

Teacher Punishment Implementation for Student by Law Number 23 of 2002 about Child Protection (Case Study Gunungsitoli City-Indonesia)

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Abstract: Child protection aims to ensure the fulfillment of children's rights optimally as stated in Law No. 23 on the Protection of Children. One of the components for promoting the rights of the child is the teacher. Teachers need a way or method of rational and concrete as well as a positive impact on children so that they can provide motivation for children or students in their everyday lives. On the other hand, the right to protection in carrying out duties in the form of a sense of security and safety assurance of the Government in accordance with their respective authorities. With the birth of the Child Protection Act, expected to be a legal instrument that serves as engineers of child protection in Indonesia. Despite the efforts that have been done so far has not been optimal, still sectoral and have not touched the fundamental things relating to the protection of children's rights.

Keywords: Teacher Punishment, Child Protection.

INTRIDUCTION

Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity, as well as protection from violence, intimidation and discrimination, for the realization of children Indonesia reliable, quality, noble and prosperous. Child in question is someone who is not yet 18 years as mentioned in Article 1 paragraph 1 of Law No 23 on the Protection of Children[12].

Indonesian children to realize a reliable, quality, noble and prosperous, the national educational institutions play a very important and strategic in this case is the teacher. Teachers need a way or method of rational and concrete as well as a positive impact for children namely teaching methods persuasive approach is humane, so it can provide motivation or encouragement for children or students to virtuous character, personality, intelligent and has values that are noble in daily life-day.

One way of motivation in the form of punishment for children by teachers, but the punishment is often interpreted differently by parents, teachers, communities, and law enforcement officers and even often considered contrary to the Child Protection Act.

Fostering action by providing excessive punishment beyond the limits of reasonableness is

clearly contrary to the Child Protection Act, because of the opinion that all forms of violence and physical impact are therefore unlawful. Furthermore, that child inside and in the school environment must be protected from acts of violence committed by teachers, school administrators or friends or at other educational institutions.

The penalty for a student should be tiered, beginning with a reprimand, suspension, laid off, newly issued. The penalty was a long process, the child if handled properly necessarily changed.

THEORETICAL FRAMEWORK

Each community has developed its own mechanism itself to control the behavior of its members are committed or considered committing deviant behavior. Particularly if the deviation is considered intentional, unacceptable, and led to a serious loss in the form of casualties or costs in a broad sense, so comes the concept of punishment.

At first, the paradigm of retributive punishment and carried out by a direct reaction for acts committed by a person or group of people. Retributive paradigm is seen in the spirit of reward accordingly relating to actions and / or effect of deeds done. Paradigm condemnation recently emerged with vigor so that people do not do anything threatened. In other words, the judgment is done in a spirit ward.

The development of an understanding of the usefulness of punishment as an instrument in order method of changing behavior seen through the emergence of the rehabilitative paradigm. The paradigm sees that someone who violates or breaches of the existing rules is basically the damaged, diseased, shortcomings, problems, or an inability to perform the behavior. Therefore, through condemnation, that person is basically going to be repaired or healed of its shortcomings. Along with the paradigm change, the forms of punishment were growing, varied, and supposedly more humane.

Emerging theories of Braithwaite [1], which argued that the granting of a shame, especially when done in a systematic, comprehensive, and are not final. So it is referred to as integrative shaming can be seen, as a form of punishment is effective. If all elements of society to embarrass a corrupt person, for example, of course, the prospective corruptors will think long for corruption.

Up here there are situations that, it turns out, not all communities have a community development by relying on the judgment as a mechanism of behavior modifier. There are people like the Japanese people who do not develop the instrument of punishment in order to reply to, deter, or rehabilitating a result of doing an act.

In Japanese society, which is developed is an understanding of shame as a control tool for the individual, the extent to which the agreed or not with the values of the group. In Japan, thus the prevailing theories about the presentation of self in everyday life, where everyone is assumed to have a role that should be adhered to in order that life may run.

If something happens that is considered abuse or deviant social norms, then the orientation is intended that it will cause problems and embarrassment to others, so that people who do or the person who actually did, but related to people who do, must prevent it [2].

