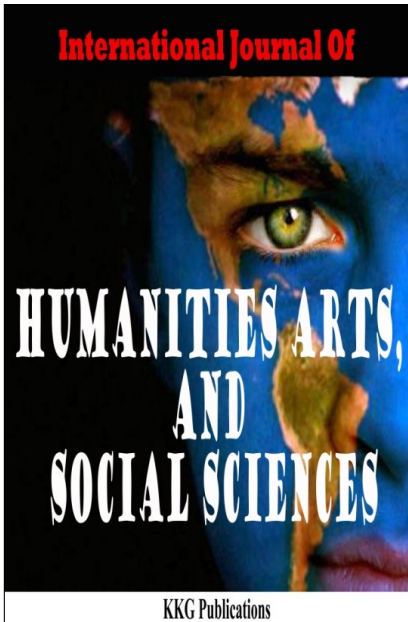


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# THE URGENCY OF PONTIANAK LOCAL PUBLIC POLICY IN EMBODING LEGAL PROTECTION AGAINST TEACHER

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**Abstract.** Teacher is one of the most important figures in education, who do not get protection in reality, especially optimal legal protection from government. The empirical fact showed that there were “teacher’s criminalizations” in performing their duties professionally. The obligation is to provide teacher’s legal protection in performing their professional duties, especially by government, both central and local government. It starts through the teachers’ legal protection providing. Although law and the Government Regulation have been published, but law is still unable to provide comprehensive legal protection against teachers substantively. So for that, Pontianak Local Act Draft presence will be legal protection from Local Government to take policy measures of crucial legal protection against teachers. The aim of this study is to formulate a local policy which accomodates law protection against teacher in doing their profession, especially from bad treatment and violent act. Research method used was normative and sociological law research to reveal empirical fact. Research finding is Pontianak Local Act presence, it is expected to be able to give law protection against teachers substantively, Law Service Unit and Teacher Complaint (UPHPG) norming is important which does not exist yet during this time. It can be said that UPHPG is an organization vessel regulation model in giving counseling space and law assistance for giving teachers’ law protection.

## INTRODUCTION

Education is one of the important elements in order to encourage nation’s advancement. Education quality realization will create human choice. Improving the educational level is an important aspect in order to realize the objective of the state as mandated in the 1945 Constitution, enriching the life of a nation.

Education also needs to be understood as a long-term investment, because good education quality will greatly affect the impact on the quality of people’s life in a country. So, the government has a responsibility to realize a good quality of education for all its citizens.

Education is a conscious and deliberate effort to create an atmosphere of learning and learning process so that students are actively developing their potential to have the spiritual power of religion, self-control, personality, intelligence, character, and skill needed for themselves, society, nation, and state.

The aim of education in Indonesia, as contained in Act on National Education System, 20 (2003) Chapter II Section 3, states:

“The national education aims at developing students’ potentials in order to become a man of faith and have fear of God Almighty. Man becomes noble, healthy, knowledgeable, skill-

ed, creative, independent, and becomes a democratic and

responsible citizen” (Mudyahardjo, 2008).

Then, within each business, educational goal by Brubacher (1939) in his book “modern philosophies of education” is expressed below (Anwar, 2015):

“Education aims to perform time-important funtions, all of which are normative. In the first place, they give direction to the educative process for education to slip into such a tough pattern, underscoring the second funtional aim to perform. Aims not only should give direction to education but should motivate it as well. Finally, aims have the function of providing a criterion for evaluating the educational process”.

Through Brubacher (1939) description above, it can be understood that the purpose of education is to implement three important functions, all of which are normative as follows: (a) The purpose of education is to give direction to the educative process; (b) The purpose of education does not always give directions to education, but it should push or provide motivation as possible; and (c) The purpose of education has the function to provide guidance or provide criteria for assessing the educational process. Based on the above, it can be seen that education has an enormous influence on an effort to promote community life as well as the nation. Conversely, low quality education will have a negative effect. As shown in IPS Lesson (2015), the low level of citizen’s education will have an impact

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on the population's ability to understand and deal with face-time advances, science, and technology. Never before, it will lead to other problems; one of all these is a domino effect in criminal act improving.

