

Legal Service Unit and Teacher Protection as A Mediation Forum for Penal Violence in the World of Education

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ABSTRACT

This study offers a development of a model of fair teacher protection, with a focus on research conducted in West Kalimantan, particularly in Pontianak City and Ketapang District. The offer of a just teacher protection model is based on the empirical facts that there is still violence in the world of education and/or the criminalization of teachers that is still happening. Although various laws and regulations have been regulated to provide legal protection for teachers, the mechanism for implementing legal protection for teachers has not yet been formulated, so the reality is that when problems occur in the world of education and/or criminalization of teachers, they are resolved in various ways, either through government agencies, teacher organizations, schools or police officers, and there are even mutual opinions on social media. Through the socio-juridical research method through interviews and discussions, it was found that the effort to provide legal protection for teachers is important to be regulated through regional policies related to the formation of the Legal Service Unit and Teacher Protection or Unit Pelayanan Hukum dan Perlindungan Guru (UPHPG) which can become a coordinating institution and a forum for solving legal problems for teachers. The focus of this article describes how the UHPG is intended to be a mediation platform for penal mediation in resolving violence in education and/or criminalizing teachers.

Keywords: teacher criminalization, teacher protections, UHPG, mediation penal

INTRODUCTION

Violence in education and/or criminalization of teachers is behavior that violates the code of ethics and rules in the world of education..[1] Empirical facts show that violence in education occurs due to several factors, including weak communication between parents, students, teachers, and the school[2]. communication that is not built properly has an impact on teachers facing criminalization, because of the perception that schools should be places to provide protection for their students, so that disciplinary actions taken by teachers are considered violent against students..[3] The results of research by A. M. Thompson et al. revealed that the analysis of teacher profiles at the beginning showed that in the educational process, if parental intervention was high, they tended to judge students to have more external behavior. [4] Other

research has shown that inexperienced and trusted teachers are concentrated in poor, minority schools, hence low-performing.[5] This shows the importance of communication between parents, students, teachers and the school. A good and harmonious relationship between parents, teachers and students must be maintained. Therefore, intense communication is a very important key to do. Many cases of violence and criminalization of teachers in schools are caused by miscommunication. Students miscommunicate when receiving disciplinary punishment from the teacher, parents miscommunicate when listening to a unilateral report from their child who has been punished by the teacher.[6]

The normative protection policy for teachers has been regulated in laws and regulations which include legal protection, professional protection, as well as protection of occupational safety and health and protection of intellectual property rights.[7] This study explores the importance of formulating the development of a legal protection model for fair teachers.

Although various regulations have been regulated regarding teacher protection, substantively these arrangements are still not able to provide comprehensive legal protection to teachers.[8] The reality is that not all teachers have access to protection, including legal protection. In fact, the mechanism for solving problems of violence in education and/or criminalization of teachers has not been regulated, so that the implementation of legal protection policies for teachers, especially private teachers, has not been implemented [9] [10]. Therefore, the presence of implementing regulations in the form of regional policies as a legal umbrella for local governments in taking legal protection policy steps for teachers is urgent.

Based on previous research, that in the case of teacher criminalization and/or violence in education there is no clear mechanism for handling it, so that the parties solve the problem themselves in various forms, so that the presence of the Legal Service and Teacher Protection Unit (UPHPG) becomes urgently regulated in regional policies [8].

Empirically, the criminalization of teachers has an impact on the emergence of teacher apathy in carrying out their profession as educators and teachers, where teachers become less assertive towards students who are naughty or violate school rules. in educating is very important so as not to be criminalized. [12]

In order to accommodate this, the establishment of a legal service unit and teacher protection abbreviated as UPHPG becomes relevant and urgent for its formation. This research was conducted by conducting policy advocacy to stakeholders with the research target being conducted in Pontianak City and Ketapang Regency. The problems formulated and the objectives to be achieved in this research are how the Legal Service and Teacher Protection Unit as an institution is constructed as a model development for realizing equitable teacher protection, which is then regulated into a regional policy. The focus of the study in this research is how the **UPHPG** is intended to be a mediation forum for solving the problem of violence in education and/or the criminalization of teachers.