The emergence of a shame is the punishment itself. Furthermore, according to Scheff & Retzinger [3] shame bore alienation on the culprit given cut off from society. That is what distinguishes the more shame to guilt associated with the awareness that there are rules that have been violated and their consequences must be borne punishment later. According to Kugler and Jones [4], the phenomenon of guilt is very relevant in everyday situations, especially those that require consideration of morality.

Attributed to the situation of people who see the punishment, and not a shame, as a means of social control, suggesting that there are certain cases and certain subjects where the situation makes people (perhaps also to a group of people) feel embarrassed, it

might be more effective. Manners, social values and morality are things that are traditionally be regarded as something which, if breached or violated if known, would bring shame on the perpetrators. The problem is, even though the people of Indonesia are the manners of high society, has a high social value and the claim to morality, shaming seems almost never used. Shame itself can indeed be a deterrent to do certain things, but it is known very little developed in order to do certain acts due to reaction (and hopefully be a deterrent anyway in time).

Corporal punishment universally recognized, called bullying, hazing and mobbing. There is a sense that the current standard. This term is taken to describe a destructive action. In contrast to other countries, such as Norway, Finland, Denmark, and Finland that mention bullying by the term mobbing. The term originally comes from the UK, which emphasizes an anonymous group of people and numerous and involved violence.

While Schwartz [5] refer to the term bullying victimization. Buhs [6] add the terms peer exclusion and victimization to describe the behavior of bullying. Tattumin Smith, Pepler and Rigby [7] consider that bullying is a desire to hurt and most of it must involve the power imbalance that is the person or group who is a victim is that does not have the power and the treatment of this happens repeatedly and attacked unfairly.

Various deviant behavior do children allegedly caused by the lack of children's understanding of the value of positive self. Mutual respect, helpfulness, empathy, honest, gentle and so not seldom missing from the children's personalities. Instead, they are familiar with negative things like violence, deceit, cunning, selfish and so forth.

Not that children do not know that what was done wrong but bad good understanding of children still refers to a correct behavior when not punished and wrong if convicted [8]. Understanding child behavior based on the well when it is not punished and the bad punished included in the moral understanding of pre-conventional.

Definition of physical punishment or penalty that contain violence, is the use of force, unjust and unjustifiable, accompanied by great emotional or anger uncontrolled, sudden, powerful, rude, and insulting. That power, usually physical strength, misused against public rights, the rule of law and public freedoms, so contrary to the law. According to the Law on Elimination of Domestic Violence No. 23 of 2004 [13], article 1, paragraph (1), that violence is an act against a person, especially women, misery or suffering physical, psychological and or negligence of household including

threat to commit acts, coercion, or deprivation of liberty unlawfully in the household environment. According to the Criminal Code, chapter 89, violent means to use force or physical strength is not small or as strong as possible, unauthorized, such as hitting with the hand or with all kinds of weapons, kicked, kicked, and so on, so that the people affected by the action feel sick which is very. Violence can be likened to "make people unconscious and helpless".

Violence is action, aggression and abuse of rights, abuse, harmful, injurious, others, material and immaterial, so it is a criminal act. Violence is often referred to as an antidote to shame or humiliation. Errors of this expression are that violence has become a source of pride and effort defending the honor. Violence does, but not always, a deviant behavior. There is also understood that violence is inherent in humanity, and are held as self-restraint, self-restraint. In his study of the causes of violence anthropologically, James W. Prescott found a link between the lack of maternal love child and sexual repression.

Violence in education as the Promotion of the Wrong Message, which is harmful, because it promoted that violence, may be accepted in society. Promotion wrong message that (a) encourage educators to using force to follow the example of the substitute parental authority figures or those who use violence; (B) supporting parents and educators to apply violence as they once experienced. For them violence is legitimate [9].