Furthermore, an educational process, known a teaching and learning process, involves the teachers' and students' roles. The teacher's role is very important to determine the success in teaching and learning process, where the teacher in case carries out two roles, i.e., as a teacher and as a student, which means besides teacher has a duty and responsibility of science transfer, he/she is also responsible for educating students to establish a good character of students.

In practice these days, it is still found that the teacher, as one of the most important figures in educational sphere, is still not getting optimal protection from the government and can be seen in the fact that, for example, there are "criminalizations" for the teacher. On such conditions, the teacher has implication for the teacher to perform his own professional duty, due to the student and family/student's parents. Therefore, the problem regarding the teachers' protection should get a serious attention by central government or local government.

The obligation is to provide teachers' legal protection in performing their professional duties, especially put on the government, both central and local governments. It is started by providing law, i.e., Act, Government Regulation until Local Regulation as legal protection for government and local government in taking policy and exact policy forms and being consistent with the accepted rights of the teachers.

Central government has enacted Act on National Education System, 20 (2003), on Act on Teacher and Lecturer, 14 (2005), Government Regulation on National Education Standard, 19 (2005) and Government Regulation on Teacher, 74 (2008). The rules are the main foundation or legal basis for the government in implementing the obligation of providing legal protection against teachers. But the rules had not been accommodated by set pattern and legal protection mechanism against teacher, so Local Public Policy in Pontianak is crucial.

During this time, the researcher did not find any local policy that gives more implementative and applicative law protection for teachers, both in province and city/district in Indonesia, so this study will give an analysis of Pontianak local policy urgency in giving law protection effort against teachers. Specific research about legal protection policy against teacher is never done till yet. But, a researcher Ardi (2013) only pointed out factors and obstacles in implementation of law protection against teachers as mandated by Act on Teacher and Lecturer, and recommended the need of local policy through Pontianak Local Policy on Protection against Teacher, but not substantively, yet discussing

how the form and norm have to be formulated in a Local Act. Therefore, the researcher tried to give deeper analysis through this study that Pontianak Local Policy presence was expected there so a policy formulation can be made as a form or model in effort of giving law protection against teacher from bad treatment and/or violence act from various parties, what is violence as a phenomenon in society life, in order to minimize the loss of teachers' spirit in doing their job as an educator to their students (Sirajuddin & Zubaedi, 2008). This research was done to give contribution to Local Government through policy formulation. There is a form, mechanism or system in giving law protection against teachers in all forms of bad treatment/violence in doing their job as educator and teacher, and there is a forum model which gives protection against teachers in Pontianak.

### Issues

Based on the description above, we can identify several problems, namely:

1. Why local public policy on legal protection against teacher is needed?
2. How legal protection against teacher is needed to be regulated in Local Act norm in Pontianak ?

### LITERATURE REVIEW

Education is a conscious and well-planned effort to create an atmosphere of learning including learning process so that the learners actively develop their potential to have spiritual power, self-control, personality, intelligence, noble character, as well as skills the society, nation, and state need (Article 1 point 1 Higher Education 12th Law of 2012). The following are the education concepts (Anwar, 2015):

1. The aggregate of all processes by which a person develops abilities, attitudes, and other forms of behavior of positive value in the society in which he lives.
2. The social process by which people are subjected to the influence of a selected and controlled environment (especially that of the school) so they may attain social competence and optimum individual development.

There are some reasons for the education's importance in human lives (Dariyo, 2013; Nuchso, Tuntivivat, & Klayklung, 2016):

1. Rational reasoning is an underlying reason that naturally everybody wants to develop their potential to become a superior, intelligent, skilled, and virtuous person so as to be a good and responsible citizen in the society. Everyone can rationalize the reason, so that one does not become a social burden for the society.
2. The reason for justice is the reason that education is for anyone regardless of the background of the nation, ethnicity,

gamma, gender, social status, economy, skin color, and so on. Everyone has the right to get education to develop their competence in order to become human being cedas, creative, skilled, and responsible in the society. So no human being can inhibit the rights of individuals who want to get a decent education for himself

3. Economic reasoning is a reason that through education, she/he hopes that they will be able to get the best job that can improve economic prosperity for his family. With the highest education, one will master a professional skill that is necessary for society's progress, so that he earns sufficient income for their welfare.

