

THE REALIZE EQUITABLE TEACHER PROTECTION THROUGH A NON-PENAL POLICY

Yenny Aman Serah
Universitas Panca Bhakti Pontianak, Indonesia
yenny.upb@gmail.com

Rini Setiawati
Universitas Panca Bhakti Pontianak, Indonesia
rini090366@gmail.com

Abstract

Teacher protection has been regulated in various laws and regulations, both laws, government regulations to ministerial regulations, but the reality of teachers is still faced with problems, including the weak legal protection. Facts are revealed when problems are encountered, such as teachers experiencing criminalization with allegations of committing violence in the learning process, teachers must face the legal process themselves, and there is no mechanism for handling them. In order to realize equitable teacher protection, this study uncovers the problem of how to develop a model to realize equitable teacher protection through a non-penal policy approach. This research was used the transdisciplinary approach involving several stakeholders through the sociological juridical research method, the results of research on the importance of being regulated by regional policies were obtained through the establishment of the Legal Service and Teacher Protection Unit (UPHPG) which is a coordinating institution to solve the problem of criminalizing teachers by prioritizing non-penal policies. The non-penal policy in handling the problem of teacher criminalization through UPHPG is formulated an integral and comprehensive handling mechanism involving several stakeholders and prioritizing prevention efforts through communication, information and education to all parties, providing consultation and legal assistance as well as legal assistance services to good teachers.

Keywords : *Fairness; Non-Penal Policy Protection, Teacher*

A. INTRODUCTION

The teachers in carrying out their professional duties have a legal basis as a guide for every teacher to know the scope of their professional rights and obligations, including Act No. 20 of 2003 concerning the National Education System, Act No. 14 of 2005 concerning Teachers and Lecturers, and Government Regulation Number 74 of 2008 concerning Teachers.

Hawley argued that teacher professional development is the key to improving education¹ Teacher's professional learning is one way to support students' skills in preparing for further education and being ready to the job market.² Teacher is a very noble profession for the community because it is considered as a figure instilling the values of integrity to students.³ It is almost undeniable that the quality of teaching in schools greatly affects students' knowledge, attitudes and skills.⁴ The professional development of teachers has become closely linked to many school improvement efforts around the world⁵

Teachers have three main tasks, namely professional duties, humanitarian tasks and social tasks. Professional duties include various tasks related to their profession, namely carrying out the mandate to educate the nation's generation through learning activities, so that teachers are required to have pedagogical abilities, teaching methods, to the ability to understand students both from their character, psychology, and background.⁶

Teachers and students are like two sides of a coin, both of which cannot be separated in the world of education. The interaction between the two sometimes runs harmoniously, but not infrequently it is contradictory.⁷ In reality, we are faced with the phenomenon of violence, harassment and even criminalization by parents against teachers. This phenomenon became the news of various media, both print media, electronic and online. Problems between parents and teachers are part of a form of social conflict that needs to be resolved immediately because it has the potential to have a detrimental impact on educational institutions⁸

Tamsil Muis revealed that the results of his research show that the forms of violence that often occur in schools are verbal (saying harsh words and offending), psychological (ignoring, threatening), and physical (twisting, kicking, pinching).⁹ Seeing the phenomena mentioned above, it is urgent to

