

LEGAL PROTECTION AND WELFARE IN EDUCATION: A POST-PANDEMIC RECOVERY PERSPECTIVE ON IMPLEMENTING LAW NO. 14 OF 2005

Franciscus Xaverius Wartoyo
Universitas Pelita Harapan, Banten, Indonesia
franciscus.wartoyo@uph.edu

Teguh Prasetyo
Universitas Pelita Harapan, Banten, Indonesia
teguh.prasetyo@uph.edu

Abstract

Legal protection for educational human resources in the post- pandemic recovery period needs to be pursued because it is part of improving their welfare in addition to safety in every activity and task. This study intends to describe how the development of education in the implementation of Law No. 14 of 2005 concerning Teachers and Lecturers is viewed from the rights and obligations in the perspective of dignified justice. Research methods are used normatively and empirically, as well as literature reviews that support descriptive exposure to strengthen argumentation and persuasion, explain facts in the field, and provide results of relevant data collection from various applicable legal sources. In implementing Law No. 14 of 2005 concerning Teachers and Lecturers, especially in the post pandemic recovery , private educational institutions are expected to get special attention, and for private educational institutions, the impact is very influential, especially in the field of financial management in order to harmonize their financial management as before the COVID-19 pandemic, especially for teachers and lecturers who obtain welfare from private educational institutions in order to harmonize rights and obligations as stated in Law no. 14 of 2005 and realizing the provisions of "educating the life of the nation" as specified in Indonesian Constitution 1945 and Pancasila which are justice-oriented with an intention.

Keyword: *Legal protection; Obligations; Dignified Justice; Post pandemic recovery; Law No. 14 of 2005.*

A. INTRODUCTION

In essence, learning is the need of every human being from the time his five senses function until later at the end of his life. The Indonesian government has a policy that regulates the study of its citizens in the context of formal, informal, and non-formal education. The government regulates everything.¹ Law No.14 of 2005 concerning Teachers and Lecturers in article 39, paragraph 1 states, "The government, local government, community,

¹ Stephen Thomson and Eric C. Ip. "COVID-19 emergency measures and the impending authoritarian pandemic." *Journal of Law and the Biosciences* 7, No. 1, (2020): 3.

professional organizations, and/or education units must provide protection to teachers in the implementation of duties.”²

In this case, the government’s regulations and laws protect citizens’ rights to achieve learning goals for students, teachers, and lecturers as educators.³ Article 39, paragraph 1 of Law No. 14 of 2005, concerning teachers and lecturers, emphasizes not only the duties of the government but also all units in education that can provide protection for teachers and lecturers in carrying out their duties. Legal protection is not in a narrow sense, such as the dispute between teachers or lecturers and students involving child protection laws, but more in a broad sense involving the welfare of teachers and lecturers as referred to in Article 14 paragraph (1) point e which includes legal protection, professional protection, occupational safety and health protection, and Intellectual Property Rights (IPR).⁴

In this case, lecturers are one of the important components in the higher education system in Indonesia. The roles, duties, and responsibilities of lecturers are very important in realizing the goals of national education, namely educating the nation’s life and improving the quality of Indonesian human resources. While lecturers are declared as educators and professional scientists who mainly transform, develop, and disseminate science, technology, and art through education, research, and community service. At the same time, the term professional is expressed as work or activities carried out by someone and become a source of living income that requires expertise, proficiency or skills that meet certain quality standards or norms and require professional education.

Law No. 14 of 2005 is expected to provide benefits and legal certainty for teachers and lecturers. Fundamental principles in law that require laws to be clear, predictable, and accessible to the public. It is a principle that guarantees that the recipient of the law must know the law to plan his actions according to it.⁵ Legal protection for teachers and lecturers in Indonesia is generally regulated in Law No. 20 of 2003 concerning the National Education System, Law No. 14 of 2005 concerning Teachers and Lecturers, Government Regulation Number 74 of 2008 concerning Teachers, and specifically regulated in the Regulation of the Minister of Education and Culture Number 10 of 2017

² Suharyanta. "Implementation Of Legal Protection For Teachers To Tackling Criminal Acts Of Persecutio." *Magistra Law Review* 1, no. 02, (2020): 95.