According to Hyman [10] corporal punishment is an official form of discipline applied in family and school environment. Still questioned the effectiveness of violence to bring about change. Legally, violence resolved legally, litigation or non-litigation. According to Article 1365 The Code of Criminal for Indonesia (KUHPdt), "Each misconduct bring harm to another person, require a person who because of his fault issuing losses, replace the losses." Article 1366 provides that "Every person is responsible not only for the harm caused by his actions, but also for damages caused by negligence, or carelessness, his heart." Article 1367 stipulates that schoolteachers are responsible about damages issued by the student during the time students are under their supervision.

Awareness of children should also be built with often invites dialogue and communication creates a warm, and not giving orders and prohibitions. The important thing is to build a personality to often argue and listen to their opinions. The future of a country is in the hands of children. And therefore the role of parents and teachers are very large in creating a child's personality.

DISCUSSIONS

Penalties Against Students in the Perspective of the Child Protection Act

Since the Child Protection Act was passed, more and more complaints from the public, parents of students to law enforcement officials for the actions or the actions of the student teachers in the school. Not infrequently, the authorities arrested the teacher, attended by parents to ask for accountability of teachers, sometimes even rude and unfriendly attitude of the parents of students to teachers, because children treated arbitrarily. However, the teacher patiently and steadfastly accept all the insults, blasphemies the insult without resistance or retaliation.

If understood correctly that the real teacher is enforcing discipline or school rules apply to students who have committed the offense, confusion, noise, confusion, so that interfere with the activity of teaching and learning activities. Teachers always abide by the provisions of school rules, oriented compliance or adherence to the discipline in question. But what happened instead of misunderstanding between the parents with the teacher, as if in a school environment event has occurred persecution committed by teachers against students, she said violating the Child Protection Act and Human rights.

Given the reports of violence to the authorities, who conducted the student teachers continues to increase; it is necessary to do a judicial (judicial review), especially Article 77 and the letter of Article 80 Child Protection Act, which states as follows:

Article 77: Any person who knowingly perform actions:

1. Discrimination against children who cause children to suffer losses, both materially and morally, thus inhibiting its social function;
2. Neglect against children which resulted in a child experiencing pain or suffering, whether physical, mental, and social,
3. shall be punished with imprisonment for a period of 5 (five) years and / or a fine of IDR 100,000,000.00 (one hundred million rupiah).

Article 80:

1. Any person, who committed atrocities, violence or threats of violence, or child abuse, shall be punished with imprisonment for a period of 3 (three) years and 6 (six) months and / or a fine of IDR 72,000,000.00 (seventy-two million).
2. In the case of the child referred to in paragraph (1) were seriously injured, the offender shall be punished with imprisonment for a period of 5 (five) years and / or a fine of IDR 100,000,000.00 (one hundred million rupiah).
3. In the case of the child referred to in subsection (2) dies, the offender shall be

punished with imprisonment of ten (10) years and / or a fine of IDR 200,000,000.00 (two hundred million rupiah).

4. Criminal plus one-third of the provisions referred to in paragraph (1), paragraph (2) and (3) if the parent who committed abuses.

Because violence is not necessarily a false teacher, in this case the teachers also do not necessarily have punished students by means of violence or mistreatment, but discipline. In a school environment, student status as learners, which means it is subject to the disciplinary rules of the school and the teacher. In principle there is no teacher who intentionally commit acts of violence against students, Even if the teachers are doing that, certainly advance the teacher followed by the Honorary Board of Teachers, because they have violated professional ethics of teachers. However, the reality is precisely violators will nonetheless threatened with criminal sanctions as provided for in Article 77 and Article 80 of the above, because the idea that all forms of physical impact is violent, it includes disciplining students by punishing. "That the administration of such punishment as an educational tool to give a lesson to the mistakes made by the students with the aim to prevent similar violations."

In essence, public education serves as a social machine that is responsible for manipulating the future. An educator on duty to help prepare learners to have extensive knowledge, noble and beneficial for the life of the wider community. But lately the existence of educators are often confronted with a reality that does not facilitate the task profession, such as the complaints of parents and community educators to violence when carrying out their duties at school.

The presence of the Indonesian Child Protection Commission (KPAI) and the Law on Child Protection is actually an effort to protect Indonesian children from ill treatment. But its existence is often used as a tool to justify the child's fault. These conditions will certainly impact the increasingly difficult task of implementing education teachers to enforce discipline, especially to foster the child's personality with commendable morals.

