.

KEYWORDS

Teacher; Human Rights; Legal Protection



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INTRODUCTION

Law Number 20 of 2003 concerning the National Education System (hereinafter abbreviated as the “*SISDIKNAS Law*”), stipulates the objectives of national education in Article 3 which states: “*National education functions to develop the ability and shape the character and civilization of a dignified nation to educate the nation's life, aims to develop the potential of students to become human beings who are faithful and devoted to God Almighty, have noble character, are healthy, knowledgeable, capable, creative, independent, and become democratic and responsible citizens*”.

The educational objectives in the article above provide a foundation for all educational efforts in Indonesia. In line with the objectives in the SISDIKNAS Law and Law Number 14 of 2005 concerning Teachers and Lecturers, Article 4 explains the function of teachers: “*Teachers function to improve the quality of national education and play a role in shaping character and developing the potential of students to become human beings of faith, piety, and noble character.*”

As the goal of character building, teachers have a vital role in shaping student character, where this character-building process includes various strategies that focus on values, and habits, with approaches that are by student needs. This consists of the task of disciplining students. Teachers have an important role as educators, mentors, and shapers of student character. Teachers are also tasked with instilling discipline in students, to maintain a conducive classroom environment and form responsible behavior. However, in carrying out these obligations, challenges often arise in determining the boundaries between disciplinary action and potential violations of children's rights. Teachers not only have the authority to reward students but can also punish them.¹ This is also emphasized in Article 39 paragraph (1) and paragraph (2) of Government Regulation Number 74 of 2008 concerning Teachers.

Students in this case as children have their rights protected by Law Number 35 of 2014 concerning Child Protection, hereinafter referred to as the Child Protection Law which functions as a legal basis that ensures every child including students in the school environment, and guarantees protection against all forms of violence, discrimination, and inhumane treatment.

Children as students have protected rights in the Child Protection Law in Article 9 paragraph 1A and also in Article 54 paragraph 1. These two articles are often used as a legal basis for both students and parents/guardians of students in complaining about student disciplinary actions carried out by teachers or education units, to the authorities. This often causes concern among teachers in carrying out their duties and responsibilities, with the demands to educate students and discipline student behavior by the rules or regulations that have been prepared by the education unit.

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¹ Abdul Atsar, *Perlindungan Hukum Terhadap Profesi Guru dan Dosen di Indonesia* (Karawang: Graha Ilmu, 2020).



their duties and responsibilities, with the demands to educate students and discipline student behavior by the rules or regulations that have been prepared by the education unit.

In recent years teachers in carrying out their duties, namely giving punishment when students make mistakes, have become the main spotlight among the public and the mass media. The existence of cases of violence that occur in the school environment committed by teachers can be caused by many factors, the main factor is the misunderstanding between stakeholders, which results in reporting to the police.² Both those who report from students, parents, and guardians of students to teachers.

The role of teachers in educating, teaching, guiding, directing, training, assessing, and evaluating students is crucial.³ Therefore, teachers have the authority to give awards and sanctions to students by the provisions stipulated in Government Regulation Number 74 of 2008 concerning Teachers. In Article 41 paragraph 1 and paragraph 2, teachers are explicitly given the freedom to impose sanctions on students who violate religious norms, norms of decency, norms of politeness, written or unwritten regulations set by the teacher, education unit level regulations, and laws and regulations. The sanctions referred to can be in the form of reprimands and/or warnings, both oral and written, as well as punishments that are educational by educational methods, the Teacher's code of ethics, and laws and regulations.

Looking at Article 54 paragraph 1 of the Child Protection Law and Article 41 paragraphs 1 and 2 of Government Regulation No. 74/2008 on Teachers, teachers are faced with a dilemma. Article 54 paragraph 1 of the Child Protection Law protects students from all forms of violence and crime in the educational environment. Meanwhile, in disciplining students, teachers are given the authority to impose sanctions as stipulated in Article 41 paragraphs 1 and 2, but the article does not explicitly explain the types of punishment allowed, resulting in unclear norms or vague norms. Based on the Regulation of the Minister of Education, Culture, Research and Technology (*Permendikbudristek*) of the Republic of Indonesia Number 46 of 2023 concerning the Prevention and Handling of Violence within the Education Unit, the violence referred to in the Child Protection Law has been explained in Article 6 to Article 13.

Teachers have received protection from the Ministry of Education and Culture Regulation No. 10/2017 on Protection for Educators and Education Personnel. This legal protection includes protection against violence, threats, discrimination, intimidation, and unfair treatment. With the background above, seeing the discomfort of the Teacher carrying out his duties as an educator. Where this situation raises important questions about whether legal protection for teachers can be implemented properly.

Based on the background as described above, the authors raise several problem issues, namely how human rights see teachers in giving punishment to

² Ana Fauzia & Fathul Hamdani, "Aktualisasi nilai-nilai Pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah" (2021) 2:2 J Indones Berdaya 157-166.

³ Fathul Hamdani et al, "Pentingnya Pengembangan Soft Skills Generasi Milenial dalam Menghadapi Tantangan Pasca Pandemi Covid-19" (2022) 3:3 Indones Berdaya 485-494, online: <<https://ukinstitute.org/journals/ib/article/view/245>>.



students as a form of effort to discipline students and how forms of legal protection for teachers in disciplining students.