³ Rusmilawati, Windari, Supanto, and Widodo Tresno Novianto. "Child protection versus teacher protection: a legal review of the settlement of school corporal punishment in Indonesia." *Crime, Law and Social Change* 76, (2021): 2.

⁴ Ljuben Kocev. "Copyright Protection vs Free Movement of Goods within the Internal Market of the EU." *Economics. Law. Innovation.* no. 4 (2021): 56.

⁵ Raitio, Juha Tapani. "Legal Certainty." In *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer Netherlands, 2020), 2.

concerning the Protection of Educators and Education Personal.⁶ This law aims to provide legal certainty and protection for teachers in carrying out their duties and profession.

Legal certainty is an important principle in law that requires laws to be clear, predictable, and accessible to the public. In the context of education, legal certainty ensures that the laws and regulations governing education are clear and predictable. Increasing legal certainty through education can also increase legal certainty for citizens in the country.

With the enactment of Law No. 14 of 2005 concerning Teachers and Lecturers, those who are stable as teachers and lecturers appointed by educational units organized by the community will not get a decent and adequate salary and income. It is different from those appointed by the state. This distinction occurs because different institutions carry out the basis for the appointment of teachers/lecturers. The 1945 Constitution equally protects the rights of each group. However, since the legal bases of the two are different, it is logical and natural that the sources of income of the two groups of teachers and lecturers are different. This difference may result in the income of teachers and lecturers appointed by the state being higher than teachers and lecturers appointed by community education providers.⁷

Based on the description above, it is considered necessary to examine how to reconstruct the model of educational thinking and practice in the community in our universities today by prioritizing the need to strive for the welfare of teachers and lecturers with facilities, as well as allowances for teachers and lecturers not only certification because their duties have the same rights but different obligations between the public and private.⁸

B. RESEARCH METHODS

This research adopts quality research methods with a comprehensive legal approach, empirical normative design, and literature review. This approach allows researchers to combine direct analysis of field data with a critical review of relevant literature. Data collection in this research uses systematic and detailed data from various applicable legal sources. This research presents a holistic understanding of the findings that is more accurate and effective. This research method accommodates the complexity of legal

⁶ Denny Zahuri and Evita Israhadi. "Juridic Review of Legal Protection towards Teachers as Educators." In Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6th 2021, Jakarta, Indonesia. 2021.

⁷ Tsung-Ling Lee. "The rise of technocracy and the covid-19 pandemic in Taiwan: Courts, human rights, and the protection of vulnerable populations." *German Law Journal*. 22, no. 6, (2021): 1115.

⁸ Joseph Lelliott, Andreas Schloenhardt, and Ruby Ioannou. "Pandemics, punishment, and public health: COVID-19 and criminal law in Australia." *University of New South Wales Law Journal, The*. 44, no. 1, (2021): 167.

problems by integrating an empirical normative approach and literature review. This approach allows researchers to develop solid and in-depth arguments that describe the facts in the field and explain their relationship and implications with the existing legal basis. Research can significantly contribute to a better understanding of relevant legal issues and provide a solid foundation for developing better legal policy or practice in the future. By utilizing relevant data from various applicable legal sources, this research can provide a comprehensive view and increase the findings' reliability.

C. RESULTS AND DISCUSSION

The emergence of the COVID-19 outbreaks three years ago has not only brought health and economic impacts, one of which is that community members have experienced obstacles to recovery, thus impacting the education sector⁹ because it concerns the sustainability of the quality of education of students and the welfare of students, teachers, and lecturers. Several sources that can be found during the COVID-19 pandemic were found from interviews with students who applied for dispensation, and this resulted in unstable financial management of universities, especially the lower middle cluster private sector.¹⁰ Parents and guardians of students with private employment social status also experience obstacles in financing their children in education, it is also felt by private universities in their financial management operations, because there are private universities in their financial management operations are still influenced by the number of students, so to support the financial operational management of universities, in the recovery of education implementation after the COVID-19 pandemic, Especially in private universities, state policy makers through government institutions related to education and private institutions through CSR are expected to provide incentives and rewards for authors of Scopus journals, Sinta, subsidies, or electricity subsidies, exempt land and building taxes to restore the management of private universities, especially their financial management operations so that they can compete with state universities, Because the impact of Covid 19 is very felt for private universities in the implementation of their financial management operations.¹¹