RESEARCH METHOD

The approach in this research is transdisciplinary, because to solve problems, it is studied from sociological, empirical and juridical aspects using other fields of science such as psychology, education, policy makers as stakeholders (stakeholders). This study uses the juridical-

sociological method, intended to understand the 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.

DISCUSSION

Institutional Urgency of the Legal Service and Teacher Protection Unit (UPHPG)

W. J. Hall and H. C. Dawes' research reveals that in the future it is necessary to identify a constellation of policy strategies that need to be activated in schools to eliminate bullying.[13] On the other hand, teacher organizations promote student success by creating professional teaching staff with adequate income through continuing education for teachers.[14] This was initiated in the context of increasing teacher professionalism. Martin Luther King Jr.[15], namely: "Intelligence plus character is the real goal of education".

The reality of violence by/against teachers, especially in the teaching and learning process, is more common where the perpetrators are teachers with the perception of taking disciplinary action against their students, and on the other hand parents/families of students react on the contrary by committing their own acts of violence or intimidation and threats against teachers. Based on this reality, various kinds of models have been carried out, as illustrated in the following table:

No	Action	Ketapang Regency		Pontianak City		Total Quantity	
		Quant ity	%	Quant ity	%	Quantit y	%
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 Proffesional 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 faced with 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. Besides that, 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, 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 carried out 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.

The concept of teacher protection is one of the issues that has received attention from various parties, this is because there are opinions from several groups who think that currently teachers are in a condition that is vulnerable to various things that pose a threat to the teaching profession. However, this does not mean that the existence of teacher protection creates legal immunity for teachers. So it is clear that in this case the government must be able to form a regulation that can create teacher protection that meets the expectations of various parties.

The process and mechanism for protecting teachers is constructed by establishing a special unit and institution under the Office in charge of Education and Culture, which institution is a coordinating institution that can be given tasks and roles, including coordinating efforts to prevent and handle acts of violence in education. and/or criminalization of teachers [16]

The Legal Services and Teacher Protection Unit (UPHPG) was conceived by researchers as an institution that can provide legal protection for teachers with justice. UPHPG is a coordinating institution that works integrally and prioritizes a non-penal approach.[17] The construction of an integral UPHPG institutional formation becomes important to involve various parties by prioritizing the resolution of problems, including through penal mediation.

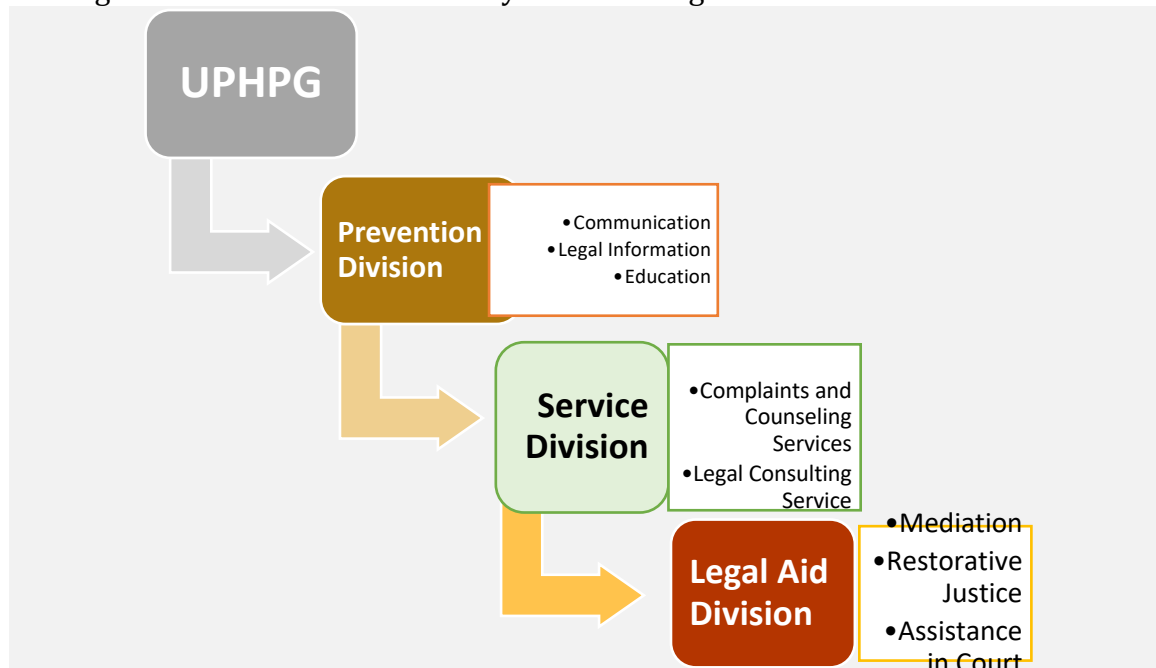
UPHPG AS A PENAL MEDIATING MEDIA FOR THE RESOLUTION OF VIOLENCE PROBLEMS IN THE WORLD OF EDUCATION