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- 1 Dede, Chris, Diane Jass Ketelhut, Pamela Whitehouse, Lisa Breit, and Erin M. McCloskey., A Research Agenda for Online Teacher Professional Development, *Journal of Teacher Education*, Vol. 60, No. 1, 2009, page. 8–19
 - 2 Darling-hammond, Linda, Maria E Hyler, and Madelyn Gardner., E Ff Ective Teacher Professional Development, June 2017;
 - 3 Munawir, AHmad., Paradigma Guru Dan Orangtua Terhadap Penerapan Undang-Undang Perlindungan ANak Di Sekolah, *Journal of Islamic Economic Law*, Vol. 4, No. 2, 2019, page. 110–23
 - 4 Koski, William., Teacher Collective Bargaining, Teacher Quality, and the Teacher Quality Gap: Toward a Policy Analytic Framework, *Harv. L. & Pol'y Rev*, Vol. 6, No. 2000, 2012, page. 67
 - 5 Borko, H., J. Jacobs, and K. Koellner., Contemporary Approaches to Teacher Professional Development, *International Encyclopedia of Education*, No. 3, November 2017, page. 548–56
 - 6 Saihu, TAufik., Perlindungan Hukum Bagi Guru, *Al Amin: Jurnal Kajian Ilmu Dan Budaya Islam*, Vol. 5, No. 1, 2019, page. 49-58
 - 7 Fauzi, Imron., Dinamika Kekerasan Antara Guru Dan Siswa Studi Fenomenologi Tentang Resistensi Antara Perlindungan Guru Dan Perlindungan Anak, *Journal of Chemical Information and Modeling*, Vol. 53, No. 9, 2019, page. 1689-99
 - 8 Rozi, *Strategi Pencegahan Dan Pengendalian Konflik Antara Orangtua Dan Guru Di Madrasah*, page. 1-8
 - 9 Muis, Tamsil., Tindakan Kekerasan Guru Terhadap Siswa Dalam Interaksi Belajar Mengajar (Studi Kasus Di SMAN Surabaya), *Jurnal Pendidikan (Teori Dan Praktik)*, Vol. 2, No. 1, 2017, page. 86

pay attention to how to realize the protection of teachers so that they do not become victims of criminalization in carrying out their professional duties. Victims in Arief Gosita's view are those who suffer physically and mentally as a result of the actions of others who seek fulfillment of their own or other people's interests that conflict with their interests and suffer from human rights.¹⁰

This study wants to reveal the problem of how the concept of realizing equitable teacher protection through non-penal policies is contained in regional regulations. Teacher protection in reality, even though it has been regulated in various laws and regulations, has not accommodated the realization of equitable teacher protection, especially for private or private teachers honorary.

As research that has been done by Fahriza M. Tanjung, et al¹¹ that teacher protection policies have not been able to protect private teachers. Likewise, the results of research conducted by researchers, teachers have not received legal mechanisms and services when dealing with the problem of criminalizing teachers.

B. RESEARCH METHODS

This study uses a transdisciplinary approach, because to solve this problem it will be studied from sociological, empirical and juridical aspects because it involves other fields of science such as psychology, education, policy makers as stakeholders. This study uses the juridical-sociological method, intended to understand the relationship or relationship between legal phenomena and society. Because basically law is not only seen as an independent or isoteric normative intensity, but rather as a real part of the social system related to social, cultural and other variables. Through this method, it is hoped that hidden meanings behind or the subject under study will be found, so that they can reveal the secrets of something by gathering information in appropriate circumstances, using a systematic, directed and accountable way of working. Not only recording things that appear explicitly, but must see the whole phenomenon that occurs.

C. RESULT AND DISCUSSION

1. The Teacher Criminalization in Ketapang Regency and Pontianak City

Violence in education is behavior that exceeds the boundaries of the code of ethics in the world of education, both in physical form and harassment of one's rights. The perpetrators can be school leaders, teachers, staff, students, parents or guardians of students, even the

10 AS, Yenny, Nurfitriawati Nurfitriawati, Klara Dawi, and Sri Ayu Septinawati., Legal Protection for Human Trafficking Victim, Especially Women and Children in West Kalimantan, *International Journal of Multi Discipline Science (IJ-MDS)*, Vol. 1, No. 1, 2018, page.42