The existence of higher education is one of the means to be able to achieve development goals both for the short and long term, in this case,

⁹ Franciscus Xaverius Wartoyo. "Peran Negara Dan Masyarakat Dalam Menghadapi Covid-19 Dalam Perspektif Politik Dan Hukum." *Historis: Jurnal Kajian, Penelitian Dan Pengembangan Pendidikan Sejarah*. 5, no. 1, (2020): 29.

¹⁰ Lebre, Audrey. "COVID-19 pandemic and derogation to human rights." *Journal of Law and the Biosciences*. 7, no. 1 (2020): Isaa015.

¹¹ Francesca Ippolito. "Re-Evaluating Triage in International Justice during COVID-19—Complying with the Rule of Law?." *International Organizations Law Review*. 18, no. 3, (2021): 448.

educators, scientists, and lecturers not only carry out teaching duties for their students through universities, it is hoped that they will not only be able to create mere theories but a real work not only science. Suppose the function of universities is only to carry out teaching programs. In that case, the operating costs will be considered too expensive, considering that there are currently many cheaper ways to obtain knowledge.¹²

Education in Indonesia at the highest level is a university consisting of public and private universities that produce national cadres in various competencies to determine the progress of the Indonesian nation by the professionalism of universities or higher education, both public and private.¹³ The existence of universities really needs to be considered in addition to being able to produce knowledge and utilize it through various research activities. In connection with the university's role, currently, universities can run the tri darma of higher education consisting of research, service, and teaching, per Law No. 20 of 2003.¹⁴

According to Law No. 20 of 2003 article 20 (2), universities' main task is that Higher education is obliged to organize education, research, and community service. In learning activities is the development of science and knowledge of students, while in research activities is a production process for the development and search for the latest knowledge that has been utilized during the teaching period, dedication so that lecturers and students have the ability to recognize themselves and problems rationally, adaptability, and have intellectual courage in making innovations.¹⁵

In heading towards the digital era along with the post-pandemic, in Indonesia, the Ministry of Education and Culture triggered an education system about freedom of learning with the main theme of freedom in managing learning.¹⁶ This is important to reduce the burden on teachers in carrying out their profession, with the freedom to assess student learning with various types and forms of assessment tools, from various burdensome administrative

¹² Dinushika Dissanayake. "Justice after COVID 19: An analysis of the challenges faced by the formal justice sector in Sri Lanka during a global pandemic." *Asia-Pacific Journal on Human Rights and the Law*. 23, no. 2, (2022): 156.

¹³ Fathul Hamdani and Ana Fauzia. "Legal Discourse: The Spirit of Democracy and Human Rights Post Simultaneous Regional Elections 2020 in the Covid-19 Pandemic Era." *Lex Scientia Law Review*. 5, no. 1, (2021): 97.

¹⁴ Katharine G. Young. "The idea of a human rights-based economic recovery after COVID-19." *International Journal of Public Law and Policy*. 6, no. 4, (2020): 390.

¹⁵ Isra Nurhanifah and Eny Kusdarini. "The Policy of Legal-Entity State Higher Education Institutions (PTN-BH) Determination Viewed from Material Law Institutions." *Interdisciplinary Journal on Law, Social Sciences and Humanities*. 3, no. 1, (2022): 77.