UPHPG is a coordinating institution that can be assigned non-penal duties and roles, including coordinating efforts to prevent and handle violence in education and/or criminalizing threat teachers, 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 protection for teachers; and carry out reporting and evaluation.[7].

The policy for establishing the UPHPG as a model in providing teacher protection is regulated by regional policy. 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 that is set collectively.[18]

The development of a model for realizing equitable teacher protection is the importance of establishing UPHPG which is described by the following structure:



From the picture of the structure of the UPHPG formed above, it is important to discuss the 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. The important thing for settlement out of court is settlement through penal mediation.

Penal mediation is an alternative settlement of criminal cases outside the penal route.[19] In the settlement of criminal cases, if you take the penal route, usually there is always a criminal imposition by the judge against the perpetrator, this philosophically sometimes does not satisfy all parties, therefore it is necessary to think about resolving criminal cases through the ADR (Alternative Dispute Resolution) route with the aim that resolve the conflict between the perpetrator and the victim.

From the perspective of terminology, penal mediation is known as mediation in criminal cases, mediation in penal matters, victim offenders mediation, offender victim arrangement[20]. The existence of penal mediation is a new dimension studied from theoretical and practical aspects.

As time goes by, as the number of cases is increasing day by day, the polarization and penal mediation mechanisms are one solution to reduce the volume of cases[20].

Stuart M. Widman calls penal mediation a "process with a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute".[21] M. William Baker, mentions penal mediation as "a process of bringing victims and offenders that reach a mutual agreement regarding restitution would become the norm." [22][23] Thus penal mediation is the settlement of criminal cases that are carried out without going through the criminal justice system, but by involving victims, perpetrators and third parties as mediators carried out by deliberation to reach a win-win solution[24].

Penal mediation can be studied from a philosophical, sociological and juridical perspective. From a philosophical perspective, the existence of penal mediation contains the principle of applying a "win-win" (win-win) solution and not ending in a "lose-lose" (lost-lost) or "win-lose" (win-lost) situation. the judiciary wants to achieve by achieving formal justice through the litigative legal process (law enforcement process). Through the penal mediation process, the highest peak of justice is obtained because of the agreement of the parties involved in the criminal case, namely between the perpetrator and the victim.[25] Mark S. Umbreit defines restorative justice as a process to involve, as much as possible, all parties who have a role in the occurrence of a crime to jointly identify and understand the harm it causes, the wishes of the victim, and obligations of the perpetrators of criminal acts, with the aim of restoring and placing everything in its place as best as possible[22] mediation as a form of ADR is possible in criminal cases, but is still given an umbrella/legal framework (mediation within the framework of criminal law).), which can be integrated into material criminal law (KUHP) or formal criminal law (KUHP)[24].