METHOD

In this research, the author applies legal research methods, especially normative legal research. Normative legal research is an approach used to find and analyze legal rules, legal principles, and legal doctrines to provide solutions to legal problems at hand.⁴

RESULT & DISCUSSION

I. Human Rights towards Teachers' Obligation in Disciplining Students

Human rights can be understood as the basic rights that every individual has, which are inherent to him only because he is human. Human rights can also be interpreted as legal norms that encourage the protection of everyone wherever they are, from violations or betrayals in political, legal, and social aspects.⁵ Human rights are a set of provisions or regulations that aim to protect citizens from possible oppression, restriction, or obstruction of their freedom by the state. In other words, the state is subject to certain restrictions so that the basic rights of citizens can be protected from abuse of power.⁶

Based on Soetandyo Wignjosebroto's view, human rights are fundamental rights that are universally recognized and inherent in every individual as part of his nature and nature as a human being.⁷ In general, human rights can be defined as the rights inherent in human nature, without which we cannot live as human beings. Recognition of these rights has been fought for by the world community for a very long time.⁸

Human rights theory reflects human efforts to create a just, threatening society that respects individual freedoms.⁹ According to John Locke, every individual from birth already has freedom and human rights, which include the rights to life, liberty, and property.¹⁰ These rights are natural rights that are inherent to humans from

⁴ Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014).

⁵ Nurliah Nurdin & Astika Ummy Athahira, *HAM, GENDER DAN DEMOKRASI (sebuah Tinjauan Teoritis Dan Praktis)* (Jatinagor: CV. Sketsa Media, 2022).

⁶ Eduard Awang Maha Putra et al, "Keadilan dan Perlindungan HAM: Refleksi Tragedi Kanjuruhan" (2024) 3:1 J Huk dan HAM Wara Sains 121-132.

⁷ Eko Riyadi, *Hukum Hak Asasi Manusia: Perspektif Internasional, Regional dan Nasional* (Depok: PT RajaGrafindo Persada, 2018).

⁸ Muladi, "Hukum dan Hak Asasi Manusia" in Firdaus Arifin, ed, *Hak Asasi Mns Teor Perkemb dan Pengaturan* (Yogyakarta: Thafa Media, 2019).

⁹ Rhona KM Smith et al, *Hukum Hak Asasi Manusia*, Knut D. Asplund, Suparman Marzuki & Eko Riyadi, eds (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia (PUSHAM UII), 2008).

¹⁰ John Locke, *Two treatises of government and a letter concerning toleration* (Cambridge: R. Butler, 1821).



birth and are inviolable by anyone, including the state. The state can only revoke or alter these rights with the consent of the owner.¹¹

From the perspective of human rights theory, teachers' obligations in disciplining students must still pay attention to and respect children's rights to be treated with dignity. All forms of violence, both physical and verbal, cannot be justified and can be categorized as human rights violations. Therefore, teachers are advised to apply discipline methods that are more educative, humanist, and in line with the principles of human rights to create a safe and conducive learning environment.

Teachers must carry out their duties according to the principles of human rights. This is important so that discipline enforcement efforts do not violate the rights of students as individuals who are entitled to be treated with respect and without violence. In the learning and teaching process, teachers must ensure that the disciplinary process does not dehumanize or violate students' basic rights. For example, avoid actions that demean or humiliate students in front of their peers. In disciplining students teachers are prohibited from using physical or verbal violence. Such violence not only violates human rights but can also hurt students' psychology and create an unsafe environment.

The disciplinary process should take an educative approach, which aims to teach students about responsibility and the consequences of their actions. This progressive approach also emphasizes solutions that focus on improving attitudes rather than punishment. Teachers must be fair in disciplining students, without discriminating based on background, creed, gender, or other personal characteristics. Fair and consistent discipline is important so that all students feel they are treated equally.

In the process of disciplining students, teachers must base discipline on school rules that have been agreed upon and understood by students. Thus, students understand the consequences of their behavior and feel that the discipline applied is reasonable and according to the rules. Teachers need to understand that each student has different psychological conditions. Before disciplining, teachers need to consider students' mental and emotional conditions so that discipline does not negatively affect their well-being. By paying attention to these aspects, teachers can discipline students firmly while still respecting human rights values, creating a positive learning environment, and shaping students' characters without violating their basic rights.

Several laws, such as Law Number 39 of 1999 on Human Rights, in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, regulate the protection of students from the perspective of national law. Also, Law Number 35 of 2014 concerning Child Protection, is a reference for human rights to ensure the protection of children. The definition of a child referred to in UUPA article 1 paragraph 1 is that a child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb. A child is considered an individual under the age of 18, regardless of marital status. Children's rights also include protection for fetuses still in the womb, especially related to the right to life and

¹¹ Ana Fauzia & Fathul Hamdani, "Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence" (2021) 11:1 J Jurisprud 57-67.



healthy growth. Children need special protection from violence, discrimination, and exploitation, as well as the right to education, health, and a decent life. This confirms that children's rights, including the right to protection, apply to individuals below that age. One important aspect of child protection is their right to be protected from violence.