11 Tanjung, Fahriza Marta, and Restu Darwin., Implementation of Private Teacher Protection Policies, Vol. 384, 2020, page. 416-20

community.¹² The reality of violence in the world of education occurs a lot where the perpetrators are teachers with the perception of taking disciplinary action against their students, and conversely parents/families of students react on the contrary by taking their own actions in the form of acts of violence or intimidation and threats against teachers. In essence, teachers should realize that discipline is not synonymous with violence. Discipline requires firmness, not violence.¹³ Disciplinary actions taken by teachers to their students, which in the past were considered normal, are now considered to violate human rights. As a result, the teacher seems to face a dilemma, on the one hand he has to enforce school discipline and order, while on the other hand, he is worried about being criminalized by parents or child defender NGOs on charges of committing violence against children.¹⁴

At the empirical level in Ketapang Regency and Pontianak City, it shows that teacher criminalization still occurs even though the data on violence has not been comprehensively recorded, because the reality is that when violence occurs there are various forms and variations of its handling so that quantitatively there has never been a data collection on cases of violence both committed by teachers and violence against teachers in carrying out their professional duties. As revealed in the data on handling cases of violence committed by teachers against their students in the following table:

Table 1: Data on Cases of Suspected Teaching Staff/Teachers handled by the Police for 2015-2020

No	Year	Number of Cases handled by the Police		Quantity
		Ketapang Police Resort	Pontianak Police Resort	
1	2015	-	2	2
2	2016	-	2	2
3	2017	-	-	-
4	2018	1	2	3
5	2019	-	1	1
6	2020	-	-	-
Quantity		1	7	8

Source: Processed Field Research

The facts in the table above show that there are still teachers who are reported to law enforcement officials with suspicion of committing

12 Muis, Tamsil., Tindakan Kekerasan Guru Terhadap Siswa Dalam Interaksi Belajar Mengajar (Studi Kasus Di SMAN Surabaya), *Jurnal Pendidikan (Teori Dan Praktik)*, Vol. 2, No. 1, 2017, page. 86

13 *Ibid.*

14 Mudlofir, Ali, Perlindungan Profesi Guru Di Persimpangan Jalan, No. 26, 2011, page.20-41

violence against their students even though they are based on the behavior of children who are still problematic or naughty, so they must be resolved through legal channels. Thus, the reality is that in handling teacher problems, a clear mechanism has not been found, as revealed from the results of research conducted on teachers, school administrators and PGRI administrators in Ketapang Regency and Pontianak City, there are several actions taken when facing cases of violence against/by teachers as illustrated in the following table:

Table 2: Actions taken in resolving cases of violence against/by teachers in Pontianak City and Ketapang District

No	Action	Ketapang Regency		Pontianak Regency		Total Quantity	
		Quantity	%	Quantity	%	Quantity	%
1	Completed by deliberation (peaceful at school)	12	48	17	48,57	29	48,33
2	Solved by giving compensation	1	4	1	2,86	2	3,33
3	Completed by the Teacher Professional Organization (PGRI)	5	20	6	17,14	11	18,33
4	Completed through related agencies	5	20	5	14,29	10	16,67
5	Resolved through a legal process	1	4	2	5,71	3	5
6	Etc	1	4	4	11,43	5	8,34
	Quantity	N=25	100	N=35	100	60	100

Source: Processed Field Research

The data in the table above reveals that most of the respondents in Ketapang Regency and Pontianak City, 29 (48.33%) stated that when they faced problems between teachers and students, they were resolved

through deliberation at school. Meanwhile, 11 (18.33%) stated that it was completed by the teacher professional organization (PGRI) and a total of 10 (16.67%) respondents stated that it was completed through the Education and Culture Office. In addition, there are 3 (5%) respondents who resolved through legal processes, and a number of 2 (3.33%) were resolved through the provision of compensation and there were 5 (8.34%) respondents stated otherwise, such as being distributed through social media.

When field research was conducted through a focused discussion forum, although most of the problems were resolved peacefully, namely 48% in Ketapang Regency and 48.57% in Pontianak City, the school revealed the need for the Government to accommodate the establishment of a unit that could be a forum for resolving problems against teacher, which involves various related parties in handling it. Because it was found that even though it was resolved peacefully, but peace here was interpreted as not being processed legally, but the parents of students still demanded that the teacher be given administrative sanctions in various forms by the school on the basis that the teacher had committed violence against his students, while the teacher argued that the violence was committed in framework of the educational process for its students. Under these conditions, the school hopes that it is necessary to establish a unit or institution that can be a forum for solving these problems and of course can provide protection for both teachers and children.