¹⁶ Muhamad Zaky Albana and Zulfia Hanum Alfi Syahr. "Access to Posbakum In Pandemic Times and The Digital Era for The Community as A Meaning Of Social Justice Fulfillment." *Jurnal Hukum dan Peradilan*. 11, no. 3, (2022): 545.

arrangements, from various threats, criminal or political pressure on teachers.¹⁷

One of them concerns Human Resources (HR) in the university to prepare an independent learning system, one of which is the dose of expert assistants, lecturers, and head lecturers to professors, so that in developing more creative learning resources with local wisdom, one of which is in supporting human resources, scholarships are needed for public and private universities for further study or research given the same public and private facilities so that lecturers are motivated to develop his career in accordance with expectations or in line with the.¹⁸

With the merger of private colleges and academies into universities, the number of private universities is increasing. With the existence of private universities, it is very helpful for the state to educate the nation's life, private universities that are accredited superior until the end of December 2023 are 45 private universities, while there are 37 public universities that are accredited superior.¹⁹ Private universities also produce many experts for their alumni and succeed in producing human resources with the highest positions of professors. This proves that the quality of private universities in Indonesia is no less competitive with the state in educating the nation's life. It is a consideration for the state to pay special attention as stated in article 31 (4) of the 1945 Constitution, the state prioritizes the education budget at least twenty percent of the state budget and from the regional budget to meet the needs of national education implementation. Underpinning the government's responsibility to oversee the education process in Indonesia between the public and the private sector so that it can accelerate and prepare for a Golden Indonesia in 2045 involves the role of foundations, private institutions, and the government.²⁰

After the COVID-19 pandemic, it has an impact on resources in private universities, because in the private sector, the foundation's financial resources only provide infrastructure, while for the process of running universities, financial operational management is mostly determined by the number of students. The number of students in private universities affects the

¹⁷ Anis Widyawati et al., "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*. 6, no 2, (2020): 259.

¹⁸ Lawrence O. Gostin, Roojin Habibi, and Benjamin Mason Meier. "Has global health law risen to meet the COVID-19 challenge? Revisiting the International Health Regulations to prepare for future threats." *The Journal of Law, Medicine & Ethics* 48, no. 2 (2020): 376.

¹⁹ Bustanul Rifai Hamzah, Sokhibul Kahfi, and Muhammad Hasyim. "The Legal Aspect of Digital Business Domination During Post Pandemic." In *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)*. 1, no. 1, (2022): 120.

²⁰ Audrey Lebret. "COVID-19 pandemic and derogation to human rights." *Journal of Law and the Biosciences*. 7, no 1, (2020): Isaa015.

management of financial operations in private universities.²¹ Policy makers related to the field of education, both the government and private sectors pay more attention to private universities through Corporate Social Responsibility (CSR), in the form of scholarships, or allowances, apart from lecturer certification in order to create justice and legal certainty according to the purpose of dignified justice, because in dignified justice, both justice itself, legal certainty, as well as expediency according to law are all one the unity of the balance of the system (order) of values in the law to achieve the ultimate goal of the law, which is to humanize man.²²

In Indonesia, to ensure the quality of education in universities, there has been an independent accreditation agency (*Lembaga Akreditasi Independen/LAM*), in addition to the State Accreditation Board for Higher Education (*Badan Akreditasi Nasional Perguruan Tinggi/BAN PT*). However, it also needs to be seen whether this LAM is effective or not because this LAM becomes an obstacle when the private sector accredits or assesses state universities. This happens less effectively because the state feels that in its organizational structure, it feels higher because it is subsidized by the state than the private sector and has more complete facilities, even though there are college grants. Then, the admission of private new students has its own market after the announcement of the admission of new students of state universities.²³

By using an approach to Restoration of Justice and Legal protection to create quality human resources,²⁴ the role of higher education (university) is very decisive in the output of university alumni to compete at national and international levels, one of which is human resources and Tri Dharma is determined by the quality of lecturers and infrastructure.

Therefore, lecturers need to get better welfare guarantees in accordance with the educational concept of national education law, and there is no gap between public and private lecturers. To realize national education, must be avoided from political interests so that political dynamics do not affect the policy of the national education law (restoration of justice). Protection and guarantee before the law and equal treatment are not intended to ensure

²¹ Bustanul Rifai Hamzah, Sokhibul Kahfi, and Muhammad Hasyim. "The Legal Aspect of Digital Business Domination During Post Pandemic. 1, no. 1, (2022): 120.

²² Dima Jamali and Charlotte Karam. "Corporate social responsibility in developing countries as an emerging field of study." *International journal of management reviews*. 20, no 1, (2018): 32.