Children in life have a vulnerable position to violence. Along with their development, children can be victims, but it does not rule out the possibility of becoming perpetrators. To protect against violence caused by vulnerable children as victims in Indonesia. The Child Protection Law is one of the legal regulations in Indonesia to ensure that children receive protection. A child is protected by the State, which is mentioned in Article 20 of the Child Protection Law. The article confirms that child protection in Indonesia is sustainable and must be realized by the government, including local governments.¹²

In human rights theory, violence against children is seen as a violation of their human rights. Acts of violence against children are a form of human rights violation that should not occur under any circumstances. According to Article 1.15 of the Child Protection Law, violence is defined as any action against a child that results in suffering or misery, whether physical, psychological, sexual, or neglect. This definition also includes threats to commit acts of violence, coercion, or unlawful deprivation of liberty.

In education, children's rights are also protected. Child protection in education involves efforts to prevent and deal with physical, psychological, and sexual violence that can occur in schools. In addition, protection also includes preventing discrimination based on social, economic, cultural, or gender backgrounds. Child-unfriendly educational conditions, such as bullying or intimidation, can hinder children's learning process and damage their mental and emotional development.

The existence of Law No. 35/2014 on Child Protection can be seen as an effort to ensure children's rights to protection, welfare, and overall development, which also provides limits to the obligations of teachers in disciplining students. Law No. 35/2014 on Child Protection aims to ensure that children's rights, particularly those relating to protection and education, are respected and protected in all aspects of life, including in the context of teacher discipline. Although teachers must discipline students, they must still prioritize human rights principles, such as non-discrimination, protection from violence, and respect for children's dignity.

Children are often victimized because they are physically, emotionally, and socially vulnerable. Violence against children, whether in the form of physical, emotional, verbal, psychological, sexual, negligence, or abuse, often occurs in various places, including the school environment, and is a serious problem. The realization of human rights protection is still a topic that is often discussed by the public. In Indonesia, various shortcomings in the quality of education are found in various aspects of life. The issues of human rights violations against children in schools as well as criminal acts directed against them can be broken down into several main cases that often occur in the context of education.

There is a case that occurred in Indonesia, namely at Kesatrian Vocational High School, Purwokerto, Banyumas, Central Java, where a teacher has been named as a

¹² Teguh Kurniawan, "Peran Parlemen dalam Perlindungan Anak" (2015) 6:1 *Aspirasi J Masal Sos* 37-51, online: <<https://jurnal.dpr.go.id/index.php/aspirasi/article/view/467>>.



suspect in a case of violence allegedly intentionally committed against his student. This incident went viral after a video showed the teacher stroking his student's cheek with his left-hand several times in front of the classroom. However, this action was a preparation to slap the student hard. So that the student slammed backward. From the data obtained, at least nine students were victims. The reason the unscrupulous teacher slapped, them was because the victims were late during class time, and it was done as a deterrent and a warning to other students.¹³

In contrast to the status above, in one of the other cases at the end of 2024, the world of education was shocked by the news of an honorary teacher named Supriyani from South Konawe District who served at the State Elementary School 4 Baito, who was reported by a student's parent on charges of maltreatment committed against her child in April 2024. This case caught the public's attention when the teacher was finally detained by the prosecutor's office. The case began when a student claimed to have been beaten by teacher Supriyani until he was injured. The student's parents did not accept this and reported the case to the Baito District Police. After mediation efforts were made, there was no peace between the two parties. However, in reality, the testimony of the witness, namely the student's homeroom teacher who was the key witness in this case, testified that the student admitted that he was injured because he fell into the field but did not dare to tell his parents, so he made up a story that the teacher had beaten the student. This was told to the investigator, who was convinced that the teacher had not beaten the student. In the end, during the trial, the judge stated that the defendant, an honorary teacher, had not been proven legally and convincingly guilty of the crime charged.¹⁴ This case has generated a wide range of responses from the public. Today, teachers often face a vulnerable position, where those responsible for teaching and educating must face potential legal risks in carrying out their coaching duties to students.

Looking at the cases above, the education system that is supposed to protect and support teachers in carrying out their duties can be a threat to them. The teaching profession has received protection, one of which is regulated in the Ministry of Education and Culture Regulation Number 10 of 2017 concerning Protection for Educators and Education Personnel. This protection includes protection from violence, threats, discriminatory treatment, intimidation, and unfair actions. The regulation also stipulates protection for teachers from various parties, including students, parents, the community, bureaucracy, and other parties related to the duties of educators and education personnel.

The protection of human rights is regulated in the 1945 Constitution, especially after the amendment that gave birth to Chapter XA on Human Rights. One of the relevant articles in this discussion is Article 28J Paragraph (2) of the 1945 Constitution which states, "In exercising his rights and freedoms, every person shall be subject to restrictions stipulated by law for the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands by moral considerations, religious values, security, and public order in a

¹³ Arbi Anugrah, "Dalami Kasus Guru Tampar Murid yang Viral, Polisi Libatkan Ahli", (2018), online: *Detik News* <<https://news.detik.com/berita-jawa-tengah/d-3982357/dalami-kasus-guru-tampar-murid-yang-viral-polisi-libatkan-ahli>>.