2. Non-Penal Policy as an Effort to Handle Violence in the World of Education to Realize the Protection of Just Teachers

Several hypotheses can be proposed to explain the phenomenon of violence that occurs in the world of education. First, violence arises as a result of violations accompanied by punishment, especially physical. Second, violence can be caused by a bad education system. Third, violence may also be influenced by the social environment and social media impressions. Fourth, violence can be a reflection and development of people's lives which are experiencing rapid shifts, thus necessitating the emergence of an attitude of instant solutions and shortcuts. And, fifth, violence is influenced by the socio-economic background of the perpetrator.¹⁵ The results show that compliance in overall policy implementation is inversely related to violence and is positively related to teacher protection.¹⁶

The facts and factors that influence the occurrence of violence in the world of education mentioned above certainly require comprehensive handling, where legal action or penal measures are expected to be only

15 Muis, Tamsil., Tindakan Kekerasan Guru Terhadap Siswa Dalam Interaksi Belajar Mengajar (Studi Kasus Di SMAN Surabaya), *Jurnal Pendidikan (Teori Dan Praktik)*, Vol. 2, No. 1, 2017, page. 86

16 Hall, William J., and Hayden C. Dawes., Is Fidelity of Implementation of an Anti-Bullying Policy Related to Student Bullying and Teacher Protection of Students?, *Education Sciences*, Vol. 9, No. 2, 2019, page. 1-17

an *ultimum remedium*, but the most important thing in addressing this problem is through non-penal policies.

Barda Nawawi Arief once revealed that the use of non-penal means has advantages. From the point of view of criminal politics, the most strategic policy is through non-penal means, because it is more preventive in nature. It means that non-penal means have prospects and tendencies to prevent violence. Non-penal handling of violence is fundamental and vital because it focuses on preventive aspects, where the main target is to deal with factors conducive to violence.¹⁷

Based on the opinion above, the expected non-penal policy in handling violence in the world of education is a policy that is more directed towards preventive efforts to prevent the occurrence of violence in question and persuasive, namely handling by building communication and prioritize the interests of protecting children/students and the interests of providing fair teacher protection.

Justice, in the literature is often interpreted as an attitude and character. Attitudes and characters that make people act and hope for justice are justice, while attitudes and characters that make people act and expect injustice is injustice. In general it is said that an unfair person is a person who does not obey the law (unlawful, lawless) and an unfair person (un-fair), then a just person is a person who obeys the law (law-abiding) and is fair. Because the act of fulfilling/obeying the law is fair, then all law-making actions by the legislature in accordance with the existing rules are fair. The purpose of making laws is to achieve progress in the welfare and happiness of the community. Thus, all actions which tend to produce and maintain the happiness of society are just.¹⁸

Aristotle argued that justice should be understood in terms of equality. This opinion is in accordance with social justice for all Indonesian people. It can be concluded that all Indonesian people receive equal treatment in obtaining justice. However, Aristotle makes an important distinction between numerical equality and proportional equality. Numerical equality equates every human being as a unit with equal rights and obligations. This equality means that the equality of rights is the same for all people in obtaining justice for their human rights. For example, the right to life, the right to freedom, the right to express opinions and others. Whereas proportional equality gives each person what is his right according to his abilities and achievements.¹⁹ Hart argues that the general principle of justice in law is equality and inequality. This means that similar things are treated in the same way, while different things are treated in different ways. This view gives the perception that equality of individuals must be treated the same as other individuals, becomes relative if equality is different from what is done to

17 Korupsi, *Kebijakan Non Penal (Penanggulangan Korupsi) Berdimensi Transendental*, page. 384-91

18 Dwisvimiar, Inge., Keadilan Dalam Perspektif Filsafat Ilmu Hukum, *Jurnal Dinamika Hukum*, Vol. 11, No. 3, 2011, page. 522-31