As is the case in solving problems of violence in the world of education and/or criminalizing teachers through the establishment of this UHPG, especially in the Legal Aid division, UHPG can resolve these problems with a penal mediation approach, by presenting related parties such as the teacher, the student and their parents/family , the school, PGRI and other related parties to find a win win solution in handling it, and it doesn't have to end with being resolved before the Court or having long debates on social media that can damage the image of the world of education.

CONCLUSION

The formation of the UHPG is a crucial thing to realize, as a strategic step in handling the problem of violence in education and/or criminalizing teachers in order to realize equitable legal protection for teachers.

The formation of the UHPG is carried out with a regional policy with a structure that includes a prevention division, a service division and a legal aid division, where in the legal aid division it is important to prioritize the development of a model for solving the problem of teacher criminalization with penal mediation.

In the context of the settlement of criminal cases, penal mediation is the settlement of criminal cases through deliberation with the help of a neutral mediator, attended by victims and perpetrators along with their parents and community representatives, with the aim of

recovering for victims, perpetrators, and the community, so that this can be applied in resolving criminal cases. the problem of violence in the world of education and/or criminalization of teachers through the UHPG forum, so that the solution with this model is expected to realize just teacher protection.

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References

- [1] R. H. Abdul Rahman Prakoso, "Perlindungan Hukum Terhadap Profesi Guru Atas Tindakan Pemberian Hukuman Terhadap Siswa," pp. 177–187.
- [2] Ta. Saihu, "Perlindungan Hukum Bagi Guru," *Al Amin J. Kaji. Ilmu dan Budaya Islam*, vol. 5, no. 1, pp. 49–58, 2019.
- [3] H. Newnham, "When is a teacher or school liable in negligence?," *Aust. J. Teach. Educ.*, 2000, doi: 10.14221/ajte.2000v25n1.5.
- [4] A. M. Thompson, K. C. Herman, M. A. Stormont, W. M. Reinke, and C. Webster-Stratton, "Impact of Incredible Years® on teacher perceptions of parental involvement: A latent transition analysis," *J. Sch. Psychol.*, vol. 62, no. April, pp. 51–65, 2017, doi: 10.1016/j.jsp.2017.03.003.
- [5] L. Cohen-Vogel, L. Feng, and L. Osborne-Lampkin, "Seniority Provisions in Collective Bargaining Agreements and the "Teacher Quality Gap,"" *Educ. Eval. Policy Anal.*, vol. 35, no. 3, pp. 324–343, 2013, doi: 10.3102/0162373713482765.
- [6] I. Fauzi, "Dinamika Kekerasan Antara Guru dan Siswa Studi Fenomenologi Tentang Resistensi Antara Perlindungan Guru dan Perlindungan ANak," *J. Chem. Inf. Model.*, vol. 53, no. 9, pp. 1689–1699, 2019, doi: 10.1017/CBO9781107415324.004.
- [7] Y. AS, "Perlindungan Hukum Terhadap Guru Yang Berkeadilan Di Kota Pontianak," *J. Huk. Media Bhakti*, vol. 3, no. Desember 2019, pp. 153–164, 2019, doi: 10.32501/jhmb.v3i2.105.
- [8] Y. Serah and R. Setiawati, "Urgency Formation of Legal Service Institutions and Teacher Protection," in *Proceedings of the Proceedings of the First Brawijaya International Conference on Social and Political Sciences, BSPACE, 26-28 November, 2019, Malang, East Java, Indonesia, 2020*, pp. 1–8, doi: 10.4108/eai.26-11-2019.2295209.
- [9] F. M. Tanjung and R. Darwin, "Implementation of Private Teacher Protection Policies," vol. 384, no. Aisteel, pp. 416–420, 2020, doi: 10.2991/aisteel-19.2019.91.
- [10] Ah. Munawir, "Paradigma Guru dan Orangtua Terhadap Penerapan Undang-Undang Perlindungan ANak di Sekolah," *J. Islam. Econ. Law*, vol. 4, no. 2, pp. 110–123, 2019.
- [11] A. Imron, S. Supangat, and N. Rosyidah, "Penguatan Kesadaran Hukum Perlindungan Anak Bagi Guru Madrasah Diniyah Takmiliyah Dan Pondok Pesantren Anak-Anak Se Kabupaten Blora Jawa Tengah," *Dimas J. Pemikir. Agama untuk Pemberdaya.*, vol. 15, no. 2, p. 1, 2016, doi: 10.21580/dms.2015.152.743.
- [12] F. Fuad and S. Achmad, "Dialektika Perlindungan Hukum Bagi Guru Dalam Mendisiplinkan Siswa di Sekolah," *J. Law Policy Stud.*, vol. 1, no. 1, pp. 56–65, 2020.
- [13] W. J. Hall and H. C. Dawes, "Is fidelity of implementation of an anti-bullying policy related to student bullying and teacher protection of students?," *Educ. Sci.*, vol. 9, no. 2, pp. 1–17, 2019, doi: 10.3390/educsci9020112.
- [14] W. Koski, "Teacher collective bargaining, teacher quality, and the teacher quality gap: Toward a policy analytic framework," *Harv. L. Pol'y Rev.*, vol. 6, no. 2000, p. 67, 2012.