¹⁴ BBC News, "Guru Supriyani divonis bebas pada peringatan Hari Guru", (2024), online: <<https://www.bbc.com/indonesia/articles/cvg082jl12ko>>.



democratic society.” This article emphasizes that human rights cannot be violated arbitrarily and can only be limited by law for legitimate purposes and by religious and moral values. Cases of human rights violations by teachers against students can be seen as a violation of the basic principles of equality, freedom, and respect for human dignity that are upheld. Therefore, discriminatory or violent acts committed by teachers against students, which violate these principles, are human rights violations.

From a human rights perspective, punishment by teachers to students as a form of effort to discipline them must be done carefully and still respect the dignity and rights of children. Children have the right to education in a safe environment, free from violence, and support for their development, as stipulated in the Convention on the Rights of the Child (*KHA*) which has been ratified by many countries, including Indonesia. Corporal punishment (e.g. hitting, pinching, or pinching) violates a child's right to be free from violence, as stipulated in Law No. 35/2014 on Child Protection in Indonesia. Verbal punishment that is insulting or demeaning can also be considered a form of psychological abuse, which is prohibited as it can damage a child's mental health.

Several ways that teachers can discipline students who respect the dignity and rights of children. The application of Restorative Justice methods whereby Inviting students to understand their mistakes, discuss, and find solutions together. Restorative Justice in the school environment is used to replace traditional punitive practices with a community-oriented approach that involves all stakeholders to find solutions.¹⁵ While the process will vary depending on the incident, there is a basic structure that summarizes all Restorative Justice interactions in the classroom.¹⁶ Some of the ways that can be done in the Restorative Justice process in the classroom are as follows:¹⁷

1. All parties involved discuss the incident.
2. The victim will be allowed to express her feelings, as will the accused. Restorative practices should give equal time to each party as the ultimate goal is not punishment, but restoration.
3. The teacher/administrator will act as a mediation facilitator, where they ask open-ended questions in an attempt to encourage reflection. These group meetings are known as circles and are at the core of restorative justice practices. Examples of questions often posed to students include: What can you do to make this right? How would you feel if the same thing happened to you? How did your behavior affect your fellow students?
4. All parties involved decide on a course of action, and all parties work together to implement the plan.

Then teachers can apply Positive Discipline which focuses on reinforcing positive behavior, such as giving appreciation to students who obey the rules. Positive Discipline is an approach to discipline and even build children's character

¹⁵ University of San Diego, “6 Restorative Justice Practices to Implement In Your Classroom [+Real Examples]”, online: <<https://pce.sandiego.edu/restorative-justice-in-the-classroom/>>.

¹⁶ Ana Fauzia & Fathul Hamdani, “Restorative Justice: Antara Teori dan Praktik”, (2022), online: *HnG Consult* <https://hng.co.id/view/article-details?id_post=Restorative-Justice:-Antara-Teori-dan-Praktik-2u7zUYvkES>.

¹⁷ University of San Diego, *supra* note 15.



without punishment. Although without punishment, the positive discipline approach is not an approach that allows or gives unlimited freedom to children, because in the positive discipline approach, there is freedom but there are also restrictions.¹⁸

In an effort to educate and develop learners' thinking and behavior, there are three common responses that parents, adults, and educators often give when faced with inappropriate behavior from children, namely giving punishment, letting children act as they please, or advising children.¹⁹ The approach of giving punishment to learners is often based on the distrust of educators, education personnel, or parents in the ability of learners to develop good behavior and take responsibility for their choice of actions. One of the common reasons cited when administering punishment is to instill discipline. Discipline is formed through a relationship based on trust and attention between parents and children, or educators and students.²⁰

The main purpose of discipline is for learners to understand their behavior, take initiative and responsibility for what they choose, and respect themselves as well as others. In other words, discipline instills positive thought processes and behaviors throughout a child's life.²¹ The use of disciplinary punishment as one of the methods to discipline students in schools has good intentions and is sometimes considered a necessary way to maintain classroom order. However, it is not uncommon for the choice of this form of punishment to be inappropriate and contain elements of violence that harm children, with far greater impact than the intended goal. Instead of supporting the educational process, these actions often have the potential to become a form of child abuse, even if it is for educational reasons.

In a journal entitled *Legal Protection of the Teacher Profession in National Policy* by Deny Guntara, the opinion of the Minister of Education and Culture for the 2016-2019 period, Mr. Muhadjir Effendi, is quoted. He highlighted Government Regulation No. 70/2008, which regulates the freedom and authority of teachers in giving educational sanctions to students. According to him, there needs to be an affirmation for every teacher regarding clear boundaries regarding physical sanctions that can still be tolerated. Physical sanctions that are allowed must still respect the dignity of students and be adjusted to their stage of development. Examples of sanctions that are still acceptable include push-ups, running around the field, cleaning the environment, tidying up hair, making certain writings or assignments, etc.²²

According to Article 4 Paragraph (1) of Law No. 20/2003 on the National Education System, education must be conducted in a way that respects children's right to feel safe and comfortable. The punishment given must be educational, not punitive in the sense of retaliation. Teachers are obliged to ensure that disciplinary

¹⁸ J H Souisa et al, *Disiplin positif untuk Merdeka Belajar: strategi penerapan pada jenjang SMA*, Sam Yhon et al, eds (Jakarta: Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi, 2022).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Bambang Setiadin, "Jaminan Perlindungan dan Pemenuhan Hak-hak Profesi Bagi Guru" (2014) 24:3 Manaj Pendidik 181-185.



action still encourages students to learn and develop and teachers have the responsibility to discipline students, but such action must be carried out within the limits set by law. Discipline must be educative, not violate children's rights, and uphold the principles of child protection.