When education is known awards (reward) and penalties (punishment), as one of the tools of education, then with the Child Protection Act and KPAI, as if the world lost one of the tools of education in implementing the educational process. Though the existence of reward and punishment very important in achieving educational goals. Although many teachers argue that the enforcement of discipline by punishment (penalty) becomes unnatural conducted in schools on the grounds of violating human rights, and this is always "haunt" the teachers in applying punishment to students. Law No. 23/2002 on Protection of Children often makes teachers fret when educating students with methods of

punishment. Mentioned in the Act, the child should be protected from violent one. For example, when there are teachers who pinch, but the intention is to remind the students, but can be prosecuted because it includes basic forms of violence by using the Child Protection Act. Imposition of punishment is indeed a classic method of educating students in addition to granting rewards. When teachers are tweaked or pinching students, parents may be going to report it as a form of violence. For teachers, parents report that is certainly worrisome and those with a maximum imprisonment of 3 (three) years and 6 (six) months or a maximum fine of IDR72,000,000.00 (seventy-two million). Teachers could be considered committing atrocities, violence or threats of violence or abuse against children by the application of punishment in an effort to educate students with reference to the Child Protection Act, so that it is this that seemed to discriminate against teachers in terms of educating.

It should be understood that the sentence could not be afforded spontaneously and emotionally, but the planning process. Penalties are also not limited to pinch, tweak, scolding. Because corporal punishment is only bred arrogance and bring revenge. In fact, corporal punishment organized will be the culture of violence in educational institutions. But sometimes punishment educating given as failing a grade because of the inability of students in mastering the competencies, it has been linked also with human rights abuses against students, so parents casually come to school to berate and even threaten teachers, and teachers can only keep silent as if they just a puppet or a robot that can be treated.

KPAI legally prohibit acts of violence against the students, even though the teacher as an educator has academic authority in the classroom to maintain discipline in order to achieve optimal learning objectives. Teachers as educators often are at a dilemma, between the demands of the profession with the treatment community. They are required to be capable of delivering learners achieve educational goals. When they attempt to enforce discipline, they were confronted by KPAI. If they fail to enforce discipline their students and learners fail to deliver on education goals, again teachers into scapegoats and sacrificial for the failure.

When teachers want to pass sentence on his student in order to enforce discipline, then immediately also parents and community claim deed as an act violating human rights, who later reported the teachers actions to the authorities or to the KPAI authorities. With the power of the regulation, the impact on the teachers that do not receive legal protection from all threats and intimidation. Teachers are in a very passive position and a person who awry. Indeed, the actions of individual teachers who are less educated with penalties to students beyond the work of a felons, certainly acts

can not be tolerated, as well as the attitude of the parents and the community began to experience a crisis of confidence in the teacher, but still requires teachers to deliver their children into society educated, otherwise they do not provide support and appreciation to teachers.

Before sentencing to students, there are some steps that are often carried out by teachers in general in the face of students who make mistakes, first, provide reports to parents about their child's behavior, by calling direct, step is conducted twice, with involving teacher guidance and counseling; second, when twice the calling did not show changes and good cooperation, a teacher can give corporal punishment against students with the provision is not justified on the part of the vital body, should the punishment be done in the form of educating, punishment carried out in a fair and take into account the psychological aspects protege; and third, if still not showing any change in the behavior of the students, then the next action and expelled from school dismissal.

Warranty On Legal Protection For Teachers In Running Tasks of Professional

Policy on Human Rights globally has become demands of the times, these demands came from international human rights standard settings pioneered by the United Nations (UN) in the field of legislation. Thinking about the conception of human rights that has long been developing in the discourse of scientists since the era of enlightenment in Europe, rose to international legal documents official. The peak of its development is the formulation of the Universal Declaration of Human Rights called the Universal Declaration of Human Rights (UDHR) in 1948, and this declaration was ratified by all countries in the world and become the basic legal recognition of human rights in each country.