- [15] D. B. Buller et al., "Accuracy of principal and teacher knowledge of school district policies on sun protection in California elementary schools," *Prev. Chronic Dis.*, vol. 15, no. 1, pp. 1–10, 2018, doi: 10.5888/pcd15.170342.
- [16] R. Yenny AS, Setiawati, "Fulfillment Of Teacher Protection Rights," pp. 1–10, 2019.
- [17] Y. A. Serah and R. Setiawati, "Non-Penal Policy Against Teacher Criminalization," *J. Crit. Revieww*, vol. 7, no. 14, pp. 656–660, 2020, doi: <http://dx.doi.org/10.31838/jcr.07.14.115>.
- [18] D. Priyatno, "Kriminalisasi Kebijakan," *J. Wawasan Yuridika*, vol. 23, no. 2, pp. 146–154, 2010.
- [19] S. Lasmadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia," *Inovatif*, vol. Volume 4, no. No 5, pp. 1–10, 2011.
- [20] L. Mulyadi, "Mediasi Penal Dalam Sistem Peradilan Pidana Indonesia: Pengkajian Asas, Norma, Teori Dan Praktik," *Yust. J. Huk.*, vol. 2, no. 1, 2013, doi: 10.20961/yustisia.v2i1.11054.
- [21] U. Usman and A. Najemi, "Mediasi Penal di Indonesia," *Undang J. Huk.*, vol. 1, no. 1, pp. 65–83, 2018, doi: 10.22437/ujh.1.1.65-83.
- [22] N. Surbakti, "Mediasi Penal Sebagai Terobosan Alternatif Perlindungan Hak Korban Tindak Pidana," *J. Ilmu Huk.*, vol. 14 Nomor 1, no. 1, pp. 90–106, 2011.
- [23] M. Sari, "Jurnal Ilmu Hukum MEDIASI PENAL SEBAGAI ALTERNATIF MODEL," no. 11, 2008.
- [24] L. Wulandari, "Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal," *Law Reform*, vol. 4, no. 1, p. 1, 2010, doi: 10.14710/lr.v4i1.312.
- [25] R. A. Fitriyono, B. Setyanto, and R. Ginting, "Penegakan Hukum Malpraktik Melalui Pendekatan Mediasi Penal," *Yust. J. Huk.*, vol. 5, no. 1, pp. 101–102, 2016, doi: 10.20961/yustisia.v5i1.8724