Looking at Law No. 35/2014 on Child Protection, where there are no provisions that explicitly regulate the types of punishment allowed for teachers in disciplining students. Since there is no explicit limitation on permissible punishment, a systematic approach through legal interpretation, government policy, and court jurisprudence can be a solution. There needs to be clearer derivative rules to distinguish between legitimate disciplinary actions and violations of children's rights to avoid criminalization of teachers who carry out their duties properly.

Therefore, in disciplining students, teachers must adhere to the limits set by the law so that the actions taken remain educational, do not violate children's rights, and are by professional ethics. These main limitations are regulated in various laws and regulations in Indonesia, one of which is contained in Article 76C of Law Number 35 of 2014 concerning Child Protection, namely Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children, meaning that teachers are prohibited from committing violence against children, both physically and psychologically. If a teacher can be subject to criminal sanctions as stipulated in Article 80 of the Law on Child Protection.

Looking at the authority of teachers as professionals in carrying out their duties as teachers in Article 39 of PP No. 74 of 2008 concerning Teachers:

1. Teachers have the freedom to impose sanctions on their students who violate religious norms, moral norms, politeness norms, written and unwritten regulations set by the teacher, education unit level regulations, and laws and regulations in the learning process under their authority.
2. Sanctions as referred to in paragraph (1) may take the form of reprimands and/or warnings, both verbal and written, as well as punishments of an educational nature by educational principles, the Teacher code of ethics, and laws and regulations.

In this article, teachers are given the authority to impose sanctions on students who are deemed to have violated the norms of decency, politeness, religion, or law related to the regulations set by the school and generally applicable regulations from the government. This sanction aims to create an orderly, safe, and comfortable learning environment.

II. Forms of Legal Protection for Teachers in Disciplining Students

Legal protection refers to measures taken by governments, institutions, or individuals to ensure the rights of every citizen are protected. The main purpose of legal protection is to protect the rights of individuals or groups from threats, violations, or abuse by other parties, be it individuals, groups, or the state. The theory of legal protection for the community in the context of Government Law or Administrative Law focuses on the concepts, principles, means, and mechanisms of legal protection. From the perspective of Administrative Law, legal protection is



related to the guarantee of respect for people's rights in public services implemented through "government actions," which are based on the principle of the rule of law.²³

According to Philipus M. Hadjon, there are two legal protections for the people, namely:²⁴

1. Preventive legal protection refers to efforts to prevent violations of the law or disputes by allowing individuals or communities to express opinions or objections before legal or policy decisions are finalized. Kelsen emphasized the importance of legal rules that prevent conflict and provide guarantees for individuals to obtain justice before legal action is taken.
2. Repressive legal protection aims to resolve legal disputes. Legal protection is a guarantee provided by the state to every individual or party to exercise their legal rights and interests by their capacity as a legal subject. Repressive legal protection according to Hans Kelsen refers to legal action taken after an offense or dispute occurs, to enforce the law and impose sanctions on the offending party. This repressive approach focuses on providing punishment or restoring the situation after a violation, with the hope of preventing the recurrence of the same act in the future.

Teachers carry out their duties as professional educators by the mandate in Law Number 20 of 2003 concerning the national education system to develop the potential of students to become human beings who are faithful and devoted to God Almighty, noble, healthy, knowledgeable, capable, creative, independent, and become democratic and responsible citizens. In the process, it often faces challenges in trying to discipline students because actions that aim to educate can be misinterpreted as violations of the law.²⁵

The role of teachers in the learning process is very important, with tasks that are not easy. The heavy burden carried by a teacher as mandated by Article 3 of Law Number 20 of 2003 concerning the National Education System is national education. The function of teachers in the national education system is as teachers and educators. As a teacher, teachers have an important role in the learning process to help students understand, master, and apply certain knowledge and skills. This function is the core of the teacher's professional duties. Teachers are tasked with delivering subject matter according to the curriculum and the level of student development.²⁶ This function covers all forms of learning from the beginning to the teacher is responsible for evaluating student understanding.

In addition to Law No. 20/2003 on the National Education System, the Republic of Indonesia Law No. 14/2005 on Teachers and Lecturers. This law became the first legal umbrella for a teacher without any distinction between public and private teachers. Teachers as one of the stakeholders who have the authority to carry out government administrative tasks, Article 36 states that the government, the community, professional organizations, and or education units must protect

²³ I Dewa Gede Atmadja & I Nyoman Putu Budiarta, *Teori-Teori Hukum* (Malang: Setara Press, 2018).

²⁴ Phillipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: PT. Bina Ilmu, 1987).

²⁵ Agus Affandi, "Dampak Pemberlakuan Undang-Undang Perlindungan Anak terhadap Guru dalam Mendidik Siswa" (2016) 11:2 J Huk Samudra Keadilan 196-208.