4. Social factors are closely related to the social changes that occur in the society. With the success of the Family Planning program, the size of the family is smaller, so parents, both father and mother, can send their children as high as possible. Thus, children can get the best level of education compared to the previous generation of parents.

5. Science and technology reason requires every person to play an active role in developing science and technology in order to promote the wider life and welfare of the society. The progress of science and technology of a nation is closely related to the amount of contribution given by every citizen. Therefore, every citizen, who is aware of the duties and responsibilities of the nation's progress, will continue to sharpen all his potential through education. With the increase in educational attainment of citizens, it will increase the country's science and technology.

6. Work reason is a reason that many people improve their level of education, when they are aware of the demands and requirements of a certain level of education that must be met in order to hold a position within an institution, organization or company. Therefore, they volunteered to pursue higher education so they could meet the requirements required by organizations, agencies or companies, where they worked their careers.

Educational aims at performing time-important functions, all of which are normative. In the first place, they give direction to the educative process for education to slip into such a tough pattern, underscoring the second function that aims at performance. Aims not only should give direction to education but should motivate it as well. Finally, aims have the function of providing a criterion for evaluating the educational process (Anwar, 2015; Meidrina, Mawaddah, Siahaan, & Widyasari, 2017). The children will be happy if they are treated well and warm; the main source of their happiness is to be treated as such. Furthermore, when children are supported with such behavior, they will treat others, animals, even inanimate objects warmly (Haris, 2017; Lavilles & Robles, 2107; Lickona, 1991).

## METHOD

This study used a qualitative approach, with two methods of research, that is, a normative legal research (normative juridical) and sociological legal research/empirical juridical (Soemitro, 1987):

1. Normative legal research (normative juridical) is a legal research method done by reviewing library material and secondary data using deductive reasoning method through several approaches, namely: 1) statute approach, 2) conceptual approach.

2. Sociological legal research (empirical juridical) is a legal research method done by primary data obtaining. Through inductive reasoning method, respondent finds the true criteria and facts used to perform the induction process and examination of truth correspondingly to find the sophisticated facts.

## RESULTS AND DISCUSSION

### Education Process Overview in Pontianak

In education process implementation, school can be said as a second home for student, whereas a teacher at school can be said as a parent figure for the students in school environment. Teacher, as a parent figure for student, has responsibility to give love to each student by providing good and warm treatment to students like parents are to their children. A moral educator from England, Peter McPhail stated that (Ginanto, Mulyadin, Putra, n.d.; Lickona, 1991):

"Children will be happy if treated well and hearty; the main source of their happiness is to be treated like that. Furthermore, when the children are supported by such behavior, they will be happy and warm to treat other people, animal, and even inanimate object".

Teacher, as one element of a school, carries out educational activities, in addition to the aims to provide knowledge in order to create students who have competence in the field of science and also has the responsibility of establishment of students' good character, as Martin Luther King Jr. opined (Lickona, 1991), namely: "Intelligence plus character - that is education's real purpose". In good value investment for students in the school, formerly, a teacher should be able to know and understand about each student's character. It can support student's development positively. This is in line with Article 3 of Act on National Education System, 20 (2003) stated that:

"National education functions to develop the ability, moulds the character development and dignified civilization in the context of the enriching nation life, aims to develop students' potential to become faithful and devoted to God Almighty, noble, healthy, knowledgeable, skilled, creative, independent, and become

democratic and responsible citizens.” Thus, education sector needs to be taken seriously by the government or community. In an effort to promote and fulfill education rights of children in Pontianak has actually sought through several programs, so that

children’s participation level has been high, as the figures in the following table show:

**TABLE 1**  
**Literacy Figures and School Enrollment Rates in Pontianak**

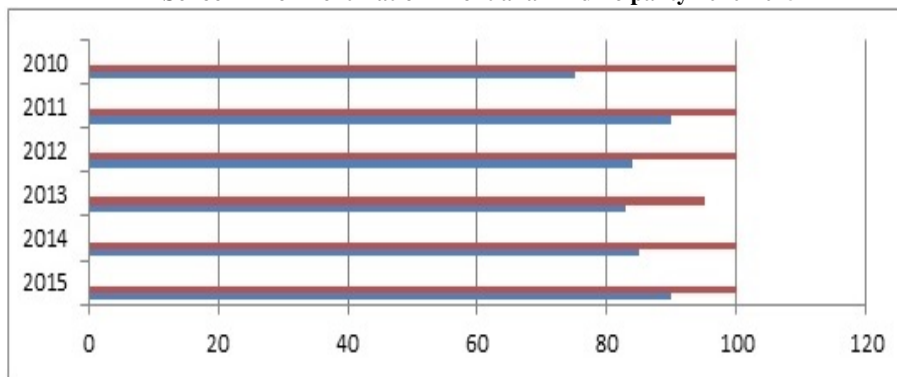
Year	Literacy Figures		School Enrollment	
	15-24 years old	15-55 years old	7-12 years old	13-15 years old
2007	98.31	93.50	98.11	96.76
2008	98.92	95.68	97.64	91.41
2009	97.77	91.39	92.85	93.40
2010	96.67	84.95	100.00	77.78
2011	97.95	96.42	100.00	91.71
2012	99.57	97.37	100.00	90.06
2013	99.40	97.31	97.82	89.44
2014	99.43	98.71	99.35	92.71
2015	99.85	98.40	99.44	98.75

Source: Pontianak BPS

School Enrollment (APS) in Pontianak for age group 7-12 years during the last three years has been 100 percent. It indicates that the entire population aged 7-12 years old in Pontianak has been able to take advantage of existing educational facility according to age in education level. In contrast to age group 13-15 years,

age group APS has been quite volatile in the last few years. However, school participation of childhood ages 13-15 years old continued to rise and get near to 100 percent. The data on school participation rates in Pontianak are presented in the figure below:

**FIGURE 1**  
**School Enrollment Ratio in Pontianak Municipality 2010-2015**



School, as a tool of education, is not only responsible for the implementation of knowledge transfer, but also plays a role in providing students the moral education.

Starting from the objectives mentioned above, in practice, there are three following important factors in moral education in Indonesia:

1. For learners who actually have the level of awareness and moral consciousness for developmental differences unevenly, it is necessary to identify what leads them to an understanding of

the conditions of moral development of students.

2. Values (moral) based on consciousness stage and human moral development are necessary to know learner’s ability stages. Thus, it should be understood that learner’s understanding process is based on awareness level and power of consciousness value itself.

3. Teacher acts as a facilitator in possibility providing for

students to understand and appreciate moral education's value. School is one of the social institutions which collect interest and individual, thus, becoming a special community which has a unique and distinctive character. In addition to the family, the education is not infrequently regarded as one of the ideal communities to organize someone's character building (Sudarma, 2013). School, as one of the zones that can configure student's character, off course, is expected to be able to educate students and configure the good character of students. The importance of this character was revealed by Ben Franklin who stated: "Nothing is more important to the community welfare but rather to train the youth in wisdom and virtue."

However, the school as a zone has the ability of forming student's character. There are still many shortcomings of the teacher as a role model who has the ability to guide and educate students to have a good character. Not infrequently, there are some cases where the teacher is considered less able to discharge their responsibility.

In addition, the reverse reality is found where teacher got criminalization of the parents/student's family in terms of teacher carrying out education process to his students. Such a teacher is subjected to violence from the students or parents/student's family who deviated from the rules or from the framework of character-building process.