²³ James R. May and Erin Daly. "Dignity rights for a pandemic." *Law, Culture and the Humanities* (2020): 1743872120944515.

²⁴ Iman Imanuddin and Bareskrim Polri. "Pendekatan Restorative Justice dalam Menanggulangi Tindak Pidana Lingkungan Hidup," *Jurnal Syiar Hukum Jurnal Ilmu Hukum*, 17. (2020).

equality of income or discrimination²⁵ but to provide legal protection by the state both to teachers appointed by the government/regional community and to teachers and lecturers.

D. Conclusion

The COVID-19 pandemic has ended with presidential decree no. 17 of 2023, and the impact felt for teachers and lecturers, especially private universities, is still being felt today. The duties of teachers or lecturers, both public and private, have the same duties; it's just that the obligations are different, which are determined by the conditions of each institution that overshadows them, namely public or private. The preamble of the 4th alenia of the 1945 Indonesian Constitution states that "... to advance general welfare, educate the life of the nation...", thus the state's task related to policy makers in the field of education and the private sector through its CSR programs, it would be nice to facilitate and support the duties of teachers and lecturers, because the duties of teachers and lecturers have the same duties, but judging from private universities in their operational management is still determined by the private university foundation, especially related to the Tri Dharma of Higher Education and pay attention to the welfare of human resources, thus as a suggestion to pay attention to those that support the welfare of human resources of private universities and their competence, the existence of land and building tax subsidies, electricity subsidies, rewards for authors of Scopus or Sinta journals, and special grants for private universities, in order to restore the management of private universities, especially financial management operations so that they can compete with state universities.

In implementing Law No. 14 of 2005 concerning Teachers and Lecturers, especially in the post-COVID-19 pandemic, private educational institutions are expected to receive special assistance and for private educational institutions, the impact is very influential, especially in financial management operations in order to harmonize their financial management as before the COVID-19 pandemic, especially for teachers and lecturers who obtain welfare from private educational institutions in order to harmonize rights and obligations as stated in Law No. 14 of 2005 and realizing alenia 4 "educating the life of the nation" of the 1945 NRI Constitution and Pancasila which is justice-oriented with an intention.

²⁵ Andros Timon. "Tanggung Jawab Pemerintah Daerah Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin." *Jurnal Ilmu Pemerintahan Suara Khatulistiwa*. 6, no. 2, (2021): 160.

BIBLIOGRAPHY

Journals:

- Al Fikry, Ahmad Habib, Muhammad Riyan Afandi, and Dian Latifiani. "National Law Development through Civil Procedure Law Reform as a Manifestation of State Goals during the Covid-19 Pandemic." *Lex Scientia Law Review* 5, no. 2 (2021): 41-64.
- Albana, Muhamad Zaky, and Zulfia Hanum Alfi Syahr. "Access to Posbakum In Pandemic Times And The Digital Era For The Community As A Meaning Of Social Justice Fulfillment." *Jurnal Hukum dan Peradilan* 11, no. 3 (2022): 545-562.
- Dissanayake, Dinushika. "Justice after COVID 19: An analysis of the challenges faced by the formal justice sector in Sri Lanka during a global pandemic." *Asia-Pacific Journal on Human Rights and the Law* 23, no. 2 (2022): 156-205.
- Gostin, Lawrence O., Roojin Habibi, and Benjamin Mason Meier. "Has global health law risen to meet the COVID-19 challenge? Revisiting the International Health Regulations to prepare for future threats." *The Journal of Law, Medicine & Ethics* 48, no. 2 (2020): 376-381.
- Hamdani, Fathul, and Ana Fauzia. "Legal Discourse: The Spirit of Democracy and Human Rights Post Simultaneous Regional Elections 2020 in the Covid-19 Pandemic Era." *Lex Scientia Law Review* 5, no. 1 (2021): 97-118.
- Hamzah, Bustanul Rifai, Sokhibul Kahfi, and Muhammad Hasyim. "The Legal Aspect of Digital Business Domination During Post Pandemic." In *Proceeding International Conference on Law, Economy, Social and Sharia (ICLESS)*, vol. 1, no. 1, pp. 120-130. 2022.
- Imanuddin, Iman, and Bareskrim Polri. "Pendekatan Restorative Justice Dalam Menanggulangi Tindak Pidana Lingkungan Hidup." *Jurnal Syiar Hukum Jurnal Ilmu Hukum* 17 (2020).
- Ippolito, Francesca. "Re-Evaluating Triage in International Justice during COVID-19—Complying with the Rule of Law?." *International Organizations Law Review* 18, no. 3 (2021): 448-481.
- Jamali, Dima, and Charlotte Karam. "Corporate social responsibility in developing countries as an emerging field of study." *International journal of management reviews* 20, no. 1 (2018): 32-61.
- Kocev, Ljuben. "Copyright Protection vs Free Movement of Goods within the Internal Market of the EU." *Economics. Law. Innovation. no. 4* (2021): 55-63.
- Lebret, Audrey. "COVID-19 pandemic and derogation to human rights." *Journal of Law and the Biosciences* 7, no. 1 (2020): Isaa015.