²⁶ Munawir, Zuha Prisma Salsabila & Nur Rohmatun Nisa, "Tugas, Fungsi dan Peran Guru Profesional" (2022) 7:1 J Ilm Profesi Pendidik 8-12.



teachers in carrying out their duties. However, the implementation of the law still focuses on strengthening the legal aspects of improving teachers' welfare, while the protection of the teaching profession often goes unnoticed.

Legal protection for teachers has been regulated in various regulations in Indonesia, as long as these actions are carried out within reasonable limits, educative, and by applicable norms. There are at least 4 regulations in Indonesia that mandate legal protection for teachers in carrying out their professional duties, as follows:

1. Legal protection for teachers has been regulated in various regulations in Indonesia, as long as these actions are carried out within reasonable limits, educative, and by applicable norms. There are at least 4 regulations in Indonesia that mandate legal protection for teachers in carrying out their professional duties, as follows”.
2. Law Number 14 of 2005 concerning Teachers and Lecturers, namely Article 39.
3. Government Regulation No. 74/2008 on Teachers, Articles 40, 41 and 42.
4. Minister of Education and Culture Regulation No. 10/2017 on the protection of educators and education personnel.

Teachers in No. 74/2008 are professional educators with the main tasks of educating, teaching, guiding, directing, training, assessing, and evaluating students in early childhood education through formal education, primary education, and secondary education. Teachers are protected by the law in carrying out the task of disciplining students, as long as the action, if by procedures, does not violate students' human rights, and aims to educate. Therefore, teachers need to understand the applicable regulations, apply a positive discipline approach, and always act according to the principles of professionalism in educating students.

Legal protection for teachers is emphasized by Government Regulation Number 19 of 2017 concerning Amendments to Government Regulation Number 74 of 2008 concerning Teachers in Article 1 reads: “Protection is an effort to protect Educators and Education Personnel who face problems related to the implementation of their duties” and Article 3 which reads:

“Legal Protection as referred to in paragraph (2) letter a includes protection against:

1. Violence;
2. Threats;
3. Discriminatory treatment;
4. Intimidation; and/or
5. Unfair treatment, on the part of students, parents of students, the community, bureaucracy, and/or other parties related to the implementation of duties as Educators and Education Personnel.”

Legal protection for teachers is essential to create a healthy and safe educational environment. Teachers still must enforce discipline according to educational principles without violating the rights of students. In the event of legal problems, teachers have the right to obtain legal protection and assistance from the government, schools, and professional organizations.



In the national education system, teachers have a dual function as teachers and educators. In other words, the role of teachers is not only limited to the delivery of knowledge or the development of cognitive aspects alone but also includes the formation of the character of students through affective (attitude) and psychomotor (behavior) aspects. The goal is that students are not only intellectually superior, but also have good mentality, attitude, and behavior. The development of the national education system in Indonesia received a new impetus with the enactment of the Law of the Republic of Indonesia Number 20 of 2003 concerning the National Education System. The law has important implications for the world of education, including guaranteeing the rights of teachers and education personnel to obtain legal protection in carrying out their duties, as well as the rights to intellectual property produced by them.

Violations of the law committed by teachers can be eliminated through preventive efforts, namely by applying the professional ethics of teachers prepared by professional organizations of teachers by the mandate of the National Education System Law and the Teachers and Lecturers Law. This preventive effort is more effective and efficient when compared to repressive efforts, because preventing is better than treating, treating requires a lot of energy, time, and money, and restoring the original situation is more difficult than preventing it. However, if these preventive efforts are not taken seriously and without being integrated with repressive efforts, the consequences will be worse, therefore the implementation of preventive and repressive efforts must be carried out in an integrated manner.

As a prevention effort in the Regulation of the Minister of Education, Culture, Research and Technology of the Republic of Indonesia Number 46 of 2023 concerning Prevention and Handling of Violence in the Education Unit Environment, the definition of Prevention is an action, method, or process carried out so that a person or group of people does not commit Violence in education units. And what is meant Violence is any act, action, and/or decision against a person that has the impact of causing pain, injury, or death, sexual/reproductive suffering, reduced or partial and/or complete loss of physical, intellectual, or mental function, loss of opportunity to get education or work safely and optimally, loss of opportunity for the fulfillment of human rights, fear, loss of self-confidence, loss of ability to act, a sense of helplessness, economic loss.

Giving sanctions to students who have violated the norms or rules that apply intending to educate, has been recognized as a professional duty of a teacher. This is confirmed by the regulations described above. Even when compared with Government Regulation Number 70 of 2008 related to the freedom and authority of sanctions that are educational by teachers to their students, it needs to be emphasized to be known by every teacher what physical sanctions can be tolerated. Physical sanctions can be implemented by the limits that can be allowed.

Preventive efforts are the main step to provide legal protection for teachers in carrying out the task of disciplining students. With clear rules, humanist methods, an understanding of the law, and support from schools and professional organizations, teachers can carry out their duties professionally without fear of facing legal problems.