In further developments, the conception of human rights also include the efforts to guarantee the fulfillment of civil rights and political and pursue their economic, social, and cultural, including the right to education, right to scientific discoveries, and so forth. The highlight developments on the above with the signing of the Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

For a democracy, recognition and protection of human rights is the main pillar. Meanwhile, the recognition and protection of human rights gets a prominent place and can be regarded as one of the objectives of law country. Thus, Indonesia as a democratic state of law must include elements of the recognition and protection of human rights in its constitution 1945 following the amendment to accommodate a little more substance to ESC rights in its provisions. The second change Act of 1945 enhance

Indonesia's commitment to the promotion and protection of human rights by integrating relevant provisions of international instruments on human rights, as contained in Chapter XA on Human Rights. The changes were maintained up to the fourth amendment of the Constitution in 1945.

According to Article 3 of Law No. 20 Year 2003 on National Education System states that the national education serves to develop the ability and character development and civilization of the nation's dignity in the context of the intellectual life of the nation, is aimed at developing students' potentials in order to become a man of faith and fear of God Almighty, noble, healthy, knowledgeable, skilled, creative, independent, and become citizens of a democratic and accountable. This article gives an overview that function of teacher as well as educators.

The limited rights of teachers in giving punishment to educate in the long term may lead to the withdrawal of the quality of education in Indonesia because it is indirectly limited the role of the teacher as a teacher but lost its role as an educator, while the education is often used as an indicator to measure the progress of a nation.

The role of education in the development process of human resources and overall development has been recognized by all civilized nations in the world, even the key factor of success in the world's developed countries such as Japan, the United States, and Singapore is education. Therefore, legal protection for teachers to be very significant so that teachers can fulfill their role not only as a teacher but also as an educator.

Article 14 paragraph (1) of Law No. 14 Year 2005 on Teachers and Lecturers. stipulates that in carrying out the task of professionalism, teachers are entitled:

1. Earn above the minimum living needs and social welfare;
2. Earn promotions and awards in accordance with the duties and job performance;
3. Protected in performing their duties and intellectual property rights;
4. An opportunity to improve the competency;
5. Obtaining and utilizing learning facilities and infrastructure to support the professionalism of the task;
6. Have freedom in their assessments and in determining graduation, awards, and / or sanctions to students in accordance with the rules of education, teachers' code of ethics, and laws and regulations;
7. Acquire a sense of security and safety assurance in performing the task;
8. Have the freedom to associate in professional organizations;
9. Have the opportunity to play a role in determining educational policy;

10. The opportunity to develop and improve the academic qualifications and competence; and / or
11. The training and professional development in the field.

In addition to establishing the rights of teachers above, Law No. 14 Year 2005 also has set the protection of teachers in performing professional duties as specified in Article 39, namely:

1. The government, local governments, communities, professional organizations, and / or education units must provide protection against teachers in the implementation of tasks.
2. Protection covers legal protection, the protection of the profession, as well as occupational safety and health protection.
3. The legal protection covers 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 of the profession includes protection against dismissal is not in accordance with the laws and regulations, the payments are not fair, restrictions in conveying the views, harassment of the profession, and the restriction / prohibition others that can inhibit teachers in performing the task.
5. occupational safety and health protection includes protection against the risk of interference job security, work accidents, fires at work, natural disasters, health, work environment, and / or other risks.

Meanwhile, the Draft Regulation on Teachers in Article 36 stipulated that:

1. Teachers are entitled to protection in carrying out duties in the form of a sense of security and safety assurance of the Government, local government, legal entities providers of education, educational units, professional organizations, and / or society according their respective authority.
2. A sense of security and safety assurance in carrying out duties of teachers acquired through legal protection, profession, safety, and occupational health.
3. Society, a professional organization of teachers, the Government or Local Government can assist each other in providing protection.

Of several provisions of the law above, it can be seen that teachers receive legal protection in carrying out the task of the profession and the professional organization of teachers in this case has a strategic role in providing this protection. This is also confirmed in

the Law No. 14 of 2005 in Article 42, which states that the Organization of the teaching profession has the authority:

1. Establish and enforce a code of conduct of teachers;
2. Provide legal assistance to teachers;
3. The protection of the teaching profession;
4. Conduct training and professional development; and
5. Promote national education.