- Lee, Tsung-Ling. "The rise of technocracy and the covid-19 pandemic in taiwan: Courts, human rights, and the protection of vulnerable populations." *German Law Journal* 22, no. 6 (2021): 1115-1132.
- Lelliott, Joseph, Andreas Schloenhardt, and Ruby Ioannou. "Pandemics, punishment, and public health: COVID-19 and criminal law in Australia." *University of New South Wales Law Journal, The* 44, no. 1 (2021): 167-196.
- May, James R., and Erin Daly. "Dignity rights for a pandemic." *Law, Culture and the Humanities* (2020): 1743872120944515.
- Nurhanifah, Isra, and Eny Kusdarini. "The Policy of Legal-Entity State Higher Education Institutions (PTN-BH) Determination Viewed from Material Law Institutions." *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, no. 1 (2022): 77-89.
- Suharyanta, Suharyanta. "Implementation Of Legal Protection For Teachers To Tackling Criminal Acts Of Persecution." *Magistra Law Review* 1, no. 02 (2020): 94-102.
- Thomson, Stephen, and Eric C. Ip. "COVID-19 emergency measures and the impending authoritarian pandemic." *Journal of Law and the Biosciences* 7, no. 1 (2020): Isaa064.
- Timon, Andros. "Tanggung Jawab Pemerintah Daerah Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin." *Jurnal Ilmu Pemerintahan Suara Khatulistiwa* 6, no. 2 (2021): 160-174.
- Wartoyo, Franciscus Xaverius. "Menakar Korelatifitas Merdeka Belajar dengan Sistem Pendidikan Nasional Undang-Undang Nomor 20 Tahun 2003 dan Pancasila." *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 4, no. 2 (2022): 140-153.
- Wartoyo, Franciscus Xaverius. "Peran Negara Dan Masyarakat Dalam Menghadapi COVID-19 Dalam Perspektif Politik Dan Hukum." *Historis: Jurnal Kajian, Penelitian Dan Pengembangan Pendidikan Sejarah* 5, no. 1 (2020): 29-40.
- Widyawati, Anis, Rasdi Rasdi, Ridwan Arifin, and Sепthian Eka Adiyatma. "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 6, no. 2 (2020): 259-286.
- Windari, Rusmilawati, Supanto, Supanto, and Widodo Tresno Novianto. "Child protection versus teacher protection: a legal review of the settlement of school corporal punishment in Indonesia." *Crime, Law and Social Change* 76 (2021): 1-22.
- Young, Katharine G. "The idea of a human rights-based economic recovery after COVID-19." *International Journal of Public Law and Policy* 6, no. 4 (2020): 390-415.

Books:

Raitio, Juha Tapani. "Legal Certainty." In *Encyclopedia of the Philosophy of Law and Social Philosophy*, edited by Mortimer Sellers and Stephan Kirste, 1–6. Dordrecht: Springer Netherlands, 2020.

Conference & Proceedings:

Zahuri, Denny, and Evita Israhadi. "*Juridic Review of Legal Protection towards Teachers as Educators.*" In *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6th 2021, Jakarta, Indonesia. 2021.*