As a repressive effort to protect a teacher, in the Regulation of the Minister of Education, Culture, Research and Technology of the Republic of Indonesia Number



46 of 2023 concerning Prevention and Handling of Violence in the Education Unit Environment, Article 14 states that the Prevention and Handling of Violence in the education unit environment includes: a. strengthening governance; b. education; and c. providing facilities and infrastructure. This prevention and handling can be carried out by the Education Unit, Regional Government, and the Ministry as stated in Articles 15, 16 and 17 as follows:

Article 15 (1) Education units shall strengthen governance through:

1. Formulating and implementing rules and programs for the prevention and handling of violence in the education unit environment;
2. Implementing policies on the prevention and handling of violence within education units stipulated by the Ministry and local government authority;
3. Planning and implementing violence prevention and handling programs within the education unit;
4. Implementing learning without violence in the education unit environment;
5. Establish TPPK in the education unit environment;
6. Facilitating the implementation of TPPK tasks and functions;
7. Cooperate with related agencies or institutions in the prevention and handling of violence in the education unit environment;
8. Utilizing funding sourced from the state revenue and expenditure budget, regional revenue and expenditure budget, and/or school operational assistance for Violence Prevention and Handling activities within education units;
9. Providing funding for violence prevention and handling activities within education units organized by the community; and
10. Conducting periodic evaluations of the implementation of Violence Prevention and Handling within the education unit.

Article 16 (1) Local governments by their authority shall strengthen governance using:

1. Compile and stipulate regional head regulations that support the prevention and handling of violence in the education unit environment;
2. Integrating the Violence Prevention and Handling program within the education unit into the priority agenda of local government policies by the authority;
3. Allocating a budget for the implementation of Violence Prevention and Handling within the education unit organized by the local government by authority;
4. Facilitating and fostering education units in implementing the Prevention and Handling of Violence within the education unit;
5. Establishing a Task Force;
6. Coordinating across sectors in implementing the Prevention and Handling of Violence within the education unit by the authority;
7. Conduct monitoring and evaluation at least 1 (one) time in 1 (one) year on the implementation of the guidelines for preventing and handling violence in the education unit environment; and
8. Report the results of monitoring and evaluation in the education unit environment if the Ministry of Education requests it.



Article 17 The Ministry shall strengthen governance using:

1. Develop and establish policies, standard operating procedures, guidelines, modules, and programs that support the Prevention and Handling of Violence;
2. Allocate a budget for the implementation of the Prevention and Handling of Violence within the education unit;
3. Coordinate across sectors in implementing the Prevention and Handling of Violence within the education unit; and
4. Carry out regular monitoring and evaluation of the implementation of policies on the Prevention and Handling of Violence within the education unit nationally.

The importance of legal protection for teachers must be supported by a legal education socialization program aimed at teachers. This socialization can be carried out by the government, professional organizations, or non-governmental organizations (NGOs) that have an interest in education. The main objective of this activity is for teachers to understand, know, and be able to carry out their rights and obligations appropriately. In addition, this activity can encourage the creation of a law-aware culture among teachers.

Although the protection of teachers is the responsibility of the government, teachers also have an important role in fighting for their rights. As reflected in religious teachings that emphasize that changes in the fate of a people can only occur if they try to make it happen. Therefore, teachers need to be constructively critical of government policies and get involved in the public policy formulation process. If they feel disadvantaged by a policy, either from the school or the government, teachers can take appropriate steps to convey constructive criticism and input.

To optimally carry out their rights and obligations, teachers need to study various regulations governing education, especially those related to their profession, such as Law No. 20/2003 on the National Education System, Law No. 14/2005 on Teachers and Lecturers, and other regulations such as Government Regulation No. 19/2005 on National Education Standards and Government Regulation No. 74/2008 on Teachers.

Preventive efforts for teachers in carrying out the task of disciplining students aim to prevent problems or conflicts before they occur, as well as create a supportive and conducive environment for the learning process and discipline. As a repressive effort to protect a teacher, in 2024 there is a Decree of the Director General of Teachers and Education Personnel of the Ministry of Education, Culture, Research and Technology Number 3798 / b.b1 / hk.03 / 2024 concerning technical guidelines for the protection of educators and education personnel in carrying out their duties. Where the form of protection carried out by the Ministry Protection Task Force, Regional Government, and Education Unit is carried out with non-litigation advocacy, which includes

1. Legal consultation can be in the form of providing advice or opinions for the settlement of disputes or disputes;
2. Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties; and



3. The fulfillment and/or restoration of the rights of Educators and Education Personnel can be in the form of assistance to obtain legal counsel in resolving cases through criminal, civil, or state administrative processes.