### **The Urgency of Local Public Policy in Providing Legal Protection Against Teachers in Pontianak**

Teacher in carrying out his profession already has a reference source in the form of legislation that could serve as guidelines for any teacher to determine the scope of the rights and obligation of his profession. For example, there are several laws in Indonesia that specifically regulate teacher's profession namely Act on National Education System, 20 (2003), and Government Regulation on Teachers, 74 (2008) in carrying out their profession. They should know and understand the entire legislation related to the profession in order to promote a teacher who has the legal awareness and professionalism in order to realize good quality education.

Article 39 paragraph (1) of Act on Teacher and Lecturer, 14 (2005) stated that: "The government, local government, community, professional organization, and/or education unit must provide protection against teachers in the implementation of their duty". It can be seen that central government, local government, community, and teachers' professional organization have an obligation to provide protection against the teacher. Off course, protection is given to assure and maintain the stability and performance of a teacher as an educator.

Furthermore, in Article 39 paragraph (2) of Act on Teacher

and Lecturer, 14 (2005) stated: "The protection referred to paragraph (1) shall include legal protection, the protection of the profession, as well as occupational safety and health protection".

The legal protection provision against teacher can be seen in Article 39 paragraph (3) of Act 14 of 2005 namely: "Protection of the law referred to paragraph (2) includes legal protection against violent act, threat, discriminative treatment, intimidation, or unfair treatment of the student, student's parents, the community, the bureaucracy or the other".

Legal protection against teacher concept is one of the issues that received attention from various parties. This is because there is the opinion of some people that this time, a teacher is susceptible to a variety of things that become a threat to the teaching profession. But, it does not mean that teachers' protection is delivered to teachers' impunity. It is clear that government should be able to establish a regulation, which may create legal protection for teachers who meet the expectation of the various parties.

In order to create a legal protection against the teacher at least, there are challenges that must be addressed about whether the legal protection for teacher in the level of implementation can create justice to all elements involved in the process of teaching and learning in school, including, in this case, the learner. Some efforts to achieve legal protection against teacher are very important to realize that:

1. Realizing the figure of qualified teacher having professionalism in carrying out the function and education responsibility.
2. Achieving teaching and learning process in schools that spawned learner who have competence in the field of science and have good character.

At the empirical level, teacher, as a figure of student's parent in school surrounding, drew criticism from many quarters, especially from students' parents because there is a view that teacher, as a student's parent, should be a role model for all students and their responsibility is to keep students from various threats.

Furthermore, if it is traced further, it turns out there are some teachers who are victims of violence perpetrated by student and/or parents/students' families. It can be seen by some of the cases occurred and concern from some circles.

Regional Police of West Kalimantan reported that there were three cases of violence committed by student parents/student's during the teaching and learning activities at schools. Head of Public Relation of Regional Police of West Kalimantan explained the latter case. On, Thursday, September 8, 2016, a Head of Elementary School (SD) Negeri 37 Ambawang, District

Ambawang, Kubu Raya, Aaron, was beaten until bloody in the face. If there is a view of empirical fact in Pontianak, an indication of the weak teacher's legal protection is still to be found anyway. The phenomenon is considered a form of harassment profession, once insulting the dignity of teacher. Pontianak Mayor, Sutarmidji, for example, asked for criminalization to be stopped immediately. All parties should maintain the dignity of teachers. "Not only parents, but also teachers themselves", he told Vice Editor in Chief in London, Friday (12/8) as said in Sutan (2016). Based on the above, the regulation on teachers' protection is desperately needed so that there is a balance between the duty of the teaching profession and the right which is also owned by a teacher.

Urgent importance of presenting regional policy governing teachers' legal protection is not only central government's duty and responsibility, but local government should contribute maximally to realize the teachers' protection for social justice for all Indonesian people.

Formation of Pontianak Local Act on Protection Against Teacher, when seen from the theory of law, does not stand alone, but has been linked as a system of law and regulation based on theory system and legislation adopted in Indonesia, either be viewed vertically or horizontally.

#### **Formulation Substance Norm in Pontianak Local Policy-Making in Embodying Legal Protection Against Teachers**

The Local Act on the Protection Against Teacher should be able to accommodate the values and ideals of law contained in the legal principles of legal certainty and can provide benefits to local government, community, and private organizations. It can provide a sense of justice that embraces the truth, is not biased, impartial, and arbitrary.