19 Febriansyah, Ferry Irawan, Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa, *DiH: Jurnal Ilmu Hukum*, Vol. 13, No. 25, 2017, page. 1

the way it is treated, as well as the treatment of similar things in the same way.²⁰ Justice according to Thomas Aquinas determines how people relate to people other than in terms of *iustum*, namely about what is appropriate for others according to a proportional equality (*aliquod opus adaequatum alteri secundum aliquem aequalitatis modum*).²¹ In the modern era, one who is considered to have an important role in developing the concept of justice is John Borden Rawls. Rawls, argues that justice can only be enforced if the state implements the principle of justice, in the form that everyone should have the same rights to obtain basic liberties; and social and economic differences should be structured in such a way that they are of the greatest benefit to those in the most disadvantaged positions, and with respect to positions and positions which are open to all on the basis of equitable equality of opportunity.²²

Based on the idea of a non-penal policy in order to realize equitable teacher protection, the idea that was built was the need for a regional policy in dealing with violence in the world of education in the form of the importance of forming a unit/institution under the Regional Work Unit in charge of Education and Culture. The formation of the unit/institution is regulated in a Regional Regulation that mandates its formation, and the researcher gives the idea that the unit/institution is called the Legal Service and Teacher Protection Unit (abbreviated UHPG), which so far does not exist. UHPG²³ can be said as a form/organizational platform that can be used as a non-penal policy model in providing legal protection to teachers in responding to violence in the world of education and also prioritizing the protection of children, where the forum/organization consists of representatives from the local government, both from the agency that handles Education and Culture as well as the Office in charge of Child Protection, Teacher Professional Organizations, Education Units, Police Officers, Academics and Community Institutions engaged in legal aid.

UHPG is a coordinating institution that can be given non-penal duties and roles, including coordinating efforts to prevent and handle acts of violence, threats, discriminatory treatment, intimidation, or unfair treatment from the students, parents of students, the community, the government, or other parties. others against teachers, as well as acts of violence from teachers against their students; as well as persuasive efforts in the form of providing legal consulting services to teachers; provide legal assistance services both inside and outside the court to teachers; and monitor the progress of the implementation of legal

20 Hayat, Keadilan Sebagai Prinsip Negara Hukum: Tinjauan Teoritis Dalam Konsep Demokrasi, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, Vol. 2, No. 2, 2015, page. 388–408

21 Dwisvimiari, Inge., Keadilan Dalam Perspektif Filsafat Ilmu Hukum, *Jurnal Dinamika Hukum*, Vol. 11, No. 3, 2011, page. 522-31

22 Dwisvimiari, Inge., Keadilan Dalam Perspektif Filsafat Ilmu Hukum, *Jurnal Dinamika Hukum*, Vol. 11, No. 3, 2011, page. 522-31.

23 Serah, Yenny Aman, and Rini Setiawati., Non-Penal Policy Against Teacher Criminalization, *Journal of Critical Review*, Vol. 7, No. 14, 2020, page. 656–60

protection for teachers; and carry out reporting and evaluation.²⁴

The policy of establishing the UPHPG as a model in providing teacher protection is regulated by regional policies with a non-penal policy approach. Understanding policy as a substitute for the term "policy" or "*beleid*" especially in the sense of "*wijsbeleid*", according to Robert R. Mayer and Ernest Greenwood policy (Policy) can be formulated as a decision that outlines the most effective and most efficient way to achieve a goal collectively determined.²⁵ David L Sills, In relation to the notion of policy, it states a plan or program regarding what will be done in dealing with certain problems and how to do or implement something that has been planned or programmed.²⁶

Criminal Policy as put forward by G. Peter Hoefnagles²⁷ that the Criminal Policy is "a rational effort from the government and the community in carrying out countermeasures carried out through:

- a. Criminal policy is the science of responses
- b. Criminal policy is the science of crime prevention
- c. Criminal Policy is a policy of designing human behavior as crime
- d. Criminal Policy is a rational total of the responses to crime

Overcoming the problem of violence in the world of education in order to avoid the criminalization of teachers through the "non-penal" policy will be better able to handle the factors that cause crime centered on problems or social conditions that directly or indirectly can cause or fostering rampant criminalization of teachers. From this policy, prevention and handling efforts by involving the community as well as focused collaboration both at the Center and the Region are clearly described as an important part and key to reducing the level of criminalization of teachers, if effective and synergistically run, the handling and the number of victims will be reduced and handled.

The Non-Penal Approach is an approach outside of criminal law where the pattern of this approach is also divided into two approaches, namely:

- a. Prior to the occurrence of cases or problems of criminalization of teachers, namely through prevention efforts by increasing awareness, understanding and concern for the wider community, especially parents of students to participate in anticipating as early as possible and protecting teachers;
- b. After the occurrence of the case through legal protection efforts, through consultation and legal assistance as well as legal assistance to teachers.

The main objective of non-penal efforts in realizing teacher

24 AS, *Perlindungan Hukum Terhadap Guru Yang Berkeadilan Di Kota Pontianak*.

25 Priyatno, Dwidja., *Kriminalisasi Kebijakan*, Jurnal Wawasan Yuridika, Vol. 23, No. 2, 2010

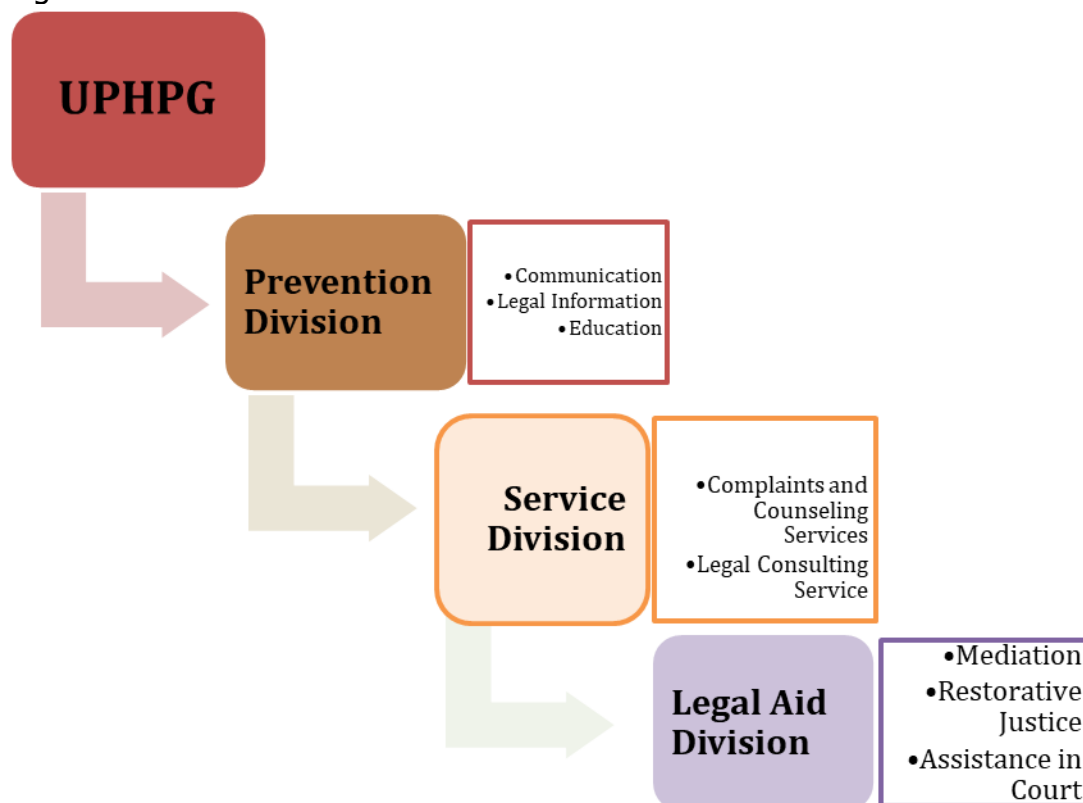
26 *Ibid*.