In relation to the issues of educating the punishment like a double-edged knife, professional organizations can play a role in the actual legal protection for teachers in several ways:

1. Make a teacher code of ethics in which there are limits on the punishment of raw educate and how teachers get legal protection in the execution of the sentence educate; This code of conduct has been mandated by Law No. 14 of 2005[11] and as provided for in Article 43 of Law No. 14 In 2005, the code of conduct and ethical norms of teachers contains a binding behavior of teachers in the implementation of the tasks of professionalism.
2. The interpretation of whether a penalty educating can be categorized as persecution and human rights violations that are in the realm of practical Party Police; Therefore, professional organizations need to form a MOU with The Police on the legal protection for teachers in performing their professional duties;
3. Conduct training on human rights-oriented teaching by involving education experts, psychologists, teachers, and relevant stakeholders.

CONCLUSION

When sentenced to students, in violation of disciplinary rules of the school, then steps must be taken: first, to report to the parents about their child's behavior, by calling direct, step is conducted twice, with involving teachers Guidance and counseling; second, when twice the calling did not show significant changes and does not show a good cooperation, then in accordance with the provisions of school rules, teachers can give corporal punishment against students, but should not be subjected to on the part of the vital body, the penalty is carried out is educate, fairly and take into account the psychological aspects of the students; and third, if still not showing any change in student behavior, we then made the decisive action of dismissal and expelled from school. So that the punishment is intended as an educational tool to give a lesson to the mistakes made by the students with the aim that no violations were similar and instead of teachers do not experience doubt or unease when sentenced to students

under the pretext of violating Human Rights and Law Child protection.

The protection of the rights obtained Educators, the right to protection in carrying out duties in the form of a sense of security and safety assurance of the Government, local government, educational units, Teacher Professional Organization, and / or the Community in accordance with their respective authorities. As a profession, the work of teachers needs assurance and protection legislation and codes of certainty. It is very important to keep them apart gain a sense of security, also have clarity about their rights and responsibilities, what you can and what they can not do, and what can and can not do the other party to them, both as a human being, educators and workers.

Parents, communities and the Government (State) is obliged to take full responsibility and provide protection for children from acts of discrimination, violence and neglect against children. It needed special protection which includes : (a) Protected from discrimination; (b) Protected from violence; (c) Protected from neglect; (d) Protected from sexual exploitation and trafficking of children; (e) Protected from emergency situations, exploitation, conflict with the law and minority groups.

RECOMMENDATIONS

Should the punishment against students must be based on balance, starting from the lowest strata, where the students are naughty fostered first by homeroom. If still cannot be tolerated subject to suspension must not follow all the action in the school. Meanwhile, in strata peak punishment, then the next action that the students were returned to their parents. With regard to the child's psychological touch smooth, supple and sweet, so they can make their feelings felt normal sensitivity and stable. The government must immediately create a law that is aligned to the teacher on abuse or violence committed by parents (guardians) of students, the community, the State and certain parties. So that teachers in terms of fighting for his defense, has had a strong legal framework and specific to regulate legal protection to teachers. Students or parents performed facts on the ground, often the teacher to get treatment of physical violence and psychological pressure. With the birth of the Child Protection Act, expected to be a legal instrument that serves as engineers of child protection in Indonesia. The format of the future concerning the function of the law as an instrument of social engendering will soon be done. Our expectations are not just limited to the formation of a product of legislation, but more importantly how the law can be implemented by concrete steps by all elements of society, the parents, the government, NGOs, and other institutions with a concern for protection the rights of children. The government must be able to carry out the mandate and consistent

protection of the rights of children with all its consequences. Furthermore, the role of the public has also become extremely important to participate, on careless the future of children, including religious organizations, foundations or NGOs. Despite the efforts that have been done so far not optimal, is still limited to programs that are purely sectoral and have not touched the fundamental things relating to the protection of children's rights.

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