Repressive efforts for teachers in carrying out the task of disciplining students include actions that are more assertive and sometimes involve the application of sanctions or punishments for the violations that occur. This effort is made to overcome student behavior that is not by the rules and to provide a deterrent effect so that there are no continuing violations of discipline. In line with the above repressive efforts as a form of legal protection for a teacher, the Government formed a protection task force which is regulated by a Decree of the Director General of Teachers and Education Personnel of the Ministry of Education, Culture, Research and Technology Number 3798/b.b1/hk.03/2024 concerning technical guidelines for the protection of educators and education personnel in carrying out their duties. This legal protection task force consists of a Protection Task Force in the Education Unit, a Protection Task Force at the Local Government Level, and a Protection Task Force at the Ministry Level Protection Task Force/Advocacy Team/Other Forms in Professional Organizations. The establishment of this legal protection task force was formed considering the importance of protection for educators and education personnel who face legal problems, professional issues, health, work safety, and intellectual property rights, so the Education Unit, Regional Government (*Pemda*), Ministry, and professional organizations need to immediately form a Protection Task Force at each level, both within the Education Unit, Regional Government, Ministry, and professional organizations. The tasks of this Protection Unit include:

1. Prepare a work program on the implementation of protection;
2. Providing non-litigation advocacy in the form of assistance through legal consultation, mediation, and fulfillment and/or restoration of the rights of Educators and Education Personnel on legal, professional, occupational safety and health, and IPR issues;
3. Disseminating policies and programs for the protection of Educators and Education Personnel together with the Education Unit;
4. Providing legal counseling related to protection;
5. Coordinating and/or collaborating with the Regional Government, Education Unit, Professional Organizations, Community, and/or other related parties;
6. Receiving and following up on complaints related to the protection of Educators and Education Personnel;
7. Issuing decisions on the results of non-litigation advocacy related to legal protection, profession, occupational safety and health, and IPR from the problems/disputes complained of;
8. Carrying out monitoring and evaluation of the Educator and Education Personnel protection program implemented; and
9. Making reports to the leader regarding the implementation of the Protection Task Force duties. Regarding acts of violence that are part of legal protection, by Regulation of the Minister of Education, Culture, Research, and Technology Number 46 of 2023 concerning the prevention



and handling of violence in education units, prevention, and handling are the duties of the Violence Prevention and Handling Team (*TPPK*).²⁷

Various problems involving teachers demand more attention from the government and firm action to protect them. As agents of change, teachers play an important role and have a great responsibility in shaping qualified and noble individuals. Currently, protection for teachers has been regulated in Law No. 14/2005 on Teachers and Lecturers and Government Regulation No. 74/2008 on Teachers.

The state as the guarantor of legal protection for its people in this case both central and regional governments, communities, teacher organizations, and/or education units are obliged to protect teachers in carrying out their professional duties, the intended protection includes legal protection, professional protection, and occupational safety and health protection. So the teacher's actions in imposing sanctions that are still within reasonable limits that are still by educational methods should not be considered a criminal offense for which the perpetrator is sentenced to criminal punishment. Taking action or imposing sanctions by teachers in enforcing the rules must indeed be done, a rule is indeed forcing when a rule is not equipped with sanctions, it tends to occur violations of the rules.

CONCLUSION

Human Rights sees the Obligation of Teachers in Disciplining Students as an effort that must be done carefully and still respect the dignity and rights of children. Teachers in carrying out their duties as educators, can provide rewards and punishments, but some punishments should not be carried out by teachers such as physical punishment such as hitting, pinching, or pinching which is considered to violate children's rights to be free from violence, as stipulated in Law No. 35 of 2014 concerning Child Protection in Indonesia. In disciplining students teachers must adhere to the legal boundaries that have been set including the Child Protection Law and the principles of Human Rights. Teachers must be careful not to violate children's protection rights as stipulated in the Child Protection Law. However, several articles in the Child Protection Law often cause legal uncertainty, because the interpretation of physical and psychological violence committed by educators is still unclear. Therefore, there needs to be a clearer and more balanced regulation of teacher obligations and child protection so as not to harm students and teachers. Several options for disciplinary efforts can be carried out by teachers using a more humanist approach to discipline such as restorative justice, positive discipline, and corporal punishment even though Indonesia has regulations that prohibit violence against children.

The form of legal protection for teachers in carrying out their obligations to discipline students is an effort to fulfill the rights of teachers as mandated in Article 14 of the Teachers and Lecturers Law. Various shortcomings in the quality of

²⁷ *Surat Keputusan Direktur Jenderal Guru dan Tenaga Kependidikan Kementerian Pendidikan, Kebudayaan, Riset, dan Teknologi Nomor 3798/b.1/hk.03/2024 tentang Petunjuk Teknis Perlindungan Pendidik dan Tenaga Kependidikan dalam Pelaksanaan Tugas* (Decree of the Director General of Teachers and Education Personnel of the Ministry of Education, Culture, Research and Technology Number 3798/b.1/hk.03/2024 concerning Technical Guidelines for the Protection of Educators and Education Personnel in the Performance of Duties).



education are found in various aspects of life. The issues of human rights violations against children in schools and criminal acts aimed at teachers can be described as some of the main cases that often occur in the context of education. As a preventive effort, the protection of a teacher is contained in the Regulation of the Minister of Education, Culture, Research and Technology of the Republic of Indonesia Number 46 of 2023 concerning the Prevention and Handling of Violence in the Education Unit Environment. While repressive efforts to protect a teacher in carrying out student disciplinary duties are contained in the Decree of the Director General of Teachers and Education Personnel of the Ministry of Education, Culture, Research, and Technology Number 3798 / b.b1 / hk.03 / 2024 concerning technical guidelines for the protection of educators and education personnel in carrying out their duties. Where the form of protection carried out by the Protection Task Force of the Ministry, Regional Government, and Education Unit is carried out with non-litigation advocacy.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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