27 Rina Melati Sitompul, M.Hamdan, Edy Ikhsan, Mahmud Mulyadi., *Kebijakan Non Penal Dalam Upaya Pencegahan Dan Perlindungan Korban Tindak Pidana Perdagangan Orang (Studi Kasus Provinsi Sumatera Utara)*, *USU Law Journal*, Vol. 2, No. 3, 2014, page. 190-204

protection is how to be able to improve certain social conditions, directly having a preventive effect on the problem of teacher criminalization. The overall effort of non-penal preventive activities has a strategic position in holding key positions which should continue to be intensified and made effective.

From the discussion, efforts were made to realize a non-penal policy in providing legal protection for teachers through the establishment of UPHPG. The UPHPG is designed with a work structure as illustrated as follows:

Figure 1: UPHPG Structure



The picture above describes that UPHPG is a coordinating institution that involves several roles of related agencies and institutions, including regional apparatus organizations that handle the fields of education and culture, social and child protection, Teacher Professional Organizations, Education Units, Police Officers, Legal Aid Institutes, Academics and Community Leaders who observe education and children, community institutions engaged in child protection and psychologists who are divided into several divisions, including:

a. Prevention Division;

The Prevention Division has the task and role of coordinating efforts to prevent and handle acts of violence, threats, discriminatory treatment, intimidation or unfair treatment on the part of students, parents of students, community, government, or other parties against teachers.

Prevention efforts are carried out through communication, information and education activities related to increasing public

knowledge and understanding of the importance of respect, fulfillment and protection of the teaching profession in carrying out the task of carrying out education in order to shape the character and integrity of students as the nation's generation. Besides that, it is also important to prioritize communication, information and education activities for teachers related to child protection by prioritizing the perspective of child protection.

Prevention efforts through communication, information and education can be carried out through dissemination, counseling and socialization programs.

b. Service Division

The Service Division has the duty and role to provide complaints and counseling services from teachers who are dealing with problems with students in carrying out their professional duties.

Complaints and counseling are given access for teachers to convey the problems they are facing in order to get solutions to their problems so that they get legal protection.

Legal Consultation is a legal service in the form of advice, explanation, information or instructions to teachers who have legal problems, to solve the problems they face in accordance with the provisions of the applicable laws and regulations.

c. Legal Aid Division

This legal aid division has the task and role of providing assistance to teachers who experience acts of violence, threats, discriminatory treatment, intimidation or unfair treatment on the part of students, parents of students, the community, government, or other parties which are resolved either through court proceedings or in court. out of court, through mediation and/or restorative justice.

Legal Aid is a legal service service in the form of providing legal assistance through legal counsel from the Legal Aid Institute to provide defense of cases faced by teachers who want to obtain justice, both non-litigation through mediation, restorative justice and litigation in litigation in court.

The division is tasked with and has a role in carrying out the objectives of implementing legal aid, namely:

- 1) Realizing the principle of equal opportunity to obtain justice for community members who need it, in this case the teachers.
- 2) Provide advice, explanations, information, or instructions to teachers who have legal problems
- 3) Assist teachers in obtaining justice in the legal process, if they have to take legal action.

D. CONCLUSION

Regional policy through the establishment of the Legal Service and Teacher Protection Unit (UPHPG) as a coordinating institution to resolve the problem of teacher criminalization by prioritizing non-penal policies is the development of a model for realizing equitable teacher protection. and

comprehensively involving several stakeholders and prioritizing prevention efforts through communication, information and education to all parties, providing complaint and counseling services as well as legal consultation, and legal assistance services to teachers, both litigation and non-litigation, both in the form of mediation and restorative justice.

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