Astawa and Pantja (2008) that a Local Act is said to have a philosophical foundation if its formulation or norms are deeply philosophical justification, particularly the philosophy of way of life of a nation containing moral values or the ethics of the nation (Astawa & Pantja, 2008). Philosophical foundation is very important to avoid a conflict of local regulations drafted by the intrinsic and sublime values in the midst of society, such as ethics, customs, religion, and others.

Philosophically, Pontianak Local Act on Protection Against Teacher is based on the consideration. First, it improves Pontianak education quality. Second, it provides protection against the teacher as one of important education elements in Pontianak. Both of these considerations contain legal ideal which is tied with philosophical values, which reflect the values of worldview, consciousness, local wisdom, and law goals which include the atmosphere of mysticism and the philosophy of the Indonesian

people that will be consistent with the guiding rule of law.

Sociologically, law existence (local act) is for human living. If law says it is associated with other things, but it will ultimately be always associated with the human life together. Thus, in a nutshell, it can be said that the law serves to airport and also organize the common life of man (society). Thus, legal issues involve various closely related aspects of the society. Legal entity is not detached from the world around it.

Hence, the importance of regulating the Local Act on Protection Against Teacher is based on the reality of Pontianak City society which includes the legal needs of society and social aspects, in order to avoid rules disposition made from Pontianak social roots, in addition to being based on empirical fact needed to accommodate effort to provide legal protection to the reality of teachers who received threats of violence from both students and parents/families. Where social fact to the fore, even when there is legislation at the national level are on the formulation of legal protection against teacher, but do not accommodate how to achieve legal protection against the teacher, as well as patterns of protection mechanism.

Effort to meet people aspiration should be in line with the changes experienced by the people for the implementation of the Local Act on Protection Against Teacher that cannot be separated from the service provided to the public. It cannot work according to its size and in its sole discretion, but requires a driving force. Implementation of regional regulation requires implementing a device according to the function.

Underlying the thinking of philosophical, sociological, and juridical aspects then from this study can be formulated to take implementable steps providing teacher legal protection in carrying out their profession to avoid all forms of threat and violence act. It is necessary to set forth a local policy in the formulation of norm/substance arranged such that the protection against teacher is there if there is gain of violence, threats, discriminatory treatment, intimidation, or unfair treatment on the part of students, students' parents, community, government, or other parties. The legal protection is to be provided in the form of access to legal counsel and legal assistance, both inside and outside the court.

As a concretization form of legal protection against teacher as well as an implementable step and local policy is important to be formulated in order to streamline and ensure the implementation of legal protection for teacher that is important for the establishment of UPHPG. It can be regarded as an association form that can be used as a model in providing legal perlindungan against teachers, where the organization consists of local government representatives, Professional Teacher Organization, Education Unit, Academia, and Public Agency engaged in legal

aid. UPHPG, a coordinating institution, can be given following tasks and roles:

1. Coordinate prevention and response efforts to violent act, threat, discriminatory treatment, intimidation or unfair treatment on the part of students, students' parents, the community, government or other party to the teacher.
2. Provide legal consultation service to teacher.
3. Provide legal assistance service both inside and outside the court to teacher.
4. Monitor the implementation progress of legal protection of the teacher.
5. Implement reporting and evaluation.

### CONCLUSION AND FUTURE STUDY

In order to organize comprehensive local autonomy, real and responsible authority is necessary and responsibility to improve

the legal protection against teacher should be there in terms of carrying Government and Local Government responsibility in the respect, promotion, enforcement, compliance, and protection against teacher in their profession as both an educator and a teacher in molding human character and integrity of young people.

To implement the foregoing, the establishment of Pontianak Local Policy on Protection Against Teacher to be more implementable is very crucial, especially through formulating the importance of UPHPG issuance that is expected to become legal protection model, because UPHPG is a coordinative institution having role of giving consultation and legal assistance against teachers dealing with threat problem, intimidation, and violent act and other acts that interfere with the teachers in their profession.

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